

## APPENDIX 9

# MODEL PERFORMANCE AND WARRANTY GUARANTEE

Contract on subsidy for negative emissions carbon capture, transport, and storage

### **Instructions for tenderers**

*The tenderer shall with the tenderer's offer submit a declaration of intent regarding a performance and warranty guarantee, cf. the contract notice, section III.1.2), the Tender specifications, paragraph 12.3, and Appendix C, Declaration of intent regarding a performance and warranty guarantee. Reference is made to Appendix C, Declaration of intent regarding a performance and warranty guarantee, for instructions for the tenderers regarding the declaration of intent.*

*This Appendix constitutes General Requirements in its entirety, cf. Tender specifications, paragraph 6.*

*The tender shall not fill in or complete this Appendix and it should not be submitted as a part of the tenderer's offer.*

*Prior to the signing of the Contract(s) the tenderer(s) who is awarded a Contract shall provide the DEA with an unconditional and irrevocable on-demand Performance and Warranty Guarantee issued by a Guarantor in favour of the DEA. The Performance and Warranty Guarantee shall be in the form of this Appendix 9, Model performance and warranty guarantee, and otherwise in accordance with the provisions of the Contract, including clause 12 of the Contract.*

*Subsidy Rate and Annual Quantity shall have the meaning as ascribed to them in Appendix 2, Definitions.*

*The guarantee amount of the Performance and Warranty Guarantee shall be stipulated as set out in the model text below.*

*The Subsidy Rate 2024 shall for the purpose of the Performance and Warranty Guarantee be calculated on the basis of the index in Appendix 5, Subsidy and economy scheme, clause 3.3.1. This means that Subsidy Rate 2024 for the purpose of the guarantee amount is calculated as:*

$$\text{Subsidy Rate}_{2024} = \text{Offered Rate} * \left(1 + \frac{\text{Forbrugerprisindeks}_{2024}}{100}\right)$$

*The DEA will calculate and inform the tenderer of the guarantee amount for the Performance and Warranty Guarantee prior to contract signing.*

*All tenderers are encouraged to in due time during the tender procedure to present Appendix 9, Model performance and warranty guarantee, to one or several banks and/or insurance companies and submit any comments or questions that these might have in the digital tendering system in accordance with the procedure in the Tender specifications, paragraph 9.*

## Performance and warranty guarantee for Contract on subsidy for negative emissions carbon capture, transport and storage

To: Energistyrelsen (The Danish Energy Agency)  
CVR-nr. 59778714  
Carsten Niebuhrs Gade 43  
DK-1577 Copenhagen V  
Denmark  
(the “Beneficiary”)

Performance and Warranty Guarantee (the “Guarantee”)  
No.: [XXXX]

In the event of:

[Name of the Operator]  
[Business registration number]  
[Address]  
[Postal code and city]  
[Country]  
(the “Operator”)

failing to fulfill its obligations of the Contract on subsidy for negative emissions carbon capture, transport and storage, dated [date], between the Operator and the Beneficiary (the “Contract”), we,

[Name of the bank / the insurance company]  
[Business registration number]  
[Address]  
[Postal code and city]  
[Country]  
(the “Guarantor”)

hereby irrevocably and unconditional guarantee, as primary obligor and not merely as a surety, to pay on behalf of the Operator without cavil or argument to the Beneficiary – upon receipt of the Beneficiary's first

written demand – any amount, for which the Beneficiary state that the Operator has become liable, up to the maximum of:

*[The Guarantee shall stipulate one of the following two options, see clause 12.6 and 12.7 of the Contract, dependent on whether the Guarantee is provided subject to adjustment for inflation or with a fixed amount. The guaranteed amount shall for both options be calculated as: amount of guarantee in DKK = Subsidy Rate 2024 x Annual Quantity. The option not selected shall be deleted from the Guarantee:]*

*[DKK [amount of guarantee in words] ([amount of guarantee in figures]), however subject to adjustment for inflation, see Appendix 5, Subsidy and economy scheme, clause 3.4.]*

*or*

*[DKK [amount of guarantee in words] ([amount of guarantee in figures])]*

This Guarantee covers all claims under the Contract, including - but not limited to - all damages, penalties and repayment of subsidies paid under the Contract with interest in accordance with the Danish Interest Act (in Danish: “renteloven”).

Any such amount will be payable to the Beneficiary without any right of objection on our part and notwithstanding any objections from the Operator. Payment must be made by us on the Beneficiary’s first written demand without examination or other documentation of the legitimacy of the Beneficiary’s demand.

We further acknowledge and agree to changes of the Contract and its Appendices which may be made under the Contract and the Beneficiary’s rights to assignment and transfer under clause 17.3 of the Contract. This Guarantee may not be assigned or transferred to a person or entity listed in any sanction list issued by any US, UK, GB or EU authorities. The Beneficiary will notify the Guarantor of any assignment or transfer of the Contract whereby another person or entity becomes the Beneficiary.

This Guarantee shall be valid and enforceable as of the date hereof until the Beneficiary confirms in writing that the Guarantee is fully discharged. *[This may be replaced with a fixed expiry in accordance with clause 12.12 of the Contract]*

The amount of the Guarantee will be reduced automatically by any amount we may have to pay under the Guarantee.

We are not entitled to transfer, assign or otherwise dispose any of our rights and obligations arising out of this Guarantee without the Beneficiary’s prior written approval.

The Guarantee and any dispute arising out of or in connection with it shall be subject to Danish law, substantive as well as procedural, however excluding its choice-of-law rules.

Any dispute arising out of or in connection with this Guarantee, including any disputes about the existence, validity or termination thereof, or the legal relationship established by this Guarantee, shall be settled by the ordinary courts of law under the jurisdiction of the City Court of Copenhagen.

This Guarantee is enforceable pursuant to section 478, subparagraph 1, no. 5, and subparagraph 4 of the Danish Administration of Justice Act (*in Danish: retsplejelovens § 478, stk. 1, nr. 5, og stk. 4*).

Signature(s)

Place:

Date:

On behalf of the Guarantor

[name of the bank / the insurance company]

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Name:

Title: