

## Appendix 9 – Form of the Performance Security

*[Letterhead of the Guarantor]*

### DEMAND GUARANTEE

**To:** RB Rail AS, registration No. 40103845025.

**DATE:** *[insert date of issue]*

**GUARANTEE NO:** *[insert Guarantee reference No]*

**TYPE OF GUARANTEE:** performance guarantee

**THE GUARANTOR:** *[insert name, legal address and registration No of the Guarantor]*

**THE APPLICANT:** *[insert name, legal address and registration No of the Applicant]*

**THE BENEFICIARY:** RB Rail AS, registration No. 40103845025.

**THE UNDERLYING RELATIONSHIP:** Any Applicant's obligation towards the Beneficiary arising from either: (i) *[insert name and number of the Agreement as set in the Form of Agreement]* (in Latvian \_\_\_\_\_) ("**Agreement**") or (ii) applicable laws in relation to the Agreement or in relation to any matters related to or arising from the Agreement. For avoidance of any doubt, the above, also includes the Applicant's obligation to pay the contractual penalties set in the Agreement.

**GUARANTEE AMOUNT AND CURRENCY:** *[insert in figures and words maximum amount payable and the currency in which it is payable].*

**SUPPORTING STATEMENT:** The supporting statement can be included in the text of the demand or drafted as a separate document whereunder the Beneficiary is required to only state that the Applicant has not fulfilled its obligations in accordance with the Underlying Relationship, without indicating motivation why the respective sum is requested.

**ANY DOCUMENT REQUIRED IN SUPPORT OF THE DEMAND FOR PAYMENT:** NONE

**LANGUAGE OF THE REQUIRED DOCUMENTS:** any document, including the demand and the supporting statement, if latter is drafted as a separate document, shall be submitted in Latvian or in English.

**FORM OF PRESENTATION:** any document, including the demand and the supporting statement, if latter is drafted as a separate document, shall be submitted either (at the choice of Beneficiary) in paper form or electronically and must be signed by authorized representative of the Beneficiary.

An evidence that the document is signed by the authorized representative of the Beneficiary is one of the following options: (i) the document bears or is accompanied by a signed confirmation of Beneficiary's bank stating that the latter has verified the Beneficiary's signature appearing on the said document or (ii) the Beneficiary's signature appearing on the said document is certified by notary public or (iii) the said document is signed by qualified electronic signature within the meaning of Article 3(12) of the EU Regulation No 910/2014 of 23 July 2014.

**PLACE FOR PRESENTATION:** *[indicate the place of presentation of the demand]* or the following Guarantor's email address: [●] (at the choice of Beneficiary).

**EXPIRY:** *[insert the expiry date]*

**THE PARTY LIABLE FOR THE PAYMENT OF ANY CHARGES:** the Applicant.

**TRANSFER OR ASSIGNMENT OF THE GUARANTEE:** the Guarantee is transferable (full or in part) to Ministry of Transport and Communications of the Republic of Lithuania, Ministry of Economic Affairs and Communications of the Republic of Estonia and/or Ministry of Transport of the Republic of Latvia, or their appointed, and/or directly or indirectly controlled ("**Transferee**") entity (or entities) that is (i) involved in CCS Deployment process (as defined in the Underlying Relationship) acting as an employer under any of the contracts concluded to implement the CCS Deployment project (as defined in the Underlying Relationship) (ii) owner of results developed under CCS Deployment (as defined in the Underlying

Relationship) project appointed under national legislation or (iii) other entity/entities. Partial Guarantee transfer means that part of the Guarantee amount indicated in the Beneficiary's notification on transfer is transferred to the Transferee and part of the Guarantee amount remains with the Beneficiary and the Beneficiary is entitled to submit the demand(s) till reduced Guarantee amount pursuant to this Guarantee terms. By issuing this Guarantee the Guarantor confirms that as soon as the Beneficiary notifies the Guarantor in writing on transfer of this Guarantee and names the Transferee and indicates to what extent the Guarantee is transferred, the indicated amounts under this Guarantee will be paid to the Transferee and in any event such transfer will not be considered as a cause for the Guarantor unilaterally to revoke or to amend this Guarantee (apart from the split of the Guarantee amount if the Guarantee is transferred in part). For avoidance of any doubt this means that a separate Guarantor's consent for the transfer is not needed and the Guarantor is obliged to pay to the Transferee as the new beneficiary under the Guarantee, once the Beneficiary has notified the Guarantor about such transfer. In such case Article 33 (g) (ii) of the ICC Rules (as defined below) is excluded. In the Guarantee is to be transferred to any other subject, a separate Guarantor's consent for the transfer is needed and Article 33 of the ICC Rules is applicable.

As Guarantor we hereby irrevocably and unconditionally undertake to pay immediately, without any delay (in any event not later than during five business days after the receipt of the Beneficiary's demand) to the Beneficiary any amount up to the Guarantee Amount upon presentation of the Beneficiary's complying demand, in the form of presentation indicated above. The payment should be made to the account of the Beneficiary indicated in the Beneficiary's demand. For avoidance of doubt, this Guarantee is a separate and independent obligation of the Guarantor and its validity and enforceability is not affected by validity and enforceability of the Underlying Relationship. The Guarantor has no right to raise any defense against this Guarantee, including, but not limited to the ones available to the Applicant under or relating to the Underlying Relationship.

Any demand under this Guarantee must be received by us on or before Expiry at the Place for presentation indicated above.

Multiple demands are allowed. The amount that the Guarantor undertakes to pay under this Guarantee will be reduced automatically by the amount that the Guarantor has paid already under this Guarantee.

**THIS GUARANTEE IS SUBJECT TO THE UNIFORM RULES FOR DEMAND GUARANTEES (URDG) 2010 REVISION, ICC PUBLICATION NO 758 (ICC RULES).** The Article 33 of the ICC Rules does not apply in case the Guarantee is assigned or transferred to Transferee. Matters which are not covered by the above mentioned ICC Rules shall be decided according to Latvian law. For avoidance of doubt, Articles 1692 to 1715 of the Civil Law of Latvia do not apply to this Guarantee, as this Guarantee does not constitute a surety (in Latvian – *galvojums*) and instead this Guarantee constitutes a separate and independent (not accessory) obligation of the Guarantor.

Any dispute, controversy or claim arising out of or relating to this Guarantee, or the breach, termination or invalidity thereof, shall be settled by arbitration under the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce. The dispute shall be settled by one (1) arbitrator. The arbitration shall be conducted in the English language. The place of arbitration shall be Stockholm, Sweden. Decision of arbitration shall be final and binding on the parties. This arbitration agreement shall be governed by laws of the Kingdom of Sweden.

If in relation to this Guarantee there are issued or there are any Guarantor's terms, regulations or there are any contracts concluded by the Guarantor, then such terms or agreements do not affect this Guarantee, its scope or cover, the Guarantee amount or its payments procedure. In any event the terms of its Guarantee prevail over the terms, regulations or the contracts.

This Guarantee has been drawn up in two originals one being kept with the Beneficiary and one with the Guarantor.

*SIGNATURE(S) of the Guarantor*

