

Danish Ministry of the Environment and Food
Contract for advice and assistance

Contract for
evaluation of efficacy studies of wood protection products
under the Biocidal Products Regulation

between

Miljøstyrelsen (DEPA)
Haraldsgade 53
2100 København Ø
CVR-no.: 25798376

and

<Insert Provider>

<Insert address>

<Insert postalcode and town>

Business registration no.: <Insert business registration no.>

24. November 2017

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CONTRACT

LIST OF ANNEXES

Annex 1 - Specification of requirements of November 20 2017

Annex 2 – Provider’s tender of <*Insert date*>

LIST OF DEFINITIONS

Annexes	means all annexes appearing on the list of annexes above. If the definition is followed by a specific number, the definition refers to the specific annex appearing on the list of annexes above.
Contract	means this Contract, including all Annexes and any later written amendments or addendums.
Contracting Entity	is defined in the Project-Specific Provisions (1).
Contract Period	is defined in the Project-Specific Provisions, section 2.
Contract Price	is defined in the Project-Specific Provisions, section 6.
Current Legislation	means the acts and statutory orders etc. applicable at any time as well as European Union law with the force of res judicata applicable for matters covered by this Contract.
Deliverables	is defined in the Project-Specific Provisions, section 3.2.
Delivery Deadlines	are defined in the Project-Specific Provisions, section 3.1.
General Provisions	means the provisions in part 2 of this Contract.
Party	means the Contracting Entity or the Provider.
Project-Specific Provisions	means the provisions in part 1 of this Contract.
Provider	is defined in the Project-Specific Provisions (2).
Subcontractor	means a legal person who, on behalf of the Provider, performs part of the obligations of the Provider pursuant to this Contract.
The Parties	means the Contracting Entity and the Provider.
The Project	means the project described in the specification of requirements, cf. Annex 1.

Working Day

means a day – Monday to Friday - except for official holidays in Denmark, and except 24 December (Christmas Eve), 31 December (New Year's Eve) and 5 June (Constitution Day).

PART 1 - PROJECT-SPECIFIC PROVISIONS

The Contract below has today been entered into by the following Parties:

- (1) Miljøstyrelsen, Haraldsgade 53 2100 København Ø, CVR-no.: 25798376 ("the Contracting Entity"), and
- (2) *<Insert Provider>*, *<Insert address>*, *<Insert postalcode and town>*, Business registration no.: *<Insert business registration no.>* ("the Provider")

THE PARTIES HAVE AGREED THE FOLLOWING:

1 SCOPE OF THE CONTRACT AND AMENDMENTS TO THE CONTRACT

1.1 This Contract is concluded pursuant to:

An advertisement in accordance with the Danish Ministry of Industry, Business and Financial Affairs Executive Order no 1572 of 30 November 2016 concerning the use of electronic communication for invitations to tender and the advertisement of public procurement under the thresholds with certain cross-border interest.

- 1.2 This Contract covers the execution of the framework agreement regarding evaluation of efficacy studies regarding wood protection products (product type 8) under the Biocidal Products Regulation. The objective, scope and content, the Deliverables from the Parties, the time schedule etc. are included in the specification of requirements, cf. Annex 1.
- 1.3 Any deviations in the performance of the framework agreement may only be made following written agreement with the Contracting Entity.
- 1.4 The Provider shall accept changes in the agreement; both extensions and restrictions in relation to the Provider's tender, cf. Annex 2. The Contract Price will be adjusted to reflect any extensions or restrictions.
- 1.5 The Contract also covers options, as described in the specification of requirements, cf. Annex 1.

2 CONTRACT PERIOD

- 2.1 The Contract Period is from January 1st 2018 to December 31st 2019 ("the Contract Period"). The Contract will terminate without further notice at the end of the Contract Period.
- 2.2 The Contracting Entity has the option to extend the Contract by 2 years. The Contract may be extended by 2 years under unchanged conditions.
- 2.3 The Contracting Entity may, subject to 3 months written notice to the Provider, extend the Contract as specified in section 2.2.

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- 2.4 In the event of an extension, cf. section 2.1 of the Project-Specific Provisions, the original Contract Period will be extended by the length of the extension.

3 DELIVERY TIMES AND DELIVERABLES

- 3.1 The Provider shall comply with the deadlines given in the specification of requirements, cf. Annex 1 ("Delivery Deadlines"); refer also to the "General Provisions" concerning penalties, cf. section 5 on Delays and Penalties.
- 3.2 The Deliverables are included in the specification of requirements, cf. Annex 1 ("The Deliverables").

4 QUALITY ASSURANCE

- 4.1 The Provider shall assure the quality of the Deliverables. This quality assurance shall be in accordance with the quality assurance requirements set out in the specification of requirements, cf. Annex 1.

5 DOCUMENTATION FOR THE DELIVERABLES

- 5.1 The Provider shall present documentation that the Deliverables can be delivered to the extent and quality, and within the Delivery Deadline, stipulated in the specification of requirements, cf. Annex 1. The documentation shall be presented when demanded by the Contracting Entity.

6 CONTRACT PRICE AND PRICE ADJUSTMENT

- 6.1 The Contract Price and pricing structure is stated in the Provider's tender, cf. Annex 2. The Contract Prices are in DKK excl. VAT ("Contract Prices"). The Contract Prices covers all costs connected with completion of the Project, excluding VAT. The Contract Prices also includes transport and travel costs, hotel and office accommodation and all other costs connected with completing the Project, unless stated otherwise in the specification of requirements, cf. Annex 1.
- 6.2 The Contract Prices is fixed for the entire Contract Period and therefore will not be index-adjusted.

7 PAYMENT TERMS AND INVOICING

- 7.1 Payment shall be in accordance with the specification of requirements, cf. Annex 1.
- 7.2 The Provider shall provide an electronic invoice to the Contracting Entity. The invoice shall include details of the EAN-no 5798000863019, attn: Charlotta Wallensten, "Gebyrfinansierede biocidgodkendelser", and "Journal No. MST-XXX-XXXXXX" Otherwise, invoicing shall be in accordance with the rules laid down in the Act on public payments etc., cf. Consolidation Act no. 798 of 28 June 2007, and the rules issued on the basis of this Act. All invoicing shall be electronic, without fees and at no cost to the Contracting Entity.
- 7.3 Invoices shall be payable 30 calendar days after the receipt of a full and satisfactory invoice.
- 7.4 If the Provider is to invoice the Contracting Entity for an amount in a particular calendar year, the invoice in which the amount is demanded shall reach the Contracting Entity by no

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later than 5 December of the calendar year in question, so the payment to the Provider can be made by no later than mid-January of the following calendar year.

- 7.5 If the details on the invoice are incomplete or the invoice is not sent electronically, the Contracting Entity reserves the right to withhold payment until a full and satisfactory invoice has been received correctly.
- 7.6 In the event of delayed payment, the Provider may charge interest pursuant to the provisions of the Danish Interest Act.

8 TERMINATION OF THE CONTRACT

- 8.1 Both the Provider and the Contracting Entity may terminate the Contract by giving 6 months notice in writing to take effect at the end of a calendar month.
- 8.2 In the event that the Complaints Board for Public Procurement or a court declares the Contract to be void and order the Contracting Entity to terminate the Contract within a time limit set by the Complaints Board for Public Procurement or the court, the Contracting Entity shall also be entitled to terminate the contract in full or in part with appropriate notice as stipulated in the order from the Complaints Board for Public Procurement or the court. The Contract shall terminate, either fully or in part, as stipulated by the order, with effect from the date the order takes effect. If the order issued contains further conditions or requirements, the Contracting Entity shall be entitled to pass on these conditions or requirements in the termination with the Provider, provided that this is on objective grounds, and the Provider shall subsequently comply with these conditions or requirements.
- 8.3 In the situation described above, the Provider shall be entitled to remuneration for work completed up to the date on which the termination takes effect. Apart from this, the Provider shall not be entitled to any form of allowances compensation, including loss of goodwill, operating losses, loss of profits, indirect losses, or consequential damage, other remuneration or similar.

9 VARIATIONS FROM GENERAL PROVISIONS

This Contract differs from the following provisions in the General Provisions:

Section 3.3:

“Each Party’s overall liability to pay compensation, not including payment of any fines, is under this Contract limited to a maximum amount corresponding to twice the Contract Price including the Contract Price of any options.” is replaced by:

Each Party’s overall liability to pay compensation under this Contract is limited to a maximum of 100.000 DKK.

Sections 5.4-5.7 does not apply to this Contract.

PART 2 - GENERAL PROVISIONS

1 RESERVATION FOR AMENDMENTS IN APPROVALS/THE FINANCE ACT

- 1.1 If the Ministry of the Environment and Food does not obtain complete budgetary approval in the Finance Act, or only obtains partial budgetary approval for the following fiscal year, or if the Ministry of the Environment and Food cannot be confident of obtaining full or partial budgetary approval in the Finance Act before the start of the fiscal year, the Contracting Entity may terminate the Contract without notice.
- 1.2 In this situation the Provider has a right to demand remuneration for work performed up to the date the termination takes effect. However, the Provider shall only be entitled to remuneration for redundant workers and rent/lease of premises for these workers, if this can be documented and every attempt has been made to prevent this. The Provider shall not be entitled to payment for lost earnings for the terminated Project or other projects related to the terminated Project.

2 REQUIREMENTS RELATING TO THE PROVIDER'S EMPLOYEES AND COOPERATION

Requirements relating to the Provider's employees

- 2.1 The Provider shall make the persons and employees listed in the Provider's tender, cf. Annex 2, available to complete the Project.
- 2.2 Until final delivery of the Deliverables, the Provider shall maintain the capacity and knowledge, including qualified employees, necessary to complete the present Project for the entire Contract Period, including any extensions. If the Provider makes any changes that have a bearing on the completion of the Project, this shall be notified to the Contracting Entity in writing as soon as possible.
- 2.3 In the interests of continuity and quality in the work, the Provider shall avoid as far as possible any changes of employees or significant changes in the allocation of roles between employees during completion of the Project.
- 2.4 If, in exceptional cases, the Provider is obliged to replace employees or change the allocation of roles, this shall not have any effect on the Provider's completion of the Project, and the changes of employees shall not cause any additional costs or delay to the Contracting Entity. Core staff, responsible employees and contact persons may not be replaced without obtaining prior written consent from the Contracting Entity. If changes in employees or a changed allocation of roles causes additional costs in the completion of the Project, these shall be borne by the Provider alone.
- 2.5 If, because of an employee's resignation or other circumstances related to an employee's personal situation, it is necessary for the Provider to replace an employee named in the Provider's tender, cf. Annex 2, the Provider shall offer the Contracting Entity other employees with qualifications and experience at least equivalent to the previous employee.
- 2.6 At the request of the Contracting Entity, the Provider shall replace an employee if the Contracting Entity's request is objectively justified. If the replacement is prompted by

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circumstances attributable to the employee or the Provider, the Provider shall bear any additional costs.

Cooperation

- 2.7 It is assumed that the Provider will exhibit great willingness to cooperate and will enter into flexible and smooth collaboration with the Contracting Entity, and it is also assumed that the Provider will enter into a continuous dialogue concerning quality and quality development of the Project so that the Project is completed as well as possible.
- 2.8 Where problems of a financial, technical or scheduling nature arise with the Project, the Provider shall inform the Contracting Entity as soon as possible after the problem arises and provide the Contracting Entity with a written recommendation for a solution.

3 LIABILITY TO PAY COMPENSATION / LIMITATION OF LIABILITY

- 3.1 The Parties shall be liable to pay compensation under the general rules of Danish law. If the Provider consists of a consortium of Providers, the individual Providers in the consortium shall bear joint and several liability towards the Contracting Entity. The Providers' internal segregation of any liability to pay compensation shall not concern the Contracting Entity.
- 3.2 However, the Parties may not claim compensation for operating losses, loss of profits, indirect losses, or consequential damage. More specifically, however, any limitation of the Parties' liability to pay compensation will lapse in the event of actions or omissions on the part of the Party that can attract liability and can be deemed grossly negligent or intentional.
- 3.3 Each Party's overall liability to pay compensation, not including payment of any fines, is under this Contract limited to a maximum amount corresponding to twice the Contract Price including the Contract Price of any options.
- 3.4 All liability pursuant to this Contract shall lapse five years after expiry/termination of the Contract.

4 BREACH

- 4.1 In the event that a Party fails to meet its obligations pursuant to this Contract, the other Party shall be entitled to demand compensation for any loss consequential upon this, cf. however, section 3 of the General Provisions.

5 DELAYS AND PENALTIES

- 5.1 If the Provider exceeds the Delivery Deadline for Deliverables, this will be treated as delay.
- 5.2 If the Provider can foresee that there is a risk of delay, the Contracting Entity shall be informed of this without undue delay, giving the background and the expected time need to complete the Project.
- 5.3 Where there is a risk of delay, the Provider shall offer to allocate additional resources to the Project to avoid or overcome the delay, even if this goes beyond the scope of the Provider's tender, cf. Annex 2. The costs of any such remedy shall be borne by the Provider, unless the delay is clearly the fault of the Contracting Entity.

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- 5.4 In the event of a delay, the Contracting Entity shall notify the Provider within a reasonable time after the delay has been ascertained.
- 5.5 If a Delivery Deadline is exceeded, cf. section 5.1 of the General Provisions, the Provider shall pay a day-fine in respect of each Working Day that the delay lasts. The fine shall be 0.5% of the Contract Price, including the Contract Price of any options, for each Working Day or part thereof. The amount of day-fines for delay may not, however, exceed 10% of the Contract Price including the Contract Price of any options.

If a Delivery Deadline for Deliverables is exceeded, the Contracting Entity shall forward a written demand for payment of day-fines within 30 Working Days after the Delivery Deadline. If such a demand is not forwarded, the Contracting Entity shall be precluded from demanding a day-fine.

The Contracting Entity may deduct the amount of day-fines from the Contract Price payable with the next invoice.

- 5.6 The provisions on fines shall not apply where the delay is the fault of the Contracting Entity or where the Contracting Entity demands changes to the Project. Moreover, the provisions on fines shall not apply if the delay is due to public authorities not providing approvals, decisions or replies, or not supplying materials or services within the agreed deadlines, unless this is caused by the Provider involving authorities too late in relation to the approved time schedule, cf. the specification of requirements in Annex 1, or failing to follow-up deliveries from a given authority.

Where a delay is the fault of the Contracting Entity or other public authorities, the Parties shall agree a new time schedule in writing. The provisions on fines in this section 5 shall then apply whenever the new deadlines are exceeded.

- 5.7 Otherwise, the general rules on delay set out in Danish law shall apply, including the right to claim compensation. Compensation may be claimed from the Provider if the Contracting Entity can document having suffered a loss over and above the fine recovered. The amount of day-fines paid pursuant to section 5.5 of the General Provisions shall be deducted from any claims for compensation.

6 DEFECTS

- 6.1 There will be deemed to be a defect in the Deliverables if these do not meet the requirements set out in this Contract or if the Deliverables otherwise are otherwise not as the Contracting Entity could legitimately expect.
- 6.2 In the event of defects, after the defects have been ascertained, the Contracting Entity shall, without undue delay, notify the Provider of these in writing.
- 6.3 Where defects are ascertained in the Deliverables, the Contracting Entity shall be entitled to a free choice of the following:
- to demand that these defects be rectified within a suitably short time determined by the Contracting Entity,

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- to have the defective Deliverable provided by a third party at the expense of the Provider,
- to demand a proportionate reduction in the Contract Price for the Provider, or
- to claim compensation.

At the request of the Contracting Entity, the Provider shall deliver the work completed up to that time and already paid for, without unnecessary delay, in order for a third party chosen by the Contracting Entity to complete the Project.

7 TERMINATION FOR BREACH OR OTHER CAUSE

- 7.1 In the event that a Party significantly or repeatedly fails to meet its obligations pursuant to this Contract without any fundamental breach occurring when viewed in isolation, the other Party shall be entitled to terminate this Contract.
- 7.2 The seriousness of the breach shall be assessed on the basis of the quality of the Project, the nature of the breach, the risk of recurrence and the impact of the breach on the Contracting Entity or the Provider.
- 7.3 The following shall always be regarded as a fundamental breach that entitles the Contracting Entity to terminate the Contract with immediate effect, subject to written notice served on the Provider:
- The Provider initiates restructuring negotiations, or there is a significant reduction in the Provider's financial capacity in general which places the proper fulfilment of the Contract at risk.
 - The Provider is declared bankrupt, unless, on the basis of a written request from the Contracting Entity, the administrator declares within ten Working Days that the estate should enter into the present Contract.
 - The Provider ceases the activities covered by the Contract, or other circumstances arise that place the proper fulfilment of the Contract at risk.

8 SUBCONTRACTORS

- 8.1 The Provider may not hand over fulfilment of the Contract, or parts of thereof, to Subcontractors, without prior written consent from the Contracting Entity, unless this is expressly stated in this Contract.
- 8.2 The Contracting Entity shall be informed if the Provider replaces a Subcontractor or there is a change in the allocation of roles between the Provider and a Subcontractor.
- 8.3 When using a Subcontractor, the Provider remains liable for the Subcontractor's compliance with the requirements set out in this Contract in the same way as with respect to the Provider itself.
- 8.4 The Provider shall avoid replacing Subcontractors as far as possible. If, in exceptional circumstances, the Provider is obliged to replace a Subcontractor, this shall not cause any additional costs or delays for the Contracting Entity.

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- 8.5 In accordance with this Contract, Subcontractors may not make any claims against the Contracting Entity, either for payment or compensation.

9 COMPETENCY

- 9.1 The Provider warrants that none of the Provider's employees allocated to the project is disqualified from completing the Project for the Contracting Entity. If the Provider is a consortium, the same rules shall apply to the members of the consortium.

10 OFFICIAL REQUIREMENTS, ETC.

- 10.1 The Provider shall comply with Current Legislation, international, European and/or national standards and practice, and with any internal guidelines adopted by the Contracting Entity which are appended to this Contract or submitted during the Contract Period.

Any failure to comply with this will be viewed as a breach of contract on the Provider's part.

11 INDUSTRIAL PROPERTY RIGHTS, ETC.

- 11.1 The Contracting Entity shall acquire title, copyright and any other rights to the Deliverables.

The Contracting Entity shall acquire similar rights to Deliverables provided by the Provider's Subcontractor(s) in connection with completion of the Project.

- 11.2 The Contracting Entity shall therefore be entitled to use the Deliverables, including through processing and use in another form or context, and make the Deliverables available and deliver them to the Contracting Entity's current or future advisors and other third parties.

The Contracting Entity shall have the exclusive right to create and publish Deliverables, including in book, leaflet, article and electronic form (including CD-ROM, DVD, Internet, software and multimedia products) and in all languages, cf. section 53 of the Danish Copyright Act, unless agreed otherwise in writing beforehand.

- 11.3 The Contracting Entity shall acquire these rights regardless of whether this Contract is terminated prematurely.

- 11.4 If the Deliverables are used in another context than the present Project, the Provider shall not be liable for any errors or defects in the Deliverables.

- 11.5 The rights to the Deliverables shall be acquired as the Project is completed.

- 11.6 Rights to the methods and tools used by the Provider for the Project and that have been developed by the Provider or a third party, shall, however, be retained by the rights holders. The Provider warrants that the Provider has the right to use these methods and tools.

- 11.7 It shall be the responsibility of the Provider to provide the Contracting Entity with the necessary rights and licences required to use and update the Deliverables. The Provider shall therefore ensure that all rights are cleared and that any web materials in the form of links can be used by other operators free of charge.

- 11.8 The Provider shall indemnify the Contracting Entity for any claim that may arise as a consequence of failure to clear third-party rights.

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11.9 The Provider is entitled to use the general knowledge acquired in the course of work on the present Project in other contexts, including work for third parties. However, the anonymity of the Contracting Entity must be maintained at all times, unless agreed otherwise in writing beforehand.

11.10 The Contracting Entity shall retain all rights to materials provided to the Provider in connection with the completion of the Project, and at the termination of the Contract such material shall be returned to the Party that supplied it.

12 INSURANCE

12.1 Throughout the entire Contract Period and for one year after the Contract terminates, the Provider shall maintain professional indemnity insurance to cover any claims in reasonable proportion to the scale of the Contract. In order to meet this requirement, the Provider shall take out insurance with a recognised insurance company to cover any damages for which the Provider might be liable, including product liability.

12.2 The Contracting Entity may require the Provider at any time to forward documentation to show that the insurance requirement has been met.

12.3 The Contracting Entity shall notify the Provider of any claims for compensation as soon as possible after the damage has been ascertained.

13 FORCE MAJEURE

13.1 Neither Party may be held responsible by the other Party under this Contract for circumstances beyond their control, and which, on signing the Contract, the Party should not have considered, avoided or overcome. Circumstances in the Providers organisation, that can be avoided by normal and reasonable measures shall not be considered as force majeure, including internal strikes or illness.

13.2 Force majeure may only be asserted for the number of Working Days that the force majeure situation persists.

13.3 In so far as a Delivery Deadline for the Provider is deferred because of force majeure, the payments relating to this deadline will be deferred correspondingly.

13.4 Force majeure may only be cited if the affected Party has given written notification thereof to the other Party by no later than 10 Working Days after the commencement of the force majeure.

13.5 Notwithstanding what may otherwise be stated in this Contract, the Parties may terminate this Contract in writing and without notice if the obstacle or delay consequential upon the force majeure situation will last or lasts more than six months.

14 CONFIDENTIALITY

14.1 The Contracting Authority is a subject to the Danish rules for public administration, including section 27 of the Danish Administrative Law ("Forvaltningsloven") regarding confidentiality. The Provider must comply with similar terms of confidentiality for matters relating to this Contract.

15 ASSIGNMENT

- 15.1 The Contracting Entity may transfer its rights and responsibilities under this Contract to another public body or to a publicly owned institution or to an institution that is essentially run on public funds.
- 15.2 The Provider may not transfer its rights and obligations pursuant to this Contract, in part or in whole, to a third party such as, but not limited to, through company transfers, without the prior written consent of the Contracting Entity. If the Provider is a consortium, the same rules shall apply to all the members of the consortium.

16 APPLICABLE LAW/DISPUTES/LEGAL VENUE

- 16.1 This Contract shall be subject to Danish law, except, however, for the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 16.2 Where there is a dispute between the Parties in relation to this Contract, the Parties shall institute negotiations with a view to resolving the dispute, which they shall enter into with a positive, co-operative and responsible attitude.
- 16.3 Where it is not possible to resolve a disagreement between the Parties by negotiation pursuant to section 16.2 of the General Provisions, the dispute shall be bindingly settled by arbitration in accordance with the relevant rules for the resolution of arbitration cases adopted by the Danish Institute of Arbitration.
- 16.4 The arbitral tribunal shall be composed of three arbitrators. Each Party shall appoint one arbitrator, while the third arbitrator, who shall also be the chairman of the arbitral tribunal, shall be appointed by the Danish Institute of Arbitration. If a Party fails to appoint an arbitrator within 30 calendar days of submission or receipt of a petition for arbitration, the arbitrator in question shall be appointed by the Danish Institute of Arbitration.
- 16.5 The arbitration shall take place in Copenhagen, and it shall be conducted in Danish.
- 16.6 Disputes between consortium members on the Provider's side and between the Provider and any subcontractors are outside the scope of this Contract.

17 MISCELLANEOUS PROVISIONS

17.1 Interpretation

If any doubts arise during the Contract Period concerning the scope, conditions, purpose or completion of the Project, both the Provider and the Contracting Entity shall inform the other Party of this immediately and in writing.

In the event of any inconsistencies, the following ranking shall be applied in interpretation:

- Project-Specific Provisions
- General provisions
- Annexes, excluding Annex 2 – Provider's tender
- All subsequent amendments and additions to this Contract

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- All meeting minutes, also signed or otherwise endorsed in writing by the Parties, from meetings held after the conclusion of this Contract
- The Provider's tender, cf. Annex 2.

17.2 Partial invalidity

If one or more of the provisions of the Contract is/are declared fully or partly invalid, this shall have no influence on the validity of the Contract otherwise. In this event, the Parties and/or the arbitral tribunal shall, as soon as possible, endeavour to lay down a valid provision to replace the fully or partly invalid provision with essentially the same content and effect such that, as far as possible, the Parties are placed in such a position as to meet the intentions of the Contract and later amendments.

17.3 Amendments and additions

Amendments and additions to this Contract shall be in writing to be valid.

17.4 No third-party rights

Other than the Parties, no third party may rely on this Contract.

17.5 Copies

Two copies of this Contract have been drawn up, of which each Party shall receive one copy.

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SIGNATURES

On behalf of the Provider:

<Insert place and date>

<Insert name>

<Insert position>

On behalf of the Contracting Entity:

<Insert place and date>

<Insert name>

<Insert position>