

# Labcyte Service Agreement

## Version 1.4

Terms and Conditions for Echo<sup>®</sup> Liquid Handler and  
Access<sup>™</sup> Laboratory Workstation Service Contracts

### LABCYTE SERVICE CONTRACTS

<b>Service Plan 1 - Compliance Contract for Echo Systems</b>	
<b>SERVICES</b>	<b>COVERAGE</b>
Contract Type	Compliance
Coverage Period	12 Months or term per quote
Planned Maintenance (PM) Visits per Annum	One (1) PM
Instrument Verification Documentation	Included after PM or other Major Service
On-Site Response Time	≤ Two (2) Business days
Zone Charges	Included
Per Diem beyond Zone Charges	Included
Labor	Included
Parts & Materials	Included
Plate and Fluid Type Calibrations	Included with Transducer replacement
Phone Support and Response	Included, ≤ 8 hour response time
E-mail Support and Response	Included, ≤ 8 hour response time
Remote Support Sessions	Included
Echo <sup>®</sup> System Software Maintenance	Included
Echo <sup>®</sup> Software Applications Maintenance, including Echo Compliance Manager	Included

<b>Service Plan 2 – Complete or Prime* Contract for Echo Systems</b>	
<b>SERVICES</b>	<b>COVERAGE</b>
Contract Type	Complete or Prime
Coverage Period	12 Months or term per quote
Planned Maintenance (PM) Visits per Annum	One (1) PM
Instrument Verification Documentation	Not Included
On-Site Response Time	≤ Three (3) Business days
Zone Charges	Included
Per Diem beyond Zone Charges	Included
Labor	Included
Parts & Materials	Included
Plate and Fluid Type Calibrations	Included with Transducer replacement
Phone Support and Response	Included, ≤ 8 hour response time
E-mail Support and Response	Included, ≤ 8 hour response time
Remote Support Sessions	Included
Echo <sup>®</sup> System Software Maintenance	Included
Echo <sup>®</sup> Software Applications Maintenance	Included

\* For System eligibility requirements see your Labcyte representative.

Labcyte Echo and Access Contract Agreement v1.4 (SW included) 013018\_FINAL v1.4 Labcyte Inc. 170 Rose Orchard Way, San Jose, CA 95134 USA \*

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### **Service Plan 3 – Maintenance Plus Contract for Echo Systems**

<b>SERVICES</b>	<b>COVERAGE</b>
Contract Type	Maintenance Plus
Coverage Period	12 Months or term per quote
Planned Maintenance (PM) Visits per Annum	One (1) PM
Instrument Verification Documentation	Not Included
On-Site Response Time	≤ Four (4) Business days
Zone Charges	Included
Per Diem beyond Zone Charges	Included
Labor	Included
Parts & Materials	Billable at 10% Discount
Plate and Fluid Type Calibrations	Not included
Phone Support and Response	Included, ≤ 12 hour response time
E-mail Support and Response	Included, ≤ 12 hour response time
Remote Support Sessions	Included
Echo® System Software Maintenance	Included
Echo® Software Applications Maintenance	Not included

### **Service Plan 4 – Maintenance Contract for Echo Systems**

<b>SERVICES</b>	<b>COVERAGE</b>
Contract Type	Maintenance
Coverage Period	12 Months or term per quote
Planned Maintenance (PM) Visits per Annum	One (1) PM
Instrument Verification Documentation	Not Included
On-Site Response Time	≤ Five (5) Business days
Zone Charges	Billable at 10% Discount
Per Diem beyond Zone Charges	Billable at 10% Discount
Labor	Billable at 10% Discount
Parts & Materials	Billable at 10% Discount
Plate and Fluid Type Calibrations	Not included
Phone Support and Response	Included, ≤ 12 hour response time
E-mail Support and Response	Included, ≤ 12 hour response time
Remote Support Sessions	Included
Echo® System Software Maintenance	Included
Echo® Software Applications Maintenance	Not included

## Service Plan 5 – Complete Contract for Access Workstations

SERVICES	COVERAGE
Contract Type	Complete
Coverage Period	12 Months or term per quote
Planned Maintenance (PM) Visits per Annum	One (1) PM
Instrument Verification Documentation	Not Included
On-Site Response Time	≤ Three (3) Business days
Zone Charges	Included
Per Diem beyond Zone Charges	Included
Labor	Included
Parts & Materials	Included
Phone Support and Response	Included, ≤ 8 hour response time
E-mail Support and Response	Included, ≤ 8 hour response time
Remote Support Sessions	Included
Tempo™ Automation Control Software Maintenance	Included
Service of Third-Party Devices	Not included

## Service Plan 6 – Maintenance Contract for Access Workstations

SERVICES	COVERAGE
Contract Type	Maintenance
Coverage Period	12 Months or term per quote
Planned Maintenance (PM) Visits per Annum	One (1) PM
Instrument Verification Documentation	Not Included
On-Site Response Time	≤ Five (5) Business days
Zone Charges	Billable at 10% Discount
Per Diem beyond Zone Charges	Billable at 10% Discount
Labor	Billable at 10% Discount
Parts & Materials	Billable at 10% Discount
Phone Support and Response	Included, ≤ 12 hour response time
E-mail Support and Response	Included, ≤ 12 hour response time
Remote Support Sessions	Included
Tempo™ Automation Control Software Maintenance	Included
Service of Third-Party Devices	Not included

# TERMS AND CONDITIONS

Separately each a “Party” and together the “Parties”

## 1. PURPOSE OF THE AGREEMENT

This agreement (“Agreement”) defines the Terms and Conditions of the Labcyte (“Supplier”) Service Contract purchased by the buyer (“Buyer”) of the instrument(s) (“Instrument”) listed in the attached quote as provided to and accepted by Buyer (“Quote”). Pursuant to the terms of this Agreement, Supplier will provide services including planned maintenance for the Buyer’s Instrument(s) for the coverage period (“Coverage Period”) specified in the Quote. Included Coverage and Services vary depending on the type of contract (“Contract Type”) purchased and specified in the Quote. The types of contracts available and associated services and coverages are described in Service Plan 1-6 (“Service Plans”) provided in the previous section (see above, LABCYTE SERVICE CONTRACTS). Additional inclusions or exclusions may be detailed in the Quote.

## 2. RESPONSIBILITIES OF SUPPLIER

- 2.1 Supplier will provide services including maintenance (as defined in Section 2.2), Service (as defined in Section 2.3), and Echo System Software Maintenance (as defined in Section 2.7) for the Instrument listed in the Quote during the Coverage Period. Services are limited to and shall not exceed those described in the Service Plans based on the Contract Type purchased and related Quote. Supplier has the option to subcontract Services directly for devices purchased from third-party manufacturers.
- 2.2 Supplier will perform planned maintenance (“PM”) on the Instrument per the schedule described in the Plans for the Contract Type purchased. Changes or additions to the services performed in the PM may be specified in the Quote. PM activities may be scheduled in advance with the Buyer’s consent or may be performed during repair or other service visits. Those with Compliance Contracts will be provided with Instrument performance certification documentation reflecting the work performed, including any software and or hardware replacement, adjustments and testing completed with the PM and or other major service incident as may be requested.
- 2.3 Supplier shall use commercially reasonable efforts to correct any reproducible functional error of the Instrument or, at Supplier’s reasonable discretion, to provide work-around solutions. As needed and applicable, Supplier’s service will consist of providing the Buyer with technical advice, repair or updates of the defective Instrument. Supplier’s sole determinant of a successful repair shall be that the Instrument performs at the level of the specifications of the Instrument when it was purchased from the Supplier. Such tests will be performed with consumables approved by the Supplier but purchased by the Buyer.
- 2.4 Supplier reserves the right to use repaired parts during the Coverage Period. For parts that have been replaced, Supplier is the sole owner of these parts and they may not be sold or repaired by the Buyer or any third party. Buyer shall not use repaired parts or any other parts unless pre-approved by the Supplier.
- 2.5 Supplier may choose to perform verification tests to establish instrument performance. These tests will be performed with consumables specified by the Supplier and purchased

by the Buyer. Any purchased consumables to be used in the aforementioned test will be pre-approved by the Buyer.

- 2.6 As used herein, Echo System Software and Tempo Automation Control Software (“Instrument Software Maintenance”) means Supplier Software products installed on or in the Instrument(s) that are used for direct control and operation of the hardware. It does not include Echo® Software Applications (“Software Applications”) that may also be installed on the Instrument. It does not include any software products provided by other parties, such as integrators, or on devices supplied by third-party manufacturers.
- 2.7 Instrument Software Maintenance includes the following services relating to versions supplied to the Buyer up to and including all features in the version installed on the Instrument when shipped by the Supplier to the Buyer under the original purchase agreement:
- a) Supplier will answer technical questions concerning functions and features of the Instrument Software;
  - b) Supplier will provide error verification, analysis and corrective efforts for the Instrument Software;
  - c) Supplier will provide, without charge, Updates of the Instrument Software (as defined in Section 2.8), when and if released during the term of this Agreement. Updates will normally be mailed or electronically delivered to the Buyer who will be responsible for installation. Supplier may perform installation of Updates during a service visit required to address an ongoing problem with the Instrument or during a visit to perform PM.
- 2.8 As used herein, Update means those releases of the Software that Supplier provides to licensees to correct errors, fix bugs, or create minor improvements, incremental features, or enhancements of existing features. Updates do not include those releases of the Software that provide substantial new features or additional functionality as these are referred to as Upgrades (“Upgrades”). Supplier will typically perform Updates during a prescheduled service visit or during a visit to perform PM.
- 2.9 Echo Software Application Maintenance is included with some Contract Types as identified in the Service Plans above. This includes Maintenance, Updates and Upgrades to the Software Applications associated with the Instrument as follows:
- a) Supplier will answer technical questions concerning functions and features of the Software Application;
  - b) Supplier will provide error verification, analysis and corrective efforts for the Software Application;
  - c) Supplier will provide, without charge, Updates and Upgrades of the Software Application (as defined in Section 2.8), when and if released during the term of this Agreement. Updates and Upgrades will normally be mailed or electronically delivered to the Buyer who will be responsible for installation. Supplier may perform installation of Updates and Upgrades during a service visit required to address an ongoing problem with the Instrument or during a visit to perform PM.

- d) There is no assurance or guarantee that Updates and or Upgrades will be released during the term of the Agreement.

2.10 Buyer acknowledges that all reported errors may not be corrected. An example of an error occurring that may not be corrected would be errors reported by a computer's operating system such as system "freezes" – these errors are beyond the control of the Supplier, reside with another party and would not be included within the responsibility of the Supplier to correct. Any Update of the Software will be deemed part of the Software and will be used in accordance with the requirements and obligations in the license agreement for the Software and the original purchase terms and conditions.

2.11 Some parts in the Instrument may become obsolete, either by the Supplier or by a third-party manufacturer. If replacement of an obsolete part is required to correct a functional error, the Supplier may be unable to complete Service of the Instrument. In this event the Supplier may offer an upgrade of the Instrument, if available, that will enable replacement of the obsolete part with a functionally equivalent part. The cost of this upgrade including parts, materials, labor and travel will be subject to the Coverage terms of the Contract Type as detailed in the Quote.

### **3. RESPONSE TIME**

On-site Service and Maintenance is available between the hours of 9 a.m. and 5 p.m. within the time zone where the Instrument resides, Monday through Friday, excluding holidays relevant to the site or country where the Instrument is being serviced. Buyer may contact the Supplier via telephone or e-mail during the hours of 8 a.m. and 5 p.m. in the time zone of where the instrument is located to report any malfunction of the Instrument. Supplier will acknowledge receipt of a service request within the business working time hours specified in the appropriate Service Plans for the Contract Type purchased. Service requests from the Buyer will receive preferential consideration over service requests from other customers that are not under existing Warranty or Service Contract.

If the service request cannot be resolved over the telephone, by e-mail or by remote connect support sessions, Supplier will dispatch a Service Engineer. The act of dispatching a Service Engineer to the Buyer's site is solely at the discretion of the Supplier and will be invoked only after all efforts using telephony, e-mail and remote connect support sessions have been exhausted. After a problem has been confirmed by the Supplier and the Buyer and the aforementioned remote efforts have not produced a resolution to the problem cited in the case at hand, the Supplier will use commercially reasonable efforts to have its Service Engineer arrive at the Buyer's location within the business days specified by the Contract Type in the Service Plans above.

Accessories, if any, designated in the Quote to be covered by exchange rather than on-site service will be serviced on-site only at the sole discretion of the Supplier.

### **4. RESPONSIBILITIES OF BUYER**

4.1 Buyer is responsible for providing the Service Engineer of Supplier access to the location of the Instrument during normal working hours in order to perform the Services. Buyer is also responsible for making the Service Engineer aware of any hazards in the Buyer's environment which may be encountered while servicing the Instrument. If the Service Engineer determines that the environment includes hazards that prevent safe delivery of Services, they may leave the site until the environment is made safe.

- 4.2 The Buyer shall assist the Supplier so far as commercially reasonable in determining the cause of the failure. To enable Supplier to respond to certain types of problems, Buyer may furnish Supplier with a test scenario and sufficient documentation to attempt recreation of the problem.
- 4.3 The Buyer shall allow the Supplier to remotely connect to the Buyer's Instrument via a VPN or Supplier supplied remote access through the Supplier's support connection for the purposes of diagnosing Instrument related problems. Buyer is responsible for providing an appropriate data communication line proximal to the Instrument under diagnosis at Buyer site.
- 4.4 Supplier shall carry out the Services with proper regard to the safety of all persons and in accordance with all applicable laws.
- 4.5 Without prejudice to its general obligations under sub-clause 4.4 above, the Supplier shall:
- (a) comply with the operating works rules applicable to the premises where the Services are to be carried out;
  - (b) comply with the Buyer's safe systems of working which includes permits to work and clearance notes;
  - (c) be provided by Buyer on a regular basis, at least annually, copies of the operating works rules from the Buyer;
  - (d) be provided by Buyer on a regular basis, at least annually, copies of the operating works rules applicable to all Supplier's employees relevant to the particular sites and issue a copy to all personnel (including sub-suppliers and agents) prior to them entering into the Buyer's premises; and
  - (e) comply with any requirements of the Buyer to require any personnel to attend a safety induction course.
- 4.6 The Supplier shall be responsible for the suitability and safety of the maintenance equipment used by it and no maintenance equipment shall be used which may be unsuitable, unsafe or liable to cause damage or injury. Without lessening the responsibility of the Supplier in regard to such maintenance equipment, if in the Buyer's opinion it is unsuitable, unsafe or liable to cause damage or injury, it shall not be used on Services and it shall be replaced with the minimum of delay at the Supplier's cost.
- 4.7 The Supplier shall ensure that its personnel shall comply with all applicable rules and regulations when visiting the Site and any and all other parts of the Buyer's premises.
- 4.8 The Buyer shall have the right at any time to require the removal of any person employed by the Supplier in connection with the Services and make a request for a replacement to be provided.
- 4.9 In the event that the Buyer shall fail to fulfil its duties of cooperation and providing a safe environment, such duties being considered as essential duties under this contract, in due time or fulfil such duties in an unsatisfactory manner, the Supplier reserves the right to discuss the issues with the Buyer and to have the Buyer establish an improvement plan and next steps to ensure that duties can be conducted sufficiently. If progress is not

satisfactory, Supplier, Supplier personnel and all Supplier subcontractors shall be released from their obligation to provide Services under this Agreement.

## **5. KEY OPERATOR**

Buyer shall designate a Primary Operator and Alternate Operator (by name, telephone number and email address). The Primary Operator and Alternate Operator must have a working knowledge of the Instrument and be able to communicate with Supplier, as they will be responsible for performing simple adjustments or corrections as requested by Supplier. Buyer will immediately notify Supplier of any changes in the name, address or telephone number of the Primary Operator and Alternate Operator.

## **6. OUT OF SCOPE SERVICES**

6.1 This Agreement does not include the following items or Services required for any of the following reasons:

- (a) The costs of consumables, applications and integration related issues, external computer, network and printer issues;
- (b) Services due to operating errors by Buyer's staff members or third parties employed or otherwise contracted by Buyer, in particular:
  - (i) Misuse, wanton damage or damage caused by electrical surges or the use of improper sources;
  - (ii) Non-conformance to recommended Instrument operating procedures as described or contained in the Instrument User Manual;
  - (iii) Modifications, repairs or relocation of the Instrument which are performed by Buyer without prior consent of Supplier, including those of unauthorized personnel who retain no certificates of completion of training courses relevant to the Instrument and have not been authorized by the Supplier to perform Services on the Instrument;
  - (iv) Failure by Buyer to provide and maintain an appropriate environment, in particular failure to warrant the necessary electrical power supply, air circulation, ambient temperature, and moisture control as specified in the user documentation including User Manuals and Site Prep Guides;
  - (v) The use of replacements or materials not complying with Supplier's standards as called out in any and all Supplier Instrument documentation including User Manuals, Technical Marketing Specification Sheets, Site Prep Guides, and Service Bulletins and the Buyers use of consumable source plates from manufacturers other than the Supplier;
- (1) Should Buyer engage the Supplier's technical staff for the purposes of a site service call due to "performance" issues on an instrument and Supplier's technical staff determines that the performance issues are related to Buyer using non-qualified consumables manufactured by others, the Supplier reserves the right to charge Buyer for all time and materials costs incurred during any and all visit(s). Chargeable amounts will be invoiced



in accordance with the standard terms and conditions stated herein;

- (vi) The use of the Instrument for purposes other than they were designated for, such as operation outside the scope and conditions described in the User Manual;
  - (c) On site operator training;
  - (d) Recertification Inspection costs as defined in Section 11;
  - (e) Supplier provided services not associated with instrument repair or maintenance such as deinstallation, relocation and reinstallation;
  - (f) Additional microplate and fluid type calibrations that are not purchased with the Instrument. These are sold as upgrades and are purchased separately from the contract.
  - (g) Accessories and hardware upgrades that add additional functionality and are not purchased with the Instrument. These are sold as upgrades and are purchased separately from the contract.
- 6.2 Supplier shall invoice any service made by the Buyer as a result of the above, according to the then valid price list of Time-and-Material Based service. Buyer and Supplier will discuss and mutually agree upon what out of scope services are being invoiced. Failure to pay such invoices may be considered a material breach of this Agreement.

## **7. CHARGES**

- 7.1 Services provided within the Coverage Period include telephone contact, email consultation, remote support via internet, travel costs, on-site labor for service repairs and parts costs. For the purpose of this section, parts do not include chemicals, reagents, well plates, dispensing tips, heat or pressure sensitive seals, Buyer replaceable items, consumables, or other parts listed in the User Manual as user replaceable parts, sub-assemblies or accessories. Replacement of these items will be billed at prevailing rates. Services also do not include training of new operators.
- 7.2 The services specified in Section 6.1 shall not be covered by the Service Contract. Any costs pursuant this clause shall be invoiced immediately following performance by Supplier.
- 7.3 Invoices for the full amount of the annual fee or pro-rata fee as defined in the Quote will be issued after receipt of the purchase order. Invoices must be paid in full within the terms of the Quote.

## **8. TERM AND TERMINATION**

- 8.1 The Service Contract becomes effective on the Start Date indicated in the Supplier's invoice and continues to be in effect until the End Date indicated in the invoice unless terminated as described in this Agreement.
- 8.2 Either Party may terminate this Service Contract, effective immediately, if the other Party commits a material breach of the terms and conditions herein and fails to correct such breach within thirty (30) days after receiving written notice thereof. If Supplier

terminates a Service Contract as a result of Buyer's material breach, Supplier will not be obligated to refund any portion of the fees paid for the Services. Material breach by the Buyer shall include, but not be limited to:

- (a) Failure to make the complete payment stated in the attached Quote or any outstanding Recertification Inspection costs within fifty (50) days after the Start Date.
- (b) Buyer violates its obligations under Section 4 above.
- (c) Failure to provide a safe environment for performance of on-site service work. This includes failure to remove environmental hazards, failure to properly decontaminate Instrument and failure to protect the Service Engineer from abusive or harassing employees and contractors in the manner it would protect its own employees.

8.3 Buyer may terminate this Service Contract for any reason or no reason by providing Supplier sixty (60) days prior written notice. In the event of such termination, Buyer will not be entitled to a refund of any portion of the fees paid for the Services hereunder.

8.4 Sections 2.3, 2.7, 6.2, 7.2, 9, 10, 12, 13, 14, 15, 16.2, 16.3, 16.4, 16.5, 16.6, and 16.7 of this Agreement survive any termination or expiration of the Service Contract.

## **9. USE OF PERSONAL DATA**

It is expressly drawn to the attention of the Buyer and Buyer agrees that Supplier can store such Buyer contact information data as is necessary to facilitate the execution of the contractual obligations. Such information shall not be used for any other purpose without the Buyer's consent and Buyer is responsible for providing any updates of contact information during the term of the Agreement.

## **10. CONFIDENTIALITY**

Each Party undertakes to observe strict confidentiality as regards business secrets and confidential information of the other Party and to impose a corresponding obligation on all third parties to whom such business secrets and confidential information are made accessible. Supplier will exclusively own all rights in and to any inventions, improvements, or technology created, developed, or made by any employee or contractor of Supplier in connection with the performance of the Services provided and is allowed to share, distribute and use the developments with regards to servicing instruments of Supplier.

These obligations are valid for the duration of the Agreement and for ten (10) years thereafter.

## **11. RECERTIFICATION INSPECTION**

If the original Warranty or previous Service Contract for any Instrument has expired, a Recertification Inspection by the Supplier, which confirms that such Instrument has been properly maintained, will be required before Supplier will provide the Service for such Instrument under this Agreement. If a Recertification Inspection is required, Buyer will be separately billed for the costs which are not included under this Agreement.

## **12. IP OWNERSHIP**

Supplier will exclusively own all rights in and to any inventions, improvements, or technology created, developed, or made by any employee or contractor of Supplier in connection with the performance of the Services and the Instrument per Labcyte End User License Agreement, executed with the Instrument initial purchase.

## **13. WARRANTY AND DISCLAIMER.**

- 13.1 Supplier guarantees and is liable for the function of Services performed by Supplier and any sub-suppliers during the Coverage Period of the Agreement for a period of ninety (90) days from the date the Services were provided by Supplier.
- 13.2 Supplier guarantees and is liable for defects in goods and parts supplied by Supplier under this Agreement for a period of ninety (90) days from the date such parts or goods were installed.
- 13.3 Notwithstanding Sections 13.1 and 13.2, Supplier is not liable for errors or damages caused by circumstances outside his control, such as wrongful handling of equipment by Buyer, normal wear and tear, or deterioration.
- 13.4 Supplier is not liable for loss of production or other consequential economic loss unless such loss was caused by Supplier's, its personnel's or sub-supplier's proven negligence. This includes, but is not limited to, loss of consumables, materials, supplies, samples or labor on the part of the Buyer due to instrument malfunction or downtime.
- 13.5 Supplier is responsible for damage to Buyer's property caused by Supplier's, its personnel's or sub-suppliers' negligence or misconduct.

## **14. LIMITATION OF LIABILITY**

In no event will Supplier be liable for any consequential, indirect, exemplary, special, or incidental damages, including any lost profits, arising from or relating to the Services even if Supplier has been advised of the possibility of such damages. Supplier's total cumulative liability in connection with the Services, whether in contract or tort or otherwise, will not exceed the fees paid for the Services. One or more claims will not enlarge this limit.

## **15. INDEMNITY**

Buyer will defend, indemnify, and hold Supplier harmless from any and all claims, losses, damages, debts, settlements, costs, attorneys' fees, expenses and liabilities of any type whatsoever (collectively, "Claims") arising from or related to any injury to employees or contractors of Supplier caused by improper installation or use of the Instrument by Buyer, and power supply used by Buyer with the Instrument. Supplier will have the right to participate in or conduct the defense of such Claim with counsel of its own choice. Supplier will use reasonable effort to promptly notify Buyer of any such Claim. No settlement of a Claim will be binding on Supplier without its prior written consent.

## **16. GENERAL**

- 16.1 Supplier will make the final decision on all Services related issues including the replacement of parts and deployment of individuals.

- 16.2 Any notices to be given by either Party to the other pursuant to this Agreement or other communication shall be in writing. A waiver of this form requirement may only be conducted in writing.
- 16.3 Should any provision of this Agreement be or become invalid or unenforceable, this shall not affect the validity of the remaining provisions. The Parties shall negotiate a replacement of the invalid or unenforceable provision which comes closest to the economic purpose of the invalid provision. The same shall apply in the event that this Agreement is incomplete.
- 16.4 This Agreement is governed exclusively by the laws of the state of California, regardless of the principles of conflicts of law. The Parties submit to the exclusive jurisdiction of the courts of California in relation to this Agreement.
- 16.5 This Agreement contains the entire agreement between the Parties relating to the subject matter herein, specifically the Service Contract, and supersede all prior negotiations, correspondence and understandings between the Parties as they relate to servicing instruments at the sites listed, whether written or oral, relating to the subject matter herein. Any contractual amendments or additions must be made in writing; this also applies to waivers of this requirement. Standard terms and conditions of the Buyer are expressly excluded.
- 16.6 The Parties are acting hereunder as independent contractors and not as partners, agents, fiduciaries, or joint ventures. Neither Party has the power or authority to represent, act for, bind, or otherwise create or assume any obligation on behalf of the other Party.
- 16.7 Any delay in the performance of any duties under this Agreement (except for payment of fee owed) by either Party will not be considered a breach if such delay is caused by a labor dispute, fire, earthquake, flood, or other events beyond the control of such Party, provided that such Party uses reasonable efforts to notify the other Party of the circumstances causing the delay and to resume performance as soon as possible.