

# Terms and Conditions for Ellab Field Services - Hourly Project

## 1. Interpretation

- 1.1.1** "Ellab" means, Ellab Inc., a California corporation.
- 1.1.2** These terms and conditions for Ellab Field Services ("**Terms and Conditions**") govern the provision of services by Ellab to the "**Client**", the party hiring Ellab to execute the agreed "**Project**", meaning the agreed Ellab Field Services defined in the "**Recommendation**", which is describing the offer or quotation provided to the Client, including descriptions of the recommended Ellab Field Services at a stated price, under these Terms and Conditions, or as further described by Ellab in an order confirmation ("**Order Confirmation**"). Together, the Recommendation, the Order Confirmation, and the Terms and Conditions are referred to as the "**Agreement**" and comprise the entire agreement between the Parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral.
- 1.1.3** The Client and Ellab are each a "**Party**" and together the "**Parties**".
- 1.1.4** Ellab forwards to the Client these Terms and Conditions as part of the Recommendation and again with the Order Confirmation. Acceptance of the Recommendation is expressly limited to Client's acceptance of the Recommendation and these Terms and Conditions for Ellab Field Services. Ellab objects to any different or additional terms. Client may send a purchase order ("**PO**") evidencing acceptance of the Recommendation and these Terms and Conditions for Ellab Field Services. Ellab's acceptance of Client's PO is expressly limited to the terms in the Recommendation, Order Confirmation, and these Terms and Conditions for Ellab Field Services which shall be deemed accepted by Client absent express rejection by Client within five (5) business days of receipt. Ellab objects to any different or additional terms.
- 1.1.5** To the extent that the terms stated in the Recommendation conflict with these Terms and Conditions, the Recommendation shall prevail. In case of conflicts between the Order Confirmation and these Terms and Conditions and any of the Client's terms and conditions or other documents, the Order Confirmation and these Terms and Conditions shall prevail.
- 1.1.6** Ellab shall provide the Ellab Field Services to Client as described in the Recommendation, or as further described in an Order Confirmation, in accordance with these Terms and Conditions.
- 1.1.7** "**Ellab Field Services**" means services performed by Ellab such as, but not limited to, qualification, validation, and calibration services.
- 1.1.8** "**Ellab's Standard Protocols**" means protocols developed by Ellab describing the steps and procedure in executing the Ellab Field Services specified in the Recommendation.
- 1.1.9** "**Scope of Work**" or "**SOW**" means the agreed scope for the Ellab Field Services described in the Recommendation, as further described in an Order Confirmation.
- 1.1.10** "**Insolvency Event**" means the occurrence of any one or more of the following events in relation to the affected party: (a) that party becomes unable to pay its debts, admits its inability to pay its debts or becomes insolvent; (b) a petition is presented, an order made or a resolution passed for the liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction), administration, reorganization, bankruptcy or dissolution of that party; (c) an administrative or other receiver, manager, trustee, liquidator, administrator or similar person or officer is appointed to that party and/or over all or any part of the assets of that party; (d) that party makes an assignment otherwise enters into or proposes any composition or arrangement concerning its debts with its creditors (or any class of its creditors) generally; or (e) anything equivalent to any of the events or circumstances listed in items (a) to (d) (inclusive) occurs in any applicable jurisdiction.
- 1.1.11** Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms. Any reference herein to the "Recommendation" shall also be a reference to the Order Confirmation.
- 1.1.12** Headings shall not affect the interpretation of these Terms and Conditions.

## 2. Payment terms

### 2.1 Hourly Project

An "**Hourly Project**" means a Project, which is billed according to time and material. In such circumstances:

- 2.1.1** 25% of the estimated total investment will be invoiced upon Client's receipt of the Order Confirmation. The invoice is due within 30 days after Client's receipt of invoice.
- 2.1.2** Invoicing per every 30 days.
- 2.1.3** Net 30-day payment terms following Client's receipt of respective invoice(s).
- 2.1.4** Invoices shall include listing or time sheets showing the hours worked by each billable employee on each workday along with the labor rate. Any overhead not included in the labor rate shall be listed separately.
- 2.1.5** Invoices shall also include costs for all materials procured for the Project, and for any subcontracted services.
- 2.1.6** Clients are responsible for paying their own applicable taxes.
- 2.1.7** Reasonable shipping, handling, parking, and toll charges will be billed in addition to the Recommendation.

- 2.1.8** The Recommendation is valid for 45 days, after which it is considered revoked and no longer valid unless otherwise extended by Ellab. Such revocation shall not prevent Ellab from issuing a new version of the Recommendation.

## 3. Preconditions prior to project start

### 3.1 Documents and SOPs

- 3.1.1** If nothing else is stated in the Recommendation, Ellab will execute the Ellab Field Services based on Ellab's Standard Protocols.
- 3.1.2** If the Client has special protocols or Standard Operating Protocols ("**SOPs**"), which Ellab needs to follow, this must be agreed upon before Project start.
- 3.1.3** If the Client's SOPs are not considered as part of the Recommendation, this may cause changes to SOW, which will be billed accordingly to the Client.
- 3.1.4** The Client must provide all necessary information and documents, including SOPs, to perform the agreed services, prior to starting the Project.
- 3.1.5** These documents must be delivered minimum 1 week before the agreed start date for the Project.

### 3.2 Preparations

- 3.2.1** The Client undertakes to carry out any agreed necessary preparations specified in the Recommendation or SOW before the start of the Project.

## 4. Business hours

### 4.1 Standard business hours

- 4.1.1** Ellab's standard business hours are Monday through Friday within 8am to 5pm, which includes 8 hours of work per day.
- 4.1.2** An Hourly Project is based on 8 hours per employee per day for on-site work. This includes the assumption that the employee will be working continuous days each week (minimum of 40 hours Monday through Friday), continuous weeks, unless agreed to by Ellab. The foregoing is subject to compliance with the applicable employment laws, including with respect to break periods.

### 4.2 Time outside business hours

- 4.2.1** Time outside of business hours including weekends and holidays will be billed with the following additional rates:
- 4.2.2** Time outside of Ellab standard business hours and overtime in excess of 8 hours per day will be billed at an additional 25% of the rates specified.
- 4.2.3** Weekend hours will be billed at an additional 50% of the rates specified.
- 4.2.4** If Public/Bank Holidays are required these will be billed at an additional 50% of the rates specified.

### 4.3 Vacation and time off

- 4.3.1** Ellab's staff will have access to their paid time off (vacation, sick, holiday), and may be utilized during the time of the Project. This will be conveyed to the Client contact with fourteen (14) days' notice, whether written or oral.

## 5. Delays and changes in project

### 5.1 Delays

- 5.1.1** The Recommendation is calculated based on efficient use of time at the Client's site based on the SOW. Recommendation assumptions may include the length of processes, testing multiple Units Under Test ("**UUT**") simultaneously, availability and access to the UUTs and facilities, and Client's approval and turnaround of documentation, however, delays may be unavoidable and are impossible to calculate ahead of time.
- 5.1.2** Delays not being the fault of Ellab, which causes usage of additional time, will be billed in addition to the Recommendation. The extra billing will be at time and material, unless and to the extent that the relevant Ellab staff have not been rescheduled to other projects.
- 5.1.3** If the actual processing time of one or more of the planned Ellab Field Services are more than 30% higher than as stated in the Recommendation, and the delays are not caused by the Client, Ellab will inform the Client in advance of completing the Project. The Client has the option to either:

- i. terminate the Project leaving the remaining part uncompleted, in which case Ellab shall be entitled to bill for the services provided by Ellab but not already billed for; or
- ii. to continue the Project and additionally pay the exceeded working hours.

### 5.2 Changes in SOW or unavailability of UUT

- 5.2.1** If either Party wishes to change the SOW, it shall submit written details of the requested change to the other Party fourteen (14) days in advance (a "**Change Request**"). The Parties shall negotiate and agree in writing on the terms of such change (a "**Change Order**"). Neither Party shall be bound by any Change Order unless mutually agreed upon in writing.
- 5.2.2** Notwithstanding Section 5.2.1, Ellab may, from time to time change the Ellab Field Services without the consent of Client provided that such changes do not materially affect the nature or scope of the Project, or the fees or any performance dates set forth in the Order Confirmation.

- 5.2.3** Ellab may charge for the time it spends assessing and documenting a Change Request from Client on a time and materials basis.
- 5.2.4** Hours accrued due to situations such as UUT unavailability, UUT failures, Client documentation turnaround, schedule changes, and SOW changes will be billed commensurate to the level and quantity of staff dedicated to the Client's Project, validation equipment, and reasonable travel expenses as required.

### **5.3 Changes of schedule**

- 5.3.1** If the Client wants to change the agreed schedule it must be submitted in writing to Ellab with minimum 14 days' notice for Ellab to adjust the timeframe. Any additional reasonable costs for adjusting the schedule may be billed in addition to the Recommendation.
- 5.3.2** In scenarios where Ellab staff is not able to enter the Client's facilities to perform the Project, because of restrictions, such as COVID-19 restrictions, Ellab may require changes to the Project schedule. In such circumstances, the Project will be executed with a changed schedule, which may cause any additional reasonable costs for adjusting the schedule to be billed in addition to the Recommendation.

### **5.4 Errors and omissions**

- 5.4.1** To the best of (a) the Client's knowledge the information provided by the Client to Ellab to perform the services is accurate, (b) Ellab's knowledge the Recommendation accurately reflects the information provided by the Client. Both Ellab and the Client agree to excuse minor mistakes and oversights and agree to work together as the Project moves forward on scope and pricing adjustments to ensure a successful completion of the Ellab Field Services.

### **5.5 Additional or supplementary work**

- 5.5.1** If the Client wants to engage Ellab for additional work, the Client must submit a written request to Ellab. Ellab will try to execute this work if possible, which will be billed accordingly.

### **5.6 Incompletion of services**

- 5.6.1** In the case Ellab cannot complete the agreed SOW for reasons that lie within the liability, responsibility, or powers of procurement of the Client, Ellab still has the right to invoice Client for the total SOW. The Parties acknowledge and agree that the amount for the total SOW is a reasonable estimate of the anticipated or actual harm that might befall Ellab should Ellab be unable to complete the agreed SOW.

## **6. Personal protection**

### **6.1 Personal protection equipment**

- 6.1.1** The Client is required to provide the necessary Personal Protection Equipment ("PPE") to perform tasks safely at the Client's facility and/or to meet specific requirements on-site. If Ellab is required to purchase PPE specific to the Client's needs this will be billed in addition to the Recommendation.

## **7. Staff and equipment**

### **7.1 Ellab staff**

- 7.1.1** Ellab's staff will be professionally experienced or supervised by an experienced Ellab staff member to perform the Ellab Field Services. Unless otherwise agreed in writing with the Client, Ellab is allowed to use subcontractors to perform the Ellab Field Services, provided they meet the same qualification standards as the Ellab staff.

### **7.2 Required training of Ellab staff**

- 7.2.1** If Ellab's staff requires site specific training in order to perform work at the Client's facility, and if it is not included in the Recommendation, then it will be billed commensurate to the level and quantity of staff, and reasonable travel expenses are required.

### **7.3 Meetings**

- 7.3.1** If the Ellab team is required to participate in meetings, and that activity was not specifically quoted, then the time will be billed commensurate to the level and quantity of staff, and reasonable travel expenses as required.

### **7.4 Medical testing requirements**

- 7.4.1** If any medical testing is required for Ellab staff to come on-site (e.g. COVID-19), Ellab requires 2 weeks' notice. Any costs associated with this required testing will be billed in addition to the Recommendation.

### **7.5 Badge access**

- 7.5.1** Ellab's staff requires badge access to the Client's site to perform work efficiently. If the Ellab staff is required to complete any training to attain the badge access the time will be billed in addition to the Recommendation.

### **7.6 Office and internet access**

- 7.6.1** Ellab's staff requires office and internet access in order to perform work efficiently. Ellab can utilize either the Client's in-house network or a guest network.

### **7.7 Client's equipment**

In case the Client is the provider of validation equipment, the following terms and conditions apply:

- 7.7.1** A constant stream of equipment shall be required to be ready and provided to Ellab to allow Ellab to execute at the speed outlined in the plan agreed between Ellab and the Client
- 7.7.2** Equipment replacements may be required, and these can be purchased or rented from Ellab.
- 7.7.3** Repairs to Client's validation equipment will not be executed, unless manufactured by Ellab
- 7.7.4** If additional validation and/or monitoring equipment is required, then these are available via Ellab. This additional equipment may be included as part of the Recommendation or subject to purchase/rental rates as necessary.

### **7.8 Assisting equipment**

- 7.8.1** For warehouses and large rooms, the Client is required to provide a personal lift and operator to assist in the placement and retrieval of sensors. The lift and the operation of the lift must, at the Client's risk, be compliant with all applicable health and safety laws and regulations.

### **7.9 Ellab's equipment**

- 7.9.1** If agreed in the Recommendation, Ellab will be utilizing its own validation equipment and computers and will be utilizing a validated software. If documentation of the specific validation of the computers used for the Project are required, an additional fee will apply.

- 7.9.2** Any damage to Ellab's equipment not at fault of Ellab will be the responsibility of the Client and billed accordingly. An example of possible damages that can occur due to: unforeseen changes of the operating environment of the measuring equipment, which is outside the specification.

- 7.9.3** If the equipment is damaged by a technical defect in the Ellab equipment, Ellab shall by repair or replacement at Ellab's unrestricted option remedy the defected equipment.

- 7.9.4** The Client accepts that minimum 90% of sensors are operational and in specification at the time of testing. This is due to potential dropout of a sensor's battery, or damage received while in use in the field.

- 7.9.5** If the Client has a stricter requirement, Ellab can leverage the Client's policy, but this may cause delays, which will be billed in addition to the Recommendation.

### **7.10 Employment of staff**

- 7.10.1** The Client undertakes that it shall not directly, during the term of the Agreement plus an additional period of twenty-four (24) months thereafter, solicit the Ellab staff that provided work on the Client's site for the purpose of offering employment, unless expressly approved by Ellab in writing.

- 7.10.2** Provided, however, that nothing herein prevents either Party from making solicitations of searches for employees directed at the public or in general and/or found in general publications, including without limitations such as through advertisements, newspapers, trade journals, website postings or the Internet, employment forms or otherwise that are not specifically directed towards employees of the other Party or responding to any unsolicited communication received from any such employee of the other Party.

## **8. UUT**

### **8.1 Preconditions**

- 8.1.1** All UUT should have digital controllers. If the unit does not have a digital controller it may be subject to additional fees.
- 8.1.2** It is prerequisite that all UUT will be available, functional, and ready for the work to be performed. The IQ/OQ/PQ/CQ/RQ (as applicable) will be able to be performed in succession without delay. Additional work may be necessary due to failed studies and/or scope changes.

### **8.2 Loaded studies**

- 8.2.1** If loaded studies are to be performed, the load must be provided by the Client.
- 8.2.2** For controlled temperature loaded studies, the load must be preconditioned to the temperature under test.
- 8.2.3** For walk-ins and warehouses the Client is responsible for providing labor to place the load items.
- 8.2.4** For autoclaves and ovens, an adequate quantity of load is required to run studies in succession for efficiency.

### **8.3 Calibration of UUT**

- 8.3.1** All UUT needs to be either in current calibration or have Ellab perform the calibration prior to moving forward with the testing. If not in calibration, Ellab can calibrate the UUT for an additional fee.
- 8.3.2** If the UUT is in current calibration, the Client must provide a copy of the calibration certificate(s) for the controller and/or monitoring system.

### **8.4 Operation of UUT**

- 8.4.1** If Ellab staff is not authorized by the Client to operate the UUT, then the Client must provide qualified personnel during all times Ellab is on-site to assist.

### **8.5 Disruption of production processes**

- 8.5.1** Please note that the Ellab Field Services may lead to disruption of the production process of the Client, due to interfering with the UUT.

## 9. Project management

### 9.1 Management of the Project

**9.1.1** Unless included in the Recommendation, Ellab will not perform project management nor provide updates about progress in the Project plan.

### 9.2 Status report

**9.2.1** If required by the Client a status report of Project hours and Project completion will be completed at regular intervals to ensure Project delivery is on-course.

**9.2.2** If not already included in the Recommendation the hours for Project updates may be billed in addition to this Recommendation.

## 10. Legal terms

### 10.1 Warranties

**10.1.1** ELLAB MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PROJECT, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; OR (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE EXPRESSLY DISCLAIMED.

### 10.2 Limitation of liability

**10.2.1** IN NO EVENT SHALL ELLAB OR ANY OF ITS REPRESENTATIVES BE LIABLE UNDER THIS AGREEMENT TO CLIENT FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT CLIENT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

**10.2.2** IN NO EVENT SHALL ELLAB'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID PURSUANT TO THIS AGREEMENT OR \$1,000,000.00, WHICHEVER IS LESS.

**10.2.3** Although Ellab will maintain liability insurance, the Client is responsible for taking out its own insurances, including liability insurances, as well as ensuring safe working conditions on the Client's premises

### 10.3 Term

**10.3.1** The Agreement shall commence on the date specified in the Order Confirmation or otherwise expressly stated in writing by Ellab and shall continue thereafter until completion of the Ellab Field Services under the SOW, unless it is terminated earlier in accordance with its terms.

### 10.4 Termination of the Agreement

**10.4.1** Either Party may terminate the Agreement by giving written notice to the other Party ("Defaulting Party") if:

- i. the Defaulting Party commits a material breach of the Agreement and such breach is incapable of cure; or
- ii. the Defaulting Party commits a material breach of the Agreement and such breach is capable of cure, and the Defaulting Party fails to remedy the breach within 30 days of receipt of the other Party's written notice to do so; or
- iii. an Insolvency Event occurs in relation to the Defaulting Party.

**10.4.2** In case the Client wants to terminate a Project for convenience, such request for termination must be submitted in writing to Ellab a minimum 30 days before the agreed Project start date, specified in the Recommendation.

**10.4.3** Termination for convenience in accordance with clause 10.4.2 above is without prejudice to Ellab's right to invoice, and the Client's obligation to pay, the charges for such Project, provided that Ellab shall seek to minimize charges for such Project to the Client by, if possible, reallocating resources to other Projects. All remaining costs will be billed to the Client.

**10.4.4** Ellab has no termination rights for convenience.

### 10.5 Consequences of termination

**10.5.1** On expiration or termination of the Agreement for any reason, Ellab shall be entitled to invoice for any work undertaken that has not been subject to an invoice as at the date of expiration or termination.

**10.5.2** Each Party's further rights and obligations under the Agreement will cease immediately upon the expiration or termination of the Agreement, provided that the expiration or termination will not affect:

- i. the accrued rights and obligations of the Parties as at the date of expiration or termination; or
- ii. the continued operation of any provisions of the Agreement which are necessary for the interpretation or enforcement of the Agreement.

### 10.6 Force majeure

**10.6.1** Ellab will not be liable in any way for failure or delay in performing the any of its obligations under the Agreement when such failure is due to COVID-19 or any event that Ellab has not reasonably been able to

predict, avoid or remedy or any other cause that was unforeseeable at the time of making the Agreement or could not reasonably have been avoided or overcome by Ellab.

**10.6.2** In scenarios where Ellab staff are not able to enter the Client's facilities to perform the Project because of pandemic restrictions, such as COVID-19 restrictions, Ellab may require changes to the Project schedule.

### 10.7 Confidentiality

**10.7.1** The Client shall not during the term of the Agreement nor at any time after its termination to any third party disclose, directly or indirectly, any of Ellab's information which is or may be disclosed to or accessed by the Client. Such information shall be treated by the Client as strictly confidential and shall not be used or copied for any purpose(s) other than for the execution of the Agreement.

### 10.8 Exclusion of other terms

**10.8.1** These Terms and Conditions shall apply to the exclusion of, and shall prevail over, any terms and conditions of contract imposed or sought to be imposed by the Client at any time.

### 10.9 Transfer of the Agreement

**10.9.1** Client shall not assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with the Agreement, or with any of its rights or obligations under the Agreement, without the prior written consent of Ellab (not to be unreasonably withheld or delayed).

### 10.10 Third party rights

**10.10.1** This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms and Conditions.

### 10.11 Severability

**10.11.1** If any provision, or part of a provision, of the Agreement is found by any court or authority of competent jurisdiction to be illegal, invalid or unenforceable, that provision or part-provision shall be deemed not to form part of the Agreement and the legality, validity or enforceability of the remainder of the provisions of the Agreement shall not be affected, unless otherwise required by operation of applicable law.

**10.11.2** The Parties shall use all reasonable endeavours to agree within a reasonable time upon any lawful and reasonable variations to the Agreement which may be necessary in order to achieve, to the greatest extent possible, the same commercial effect as would have been achieved by the provision, or part-provision, in question and with no fundamental change to the bargain between the Parties.

### 10.12 Variations

**10.12.1** No variation of the Agreement shall be effective unless agreed to in writing by the parties.

### 10.13 Remedies cumulative

**10.13.1** The rights, powers and remedies provided in the Agreement are (except as expressly provided) cumulative and not exclusive of any rights, powers and remedies provided by law or otherwise.

### 10.14 No partnership or agency

**10.14.1** Nothing in the Agreement is intended to, or shall be deemed to, establish or constitute any partnership or joint venture between the Parties, create a relationship of principal and agent for any purpose between the Parties, or authorise either Party to make or enter into any commitments for or on behalf of the other Party.

### 10.15 No waiver

**10.15.1** The failure to exercise, or delay in exercising, a right, power, or remedy provided by the Agreement or by law shall not constitute a waiver of that right, power or remedy.

**10.15.2** If a Party waives a right, power or remedy arising as a result of a breach of any provision of the Agreement, this shall not operate as a waiver of any right, power or remedy arising as a result of any subsequent breach of that provision or any other provision of the Agreement, which will instead require a variation to the Agreement in accordance with clause 10.12 (Variations).

### 10.16 Entire Agreement

**10.16.1** The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all agreements, arrangements, promises, undertakings, proposals, warranties, representations and understandings between them at any time before their respective signature ("Pre-Contractual Statements"), whether written or oral, relating to its subject matter.

**10.16.2** Each Party acknowledges that in entering into the Agreement it does not rely on any Pre-Contractual Statement made by or on behalf of the other Party in relation to the subject matter of the Agreement, other than those which are set out expressly in the Agreement.

**10.16.3** Each Party agrees that it shall have no claim for negligent misrepresentation or negligent misstatement based on, and hereby waives all rights and remedies which might otherwise be available to it in relation to, any Pre-Contractual Statement.

**10.16.4** Nothing in this clause 10.16 shall limit or exclude the liability of either Party arising out of any pre-contractual fraudulent misrepresentation or fraudulent concealment.

**10.17 Governing law and jurisdiction**

**10.17.1** The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of the State of Colorado without giving effect to principles of conflicts of laws.

**10.17.2** Each Party irrevocably agrees that the courts of the State of Colorado shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.