

# Cat® Tech Benefits AR

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## MOBILE APPLICATION END USER LICENSE AGREEMENT

Please read this Mobile Application End User License Agreement ("Agreement") carefully. By clicking "accept" (or some similar term) to this Agreement, or by downloading, accessing or using the Mobile Application (as defined below) you consent to be bound by this Agreement.

This Agreement is between you and, if applicable, the entity on whose behalf you are entering into this Agreement ("**you**") and Caterpillar Inc., a Delaware corporation ("**Caterpillar**") concerning your access to or use of the mobile application made available in connection with this Agreement and all related software downloads, services and APIs, in each case as made generally available by Caterpillar during the Term as part of the mobile application made available in connection with this Agreement, together with all content and data to the extent made available through any of the foregoing (collectively, "**Mobile Application**"). If the entity on whose behalf you are entering into this Agreement has entered into an agreement with Caterpillar in connection with the Mobile Application or the digital offering in connection with which the Mobile Application is made available (the "**Digital Offering Agreement**"), nothing in this Agreement shall supersede any provision in the Digital Offering Agreement, and to the extent there is a conflict between any provision of this Agreement and the Digital Offering Agreement, the conflicting provision of the Digital Offering Agreement shall control.

BY CLICKING "ACCEPT" TO THIS AGREEMENT, OR BY DOWNLOADING, ACCESSING OR USING THE MOBILE APPLICATION, YOU AFFIRM THAT YOU ARE OF LEGAL AGE AND HAVE THE LEGAL CAPACITY TO ENTER INTO THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF AN ENTITY, SUCH AS THE COMPANY YOU WORK FOR, YOU REPRESENT TO CATERPILLAR THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THAT ENTITY.

THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION OF DISPUTES PROVISION THAT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS.

### 1. Mobile Application

**1.1. Right to Use.** Subject to the terms and conditions of this Agreement, including receipt of all data and information from you reasonably required for Caterpillar to provide the Mobile Application, Caterpillar grants you a limited, non-exclusive right and license to access and use the Mobile Application solely for internal business purposes on any smart phone, tablet or desktop computer, or other similar computing device that you own or control. Other than as expressly provided in this Agreement, Caterpillar and its licensors reserve all rights in and to the Mobile Application.

**1.2. Updates; Availability of Features and Functions.** Caterpillar may, at any time, modify, upgrade or release a new version of the Mobile Application, or any portion of its features and functions. Unless otherwise expressly and separately agreed by Caterpillar, any new version of the Mobile Application will be subject to the terms of this Agreement. If you do not wish to be subject to the terms of this Agreement with respect to such new version of the Mobile Application, you may terminate this Agreement in accordance with Section 11.2.

**1.3. Evaluation Application and Features.** Caterpillar may designate the Mobile Application as a pre-release or evaluation application ("**Evaluation Application**"). In addition, during the Term, Caterpillar may, in its discretion, grant you a limited, non-exclusive, revocable right and license to access and use certain pre-release features and functions of the Mobile Application ("**Evaluation Features**"). The Evaluation Application and Evaluation Features are made available on a trial basis, solely in a non-production capacity for your own internal testing and evaluation of the Evaluation Application or Evaluation Features, as applicable. Notwithstanding anything to the contrary in this Agreement, the Evaluation Application or Evaluation Features will not be subject to support or other obligations of Caterpillar and are provided on an "AS IS", "AS AVAILABLE" basis only and any information or data used in connection with the Evaluation Application or Evaluation Features may be corrupted or lost and may not be recoverable. Caterpillar may terminate your right to access and use the Evaluation Application or Evaluation Features at any time, in its sole discretion, upon reasonable notice to you in accordance with Section 12.9. All restrictions, limitations and obligations relating to your access to and use of the Mobile Application set forth in this Agreement shall apply to your access to and use of the Evaluation Application or Evaluation Features.

**1.4. Acceptable Use.** You will: (a) adhere to all applicable Laws, and (b) use the Mobile Application only in accordance with the "**Acceptable Use Policy**," the current version of which is attached as Exhibit A to this Agreement.

**1.5. Accounts.** In order to access and use the Mobile Application, Caterpillar may require you to create a username (for example, a Corporate Web Security ID) and password. In that case, you must follow Caterpillar's log-in instructions (which may change from time to time). You may also be required to provide Caterpillar with certain registration information as requested by Caterpillar and to keep such information up to date. Should Caterpillar have reasonable grounds to suspect that any information that you provided to Caterpillar is fraudulent, inaccurate or incomplete (where such inaccuracy or incompleteness adversely impacts Caterpillar's ability to perform its obligations under this Agreement or subjects Caterpillar, its Affiliates, or any of their respective licensors, service providers, suppliers or distributors to additional obligations or liabilities), it shall have the right to suspend or terminate your right to access and use the Mobile Application immediately without notice. You are responsible for maintaining the confidentiality of all authentication credentials associated with your access to and use of the Mobile Application. You must promptly notify Caterpillar if you discover any possible misuse, loss or disclosure of your accounts or authentication credentials or any security incident related to the Mobile Application. For the purposes of this Agreement, "Affiliate" means any legal entity that controls, is controlled by or is under common control with a party hereto (but only for so long as such control exists), where "control" means ownership of more than fifty percent (50%) of the equity or other interests entitled to vote in the election of directors or corresponding managing authority of the Affiliate; provided that if the percentage of control permitted under applicable Laws is below the foregoing percentage, then such percentage shall apply.

**2. Jurisdictional Issues.** The Mobile Application is controlled and operated from the United States, and is not intended to subject Caterpillar or its Affiliates to any jurisdiction or Laws other than the jurisdiction and Laws of the United States. The Mobile Application may not be appropriate or available for use in some non-U.S. jurisdictions.

**3. Profiles and Forums.** The Mobile Application may permit you to make available certain information or materials through or in connection with the Mobile Application (each, a "**User Submission**"), including on profile pages or through the Mobile Application's interactive services, such as knowledge articles, message boards and other forums, and chatting, commenting and other messaging functionality (each such interactive service, a "**Forum**"). You agree that Caterpillar does not control and is not responsible for any User Submissions, the use or misuse (including any

distribution) by any third party of User Submissions, or for any of your interactions with other users of the Mobile Application. Upon your reasonable, written request, Caterpillar will take commercially reasonable efforts to remove any inaccurate or objectionable User Submissions from the Forums. Without limiting the foregoing, you understand and agree that you may be exposed to User Submissions that are inaccurate, inappropriate for children or otherwise objectionable, and you agree that neither Caterpillar nor its Affiliates will be liable for any such User Submissions. If you choose to make any of your Personal Information (as defined in the Data Governance Statement) or other information publicly available through the Mobile Application, you do so at your own risk.

#### **4. Mobile Application Information.**

**4.1. Collection of Registered Asset Data and/or Other Data.** By downloading, accessing or using the Mobile Application, you consent to the collection, storing, processing, use, sharing and disclosure of information, as described in the Data Governance Statement located at [http://www.cat.com/en\\_US/legal-notice/data-governance.html](http://www.cat.com/en_US/legal-notice/data-governance.html) and the Privacy Statement for the Mobile Application, as applicable. The Data Governance Statement and the Privacy Statement may change from time to time, so review them with regularity and care. If the Data Governance Statement or the Privacy Statement materially changes, Caterpillar will notify you by indicating in the Mobile Application, in accordance with Section 12.9 or by other reasonable means. Specific information collected, transmitted and processed may change over time and vary based on as detailed in the Data Governance Statement or the Privacy Statement, as applicable. The Mobile Application may also collect and process other information arising from access to or use of the Mobile Application or that is otherwise communicated through access to or use of the Mobile Application, including information collected from other sources (whether provided by third parties or Caterpillar) that make such information available to the Mobile Application. The information collected, stored, processed, used, shared or disclosed by or through the Mobile Application is referred to as the "**Mobile Application Information**"

**4.2. Use and Disclosure of Mobile Application Information.** You hereby grant to Caterpillar and its Affiliates, and each of their respective licensors, service providers, suppliers, subcontractors and distributors a non-exclusive, worldwide, perpetual, paid-up, right and license, including the right to grant and authorize sublicenses through multiple levels, to access, use, process, manipulate, modify, compile with other data or works and/or create derivative works of the Mobile Application Information provided that such use remains in accordance with the Data Governance Statement or the Privacy Statement, as applicable. You understand and agree that the Mobile Application Information may be transmitted to and processed in countries that have different data protection Laws than in the country in which you have your principal place of business. Caterpillar does not assume any obligations with respect to the Mobile Application Information, other than as expressly set forth in this Agreement or as required by applicable Laws.

**4.3. Mobile Application User Data.** For purposes of this Agreement, "**Mobile Application User Data**" means all Mobile Application Information that you submit or otherwise make available to Caterpillar under this Agreement. Your rights to the Mobile Application User Data shall remain subject to any restrictions or terms that apply to the Mobile Application User Data under any other agreement you have with Caterpillar or any third party, and Caterpillar does not make any representations or warranties with respect to such data under this Agreement. You represent, warrant and covenant that (a) you have secured and will maintain all rights, and have obtained and provided all required notices and obtained all legally required consents, necessary to make available the Mobile Application User Data (including all Personal Information therein) to Caterpillar, its Affiliates and their respective licensors, service providers, suppliers and distributors and to enable such entities to provide the Mobile Application in accordance with this Agreement, and to exercise the rights and licenses granted hereunder, without violating the rights of any third party or otherwise obligating Caterpillar to you or to any third party, and (b) you are solely responsible for all the Mobile

Application User Data, including: (i) the accuracy, integrity, quality, legality, reliability, and appropriateness of the Mobile Application User Data; (ii) creating and maintaining backups and copies of all the Mobile Application User Data, including for use in the event of a disaster or loss of the Mobile Application User Data stored in the Mobile Application; and (iii) adopting procedures to identify and correct errors and omissions in the Mobile Application User Data and correcting such errors and omissions.

**4.4. Communication Systems; Risk of Interception.** Some features of the Mobile Application may require use of various communications systems, such as telematics wireless communications carriers, satellite-based communication systems, internet service providers and other similar systems. Caterpillar uses various technologies and processes designed to secure communications within Caterpillar-provided communications systems; however, you recognize that such communication methods have an inherent risk of interception and/or interference and, therefore, may not be secure. You hereby consent to such communications and waive any claims that you may have against Caterpillar or its Affiliates with respect to such communication. Caterpillar has no responsibility for the availability, quality or performance of communications services or equipment furnished by third-party communication carriers.

**4.5. Legal Requests.** If Caterpillar or its Affiliates receive any order, demand, warrant, or any other document requesting or purporting to compel the production of Personal Information in the Mobile Application User Data (including, for example, by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoenas, civil investigative demands or other similar processes), Caterpillar or its Affiliates will promptly notify you (to the extent permissible under applicable Laws), so that you may, at your own expense, exercise such rights as you may have under applicable Laws to prevent or limit such disclosure. Notwithstanding the foregoing, Caterpillar or its Affiliates (as applicable) will exercise commercially reasonable efforts to prevent and limit any such disclosure and to otherwise preserve the confidentiality of Personal Information in the Mobile Application User Data and will cooperate with you with respect to any action taken with respect to such request, complaint, order or other document, including to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded to such Personal Information.

**4.6. Receipt, Archival and Retrieval of Data.** Caterpillar reserves the right to refuse to accept any Mobile Application Information that you may provide. Notwithstanding the foregoing, you acknowledge that Caterpillar has no responsibility for the deletion or failure to store any Mobile Application Information.

**4.7. Breach Notification.** Caterpillar will comply with all breach notification Laws applicable to Caterpillar pertaining to Personal Information provided to Caterpillar by you.

**5. Confidentiality** You acknowledge and agree that the Mobile Application and the terms and conditions of this Agreement are the confidential and proprietary information of Caterpillar and/or its Affiliates, and/or their respective licensors, suppliers, service providers, subcontractors and distributors ("**Confidential Information**"). You agree (a) to protect Confidential Information from unauthorized dissemination and use, (b) to use Confidential Information only for the performance of this Agreement and the exercise of any rights granted to you under this Agreement, (c) not to disclose any Confidential Information to any of your employees, agents, contractors or any other individuals, except to employees and contractors, each of whom are under confidentiality obligations no less restrictive than the requirements of this Section 5, and (d) not to remove or destroy any proprietary or confidential legends or markings placed upon or contained within the Confidential Information. You will not be liable for disclosure of Confidential Information which: (i) you already knew without an obligation to maintain the information as confidential; (ii) you received from a third party without breach of an obligation of confidentiality owed to Caterpillar or its Affiliates or their

respective licensors, suppliers, service providers, subcontractors and distributors; (iii) you independently developed; or (iv) becomes publicly known other than through your wrongful act.

## **6. Third Party Software/Services; Data Exchange.**

**6.1. Third Party Software/Services.** The Mobile Application may be bundled with non-Caterpillar-branded software or services ("**Third Party Software/Services**") that are provided by third parties. Caterpillar will use commercially reasonable efforts to identify such Third Party Software/Services in the Mobile Application Documentation. You acknowledge that your access to or use of any such Third Party Software/Services may be governed by additional third party terms or policies, including privacy policies. Caterpillar is not responsible for, and expressly disclaims, any liability in connection with any Third Party Software/Services or your access or use thereof.

**6.2. Data Exchange and Third Party Assets.** The Mobile Application may permit you to initiate the communication, transfer and exchange of certain Mobile Application Information between the Mobile Application and certain third-party assets, devices or systems approved by Caterpillar for use in connection with the Mobile Application ("**Third-Party Assets**"). Caterpillar does not exercise control over the form or quality of any data or information (including the Mobile Application Information) generated by or transmitted to the Third-Party Assets, including through APIs not exposed by Caterpillar. Therefore, you agree to the following:

- a. You accept all limitations in the display and use of all data and information imported via Third-Party Assets; and
- b. Caterpillar may restrict the volume and type of data and information transmitted to and from the Mobile Application if Caterpillar believes that such volume or type of data or information may adversely affect performance of the Mobile Application or Caterpillar's or a third party's other systems.

## **7. Indemnity Obligations.**

**7.1. Your Indemnity Obligations.** At Caterpillar's option, on written request of Caterpillar, you will defend and/or settle at your cost and expense any third party claim, suit, action or proceeding ("**Claim**") brought against Caterpillar, its Affiliates, or their respective directors, officers, employees, agents, licensors, service providers, subcontractors, suppliers or other distributors (individually and collectively, the "**Caterpillar Indemnified Party(ies)**") arising from or relating to (a) your access to or use of the Mobile Application in breach of any provision of this Agreement, or (b) any allegation that any information, materials or content that you submit or otherwise make available under this Agreement (including, all Mobile Application User Data and your User Submissions (if applicable)) infringe, misappropriate or violate the intellectual property or other rights of a third party (each Claim under (a) or (b), a "**User Indemnified Claim**"), and in each case you will pay all damages finally awarded and settlement amounts entered into to the extent based upon such a Claim. Upon your request and solely at your cost and expense, Caterpillar shall provide you with reasonable assistance with respect to the defense and/or settlement of such Claim.

**7.2. Caterpillar's Indemnity Obligations.** Caterpillar will defend and/or settle at its cost and expense any Claim brought against you (the "**User Indemnified Party**") alleging that the Mobile Application infringes any U.S. patents or U.S. registered copyrights ("**Caterpillar Indemnified Claim**"). Caterpillar will pay all damages finally awarded and settlement amounts entered into to the extent based upon a Caterpillar Indemnified Claim. Notwithstanding the foregoing, Caterpillar shall not be required to defend and/or settle any (a) User Indemnified Claim, or (b) Claim that arises out of or in connection with: (i) any access to or use of the Mobile Application other than in adherence to

this Agreement; (ii) use of other than the then-current, unaltered version of the Mobile Application; (iii) use, modification, operation or combination of the Mobile Application with non-Caterpillar software programs, data, equipment or documentation if such infringement would have been avoided but for such use, modification, operation or combination; (iv) compliance with your designs, specifications or instructions; or (v) any Third Party Software/Services or Open Source Components. If the Mobile Application becomes (or in Caterpillar's reasonable opinion is likely to become) the subject of a Caterpillar Indemnified Claim, Caterpillar shall have the right, at its sole option, to obtain for you the right to continue use of the Mobile Application or to replace or modify the Mobile Application so that it is no longer infringing. If neither of the foregoing options is reasonably available to Caterpillar, then your access to or use of the Mobile Application may be terminated at the option of Caterpillar. Upon Caterpillar's request and solely at Caterpillar's cost and expense, you shall provide Caterpillar with reasonable assistance with respect to Caterpillar's defense and/or settlement of such Claim.

**7.3. Entire Liability.** EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAWS, THE FOREGOING CONSTITUTES THE ENTIRE LIABILITY OF EITHER PARTY, ITS AFFILIATES AND THEIR RESPECTIVE LICENSORS, SERVICE PROVIDERS, SUBCONTRACTORS, SUPPLIERS AND DISTRIBUTORS, AND THE OTHER PARTY'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT, MISAPPROPRIATION OR OTHER VIOLATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS RELATING TO THE SUBJECT MATTER HEREOF.

**7.4. Process.** The Caterpillar Indemnified Party or the User Indemnified Party (as applicable) will promptly notify the indemnifying party of any Claim subject to this Section 7, provided, however, that any such failure to notify will not relieve the indemnifying party of its indemnification obligations under this Section 7 unless, and only to the extent that, the indemnifying party can demonstrate that it was prejudiced by such failure. The Caterpillar Indemnified Party or the User Indemnified Party (as applicable) shall give the indemnifying party reasonable assistance in connection with and full control and authority over the defense and settlement of the applicable Claim, except that: (a) no settlement requiring the Caterpillar Indemnified Party or the User Indemnified Party (as applicable) to admit liability, or to pay any money or otherwise take on any obligation may be made without the prior written consent of the Caterpillar Indemnified Party or the User Indemnified Party (as applicable), such consent not to be unreasonably withheld or delayed; and (b) the Caterpillar Indemnified Party or the User Indemnified Party (as applicable) may join in the defense with the indemnified party's own counsel at the indemnified party's own cost and expense.

## **8. Intellectual Property Rights.**

**8.1. Reservation of Rights.** Except as expressly granted herein, neither party is granted any rights or licenses, whether express or implied, under the other party's intellectual property rights. The Mobile Application is licensed, not sold. Nothing in this Agreement or otherwise will be deemed to grant to you an ownership interest in any of the intellectual property rights in or to any of the Mobile Application.

**8.2. Intellectual Property Rights.** Except as expressly provided herein, Caterpillar, its Affiliates and each of their respective licensors and suppliers retain all of their respective right, title and interest in and to the Mobile Application and all intellectual property rights in or pertaining to the Mobile Application or its use, including the design, structure, selection, coordination, expression, "look and feel" and arrangement of the Mobile Application and all processes, tools, software, technology, confidential information and trade secrets pertaining to the Mobile Application, together with any custom developments created or provided in connection with or related to this Agreement ("**Mobile Application Background IP**"). You shall have no right to, and will not, create any modifications, extensions, or derivatives (including derivative works) of any of the Mobile Application Background

IP, or to derive any technology from the Mobile Application Background IP (such modifications, extensions, derivatives (including derivative works) and technology, collectively "**Derivatives**"). If any Derivatives are created, notwithstanding the restrictions set forth above, you will and hereby do assign to Caterpillar irrevocably and without further consideration, all right, title and interest in and to such Derivatives and all intellectual property rights pertaining thereto in the United States and in any other country. Except to the extent prohibited by applicable Laws, if and to the extent that any Derivatives or any intellectual property rights pertaining thereto are not so assignable by you to Caterpillar, you will and hereby do grant to Caterpillar an unrestricted, perpetual, irrevocable, non-terminable, transferable, worldwide, exclusive license (including the right to grant and authorize sublicenses through multiple levels) to any Derivatives and all intellectual property rights pertaining thereto for any and all purposes and in any and all media, whether alone or together or as part of any material of any kind or nature, and waive all moral and similar rights thereto.

**8.3. Feedback.** If you provide any ideas, proposals, suggestions, comments, videos, photos or other materials ("**Feedback**"), whether related to the Mobile Application or otherwise, such Feedback will be deemed a User Submission, and you hereby acknowledge and agree that (i) Caterpillar does not control and is not responsible for any Feedback or the use or misuse (including any distribution) by any third party of Feedback and (ii) such Feedback is not confidential, and that your provision of such Feedback is gratuitous, unsolicited and without restriction, and does not place Caterpillar under any fiduciary or other obligation. In addition, by submitting Feedback, you hereby grant to Caterpillar a non-exclusive, perpetual, irrevocable, non-terminable, transferable, worldwide right and license (including the right to grant and authorize sublicenses through multiple levels) to such Feedback and all intellectual property rights pertaining thereto for any and all purposes and in any and all media, whether alone or together or as part of any material of any kind or nature, and you waive all moral and similar rights in connection therewith. Any disclosure of such Feedback by Caterpillar to third parties (other than to Caterpillar's Affiliates and Caterpillar's and its Affiliates' licensors, service providers, suppliers or distributors) shall not attribute the Feedback to you.

**8.4. Trademarks.** All trademarks that appear throughout the Mobile Application belong to Caterpillar or its Affiliates, or the respective owners of such marks, and are protected by U.S. and international trademark and copyright Laws. Any use of any of the marks without the express written consent of Caterpillar or the owner of the mark, as appropriate, is strictly prohibited.

**9. No Warranty.** CATERPILLAR AND ITS AFFILIATES, AND EACH OF THEIR RESPECTIVE LICENSORS, SERVICE PROVIDERS, SUPPLIERS, SUBCONTRACTORS AND DISTRIBUTORS (THE "CATERPILLAR PARTIES") PROVIDE NO WARRANTIES OR CONDITIONS, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WARRANTIES AND CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, NONE OF THE CATERPILLAR PARTIES PROVIDE ANY WARRANTY THAT THE MOBILE APPLICATION WILL BE FREE FROM ERRORS OR INTERRUPTION (INCLUDING INTERRUPTIONS DUE TO CYBERATTACKS OR MALICIOUS CODE OR OTHERWISE) OR BE COMPATIBLE WITH ANY HARDWARE OR SOFTWARE NOT EXPLICITLY SPECIFIED IN THE MOBILE APPLICATION DOCUMENTATION. THE CATERPILLAR PARTIES DISCLAIM ANY RESPONSIBILITY FOR ANY HARM RESULTING FROM YOUR ACCESS OR USE OF THE MOBILE APPLICATION. YOU AGREE THAT YOUR ACCESS OR USE OF THE MOBILE APPLICATION IS AT YOUR OWN DISCRETION AND RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGES TO YOUR INFORMATION SYSTEMS OR ASSETS OR LOSS OF DATA THAT RESULTS FROM SUCH ACCESS OR USE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES OR LIMITATIONS ON HOW LONG SUCH WARRANTIES LAST, SO THE EXCLUSIONS OR LIMITATIONS IN THIS SECTION 9 MAY NOT APPLY TO YOU. NOTWITHSTANDING YOUR ACCESS TO AND USE OF THE MOBILE

APPLICATION AND REGARDLESS OF ANY INFORMATION PROVIDED THROUGH THE MOBILE APPLICATION (WHETHER ACCURATE OR INACCURATE) REGARDING THE OPERATION, MAINTENANCE OR PERFORMANCE STATUS OF THE REGISTERED ASSETS, IF ANY, YOU ARE SOLELY RESPONSIBLE FOR, AND ASSUME ALL RISK RELATED TO, THE PROPER OPERATION, SUPPORT AND MAINTENANCE OF THE REGISTERED ASSETS. THE FOREGOING EXCLUSIONS AND LIMITATIONS ARE NOT INTENDED TO APPLY TO: (A) DEATH OR BODILY INJURY TO THE EXTENT DIRECTLY CAUSED BY A CATERPILLAR PARTY'S GROSS NEGLIGENCE; OR (B) FRAUD OR WILLFUL MISCONDUCT. THE MOBILE APPLICATION IS NOT INTENDED TO PROVIDE ANY EMERGENCY, MISSION CRITICAL OR SAFETY RELATED FUNCTIONALITY AND YOU SHALL NOT USE THE MOBILE APPLICATION IN THAT MANNER. CATERPILLAR DOES NOT GUARANTEE ANY RESULTS OR THE ACCURACY OF ANY RESULTS THAT YOU MAY OBTAIN FROM THE MOBILE APPLICATION.

## **10. Limitation of Liability.**

**10.1. Limitation; Damages Cap.** EXCEPT FOR THE PARTIES' RESPECTIVE OBLIGATIONS UNDER SECTION 1.1 (RIGHT TO USE), SECTION 1.4 (ACCEPTABLE USE), SECTION 4.1 (COLLECTION OF REGISTERED ASSET DATA AND/OR OTHER DATA), SECTION 4.3 (MOBILE APPLICATION USER DATA), SECTION 5 (CONFIDENTIALITY), SECTION 7 (INDEMNITY OBLIGATIONS), AND SECTION 8 (INTELLECTUAL PROPERTY RIGHTS), (a) NONE OF THE CATERPILLAR PARTIES WILL BE LIABLE TO YOU, NOR WILL YOU OR ANY OF YOUR AFFILIATES, LICENSORS, SERVICE PROVIDERS, SUBCONTRACTORS, SUPPLIERS, OR DISTRIBUTORS BE LIABLE TO CATERPILLAR, UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, FOR ANY (i) INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, (ii) LOSS OF PROFITS, REVENUES, DATA, CUSTOMERS, OPPORTUNITIES, BUSINESS, ANTICIPATED SAVINGS OR GOODWILL, OR (iii) UNAVAILABILITY OF MOBILE APPLICATION. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO THE EXTENT SUCH DISCLAIMERS ARE PROHIBITED BY APPLICABLE LAW, AND (b) EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAWS, THE AGGREGATE LIABILITY OF THE CATERPILLAR PARTIES, ON THE ONE HAND, OR YOU AND YOUR RESPECTIVE AFFILIATES, LICENSORS, SERVICE PROVIDERS, SUBCONTRACTORS, SUPPLIERS OR DISTRIBUTORS, ON THE OTHER HAND, UNDER OR IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED THE AMOUNT OF FIFTY U.S. DOLLARS (\$50.00). FOR CLARITY, THE FOREGOING CONSTITUTES A CUMULATIVE CAP THAT IS APPLIED TO ALL CAUSES OF ACTION HEREUNDER AND IS NOT TO BE APPLIED ON A CLAIM-BY-CLAIM BASIS.

**10.2. No Exclusion or Limitation of Liability.** NOTHING IN THIS AGREEMENT EXCLUDES OR LIMITS A PARTY'S LIABILITY TO THE OTHER PARTY FOR: (A) DEATH OR BODILY INJURY TO THE EXTENT DIRECTLY CAUSED BY A PARTY'S GROSS NEGLIGENCE; OR (B) FRAUD OR WILLFUL MISCONDUCT.

## **11. Term, Termination and Suspension.**

**11.1. Term.** Unless earlier terminated in accordance with this Section 11, this Agreement will remain in effect until you uninstall the Mobile Application (the "**Term**").

**11.2. Termination by You.** You may terminate this Agreement at any time by uninstalling the Mobile Application.

**11.3. Termination for Breach.** Caterpillar party may terminate this Agreement immediately if you are in material breach of this Agreement.



**11.4. Suspension.** In addition to the foregoing, Caterpillar may suspend your access to or use of the Mobile Application, in whole or in part, immediately without notice to you, if Caterpillar determines that: (a) it is reasonably needed to prevent unauthorized access to the Mobile Application Information; (b) your use of the Mobile Application poses a security risk to the Mobile Application or any third party, may adversely impact the Mobile Application or the systems of Caterpillar or any third party, may subject Caterpillar or any third party to liability, or may be prohibited by applicable Laws, (c) you fail to abide by any terms of this Agreement, or (d) in accordance with Section 1.5.

**11.5. Discontinuance.** Caterpillar may cease making the Mobile Application available to you, (a) if Caterpillar determines that market demand no longer warrants continuing to make available the Mobile Application, or (b) in order to comply with any applicable Laws. In addition, Caterpillar may limit the Mobile Application's availability at any time, in whole or in part, to any person, geographic area or jurisdiction, if Caterpillar reasonably determines that a legal or regulatory reason no longer warrants the continued making available of the Mobile Application to such person or in such geographic area or jurisdiction.

**11.6. Effect of Expiration or Termination.** Upon expiration or termination of this Agreement, all rights and licenses granted under this Agreement to you will cease. Sections 4.2 (Use and Disclosure of Mobile Application Information), 4.5 (Legal Requests), 4.6 (Receipt, Archival and Retrieval of Data), 5 (Confidentiality), 7 (Indemnity Obligations), 8 (Intellectual Property Rights), 9 (No Warranty), 10 (Limitation of Liability), 11.6 (Effect of Expiration or Termination) and 12 (Miscellaneous) will survive any termination or expiration of this Agreement.

## **12. Miscellaneous.**

**12.1. Force Majeure.** Neither Caterpillar, its Affiliates, or any of Caterpillar or its Affiliates' respective licensors, service providers, subcontractors, suppliers or distributors, nor you, any of your Affiliates shall be responsible for any delays or failures to perform any obligation under this Agreement to the extent that such delays or failures result from any cause beyond such person or entity's reasonable control, including fires, blockages, embargoes, explosion, earthquake, storms or other elements of nature, acts of terrorism, wars, epidemics, government requirements, civil or military authorities, acts of God, strikes, labor disputes or other industrial disturbances, systemic electrical, telecommunications or other utility failures .

**12.2. Assignment.** Neither party to this Agreement may assign or transfer this Agreement or its rights or obligations under it, whether by contract or by operation of law, without the prior consent of the other party; provided that Caterpillar may assign or transfer this Agreement or its rights or obligations under it without your consent to its Affiliates or in connection with a merger, consolidation, corporate reorganization, or sale of all or substantially all of Caterpillar's business or assets or of the business or assets associated with Caterpillar's Mobile Application business. Subject to the preceding sentence, the rights and liabilities of the parties hereto shall inure to the benefit of, each of the parties' respective assignees and successors and is binding on the parties and their successors and assignees. Any attempted assignment other than in accordance with this Section 12.2 shall be null and void.

**12.3. No Third Party Beneficiary.** Except as provided in Section 12.4, this Agreement does not create any third party beneficiary rights in any individual or entity that is not a party to this Agreement.

**12.4. Apple-Specific Terms.** In addition to your agreement with foregoing terms and conditions in this Agreement, and notwithstanding anything to the contrary herein, the following provisions apply with respect to your access to and use of any version of the Mobile Application that is compatible with the iOS operating system of Apple Inc. ("**Apple**"), such as a mobile app version of the Mobile Application. Apple is not a party to this Agreement and does not own and is not responsible for the

Mobile Application. Apple is not providing any warranty for the Mobile Application except, if applicable, to refund the purchase price for it. Apple is not responsible for maintenance or other support services for the Mobile Application and shall not be responsible for any other claims, losses, liabilities, damages, costs or expenses with respect to the Mobile Application, including any third-party product liability claims, claims that the Mobile Application fails to conform to any applicable legal or regulatory requirement, claims arising under consumer protection or similar legislation, and claims with respect to intellectual property infringement. Any inquiries or complaints relating to the use of the Mobile Application, including those pertaining to intellectual property rights, must be directed to Caterpillar. In the event of any third party claim that the Mobile Application or your possession and use of the Mobile Application infringes that third party's intellectual property rights, Apple will not be responsible for the investigation, defense, settlement or discharge of any such intellectual property infringement claim. You must comply with the Usage Rules set forth in Apple's App Store Terms of Service. In addition, you must comply with the terms of any third-party agreement applicable to you when using the Mobile Application, such as your wireless data service agreement. Apple and Apple's subsidiaries are third-party beneficiaries of this Agreement and, upon your acceptance of the terms and conditions of this Agreement, will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third-party beneficiary thereof; notwithstanding the foregoing, Caterpillar's right to enter into, rescind or terminate any variation, waiver or settlement under this Agreement is not subject to the consent of any third party.

**12.5. Relationship between You and Caterpillar.** You and Caterpillar are independent parties for all purposes relating to this Agreement. You do not have the power to bind Caterpillar. You do not have the power to give any person or entity any rights that Caterpillar has not previously authorized in writing. The relationship of the parties under this Agreement will not constitute a partnership or joint venture for any purpose. You and Caterpillar do not have any agency, franchise or fiduciary relationship.

**12.6. Waiver.** No waiver of any breach of this Agreement shall be a waiver of any other breach, and any waiver must be in writing and signed by an authorized representative of the waiving party.

#### **12.7. Governing Law.**

- a. This Agreement (including the arbitration provisions set forth in Section 12.8) shall be governed by and interpreted in accordance with the Laws of the State of Illinois and the federal Laws of the United States, without prejudice to the provisions of the Laws of the country where you have your principal place of business that cannot be derogated from contractually, and without reference to conflict of Laws' principles, as such Laws are applied to agreements entered into and to be performed entirely within the United States between residents of the United States.
- b. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods and/or its implementation and/or successor legislation and/or regulations, the application of which is expressly excluded.

#### **12.8. Arbitration**

- a. **All disputes, claims and controversies relating to or arising out of this Agreement (collectively, "Dispute") will be resolved by binding arbitration, rather than in court. If your principal place of business is in the United States, the Federal Arbitration Act applies to the arbitration of such Disputes.**
- b. **If your principal place of business is in the United States or Canada, the arbitration will be administered by the American Arbitration Association (AAA) in accordance with the AAA's Commercial Arbitration Rules and Mediation Procedures. If your principal place of business is in any country in APAC, then the arbitration will be**

administered by the Singapore International Arbitration Centre (SIAC) in accordance with the Arbitration Rules of the Singapore International Arbitration Centre. If your principal place of business is outside of the United States, Canada or any country in APAC, then the arbitration will be administered by the International Chamber of Commerce (ICC) in accordance with ICC Rules of Arbitration. The arbitration rules specified in this subsection are referred to as the "Rules." For the purposes of this Agreement, "APAC" means the geographic region that includes the following countries: Australia, Bangladesh, Brunei, Burma, Cambodia, China (including Hong Kong Special Administrative Region and Macau Special Administrative Region), Christmas Islands, Fiji, India, Indonesia, Japan, Kiribati, Laos, Malaysia, Marshall Islands, Federated States of Micronesia, Mongolia, Nauru, New Zealand, Palau, Papua New Guinea, Philippines, Samoa, Singapore, Solomon Islands, South Korea, Sri Lanka, Taiwan, Thailand, Timor-Leste, Tonga, Tuvalu, Vanuatu and Vietnam.

- c. Either party may commence the arbitration process called for by this Agreement by filing a written demand for arbitration with the applicable arbitration organization and delivering a copy of such demand to the other party to this Agreement in accordance with the notice provision of this Agreement. In no event shall demand for arbitration be made or permitted after the date when the institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations. If your principal place of business is in the United States or Canada, the place of arbitration will be Chicago, Illinois, United States. If your principal place of business is in a country in APAC, the place of arbitration will be Singapore. If your principal place of business is outside of the United States, Canada or any country in APAC, the place of arbitration will be Geneva, Switzerland. The arbitration shall be conducted in English. Notwithstanding the foregoing, if your principal place of business is in the Netherlands, you may opt to resolve any Dispute before Dutch courts, provided that you notify Caterpillar of this election within thirty (30) days of Caterpillar notifying you of Caterpillar's intention to commence arbitration.
- d. You agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action, and that the parties are waiving the right to a trial by jury. If for any reason a claim proceeds in court rather than in arbitration, each party waives any right to a jury trial.
- e. If the Dispute is for an amount less than US\$100,000, the arbitration shall be heard in front of a single arbitrator, and if the Dispute is for an amount of US\$100,000 or more, then the Dispute shall be heard by a panel of three (3) arbitrators. If the Dispute is to be heard in front of a single arbitrator, then the parties shall attempt to mutually agree on the identity of the arbitrator, or if no such agreement can be reached within thirty (30) days of the commencement of the arbitration proceedings, the applicable arbitration organization shall appoint such arbitrator in accordance with the Rules. If the Dispute is to be heard in front of a panel of three (3) arbitrators, each party shall nominate one arbitrator from a list of arbitrators provided by the applicable arbitration organization, and the two party-nominated arbitrators shall select the third arbitrator who will serve as chairman. Notwithstanding anything to the contrary herein, either party may seek injunctive relief in a court of competent jurisdiction to prevent irreparable harm from occurring at any time. Each party shall bear its own cost of prosecuting or defending the arbitration (excluding any attorneys' or other professional fees) and the parties shall split the arbitrators' fees and the applicable arbitration organization's administrative costs, regardless of the outcome. The provisions of this Section and judgment upon the award rendered by the arbitrator may be enforced by any court of competent jurisdiction. The arbitrator(s) shall render its decision as soon as reasonably possible after its appointment and must follow the terms of this Agreement.

- f. **This agreement to arbitrate shall be specifically enforceable in any court having jurisdiction thereof. Any award issued by the arbitrator pursuant to any arbitration shall be final and binding upon the parties, and judgment may be entered upon in accordance with applicable Laws in any court of competent jurisdiction.**

**12.9. Notices.** You agree that Caterpillar and its Affiliates may contact you by any reasonable means, including via the contact information you have provided in your Mobile Application account, by e-mail or the user interface for the Mobile Application, to provide you with information and notices relating to the Mobile Application, this Agreement or for other purposes related to the subject matter of this Agreement. Notices to Caterpillar will be delivered by registered or certified mail only, return receipt requested, to the following address: 100 N.E. Adams Street, Peoria, IL 61629-9620, Attention: Deputy General Counsel -Commercial. Unless otherwise provided by applicable Laws, notices are effective (a) when delivered personally, (b) seven (7) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, (c) two (2) business days after deposit with a private industry express courier, with written confirmation of receipt, (d) for email or other electronic transmission to you, when sent, or (e) if posted in the user interface for the Mobile Application for you, when posted. You are responsible for ensuring that the email address and contact information in your account is accurate and current. Notices sent via email will be effective when sent regardless of whether actually received.

**12.10. DMCA.** If you believe in good faith that any materials available on the Forums infringe your or their copyright, you (or your agent) may send to Caterpillar a written notice by mail, e-mail or fax, requesting that Caterpillar remove such material or block access to it. If you believe in good faith that someone has wrongly filed a notice of copyright infringement against you for a User Submission submitted by you, the Digital Millennium Copyright Act of 1998 (the "**DMCA**") permits you to send to Caterpillar a counter-notice. Notices and counter-notices must meet the then-current statutory requirements imposed by the DMCA. See [www.copyright.gov](http://www.copyright.gov) for details. Notices and counter-notices must be sent in writing to Caterpillar's Copyright Agent as follows: by mail to 100 N.E. Adams Street, Peoria, IL 61629-9620, Attn: Copyright Agent; or by e-mail to [CopyrightAgent@cat.com](mailto:CopyrightAgent@cat.com). Caterpillar's Copyright Agent's phone number is +1-309-266-0481.

**12.11. Language.** This Agreement is in the English language only, which language shall be controlling in all respects, and all versions hereof in any other language shall not be binding on the parties hereto. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

**12.12. Import and Export Compliance.** You agree that you will not use or otherwise export, re-export, transfer or release (whether by oral, visual or any other means deemed to be an export or reexport) (collectively, "**export**") the Mobile Application (including any Mobile Application Information), except as authorized by United States Laws and the Laws of the jurisdictions in which the Mobile Application was accessed or used. In particular, but without limitation, the Mobile Application (including any Mobile Application Information) may not be exported (including by accessing the Mobile Application), directly or indirectly: (a) to any person or entity listed or deemed to be a blocked, prohibited or trade-restricted person or party by the U.S. Commerce Department, U.S. Treasury Department, or U.S. Department of State by operation of law or otherwise; (b) for any purpose or use prohibited by the U.S. government, such as for nuclear, chemical, or biological weapons production or proliferation; or (c) to any destination or transit point subject to comprehensive sanctions by the U.S. government, as may be amended from time to time, without having obtained the required U.S. authorization(s) prior to such export. You represent and warrant that your access and use of the Mobile Application will not violate any such Laws and that you are not located in any such country or on any such list or deemed to be on such list. You will not access or use the Mobile Application for any purposes prohibited by United States Laws, including the development, design, manufacture or production of nuclear, missiles, or chemical or biological weapons.

**12.13. Government Entity Rights and Obligations.** the Mobile Application is a "Commercial Item," as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, this Commercial Computer Software and Commercial Computer Software Documentation is licensed to government entity end users pursuant to the license customarily provided to the public, with only those rights as are granted to the public pursuant to the terms and conditions herein and Caterpillar's applicable Public Sector End User License Agreement. Any government entity end user's rights and obligations shall be governed by this Agreement, and such Public Sector End User Agreement, as modified by a written addendum agreed upon by authorized representatives of both parties. Unless modified by such addendum, or otherwise expressly agreed to in writing by authorized representatives of Caterpillar and the government entity end user, the terms of this Agreement shall govern each party's rights and obligations. As the Mobile Application consists of Commercial Computer Software and Commercial Computer Software Documentation offered pursuant to a standard commercial license, this provision and the rights and obligations in such addendum are in lieu of, and supersede, any Federal Acquisition Regulation ("FAR") clauses, clauses found in the Defense FAR Supplement ("DFARS"), or other federal, state, or local government clauses or provisions that address a government entity's rights in computer software, technical data, or intellectual property.

**12.14. Open Source Software.** The Mobile Application may be provided together with, or otherwise contain, certain open source software components ("**Open Source Components**") under their respective open source license agreements ("**Open Source Licenses**") which are listed at [https://www.cat.com/en\\_GB/campaigns/awareness/cat-tech-benefits-AR.html](https://www.cat.com/en_GB/campaigns/awareness/cat-tech-benefits-AR.html). You acknowledge and agree to the terms and conditions in each such Open Source License and to comply with all such terms and conditions. With respect to each Open Source Component, to the extent there are any conflicts between any terms of this Agreement and any terms of the respective Open Source License, which the Open Source License does not permit, such conflicting terms of this Agreement will not apply. Any fees charged by Caterpillar in connection with the Mobile Application do not apply to any Open Source Components for which fees may not be charged under the applicable Open Source License. Where the terms of any specific Open Source License entitle you to the source code of the respective Open Source Component (if any), that source code may be made available from Caterpillar upon request (a nominal fee may be charged by Caterpillar for processing such request).

**12.15. Compliance with Laws.**

- a. You understand and agree that the Mobile Application (including any Mobile Application Information) is subject to certain national, state, provincial and local laws, rules, regulations, directives, statutes, orders, judgments, decrees, rulings, and enforceable regulatory guidance ("**Laws**"), which include without limitation, governmental procurements Laws and Laws related to bribery, fraud, corruption, or international trade, such as the U.S. Foreign Corrupt Practices Act, the UK Bribery Act, and any applicable anti-bribery or trade Laws of other countries, as amended, the U.S. Export Administration Regulations Act of 1979, as amended, the U.S. International Traffic in Arms Regulations, and the sanctions, regulations and Executive Orders administered by the U.S. Treasury Department Office of Foreign Assets Control and U.S. Department of State.
- b. Without limiting any of Caterpillar's or your other commitments hereunder, you and Caterpillar each agree to comply in all material respects with all Laws applicable to the performance of and exercise of each of your and Caterpillar's respective rights and obligations under this Agreement. Your compliance with your obligations hereunder will extend to Laws that apply to the access to or use of the Mobile Application, as well as any other of your activities hereunder, including those Laws that apply to online conduct, online content, and the transfer of data (including any Personal Information) to and from the United States or your country of residence.

- c. You agree that you have, and will maintain, at your own expenses, all permits, licenses, consents and approvals that apply to the Mobile Application or its use hereunder, including for you (a) to receive and use the Mobile Application in accordance with all applicable Laws, and (b) to otherwise exercise your rights and perform your other obligations as set forth in this Agreement (collectively, the "**Permits**"); provided that if obtaining any of the foregoing Permits is Caterpillar's responsibility under applicable Laws and applicable Laws do not permit you to obtain such Permits on Caterpillar's behalf, Caterpillar will obtain such Permits at its own expense.

**12.16. Severability.** If the application of any provision of this Agreement or portion thereof to any particular facts or circumstances shall be held to be invalid or unenforceable by an arbitration panel or a court of competent jurisdiction, then the parties shall negotiate in good faith a valid, legal and enforceable substitute provision that most closely reflects the original intent of the parties with respect to the parties' economic and business interests, and all other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to carry out the intentions of the parties hereto as nearly as may be possible. Such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of such provision in any other jurisdiction.

**12.17. Construction.** As used herein: (a) the terms "include" and "including" are meant to be inclusive and shall be deemed to mean "include without limitation" or "including without limitation," (b) the word "or" is disjunctive, but not necessarily exclusive, (c) words used herein in the singular, where the context so permits, shall be deemed to include the plural and vice versa, (d) references to "dollars" or "\$" shall be to United States dollars unless otherwise specified herein, and (e) unless otherwise specified, all references to days, months or years shall be deemed to be preceded by the word "calendar" and "business days" shall mean Monday through Friday, exclusive of Caterpillar observed holidays. The headings of this Agreement are intended solely for convenience of reference and shall be given no effect in the interpretation or construction of this Agreement.

**12.18. Electronic Signature and Disclosure Consent Notice.** You agree to the use of electronic documents and records in connection with this Agreement and all future documents and records in connection with the Mobile Application—including this electronic signature and disclosure notice—and that this use satisfies any requirement that Caterpillar provides you these documents and their content in writing. If you do not agree, do not enter into this Agreement. You have the right to receive a paper copy of all documents and records. You may (a) obtain a paper copy of any document or record (free of charge), (b) withdraw your consent to the use of electronic documents and records, or (c) update your contact information through your Mobile Application account. To receive or access electronic documents and records, you must have the following equipment and software: (i) a device that is capable of accessing the Internet; (ii) a compatible Internet browser; and (iii) software that permits you to receive and access Portable Document Format or "PDF" files, such as Adobe Acrobat Reader 8.0 or higher. To retain documents and records, your device must have the ability to download and store PDF files. Your access to this page verifies that your system and device meets the above receipt, access, and retention requirements.

**12.19. Entire Agreement.** This Agreement, including all schedules and exhibits attached hereto or referenced herein, constitutes the full and entire understanding of the parties with respect to the subject matter hereof and supersedes any prior or contemporaneous understandings, agreements or communications with respect to the subject matter of this Agreement. This Agreement may only be changed as expressly provided herein (including pursuant to Section 12.20) or in a signed, separate written agreement executed by the parties hereto.

**12.20. Changes to this Agreement.** Except to the extent prohibited by applicable Laws, Caterpillar may change the terms and conditions of this Agreement (including the terms and conditions upon which you or Caterpillar may terminate this Agreement): (i) on an annual basis; (ii) in connection with a release of a new version of the Mobile Application, or introduction of new or modified features or

functionality within the Mobile Application; or (iii) upon a change in applicable Laws, in each case, by providing notice of such change to the Agreement terms at least thirty (30) days prior to the change going into effect. Notice provided under this Section 12.19 will be made by any reasonable means, which may include posting a revised version of this Agreement through the Mobile Application or providing notice in accordance with Section 12.9. Your continued access to or use of the Mobile Application after any change to this Agreement terms goes into effect will constitute your acceptance of such change. If you do not wish to be subject to revised terms of this Agreement, you may terminate this Agreement in accordance with Section 11.2. Changes to this Agreement will not apply to any dispute between you and Caterpillar arising prior to the date on which the changes went into effect. The "*Last Updated*" legend above indicates when this Agreement was last changed.

## EXHIBIT A

### Acceptable Use Policy

You may not:

- a. Post, transmit or otherwise make available through or in connection with the Mobile Application any materials that are or may be: (i) threatening, harassing, degrading, hateful or intimidating, or otherwise fail to respect the rights and dignity of others; (ii) defamatory, libelous, fraudulent or otherwise tortious; (iii) obscene, indecent, pornographic or otherwise objectionable; or (iv) protected by copyright, trademark, trade secret, right of publicity or privacy or any other proprietary right, without the express prior written consent of the applicable owner.
- b. Post, transmit or otherwise make available through or in connection with the Mobile Application any virus, worm, Trojan horse, Easter egg, time bomb, spyware or other computer code, file or program that is or is potentially harmful or invasive or intended to damage or hijack the operation of, or to monitor the use of, any hardware, software or equipment.
- c. Use the Mobile Application for any purpose that is fraudulent or otherwise tortious or unlawful.
- d. Attempt to gain unauthorized access to the Mobile Application.
- e. Perform vulnerability, load or similar test of the Mobile Application.
- f. Harvest or collect information about other users of the Mobile Application.
- g. Interfere with or disrupt the operation of the Mobile Application or the servers or networks used to make the Mobile Application available, including by hacking or defacing any portion of the Mobile Application, or violate any published requirement, procedure or policy of such servers or networks.
- h. Restrict or inhibit any other person from using the Mobile Application.
- i. Except as expressly authorized herein, reproduce, modify, adapt, translate, create derivative works of, sell, rent, lease, loan, timeshare, distribute or otherwise exploit any portion of (or any use of) the Mobile Application, without Caterpillar's express prior written consent (e.g., with respect to the consumption of the APIs).
- j. Reverse engineer, decompile or disassemble any portion of the Mobile Application, except to the extent such restriction is expressly prohibited by applicable Laws.
- k. Remove any copyright, trademark or other proprietary rights notice from the Mobile Application.
- l. Frame or mirror any portion of the Mobile Application, or otherwise incorporate any portion of the Mobile Application into any product or service, without Caterpillar's express prior written consent.

- m. Except as expressly authorized herein, systematically download and store the Mobile Application Information.
- n. Use any robot, spider, site search/retrieval application or other manual or automatic device to retrieve, index, "scrape," "data mine" or otherwise gather the Mobile Application content, or reproduce or circumvent the navigational structure or presentation of the Mobile Application, without Caterpillar's express prior written consent.
- o. Use or access the Mobile Application in order to develop a product or service that serves the same or a similar purpose or otherwise is competitive with the Mobile Application.

You are responsible for obtaining, maintaining and paying for all hardware and all telecommunications and other services needed for you to use the Mobile Application.