

**GENERAL TERMS OF SERVICE AND END USER LICENSE AGREEMENT  
FOR  
ASSET INTELLIGENCE SERVICES**

**1. INTRODUCTION**

Caterpillar Inc. (together with its Affiliates, “**Caterpillar**” including the terms “**we,**” “**us,**” or “**our**”) provides a total vessel monitoring digital solution built upon equipment, asset and fleet level analytics and expert advisory service including all related services, websites, mobile applications, software downloads, data, text, graphics, user interfaces, visual interfaces, photographs, trademarks, logos, sounds, music, artwork and computer code (the “**AI Services**”). The AI Services for your specific needs, and may include onboard software, web-based services, analytics and reporting tools and advisory services covering all or a portion of your vessel systems. You understand that neither Caterpillar nor the AI Services prevents performance or maintenance issues and that you remain exclusively responsible for the operation and maintenance of your vessel.

This General Terms of Service and End User License Agreement (this “**Agreement**”) contains the terms and conditions that govern your access to and use of the AI Services. The specific details of your AI Services are set forth in the Technical Specification attached to the AI Service subscription(s) (each a “**Service Subscription**”) that you may purchase from Caterpillar or its Dealers for systems and equipment supported by the AI Services of a particular vessel that you own, rent, lease, manage or otherwise operate (each a “**Registered Asset**”). This Agreement does not apply to the sale, installation, configuration or maintenance of the onboard hardware, cabling and related information systems required to enable the AI Services.

If you have purchased a Service Subscription or otherwise use the AI Services, then this Agreement is between you and Caterpillar. **CATERPILLAR IS WILLING TO GRANT ACCESS TO AND USE OF THE AI SERVICES TO YOU SOLELY UPON YOUR PURCHASE OF ONE OR MORE SERVICE SUBSCRIPTIONS AND YOUR ACCEPTANCE OF ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.** You will cause each Authorized User to comply with all provisions of this Agreement applicable to the access or use of the AI Services.

BY CLICKING “ACCEPT” TO THIS AGREEMENT OR ACCESSING OR USING THE AI SERVICES 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.

**2. PERFORMANCE OF THE AI SERVICES**

*General:* Caterpillar will perform the AI Services in connection with Registered Assets in accordance with the Service Subscription(s) purchased by you under this Agreement. The AI Services will be performed during the period and subject to the rates specified in the applicable Service Subscription.

*Duty to Provide the AI Services;* Subject to receipt of all necessary data and information from you and the performance by you of your other obligations under this Agreement, Caterpillar will provide to you the following in accordance with the applicable Service Subscription:

- Caterpillar will use commercially reasonable efforts to (i) make available to you the AI Services subject to downtime resulting from routine scheduled maintenance and emergency outages; (ii) ensure routine scheduled maintenance is conducted outside normal business hours (CST); and (iii) provide advance notice of any such routine scheduled maintenance.

- All reports for each Registered Asset will be available through an on-line interface in accordance with the relevant Service Subscription.

*Modifications of the AI Services:* Caterpillar may, at any time, modify the AI Services, or any portion of its features and functions, provided that such modifications do not result in a material degradation in the quality of the AI Services taken as a whole. To the extent reasonably practicable, Caterpillar will provide advance notice of such modifications. As new or enhanced versions of the AI Software and Applications are made available, we may require that you update your current version of the related applications and information systems in order to access and utilize such new or enhance versions of the AI Software and Applications.

*Customer Representative:* You will assign, in good faith, a dedicated resource to represent you and act as the primary point of contact with Caterpillar (the “**Customer Representative**”).

*Additional Responsibilities:* In addition to the other responsibilities set forth in this Agreement, the parties shall each perform their respective obligations set forth in the applicable Service Subscription at no expense to any other party. Any additional obligations imposed upon Caterpillar must be acknowledged and accepted by Caterpillar in a written instrument referencing this Agreement. Any additional obligations imposed upon you must be acknowledged and accepted by you in a written instrument referencing this Agreement.

*Access:* Upon prior written notice, you hereby grant to Caterpillar and its respective agents, representatives, and subcontractors permission to board the vessel (s) and reasonable access to the Registered Assets and supporting systems to perform the activities set forth in this Agreement or otherwise reasonably necessary or desirable to perform the AI Services based upon vessel availability. Any Caterpillar employees, agents, representatives and subcontractors boarding a vessel in United States waters will be required to obtain a government issued Transportation Worker Identification Credential (TWIC) before they will be allowed to board vessel(s).

*Safety:* All Caterpillar employees, agents, representatives and subcontractors boarding a vessel or visiting your place of business for observation or other purposes shall comply with all lawful safety and work site rules and regulations applicable to such work site, provided that you make such personnel aware of such regulations. Any Caterpillar employees, agents, representatives and subcontractors boarding a vessel or visiting your place of business for observation or other purposes must wear situation appropriate personal protective equipment including but not limited to gloves, safety glasses and shoes, earplugs or muffs, hard hats, respirators, or coveralls, vests and full body suits.

### **3. AI SOFTWARE AND APPLICATIONS LICENSE**

Caterpillar grants to your Authorized Users a limited, non-exclusive, non-transferable, non-assignable license (without the right to sublicense) to access and use all software and applications provided by Caterpillar in connection with the AI Services solely in accordance with your Service Subscription(s) and the terms of this Agreement. All rights not expressly granted to you or your Authorized Users herein are reserved by Caterpillar. Your Authorized Users will use the AI Services software; firmware; application protocol interfaces (APIs); web-based, mobile and resident applications; and content (collectively, “**AI Software and Applications**”) only in a commercially reasonable manner for your legitimate internal business purposes with respect to the Registered Assets. You will, and will cause each Authorized User to, (i) strictly adhere to all laws, rules, and regulations applicable to the access and use of the AI Software and Applications, including those laws, rules and regulations that apply to online conduct, online content, and the import and export of data to and from the United States and your country of residence and wherever the Vessel is located, and (ii) not use the AI Software and Applications in a manner inconsistent with Caterpillar’s documentation for the AI Services. You and your Authorized Users shall use the AI Software in accordance with the Acceptable Use Policy, available at [www.cat.com/assetintel](http://www.cat.com/assetintel).

### **4. AUTHORIZED USERS AND ACCOUNT MANAGEMENT**

*General.* You agree that AI Software and Applications may be accessed or used only by your company and your company's users, designated and authorized by you (which may include your Affiliates that are controlled by you and your Affiliates contractors and representatives) ("**Authorized Users**") Authorized Users shall not include representatives of companies who offer similar services to the AI Services. Your rights to use AI Software and Applications are subject to your payment of all undisputed fees, your registration as an Authorized User, and our delivery of an appropriate license key to you to enable you to use AI Software and Applications. Caterpillar provides limited access to and use of certain functions and capabilities of AI Software and Applications ("**Internal Use**") to authorized Caterpillar dealers ("**Dealers**"), Caterpillar Fleet Advisors and other necessary Caterpillar personnel, as Caterpillar, in its sole discretion, deems appropriate.

*Usernames and Passwords.* To register and log onto and use AI Software and Applications, Authorized Users will need to create a username and password, which will be needed to access certain features of AI Software and Applications, and provide Caterpillar with true, accurate, current and complete registration information and update such information as necessary.

*Compliance with laws; Consents.* Each party hereby agrees that it has complied and will comply with all applicable laws relating to the transmission and use of data and information provided to Caterpillar, including any personally identifiable data contained therein. You have provided and will provide all required notices to and have obtained and will obtain all necessary consents from your designated Authorized Users, vessel operators and other relevant individuals and complied fully with your obligations under all applicable laws, orders, directives and regulations.

*Account Management.* You are solely responsible for managing changes in your designated Authorized Users and maintaining the confidentiality of your designated Authorized Users' usernames and passwords. You are responsible for all end-user activities that occur under your designated Authorized Users' usernames and passwords. We reserve the right to require you to change your designated Authorized Users' username in the event we determine that any username is offensive or for any other reason.

*Notice of Certain Events.* You will promptly notify Caterpillar of any:

- Unauthorized use of Authorized Users' username, password, or any other breach of security, and you will ensure that Authorized Users logout at the end of each session;
- Change in personnel that would result in a change in your designated Authorized Users or the access or usage rights granted to such persons;
- Change in business or corporate structure that could affect your account, Registered Assets or Authorized Users (e.g., any sale or acquisition of any business with access to the AI Services, Registered Assets, or vessel(s), whether by a sale or acquisition of assets, equity interests, merger or otherwise); and
- Sale of any Registered Asset or vessel to another person or entity other than any of your wholly owned subsidiaries.

## **5. DATA AND INFORMATION.**

*Collection of Registered Asset Data and Other Data.* The AI Services collects, transmits and processes information relating to among other things, the Registered Assets, the vessel(s) or equipment associated with the Registered Assets, and their use and operation, as detailed in Caterpillar's Data Governance Statement located at [www.cat.com/assetintel](http://www.cat.com/assetintel) (or at such other location as designated by Caterpillar from time to time) including System Data, Personal Information and Location Data as further described below. The Data Governance Statement may change from time to time, so review it with regularity and care. If the Data Governance Statement changes, Caterpillar will notify you by email or other reasonable means. Specific information collected, transmitted and processed may change over time and vary based on, among other things, the Registered Assets, the vessel(s) or equipment associated with the Registered Assets, and the version of the AI Services and as detailed in Caterpillar's

Data Governance Statement. The AI Services may also collect and process other information arising from access to or use of the AI Services or that is otherwise communicated through access to or use of the AI Services, including information collected from other sources (whether provided by third parties or Caterpillar) that make such information available to the AI Services.

*System Data.* In order to provide the services associated with the AI Services, Caterpillar may collect data that is ingested or used by or generated through AI Services as more particularly described in the Data Governance Statement, which may include, Device, Equipment and Component Information, Electronic Data, Inspection Data, Device Location Data, Fluid Data, Service and Maintenance History, Environmental Conditions and Patterns of Use (each as further described in the Data Governance Statement) ("**System Data**").

*Personal Information.* By accessing or using the AI Services, you (including Authorized Users) may provide information that relates to an identified or an identifiable individual ("**Personal Information**"). By so doing, you (including Authorized Users) consent to the collection, storing, processing, use, sharing and disclosure of Personal Information as described in the Data Governance Statement.

*Location Data.* The AI Services permits collection of information that includes exact location of the vessel(s) or equipment associated with Registered Asset ("**Location Data**"). Caterpillar collects such information in order to provide certain the AI Services functionality, to improve other Caterpillar products and services, to enable Caterpillar and its dealers to understand the operators of the vessel(s) or equipment associated with Registered Assets in a manner consistent with the Data Governance Statement. It is your responsibility to notify Authorized Users and any other operators of the vessel(s) or equipment associated with Registered Assets that the location of the vessel(s) or equipment associated with Registered Asset and thus potentially their location, can be identified.

*AI Services Information.* The information described in the Section 5, regardless of when collected, whether prior to the parties entering into this Agreement or thereafter, is referred to collectively as the "**AI Services Information.**" You understand and agree that AI Services 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 AI Services Information or to your (including Authorized Users') access to or use of the AI Services, other than as expressly set forth in this Agreement or as required by applicable Laws.

*Telematics Devices.* Transmission of information using a telematics device (including cellular, satellite, local area networks and other similar systems) may be subject to legal requirements (including with respect to radio frequency use authorization) that may vary from location to location. You agree to comply with all legal requirements relating to transmission of information using telematics devices, including limiting use of any such device to those locations where all legal requirements for the use of the device and related communications networks have been satisfied. Except to the extent prohibited by applicable Laws, Caterpillar disclaims all liability related to any failure to comply with any legal requirements relating to transmission of information using telematics devices. If Caterpillar discovers any such non-compliance, Caterpillar may discontinue the transmission of information from that Registered Asset.

*Communication Systems; Risk of Interception.* Some features of the AI Services 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 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.

*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 AI Services Customer 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 AI Services Customer 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.

*Use and Disclosure of AI Services Information.* You hereby grant to Caterpillar and its Affiliates, licensors, service providers and suppliers 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 AI Services Information in any and all media and for all current and future business purposes of Caterpillar and its Affiliates, licensors, service providers and suppliers, including developing, manufacturing, and marketing products and services, to the maximum extent permitted under any applicable data protection Laws or sector-specific Laws. Caterpillar's exercise of the foregoing right and license shall be consistent with the Data Governance Statement.

*Receipt, Archival and Retrieval of Data.* Caterpillar reserves the right to refuse to accept any AI Services Information that you may provide. Upon termination or expiration of this Agreement, Caterpillar will close your account, and you will have ninety (90) days to obtain a copy of your AI Services Customer Data to the extent that such AI Services Customer Data is in Caterpillar's possession. Data made available to you will be in the form in which it was made available to Caterpillar or in such other form or format as Caterpillar establishes from time to time. Unless otherwise agreed by Caterpillar, after this period of time has elapsed, you will no longer be able to retrieve any AI Services Customer Data associated with your account. Notwithstanding the foregoing, you acknowledge that Caterpillar has no responsibility for the deletion or failure to store any AI Services Information.

*AI Services Customer Data.* For purposes of this Agreement, "**AI Services Customer Data**" means all AI Services Information that you submit or otherwise make available to Caterpillar under this Agreement. Your rights to AI Services Customer Data shall remain subject to any restrictions or terms that apply to AI Services Customer 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 AI Services Customer Data (including all Personal Information therein) to Caterpillar, its Affiliates and their respective licensors, service providers, suppliers and distributors to enable such entities to provide the AI Services 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 AI Services Customer Data, including: (i) the accuracy, integrity, quality, legality, reliability, and appropriateness of AI Services Customer Data; (ii) creating and maintaining backups and copies of all AI Services Customer Data, including for use in the event of a disaster or loss of AI Services Customer Data stored in the AI Services; and (iii) adopting procedures to identify and correct errors and omissions in AI Services Customer Data and correcting such errors and omissions.

*Breach Notification.* Caterpillar will comply with all breach notification Laws applicable to Caterpillar pertaining to Personal Information provided to Caterpillar by you (including Authorized Users).

## 6. THIRD PARTY SOFTWARE/SERVICES; DATA EXCHANGE.

*Third Party Software/Services.* The AI Services 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 AI Services 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. Without limiting the foregoing, you agree to the third party terms and conditions (if any) located in the AI Services (or at such other location as designated by Caterpillar from time to time). Caterpillar is not responsible for, and expressly disclaims, any liability in connection with any Third Party Software/Services or your (including Authorized User’s) access or use thereof.

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

- You accept any and all limitations in the display, accuracy, quality, reliability, use and security of data and information imported via Third-Party Assets, as well as those, in the display of data generated by Caterpillar telematics devices exported to third-party manufactured devices or systems.
- Caterpillar is not responsible for the quality or accuracy, or the inability to receive or access data or information imported via Third-Party Assets, whether a deficiency is due to third-party caused service outages, third-party software interface incompatibilities or failures.
- To the extent you are using Third-Party Assets, or to the extent you have modified your Registered Assets in any way, then you are responsible for the accuracy, integrity, security, quality, legality, reliability, and appropriateness of any data transmitted or displayed.
- Caterpillar may restrict the volume and type of data and information transmitted to and from the AI Services if Caterpillar believes that such volume or type of data or information may adversely affect performance of the AI Services.

## 7. INFORMATION SYSTEMS AND SERVICE REQUIREMENTS

*Minimum Vessel Information System Requirements.* For the AI Software and Applications to properly function and to enable Caterpillar to provide the AI Services, you agree to reasonably maintain onboard vessel information and communications systems that meet or exceed the minimum specifications set forth in the Statement of Work attached to your Service Subscription. Future releases of the AI Software and Applications may require enhanced information and communications systems performance and specifications, and you may be accordingly required to upgrade your systems if you desire to access and use the AI Services relying on features or functions made available within such future releases. You understand that the availability of certain features and functions with the AI Services may not be available for all Registered Assets.

*Web Access.* In order to use the AI Services and provided System Data to Caterpillar, you must have equipment necessary to access the World Wide Web (the “**Web**”) and pay any necessary access fees to your communications carrier or Web service provider. If you use any mobile applications, you understand that such applications use data from compatible wireless devices, so you must purchase an appropriate data plan from your mobile service carrier. You are responsible for the acquisition, configuration, monitoring, maintenance and management of your software and hardware related to your use of the AI Services, including LAN, computers, modems, telecommunications

devices, and your network connection to the sites and applications. We are not responsible for the network connection or for issues, problems or conditions arising from or related to the network connection, including but not limited to bandwidth issues, network outages, and/or other conditions that are caused by the Web and/or network connection, or for any overages or actions that your mobile service carrier, communications carrier or Web service provider may take against you for using data in violation of your its terms and policies.

*Remote Updates to System Configuration and Settings.* We may periodically update the configuration and system settings of hardware associated with the AI Services or the AI Software and Applications.

*No Unauthorized Modifications.* Caterpillar will not be responsible for the performance of the AI Services if you make any modifications to your vessel information and communications systems (or their programming or any related applications, systems or services) that are installed to enable the AI Services without our prior authorization. You acknowledge that we are not responsible for any interruption or degradation in the AI Services resulting from any changes to your vessel information and communications systems, and you agree that we may charge you additional fees for services provided to you in relation to the remediation of any problems arising from unauthorized changes to your vessel information and communications systems.

*Insurance.* You are responsible for obtaining and maintaining adequate insurance covering your Registered Assets, vessel(s), property, and injuries to you or anyone else, and you should regularly maintain your Registered Assets. The AI Services is not an insurance product and does not replace appropriate maintenance of your Registered Assets.

*Communication Systems; Risk of Interception.* Some features of the AI Services require use of various communications systems, such as telematics wireless communications carriers, satellite-based communication systems, internet service providers and other similar systems. We use various technologies and processes designed to secure communications within Caterpillar provided communications systems; however, you recognize that such transmission methods have an inherent risk of interception and/or interference and therefore may not be secure. **YOU HEREBY CONSENT TO SUCH TRANSMISSION AND ACKNOWLEDGE THAT CATERPILLAR HAS NO RESPONSIBILITY FOR THE AVAILABILITY, QUALITY OR PERFORMANCE OF COMMUNICATIONS SERVICES OR EQUIPMENT FURNISHED BY THIRD-PARTY COMMUNICATION CARRIERS. THE THIRD-PARTY COMMUNICATIONS CARRIERS ARE EXCLUSIVELY RESPONSIBLE FOR SUCH SERVICES AND EQUIPMENT.**

*Telematics.* Transmission of information using a telematics device (including cellular, satellite, local area networks and other similar systems) is subject to legal requirements that may vary from location to location, including radiofrequency use authorization. You must limit use of any such device to those locations where all legal requirements for the use of the device and the AI Services communication network have been satisfied. In the event that a Registered Asset enabled with a telematics device is located in or relocated to a location where (i) legal requirements are not satisfied or (ii) transmitting or processing of such information across multiple locations would not be legal, we disclaim any and all liability related to such failure to comply and Caterpillar may discontinue the transmission of information from such Registered Asset.

## **8. CONFIDENTIALITY.**

**“Confidential Information”** means information hereafter disclosed by the Disclosing Party to the Receiving Party in connection with the performance of this Agreement or the AI Services that the Disclosing Party deems to be confidential and that (i) is in written or other tangible form and is marked confidential, proprietary or words to that effect, or (ii) if disclosed orally or in another intangible form, is identified as being confidential (a) at the time of disclosure and (b) is reduced to writing and marked confidential, proprietary, or words to that effect and delivered to the Receiving Party within 30 days of its disclosure. Notwithstanding the foregoing, Confidential Information does not include information that is (iii) at the time of its disclosure, or thereafter becomes, part of the public domain through no act or fault of the Receiving Party, (iv) known to the Receiving Party at the time of its disclosure by the Disclosing Party, (v) independently developed by the Receiving Party without reference to the information disclosed, or (vi) rightfully disclosed to the Receiving Party by a third party who, to the Receiving Party’s knowledge, is not subject to an obligation of confidentiality with respect to the information disclosed. For purposes of this Agreement,

“**Disclosing Party**” and “**Receiving Party**” mean, as the case may be, you and Caterpillar and/or an affiliate of either party.

The Receiving Party will (vii) accord Confidential Information received by it from the Disclosing Party with the same degree of confidential treatment that it accords its similar proprietary and confidential business and technical information, which shall not be less than the care a reasonable business person would exercise under similar circumstances, (viii) use such Confidential Information only in connection with the performance of this Agreement or the AI Services and as otherwise permitted by this Agreement, and (ix) not disclose any of such Confidential Information to any person other than its affiliates and its and their directors, officers, employees, advisors, Dealers, and representatives (collectively “**Representatives**”) who reasonably need to know such Confidential Information in connection with the performance of this Agreement and the AI Services.

The terms of this Section 8 shall survive for a period of two (2) years following the expiration or earlier termination of this Agreement.

Notwithstanding any other provision of this Agreement, the Receiving Party may disclose Confidential Information of the Disclosing Party, without liability for such disclosure, to the extent that such disclosure is (i) required to be made pursuant to applicable law, government authority, duly authorized subpoena, or court order, (“**Order**”) in which case the Receiving Party will, if allowed under such Order, provide prompt notice to the Disclosing Party and endeavor, if allowed under such Order, to give the Disclosing Party an opportunity to respond prior to such disclosure, (ii) required to be made to a court or other tribunal in connection with the enforcement of the Receiving Party’s rights under this Agreement, or (iii) approved by the prior consent of the Disclosing Party.

## **9. INTELLECTUAL PROPERTY RIGHTS**

*Generally.* Except to the extent expressly provided in this Agreement in the “Grant of License to the AI Services” section above and with respect to Customer Data, you agree and acknowledge:

- Caterpillar owns or licenses any and all rights under patent law, copyright law, trade secret law, trademark law, and any and all other proprietary or moral rights, and any and all applications, renewals, extensions and restorations thereof, now or hereafter in force and effect worldwide (“**Intellectual Property Rights**”) in connection with or relating to this Agreement and the AI Services, including but not limited to the design, structure, selection, coordination, expression, “look and feel” and arrangement of such content, contained on the sites or applications or provided as a part of the AI Services (“**Caterpillar IP**”).
- You have no right, license, or interest in any Intellectual Property Rights in connection with or relating to this Agreement or the AI Services.
- Caterpillar owns all right, title and interest in and to any replacements, improvements, updates, enhancements, derivative works and other modifications (including, without limitation, the incorporation of any ideas, methods or processes provided by or through you) to Caterpillar IP made by any person, even if paid for by you and regardless of whether or not they are similar to any of your Intellectual Property Rights. You will undertake any and all action necessary to vest such ownership in Caterpillar, including without limitation assigning (and you hereby assign) to Caterpillar all rights in and to such Intellectual Property Rights, including, without limitation, patent applications, patents, moral rights and copyrights arising from or relating to this Agreement or the AI Services or any documents related thereto.
- You may not remove, obscure, or alter any copyright, trademark, or other proprietary notices embedded in, affixed to or accessed in conjunction with the AI Services.
- All marks that appear throughout the AI Services belong to Caterpillar, 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 appearing throughout the AI Services without the express written consent of Caterpillar or the owner of the mark, as appropriate, is strictly prohibited. Our Legal Notice provides additional information on our trademark and copyright practices.

- Caterpillar may, at its sole discretion, disable and terminate the accounts of Authorized Users who may be infringing the Intellectual Property Rights of Caterpillar or others.

## 10. CHARGES AND FEES

*AI Services Fees.* You agree to pay all charges and fees (“Fees”) payable under Service Subscriptions you acquire.

## 11. WARRANTY; LIMITATION OF LIABILITY; INDEMNITIES; INSURANCE

**WARRANTY.** During the term of this Agreement, the AI Services will perform in accordance with the Technical Specification in all material respects. **NOTWITHSTANDING THE FOREGOING, YOU ACKNOWLEDGE THAT CATERPILLAR, ITS DIRECTORS, OFFICERS, EMPLOYEES, SUPPLIERS, BUSINESS ASSOCIATES, AGENTS, LICENSORS AND DEALERS (THE “CATERPILLAR PARTIES”) DISCLAIM ANY RESPONSIBILITY FOR ANY HARM RESULTING FROM YOUR USE OF THE AI SERVICES. YOU EXPRESSLY UNDERSTAND AND AGREE THAT TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, CATERPILLAR MAKES NO OTHER REPRESENTATION, WARRANTY OR CONDITION, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, (1) WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT, ACCURACY AND NON-INFRINGEMENT, (2) WARRANTIES ARISING THROUGH COURSE OF DEALINGS OR USAGE OF TRADE, (3) WARRANTIES REGARDING THE RELIABILITY, TIMELINESS, AND PERFORMANCE OF THE AI SERVICES, AND (4) WARRANTIES THAT ACCESS TO OR USE OF THE AI SERVICES WILL MEET YOUR REQUIREMENTS, BE UNINTERRUPTED OR ERROR-FREE ANY USE OF THE AI SERVICES WILL BE AT YOUR OWN DISCRETION AND RISK AND YOU ARE SOLELY RESPONSIBLE FOR, ASSUME ALL RISK RELATED TO, THE PROPER OPERATION, SUPPORT AND MAINTENANCE OF THE REGISTERED ASSETS. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY GRANTED IN THIS AGREEMENT, AND CATERPILLAR DOES NOT AUTHORIZE ANYONE TO MAKE WARRANTIES ON ITS BEHALF.**

## 12. LIMITATION OF LIABILITY; REMEDY.

**UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR A THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, THIRD PARTY OR CONSEQUENTIAL (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF BUSINESS INFORMATION, VIRUS INFECTIONS, SYSTEM OUTAGES AND THE LIKE) ARISING OUT OF, BASED ON OR RESULTING FROM THIS AGREEMENT OR YOUR ACCESS TO, USE OF, MISUSE OF OR INABILITY TO USE ANY PORTION OF THE AI SERVICES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES (INCLUDING DAMAGES INCURRED BY THIRD PARTIES). THE EXCLUSION OF DAMAGES UNDER THIS SECTION IS INDEPENDENT OF ANY REMEDY PROVIDED UNDER THIS AGREEMENT AND SURVIVES IN THE EVENT SUCH REMEDY FAILS OF ITS ESSENTIAL PURPOSE OR IS OTHERWISE DEEMED UNENFORCEABLE. THESE LIMITATIONS AND EXCLUSIONS APPLY WITHOUT REGARD TO WHETHER DAMAGES ARISE FROM BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR ANY OTHER CAUSE OF ACTION. IN NO EVENT SHALL THE TOTAL LIABILITY OF CATERPILLAR FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION, WHETHER IN CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE ANNUAL SUBSCRIPTION FEE RELATING TO THE AFFECTED ASSET.**

**YOU ALSO UNDERSTAND AND ACKNOWLEDGE THAT AI SERVICES IS NOT INTENDED TO BE USED FOR ANY EMERGENCY, SAFETY OR MISSION CRITICAL OR SAFETY RELATED USE OR APPLICATION OR OTHER ULTRA-HAZARDOUS ACTIVITIES AND YOU SHALL NOT USE THE AI SERVICES IN THAT MANNER.**

*Indemnification by You.* You agree to indemnify, defend and hold harmless each of the Caterpillar Parties from and against any and all claims, lawsuits, demands, actions or other proceedings brought against it by any third party due

to, arising out of or related to your (a) misuse or abuse of the AI Services, (b) violation of this Agreement, (c) any information you submit, transmit or make available to the Caterpillar Parties or as part of the AI Services, including System Data, or (d) violation of any law, regulation or third party rights. You shall pay any and all costs, damages and expenses, including, without limitation, reasonable attorneys' fees and costs awarded against or otherwise incurred by the Caterpillar Parties in connection with or arising from any such claim, lawsuit, action, demand or other proceeding. Caterpillar, at its expense, may assume the exclusive defense and control of any matter subject to indemnification by you, in which event you agree to cooperate with Caterpillar in asserting any available defenses.

*Indemnification by Caterpillar.* Caterpillar will defend, indemnify, and hold you harmless from and against any and all damages that you may incur resulting from any rightful claim of any third person by way of infringement of any United States patent or copyright. You acknowledge and agree that this indemnity constitutes Caterpillar's sole responsibility for infringement claims.

*Contractual Statute of Limitations.* You agree that you will not assert against Caterpillar any claim or make a demand for dispute resolution arising directly or indirectly under or in connection with AI Services, this Agreement, Service Subscriptions, or any supplemental terms that relates to, or asserts as a cause for action, any event that occurred more than twelve (12) months after the earliest date on which the facts are based were or could, with the exercise of reasonable diligence, have been known to you.

*Exclusive Remedies.* The parties agree that the remedies set forth herein are the parties' exclusive remedies for Caterpillar's failure to provide the AI Services in accordance with this Agreement and/or to meet the warranties granted hereunder, notwithstanding any obligation imposed by applicable Law (whether statutory or common law and whether in contract, tort, negligence, strict liability, fiduciary relationship, equity or otherwise).

### **13. SUSPENSION & TERMINATION**

*Term.* Subject to all sections of this Agreement, this Agreement will commence on the effective date of your Service Subscription and continue for the term thereof including any renewal term.

*Suspension or Termination for Cause, Right to Cure.* Caterpillar may terminate you and/or your Authorized Users' access to the AI Services and/or your license to use it without liability by providing written notice to you with a thirty (30) day right to cure, if:

- You or your Authorized Users violate this Agreement, or breach the terms of your Service Subscription(s) or any other valid agreement with Caterpillar for use of the AI Services or any related systems;
- You fail to pay undisputed Service Subscription Fees or other amounts owed when due;
- You become insolvent, file for bankruptcy (or similar action or proceeding), or cease to do business in the ordinary course.

*Suspension or Termination for Cause, Reinstatement of Access.* Caterpillar may immediately suspend you and/or your Authorized Users' access to the AI Services if:

- Caterpillar has reason to believe that you, your Authorized Users, any of your agents or any third party using your Authorized User accounts is abusing the AI Services or using it fraudulently or unlawfully.
- Caterpillar believes you (or any of the Authorized Users) may be violating any of the limitations on the use of the AI Services or this Agreement.
- Caterpillar has reasonable grounds to suspect that any information provided by an Authorized User is inaccurate, incomplete or untrue.

- Caterpillar shall provide prompt written notice of such suspension and the reason therefore. In the event of a suspension, upon written proof, the sufficiency of which is in Caterpillar's sole discretion, of the correction of the reason for suspension, Caterpillar may, in its sole discretion, reinstate your or such Authorized User's right to use AI Software and Applications.

You may suspend and/or terminate the AI Services by providing written notice to Caterpillar with a thirty (30) day right to cure, if:

- Caterpillar violates this Agreement, or breach the terms of its Service Subscription(s) or any other valid agreement with you for use of the AI Services or any related systems;
- Caterpillar becomes insolvent, file for bankruptcy (or similar action or proceeding), or ceases to do business in the ordinary course; or

*Effect of Termination.* If this Agreement is terminated, then unless agreed in writing by the terminating party, any uncompleted Service Subscriptions shall terminate and be of no force and effect upon the effective termination date of this Agreement. Upon the termination or expiration of this Agreement, you shall immediately return to Caterpillar all software, firmware, hardware (other than hardware purchased by you) and documentation associated with the AI Services. All provisions of this Agreement that are to come into effect or which continue in force and effect after the expiration or other termination of this Agreement and the transactions contemplated hereby shall remain in effect and be enforceable following such expiration, or termination. If your Service Subscriptions and the AI Services account are suspended or terminated for Caterpillar's convenience and no fault on your part, then you will have no obligation to pay Fees for any period following the date of suspension or termination, and you will be reimbursed a proportion of the Fees received by Caterpillar based upon the un-lapsed term, if any, of the currently active Service Subscription as of the date of suspension or termination.

#### **14. DISPUTE RESOLUTION AND MANDATORY ARBITRATION**

All disputes, claims and controversies (collectively, "**Dispute**") relating in any way to your use of AI Services, or otherwise arising out of or relating to this Agreement, Service Subscriptions or any Bid Proposal or Statement of Work relating to the AI Services will be resolved by binding arbitration, rather than in court, except that you may assert claims in small claims court if your claims qualify. The Federal Arbitration Act applies to this Section. For purposes of clarity, this Section does not apply to any Dispute arising out of the Registered Assets that are unrelated to the AI Services.

To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to: Chief Legal Officer, Caterpillar Inc., 100 N.E. Adams St., Peoria, Illinois 61629. Unless the parties agree otherwise or the arbitrator so orders, the arbitration will take place in New York, New York, USA. The arbitration will be administered by the American Arbitration Association (AAA) in accordance with the AAA's Commercial Arbitration Rules and Mediation Procedures, and, if applicable, the AAA's Consumer Arbitration Rules. Unless applicable law provides otherwise, your request for arbitration must be post marked within the time period specified above under "Contractual Statute of Limitations." 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.

We each 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 we each waive any right to a jury trial. We also both agree that you or we may bring suit in court to enjoin infringement or other misuse of Intellectual Property Rights. The arbitration panel shall consist of one individual mutually agreed upon by Caterpillar and you. Such individual shall (i) have been selected from the AAA's list of potential arbitrators, (ii) be an attorney whose 5 years of experience

has been in the realm of litigating and arbitrating issues which are of the subject of the Dispute; and (iii) have at least five (5) years of experience in the discipline which is the subject of the Dispute. If Caterpillar and you fail to mutually agree upon an arbitrator within 15 business days after receipt of the request to arbitrate, then the arbitrator shall be selected by the administrative office of the AAA. Such office shall, within five days after notice by any party to this Agreement, select a single arbitrator who complies with the requirements otherwise set forth in this paragraph. The arbitrator shall render its decision as soon as reasonably possible after its appointment and must follow the terms of this Agreement and any applicable supplemental terms.

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 law in any court of competent jurisdiction.

Unless applicable law provides otherwise, the prevailing party in any arbitration or court proceedings shall be reimbursed by the other party for all costs, expenses and charges, including, without limitation, reasonable attorneys' fees, incurred by the prevailing party.'

## **15. OTHER**

*Waiver.* The failure by either party to exercise rights granted to it hereunder upon the occurrence of any violation shall not constitute a waiver of such rights upon the recurrence of such violation or of any other right granted herein.

*Assignment.* Neither party may assign or otherwise transfer this Agreement, without the prior written consent of the other party, including in connection with a corporate reorganization, merger or the sale of substantially all of its business assets or a substantially similar transaction, whether by operation of law or any other method (in a single transaction or a series of transactions); provided, that: (a) Caterpillar may assign or otherwise transfer its interests hereunder to any of its Affiliates, (b) Caterpillar may assign this Agreement in connection with the sale or transfer of all or substantially all of the assets associated with the business that provides the AI Services; and (c) you may assign this Agreement to any Affiliate that assumes responsibility for operation of the Registered Assets. "**Affiliate**" means any entity that controls, is under common control with, or is controlled by the applicable party.

*Subcontracting.* Caterpillar may subcontract with one or more third parties (including Caterpillar's Affiliates and Dealers) who are not your direct and substantial business competitor for the provision of all or any part of the AI Services.

*Choice of Law; Severability.* This Agreement shall be governed by the laws of the State of Illinois, U.S.A. (regardless of the laws that might be applicable under its principles of conflict of laws) except to the extent inconsistent with or preempted by federal law. Each party submits to the exclusive jurisdiction of the courts of that place. If any provision of this Agreement, or the application thereof, is determined by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this Agreement, all of which shall remain in full force and effect, and such other provisions will be interpreted so as best to reasonably effect the intent of the parties. The parties further agree to replace any such invalid or unenforceable provision with a valid and enforceable provision designed to achieve, to the extent possible under applicable law, the business purpose and intent of such invalid or unenforceable provision. The laws of the United Nations Convention on Contracts for the International Sale of Goods shall not apply.

*Import and Export Compliance.* You understand and agree that the AI Services (including any System Data) are subject to laws, rules, regulations, directives, ordinances, orders, governmental requirements, or statutes (collectively, "Laws"), which include but are not limited to 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. You agree to comply with such applicable Laws and agree to not use or otherwise export,

re-export, transfer or release, whether oral, visual, or deemed to be an export or reexport, or otherwise (collectively, "export"), except as authorized by United States law and the laws of the jurisdictions in which the AI Services was accessed or used or any Registered Assets are located. In particular, but without limitation, the AI Services may not be exported (including by accessing the AI Services), directly or indirectly: (i) 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; (ii) for any purpose or use prohibited by the U.S. government, such as for nuclear, chemical, or biological weapons production or proliferation, or (iii) 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 AI Services 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 also agree that you will not use the AI Services for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of nuclear, missiles, or chemical or biological weapons.

*U.S. Government Rights.* For contracts with the U.S. Government, both directly with the U.S. Government or indirectly through a prime or sub-contractor, the AI Services (including the AI Software and Applications) are "Commercial Items", 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, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein.

*Entire Agreement.* This Agreement (including the Technical Specifications, Acceptable Use Policy, Data Governance Statement, and to the extent applicable, any supplemental terms, a, and any Service Subscription ) constitutes the entire agreement between you and Caterpillar with respect to the AI Services. This Agreement may only be changed by a signed, separate written agreement executed by the parties hereto. The section titles in the Agreement are for convenience only and have no legal or contractual effect. The terms and conditions of any quotation, offer, acknowledgement, invoice, or similar document, however designated, directly or indirectly made or issued by you shall not apply.

*Feedback, Information and Inquiries.* Should you choose to respond directly to Caterpillar with comments, questions, suggestions, ideas or the like relating to the AI Services ("**Feedback**"), you agree that such Feedback shall be deemed as non-confidential and Caterpillar shall have no obligation to respond. By submitting Feedback, you represent and warrant to Caterpillar that you have all necessary rights in and to such Feedback and all information it contains and that such Feedback does not infringe any proprietary or other rights of third parties or contain any libelous, tortious, or otherwise unlawful information. In addition, by submitting Feedback you hereby grant to Caterpillar a non-exclusive right to use, display, reproduce, modify and distribute the Feedback in whole or in part, anywhere in perpetuity in any and all media, whether alone or together or as part of any material of any kind or nature, including but not limited to developing, manufacturing, and marketing products incorporating such Feedback. Should you have any questions concerning this Agreement, write to Caterpillar Inc., 100 N.E. Adams St., Peoria, IL 61629-9600, Attn: Deputy General Counsel.

*Force Majeure.* The parties to this Agreement will not be liable for any delay or failure to perform any obligation under this Agreement, excluding your obligation to pay Fees, where the delay or failure results from any cause beyond our reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electric, telecommunications, or other utility failures, cyber-attacks, earthquake, storms or other elements of nature, epidemics, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

*Official Language.* The official language of this Agreement is English. For purposes of interpretation, or in the event of a conflict between English and versions of this Agreement in other languages, the English language shall be controlling.

*Notices and Information.* You agree that we may contact you, including by e-mail or the user interface for the AI Services, to provide you with information and notices relating to the AI Services, this Agreement, Service Subscriptions, any supplemental terms or for other purposes, including for commercial reasons.

*Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

*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 AI Services including 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 (i) obtain a paper copy of any document or record (free of charge); (ii) withdraw your consent to the use of electronic documents and records; or (iii) update your contact information through your AI Services account. To receive or access electronic documents and records, you must have the following equipment and software: (a) a device that is capable of accessing the Internet; (b) Chrome 3.0 or higher Internet browser; and (c) 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.