

CUSTOMER VALUE AGREEMENT TERMS AND CONDITIONS

The Customer Value Agreement (together with any Change Orders (as defined below), exhibits, schedules, attachments, and appendices) and the terms and conditions, as set forth below, are incorporated herein and therein, and together, shall be deemed to constitute one agreement (collectively "**CVA**"), binding on Western States Equipment Company ("**WSECO**") and the Customer, as listed on the CVA (Customer, together with WSECO, the "**Parties**," and each a "**Party**"). In consideration of the mutual covenants and agreements set forth in the CVA and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree that WSECO shall provide to Customer the goods and parts ("**Goods**") and services (the "**Services**") as set forth in this CVA, in accordance with the following terms and conditions.

1. ACCEPTANCE AND TERMS AND CONDITIONS: Acceptance of this CVA is limited to the express terms stated herein. Any proposal in Customer's acceptance for additional or different terms or any attempt by Customer to vary in any degree any of the (i) terms and conditions or (ii) representations or warranties, of this CVA, is expressly objected to and hereby rejected. Once accepted, this CVA shall constitute the entire agreement between WSECO and Customer. WSECO is not bound by any representation or agreements, express, or implied, oral, or otherwise, which are not stated within this CVA (including, for purposes of clarity, any general terms and conditions contained in Customer's purchase order or other documents submitted by Customer). This CVA will supersede all previous communications, agreements, and contracts with respect to the subject matter hereof and no understanding, agreement, term, condition, or trade custom at variance with this CVA will be binding on WSECO. No waiver or modification of the terms and conditions hereof will be effective.

2. TERM AND TERMINATION. This CVA shall commence as of the date of the last signature hereto and shall continue for twelve (12) months, unless otherwise stated on the CVA ("**Term**"), unless sooner terminated pursuant to this Section 2. The Term shall automatically renew for successive additional periods of twelve (12) months unless Customer provides WSECO sixty (60) days' written notice prior to the end of the then current Term or renewal Term. Either Party may terminate this CVA, effective upon written notice to the other Party (the "**Defaulting Party**"), if the Defaulting Party (i) fails to pay any amount when due under this CVA; (ii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors; or (iii) otherwise breaches this CVA, and such breach is either incapable of cure or is not cured within sixty (60) days of receipt of notice of such breach. WSECO may terminate this CVA at any time upon thirty (30) days' written notice to Customer. Additionally, WSECO may terminate this CVA at any time upon sixty (60) days written notice to Customer. In the event of termination of this CVA, Customer will remain obligated for payment for any Goods delivered and any Services performed by WSECO prior to the effective date of termination and for any cancellation charges, as applicable, for work in progress as of and prior to such effective date of termination.

3. TERMINATION.

- a. Termination by Customer.** In the event a Customer terminates certain Services or Additional Work (as defined herein), but not the CVA, the WSECO reserves the right to charge the Customer for any cancellation of any scheduled Services or Additional Work. Customer will pay for any partially completed work based on time and materials at WSECO's prevailing rates. Additional handling and storage fees may apply to partially completed work.
- b. Termination by WSECO.** In addition to any remedies that may be provided under this

CVA, WSECO may terminate this CVA with immediate effect upon written notice to Customer, for any reason or no reason, or if Customer: (a) fails to pay any amount when due under this CVA; (b) has not otherwise performed or complied with any terms of this CVA, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. Any termination under this CVA by WSECO automatically operates as a cancellation of any deliveries of Services and Goods to Customer that are scheduled to be made subsequent to the effective date of termination, whether or not any orders for such Services and Goods had been accepted by WSECO. With respect to any Services and Goods that are still in transit upon termination of this CVA, WSECO, in its sole discretion, may require that all sales and deliveries of such Services and Goods be made on either a cash-only or certified-check basis.

4. PRICING. Unless otherwise set forth in this CVA, or a written purchase order or proposal issued by WSECO ("**Proposal**"), the price for Goods shall be WSECO's list price for such Goods on the date such Goods are delivered to Customer. Unless otherwise set forth on a Proposal, the labor rates for Services shall be WSECO's standard labor rates for the applicable type of Service (including, but not limited to, field rates, shop rates, specialty rates or other rates, as applicable) in effect at the time the Services are performed. Unless expressly provided for on a Proposal, pricing and labor rates for future orders is subject to change without notice.

5. PAYMENT TERMS:

- a. Payment.** Customer shall pay to WSECO all invoiced amounts within thirty (30) days from the date of such invoice, unless otherwise set forth on the CVA and/or Credit Agreement. Customer shall make all payments in US dollars by check, credit card or wire transfer. For Customers who do not have an open credit account with WSECO, payment is due upon delivery of Goods or completion of Services.
- b. Late Payments.** Customer shall pay interest on all late payments, calculated daily, and compounded monthly at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable Law, calculated daily and compounded monthly. Customer shall also reimburse WSECO for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees.
- c. Disputed Invoice.** Failure to notify WSECO in writing of any dispute regarding an invoice within sixty (60) days of receipt thereof waives Customer's right to dispute such invoice. Customer's obligation to pay amounts invoiced is and will be absolute and unconditional and shall not be subject to any delay, reduction, set-off, defense or counterclaim.
- d. No Set-off Right.** Customer shall not have, and acknowledges that it does not have, any right to withhold, offset, recoup or debit any amounts owed (or to become due and owing) to WSECO under this CVA.

6. UNSATISFACTORY CREDIT STATUS. Customer shall furnish WSECO with statements evidencing Customer's financial condition as WSECO may, from time to time, reasonably request, and shall notify WSECO immediately of any and all events that may have a material adverse effect on Customer's business or financial condition. If WSECO determines in its sole discretion that Customer's financial condition or creditworthiness is inadequate or unsatisfactory, then in addition to WSECO's other rights, WSECO may without liability or penalty take any of the following actions:

- a. require that Customer provide a standby letter of credit satisfactory to WSECO in its sole discretion;
- b. accelerate all amounts owed by Customer to WSECO under this CVA;
- c. modify the payment terms specified in Section 5 (Payment Terms) for outstanding and future Orders, including requiring Customer to pay cash in advance;
- d. cancel any previously accepted Orders;
- e. delay any further shipment of Goods to Customer;
- f. terminate this CVA; or
- g. any combination of the above.

No actions taken by WSECO under this Section 6 (nor any failure of WSECO to act under this Section 6) shall constitute a waiver by WSECO of any of its rights to enforce Customer's obligations under this CVA including, but not limited to, the obligation of Customer to make payments as required under this CVA.

7. SALES TAXES: Under certain state laws, WSECO is required to collect sales tax for sales made on Equipment. Prices stated in this CVA do not include any applicable state, county, city, or local sales taxes. This Agreement is accepted with the understanding that such taxes and charges shall be added, as required by law, at the time this CVA is invoiced. Where applicable, WSECO will charge sales tax at the time of invoice unless the Customer has a valid sales tax exemption certificate on file. Valid sales tax-exempt certificates can be emailed to SalesTax@WSECO.com. In states where WSECO is not required to collect and pay Sales Tax, the Customer is obligated to self-report and pay the Sales and/or Use Tax to the Customer's appropriate state and or local Department of Revenue. In the event that Customer fails to pay any applicable tax or other charge as agreed herein or fails to provide a valid exemption certificate, Customer agrees to indemnify and hold WSECO harmless from any liability and expense by reason of Customer's failure to pay said taxes or assessments, including, but not limited to, WSECO's reasonable attorney's fees and costs and other necessary legal expenses resulting from such failure.

8. ORDER AND DELIVERY OF GOODS OR PERFORMANCE OF SERVICES. All orders for Goods and Services are subject to credit approval, which is subject to final acceptance by WSECO in its sole discretion. Customer shall have no right to cancel orders for Goods once a purchase order is issued to WSECO; provided, however, some parts may be returnable to WSECO in accordance with WSECO's then current parts return policy. WSECO will exercise commercially reasonable efforts to meet any performance dates set forth in the CVA, which such dates are estimates only. WSECO will have no liability for any loss associated with the delay in the delivery of Goods or performance of Services under the CVA. WSECO may deactivate or interrupt mechanical and electrical systems (including fire suppression systems) to perform the Services. Customer shall be responsible for reactivating such systems after completion of the Services. WSECO shall have no responsibility for reactivating, testing, or operating any such system.

9. ADDITIONAL WORK. Customer understands and acknowledges that the CVA, entered into by WSECO, has been made by WSECO in reliance on representations made by Customer regarding, among other things, the cleanliness, functionality, operational status, condition, prior use, contents and nature of the equipment or machinery that will be subject to the Services.

Should any of the representations on which WSECO relied in preparing the Services be for any reason false or incomplete, or if WSECO shall reasonably determine in the course of performing the Services that additional repair, maintenance or improvement services are necessary to satisfy its obligations hereunder, WSECO will promptly provide to Customer an estimated cost of the additional work necessary to satisfy its obligations hereunder ("**Additional Work**"). Additional Work approved or accepted by Customer (including, without limitation, additional costs and fees associated with the Additional Work) shall be deemed part of the Services hereunder and subject to this CVA. If Customer either declines or fails to agree to modify any order, proposal, and/or scope of Services to include the Additional Work within thirty (30) days of WSECO providing the estimated costs to Customer, WSECO will be entitled to immediately terminate, without penalty, this CVA.

10. CHANGE ORDERS. Subject to Section 12, if either Party wishes to change the scope or performance of the Goods and/or Services, it shall submit details of the requested change to the other Party in writing. WSECO shall, within a reasonable time after such request, provide a written estimate to Customer of (i) the likely time required to implement the change and (ii) any necessary variations to the fees and other charges for the Goods and/or Services arising from the change. Promptly after receipt of the written estimate, the Parties shall negotiate and agree in writing on the terms of such change (a "**Change Order**"). Neither Party shall be bound by any Change Order unless mutually agreed upon in writing. Notwithstanding the above, WSECO may from time to time change the Goods and/or Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Goods and/or Services, or the fees or any performance dates set forth in this CVA or relevant Change Order.

11. CANCELLATION OR MODIFICATION OF ORDERS. Customer shall be obligated to purchase from WSECO the Services and Goods specified in this CVA or Change Order. Cancellation or modification of all or part of this CVA or any Change Order is subject to WSECO's prior written consent in each instance. If cancellation or modification is allowed, Customer agrees to pay to WSECO all expenses incurred, and damage sustained by WSECO as a result of such cancellation or modification.

12. CUSTOMER WARRANTIES. Customer warrants that (i) if an entity, it is duly organized and validly existing in good standing; (ii) it is duly authorized to execute, deliver and perform its obligations under this CVA; (iii) when duly executed and delivered by each Party, this CVA will constitute Customer's legal, valid and binding obligation, enforceable against it in accordance with its terms; (iv) it is not insolvent and is paying all of its debts as they become due; (v) any payments made pursuant to this CVA are intended by it to be a substantially contemporaneous exchange for new value given to it; and (vi) each payment made of a debt incurred by it under this CVA is or was in the ordinary course of its business or financial affairs.

13. CUSTOMER OBLIGATIONS. Customer shall cooperate with WSECO in all matters relating to the Goods and/or Services and provide such access to Customer's premises, facilities, and/or equipment as may reasonably be requested by WSECO for the purposes of performing the Goods and/or Services. As needed or required, Customer shall provide directions, information, approvals, authorizations, decisions, or materials that are reasonably necessary for WSECO to perform the Goods and/or Services. Customer shall maintain the premises on and around which the Goods and/or Services will be performed in a reasonably safe condition and shall notify WSECO in advance of any hazards, dangerous conditions and defects that cannot be abated.

14. TIME OF DELIVERY: Orders for Services and Goods are processed in the order of their acceptance by WSECO. WSECO will use commercially reasonable efforts to deliver the Services and Goods to Customer on the scheduled delivery date as stated in this CVA. However, shipping

and delivery dates are estimates and dependent upon factors outside of WSECO's control including, but not limited to, the manufacturer's production schedule, material and labor shortages, equipment and inventory shortages, shipping delays, the Goods necessary to provide the Services, may not arrive on the scheduled date. WSECO shall not be liable for any damages caused by delays in delivery or shipment of the Services and Goods. Unless otherwise agreed to in writing by the parties, the Goods shall not be delivered to Customer until payment terms are mutually agreed upon.

15. RISK OF LOSS/SHORTAGES: As applicable, risk of loss of the Goods shall pass to Customer as soon as the Goods are properly loaded on the carrier, as elected by WSECO. WSECO's responsibility for shipment ceases upon delivery of the Goods to the carrier. In the event that WSECO serves as the carrier, WSECO's responsibility for shipment will cease upon delivery acceptance by the Customer. Any claim by Customer for shortage in shipment shall be made by written notice to WSECO within ten (10) days after receipt of the shipment. Customer will be deemed to have accepted the Goods unless it notifies WSECO in writing of any nonconforming products during the Inspection Period and furnishes such written evidence or other documentation as required by WSECO.

16. COMPLIANCE WITH LAW. Customer shall at all times comply with all federal, state, and local laws, rules, or regulations applicable to this CVA, Customer's performance of its obligations hereunder, and Customer's use of the Services and Goods. Without limiting the generality of the foregoing, Customer shall (a) at its own expense, maintain all certifications, credentials, licenses and permits necessary to conduct its business relating to the purchase or use of the Services and Goods and (b) not engage in any activity or transaction involving the Services and Goods, by way of shipment, use or otherwise, that violates any federal, state, and local laws, rules, or regulations.

17. LIMITED WARRANTY.

- a. New Goods.** If Customer is purchasing new Goods from WSECO, Customer acknowledges that (i) WSECO is not the manufacturer of the Goods; (ii) if the Goods include a manufacturer's warranty, WSECO will pass through to Customer the manufacturer's warranty to the extent permitted by the terms of such warranty; and (iii) the manufacturer's warranty will be subject to all conditions and exclusions set forth therein. Upon request, WSECO shall provide Customer a copy of the applicable manufacturer's warranty.
- b. Remanufactured Goods.** If Customer is purchasing remanufactured Goods from WSECO, (i) WSECO is not the manufacturer of the remanufactured Goods; (ii) if the remanufactured Goods include a manufacturer's warranty, WSECO will pass through to Customer the manufacturer's warranty to the extent permitted by the terms of such warranty; and (iii) the manufacturer's warranty will be subject to all conditions and exclusions set forth therein. Upon request, WSECO shall provide Customer a copy of the applicable manufacturer's warranty. Customer acknowledges that the only warranties with respect to remanufactured Goods are those warranties, if any, expressly set forth in the manufacturer's warranty or as specifically set forth in the Sales Agreement.
- c. Used Goods.** If Customer is purchasing used Goods from WSECO, Customer acknowledges that the only warranties with respect to such used Goods are those warranties, if any, expressly set forth in the Service Agreement.
- d. Services.** For Services purchased by Customer from WSECO, WSECO warrants that its Services will be performed and completed in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services, with such

service warranty extending for twelve (12) months (as the same may be extended by an applicable Extended Protection Plan), commencing from completion of the original Services. For example, if the service warranty is for a period of twelve months from completion of the original services, then if WSECO performs a repair pursuant to its service warranty, the warranty period remains twelve months from completion of the original Services; the twelve-month service warranty period does not start over with the repair. If replacement parts used by WSECO in connection with the provision of Services include a manufacturer's warranty, WSECO will pass such warranty through to Customer to the extent permitted by the terms of the manufacturer's warranty. With respect to Caterpillar, Inc. Goods, which are used in conjunction with the Services provided, Caterpillar, Inc. shall provide a twelve (12) month manufacturer's warranty on the Goods. WSECO's service warranty will be voided in the event of any of the following: misuse or abuse of Goods by Customer, subsequent repairs performed by Customer or vendors other than WSECO, use beyond ordinary wear and tear, failure to maintain and operate Goods in accordance with the maintenance and operations manual of the manufacturer (including, but not limited to, use of fluids that do not meet the manufacturer's standards or failure to maintain fluid levels recommended by the manufacturer) or damage due to theft, vandalism or casualty.

- e. **Limitation of Remedies:** During the limited warranty, if any, as provided herein, if, for any reason, the Services and Goods do not perform satisfactorily, as judged by WSECO in its sole discretion, WSECO may repair or replace the Services and Goods or any part thereof, at its option, without affecting any of the terms of this CVA. This remedy does not apply if the Services and Goods has failed or performs less than satisfactorily due to Customer's improper use of the Services and Goods, accident (including, damage during shipment), neglect, abuse, misuse, or exposure of the Services and Goods to conditions beyond capacity, power, environmental design limits, or operation constraints, as specified by WSECO and/or the Services and Goods manufacturer. Customer is responsible for all expenses related to repair or replacement due to these causes.

THE REMEDIES IN THIS SECTION 17 ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF THE LIMITED WARRANTY.

18. DISCLAIMER OF WARRANTIES. Except for the limited warranties set forth in Section 17, by receiving the Goods, Customer acknowledges the Goods to be in good, safe, and serviceable condition, and Customer accepts the Goods and Services **"AS IS, WHERE IS"** and **"WITH ALL FAULTS,"** regardless of defects, latent or otherwise. WSECO makes no warranties, express or implied, for any Goods, Services, equipment, product, or other items sold or furnished under this CVA, unless agreed to in a separate writing between Customer and WSECO. **WSECO MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY WSECO, OR ANY OTHER PERSON ON WSECO'S BEHALF, EXCEPT AS SPECIFICALLY SET FORTH IN THIS CVA. ALTHOUGH WSECO MAY ADMINISTER WARRANTIES ISSUED BY A MANUFACTURER, CUSTOMER ACKNOWLEDGES AND AGREES THAT (1) ANY EXPRESS WARRANTIES BY SUCH MANUFACTURER ARE NOT THE RESPONSIBILITY OF WSECO ; (2) SUCH MANUFACTURER'S WARRANTY MAY CONTAIN LIMITATIONS; AND (3) CUSTOMER MAY INCUR CERTAIN REPAIR, TRANSPORTATION OR OTHER CHARGES BY WSECO WHICH ARE NOT COVERED BY SUCH MANUFACTURER 'S WARRANTY.** Any warranty by WSECO

shall be null and void and have no legal effect if Customer fails to pay any amounts due for the Goods or Services at issue.

19. LIMITATION OF LIABILITY: In no event will WSECO, its subsidiaries, affiliates, agents or employees be liable for any liquidated, incidental, indirect, exemplary, punitive, enhanced, special, or consequential damages in connection with, arising out of, or relating to this CVA or furnishing of any equipment, goods, services or other items or any third party's ownership, maintenance, or use of any equipment, goods, services or other items furnished under this CVA, including, but not limited to, lost profits or revenues, loss of use of the Services or any associated goods, damage to associated goods, costs of capital, cost of substitute goods, or claims of Customer for such damages, whether or not the possibility of such damages has been disclosed in advance or could have been reasonably foreseen by Customer, regardless of the legal or equitable theory (contract, tort or otherwise) upon which the claim is based, and notwithstanding the failure of any agreed or other remedy of its essential purpose. WSECO is not responsible for meeting any federal, state, local or municipal code, rules, regulations, or specifications (whether statutory, regulatory, or contractual), unless Customer specifies it in writing and WSECO agrees to it in writing. Customer agrees that it has selected the Services, and associated equipment and goods, based upon its own judgment and particular needs and disclaims any reliance upon any statements or presentations made by WSECO. **IN NO EVENT SHALL WSECO'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS CVA, WHETHER ARISING OUT OF OR RELATED TO BREACH OF AGREEMENT, WARRANTY, STRICT LIABILITY TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE LESSER OF (a) TOTAL OF THE AMOUNTS PAID TO WSECO UNDER THE CVA FOR THE PREVIOUS TWELVE (12) MONTHS (AND, IF THE CVA INCLUDES MULTIPLE PIECES OF EQUIPMENT, THE AMOUNT RELATED TO THE EQUIPMENT IN QUESTION, PAID TO WSECO FOR THE PREVIOUS TWELVE (12) MONTHS) IMMEDIATELY PRIOR TO THE SUBJECT CLAIM; OR (b) \$25,000.** The parties recognize that the pricing associated with Services reflects this allocation of risk and is the basis of the bargain between the parties.

20. ASSUMPTION OF RISK. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CUSTOMER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED BY THE USE OF ANY GOODS BY CUSTOMER, ITS SUBSIDIARIES, AFFILIATES, AGENTS, OR EMPLOYEES, WHETHER IN TERMS OF OPERATING COSTS, GENERAL EFFECTIVENESS, SUCCESS, OR FAILURE, AND REGARDLESS OF ANY ORAL OR WRITTEN STATEMENTS MADE BY WSECO, BY WAY OF TECHNICAL ADVICE OR OTHERWISE, RELATED TO THE USE OF THE GOODS.

21. INDEMNITY

- a. Customer Indemnification.** Customer agrees to indemnify, defend and hold harmless WSECO from and against any and all claims, actions, suits, proceedings, costs, expenses, damages (including but not limited to consequential and incidental damages), liabilities, deficiencies, fees, interest, awards, penalties, fines, costs (including, but not limited to, attorney fees and court costs), judgements, and settlements, (including those brought or incurred by or in favor of Customer's employees, agents and subcontractors), arising out of or related to (i) the selection, delivery, loading, unloading, towing, possession, use, misuse, failure or maintenance of the Goods, operation, handling, retaking, or transportation of the Goods (inclusive of any of the foregoing by employees or agents of Customer, or third parties), (ii) personal injury, death or property damage or loss of any nature whatsoever arising out of or related to Customer's use of the Goods subject to this CVA, (iii) any breach by Customer of this CVA or any applicable law, (iv) use of the Services or serviced equipment in any manner that does not materially conform with the usage specifications provided by WSECO or the equipment manufacturer, as applicable,

or (v) any act or omission of Customer or Customer's employees, agents, contractors, subcontractors, affiliates or invitees. Additionally, Customer agrees to defend, at its expense, any and all suits brought against WSECO either alone or in conjunction with others (including any third-party suits or actions) and additionally to satisfy, pay and discharge any and all judgments and fines against WSECO in any such suits or actions, whether based in gross negligence, willful misconduct, negligence or otherwise.

- b. WSECO Indemnification.** Subject to the limitations and conditions set forth in Section 19, WSECO shall indemnify, hold harmless, and defend Customer from and against any third-party claims related to the Services provided by WSECO, to the extent such third party claims (including, but not limited to claims related to the death or injury of any person(s) or damage to or destruction of any real or personal property) are caused by WSECO's negligent acts or omissions in provision of such Services.

22. CATERPILLAR PARTS AND SERVICES COMMITMENTS. Certain Caterpillar parts and goods, that is covered by a CVA, may be eligible for parts availability and service response commitments (the "**Cat Parts and Services Commitments**"). If some or all of the equipment that is subject to a CVA is eligible for such Cat Parts and Services Commitments and a required timeframe for parts availability is not met for an eligible part, Caterpillar Financial Commercial Account Corporation ("**CFCAC**") may issue a "Cat Prepaid Credit" (as defined below) to Customer for the lesser of the following: (a) the price paid by Customer for the specific maintenance part or repair part, or (b) \$1,000 (the "**Cat Prepaid Credit**"). The Cat Prepaid Credit rules and conditions are set forth at: <http://www.cat.com/catcardrewards>. WSECO shall have no obligation to issue a Cat Prepaid Credit to Customer. Any such Cat Prepaid Credit is issued by CFCAC, and the Cat Parts and Services Commitments are subject to all terms and exclusions adopted by Caterpillar from time to time

23. INSURANCE. During the term of this CVA, each Party shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, (i) commercial general liability in occurrence form with a minimum limit of \$1,000,000 per occurrence, plus a minimum \$2,000,000 general aggregate limit; (ii) workers' compensation in an amount no less than the minimum required by law and employers' liability in a sum no less than \$1,000,000; and (iii) any additional insurance WSECO may reasonably require, in each case with financially sound and reputable insurers. Upon either Party's request, the other Party shall provide the requesting Party with a certificate of insurance from such Party's insurer evidencing the insurance coverage specified above. The certificate of insurance shall name the requesting Party as an additional insured. The insured Party shall provide the requesting Party with thirty (30) days' advance written notice in the event of a cancellation or material change in the insured Party's insurance policy. Except where prohibited by law, the insured Party shall require its insurer to waive all rights of subrogation against the requesting Party and the requesting Party's insurers.

24. DEFAULT BY CUSTOMER:

- a. Event of Default.** An "**Event of Default**" shall occur if (a) Customer fails to pay when due the sales price of the Goods and Services; (b) Customer fails to perform or observe any covenant, condition, or agreement to be performed by it hereunder; (c) Customer ceases doing business as a going concern, makes an assignment for the benefit of creditors, admits in writing an inability to pay debts as they become due, files a petition in bankruptcy, or if owners, shareholders, or members of Customer's business organization take actions towards dissolution or liquidation of Customer; (d) Customer attempts to sell, transfer, or encumber, sublease or convey the Goods or Services, or any part thereof; or (e) WSECO, in good faith deems itself, insecure relative to payment of the sales price.

- b. Occurrence of an Event of Default.** Upon the occurrence of any Event of Default, WSECO may exercise the following rights and remedies: (i) declare the sales price immediately due and payable; (ii) require Customer to assemble the Goods and make them available to WSECO at a place and time designated by WSECO; (iii) WSECO shall have full power to enter upon the property or jobsite of the Customer and take possession of and remove the Goods; (iv) WSECO shall have full power and authority to sell, lease, transfer or otherwise deal with the Goods or proceeds thereof, and in connection therewith WSECO may bid on the Goods and that a commercially reasonable price for said reclaimed Goods may be determined by WSECO based upon current national auction values, market trends relating to supply and demand, and related factors for goods of similar type and condition; (v) if WSECO chooses to sell or lease the reclaimed Goods, WSECO may obtain a judgment against Customer for any deficiency remaining on the sales price after application of all amounts received from the exercise of its rights under this CVA; and (vi) all rights and remedies of a secured creditor under the provisions of the Idaho Uniform Commercial Code, as amended from time to time. All of WSECO's rights and remedies, whether evidenced by this CVA or other related agreement, shall be cumulative and may be exercised singularly or concurrently. Customer agrees to pay all costs incurred by WSECO in enforcing this CVA or any of its provisions, including without limitation reasonable attorney's fees and costs and all costs of reclaiming the Goods, whether or not legal action is commenced.

25. NONDISPARAGEMENT COVENANT. Each Party will not directly or indirectly, during the term of this CVA and following the termination of this CVA, for any reason, intentionally make statements materially injurious to the business or professional reputation or good will of the other Party or any of the other Party's directors, officers, or employees. Nothing in this provision shall prevent either Party from giving truthful information to the extent required by subpoena or other legal process.

26. DATA GOVERNANCE: The Goods governed by this CVA may be equipped with a wireless data communication system or similar system. In such case, Customer understands data reflecting the machine performance, condition, operation, and other information is being transmitted to WSECO and Caterpillar, Inc., to better serve the Customer and to improve upon WSECO's and Caterpillar, Inc.'s products and services. Upon entering this CVA, Customer agrees to Western States Data Governance Statement, as set forth at [Western States Terms & Conditions | Western States Cat](#), and the Caterpillar, Inc. Data Governance Statement, as set forth at <https://www.caterpillar.com/en/legal-notices/data-governance-statement.html>, each as amended from time to time.

27. MARKETING. The Customer consents that, in the provision of the Services, Customer's equipment may be used in any WSECO or third-party promotional materials, pictures, videos, or other mediums. The Customer's name or trademarks shall not be used without express written consent from the Customer.

28. WAIVER. No waiver of any provision of this CVA shall be effective unless it shall (a) be in writing; (b) specifically identify this CVA; (c) specifically state that such document waives certain terms of this CVA; and (d) be accepted and signed by an authorized representative of WSECO. Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion. None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege, or condition arising from this CVA: (i) any failure or delay in exercising any right, remedy, power, or privilege or in enforcing any condition under this CVA; or (ii) any act, omission, or course of dealing between the Parties. Unless otherwise specified, remedies hereunder shall not be exclusive, but shall be cumulative and in addition to all other remedies existing at law or in equity. The receipt, acceptance and/or

negotiation of, or any endorsement on, any check or draft received from one Party will not operate to waive or release, in whole or in part, any claim of the other Party arising hereunder or in connection herewith (except as to the portion thereof actually received by the other Party in cash or other good funds).

29. FORCE MAJEURE: WSECO shall not be responsible or liable, and WSECO's obligation to perform under this CVA will be excused during each period of delay, for any delay or failure to deliver any or all of the Goods and/or performance of the services where such delay or failure is caused by any act of God, any worldwide or national epidemic or pandemic, fire, flood, inclement weather, explosion, war, insurrection, riot, embargo, statute, ordinance, regulation or order of any government or agent thereof, shortage of power, shortage of labor, material fuel, supplies or transportation, strike or other labor dispute, or any other cause, contingency, occurrence or circumstance of any nature, whether or not similar to those herein before specified beyond WSECO's control (each, a "**Force Majeure**" event"), which prevents, hinders or interferes with manufacture, assembly or delivery of the Goods or performance of the services. Any such cause, contingency, occurrence, or circumstances shall release WSECO from performance of its obligations hereunder. In the event of a Force Majeure event, such party shall: (i) immediately notify the other party of the Force Majeure event and its expected duration, and (ii) take all reasonable steps to recommence performance as soon as possible.

30. JURISDICTION AND VENUE: This CVA and the relationship between WSECO and Customer shall be governed and construed according to the laws of the State of Idaho. At the sole and exclusive election of WSECO, jurisdiction and venue for any action or dispute arising under this CVA shall be in the in the Fourth Judicial District of the State of Idaho, in and for Ada County, which is WSECO's corporate headquarters and principal place of business, wherein the parties acknowledge having done business sufficient to establish minimum contacts under the Idaho long arm statute, and which is a mutually convenient forum. In addition, Customer waives any and all rights to jurisdiction and/or venue in any other forum, including waiver of any and all rights to remove the action from any court originally acquiring jurisdiction.

31. FAILURE OR OMISSIONS. No delay or failure by either party to exercise any right or remedy under this CVA, and no partial or single exercise of that right or remedy, shall constitute a waiver of that or any other right or remedy, unless otherwise expressly provided in this CVA.

32. SEVERABILITY. If any part of this CVA shall be determined to be invalid, illegal, or unenforceable, or declared null and void by any court of competent jurisdiction, then (i) such part shall be reformed, if possible, to conform to the law and (ii) in any event the remaining parts of this CVA shall be fully effective and operative insofar as reasonably possible.

33. ASSIGNMENTS: No right or interest in this CVA shall be assigned by Customer without the written permission of WSECO, and no delegation of any obligation owed or of the performance of any obligation by Customer shall be made without written permission of WSECO. Any attempted assignment or delegation by Customer shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

34. AMENDMENTS. No amendment to or modification of or rescission, termination, or discharge of this CVA is effective unless in a writing signed by an authorized representative of each Party.

35. ENTIRE AGREEMENT. This CVA, and associated invoices, constitute the entire agreement between the parties and supersedes all prior oral and written agreements and understandings between the parties. The Parties intend for the express terms and conditions contained in this CVA (including any invoice and these CVA terms and conditions) to exclusively

govern and control each of the Parties' respective rights and obligations regarding the subject matter of this CVA, and this CVA is expressly limited to such terms and conditions. Without limitation of the foregoing, any additional, contrary, or different terms contained in any purchase order, third-party agreement, or other request or communication by Customer pertaining to the Services provided by WSECO, and any attempt to modify, supersede, supplement, or otherwise alter this CVA, will not modify this CVA (inclusive of any Customer's invoice) or be binding on the parties. The entering of a CVA with WSECO, the issuance of a purchase order for Services from WSECO, or the receipt, acknowledgement, or acceptance of Services by Customer constitutes Customer's acceptance of the CVA, and these CVA Terms and Conditions exactly as written. WSECO reserves the right, in its sole discretion, to modify or replace any of these Terms and Conditions at any time, and such modifications or replacements shall apply to all Services provided by WSECO after the date of such modification or replacement. It is Customer's responsibility to review the CVA Terms and Conditions each time Customer obtains Services from WSECO.