1. Agreement. These Customer Support Agreement Terms and Conditions and the Customer Support Agreement, including all documents, exhibits, schedules, and addendums attached thereto or specifically incorporated by reference, constitute the sole and entire agreement ("Agreement") between Hawthorne Machinery Co., Hawthorne Machinery Co. dba Hawthorne Power Systems, or Hawthorne Pacific Corp. (as specified in the signature line of the Customer Support Agreement) ("Hawthorne") and the purchasing customer ("Customer") in connection with the goods or services to be provided by Hawthorne ("Services") on behalf of Customer. This Agreement supersedes all prior and contemporaneous understandings and agreements, both written and oral regarding the Services. No purchase order issued in connection with the Services shall be binding on Hawthorne unless accepted in writing. The provision of the Services to Customer shall be subject to acceptance of any terms and conditions contained in any request for proposal, purchase order, statement of work, or other similar document, nor does it serve to modify or amend this Agreement. Any such document shall create a separate contract consisting of the terms of this Agreement and any additional terms proposed by such document to the extent they do not conflict with the terms of this Agreement. In the event of a conflict between this Agreement and any request for proposal, purchase order, statement of work, or other similar document, the terms proposed by such document to the extent they do not conflict with the terms of this Agreement shall control. The Parties agree that the Services will be governed by the following documents in this order of precedence: Customer Support Agreement, Customer Support Agreement Terms and Conditions, other writings signed by the Parties, other documents issued by the Parties relating to the Services.

2. Timing. Hawthorne shall use reasonable efforts to meet any performance dates specified in the Agreement. Customer agrees that any such dates shall be estimates only.

3. Partial Information. Customer understands and acknowledges that Hawthorne has quoted the Services relying on representations made by Customer regarding the cleanliness, functionality, operational status, contents, and nature of the equipment or machinery that will be received by Hawthorne in connection with any Service or Change Request. While preparing or pricing the Services be false or incomplete, or if Hawthorne shall reasonably determine in the course of performing the Services that additional repair, maintenance, or improvement services are necessary to satisfy its obligations hereunder ("Additional Work"). Hawthorne shall promptly provide to Customer an estimated cost of the additional work necessary to complete the Services. Customer shall agree to the Additional Work within thirty (30) days of receipt from Hawthorne, Hawthorne shall be entitled to terminate this Agreement in accordance with Section 28.

4. Change in Scope of Work. Subject to Section 3 above, if either Party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other Party in writing. Customer understands and acknowledges that Hawthorne shall negotiate and agree in writing signed by all parties on the terms of such change. Notwithstanding the above, Hawthorne may from time to time change the Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Services, the fees, or any performance dates set forth in the Agreement. If Customer fails to agree to the Additional Work within thirty (30) days, Hawthorne may, in its sole discretion, either (i) use commercially reasonable efforts to cure or eliminate such defect, or (ii) credit or refund the price of any defective Services, less a deduction equal to any cost reasonably incurred in connection with repairing the Services.

5. Customer Obligations. Customer shall pay for or reimburse all prices, fees, expenses, or charges related to the Services when they become due, cooperate with Hawthorne in all matters relating to the Services, and provide such access to Customer’s premises and facilities as may reasonably be requested by Hawthorne for the purposes of performing the Services. Customer shall provide, direction, information, approval, authorizations, decisions or materials that are reasonably necessary for Hawthorne to perform the Services. Customer shall maintain the premises on and around which the Services will be performed in a reasonably safe condition and shall notify Hawthorne in advance of any hazards, dangerous conditions and defects. Failure to comply with any portion of this section will constitute a material breach ("Material Breach") of the Agreement, alleviate Hawthorne of any responsibility hereunder, and void any portion of this Agreement. In the event Customer defaults under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Customer to the extent arising directly or indirectly from such prevention or delay.

6. Customer Obligations. Customer shall pay or reimburse Hawthorne for all reasonable costs and expenses incurred in connection with the Services or in collecting any late payments and (i) any other reasonable costs or expenses incurred in connection with the Services, unless specified otherwise on the Customer Support Agreement, in which case the terms of payment specified on the Customer Support Agreement will control. Failure to notify Hawthorne in writing of any dispute regarding an invoice within sixty (60) days of receipt of said invoice waives Customer’s right to dispute such invoice. Customer’s obligation to pay amounts invoiced shall be absolute and unconditional and shall not be subject to any delay, reduction, set-off, defense, or counter-claim. Unless specified otherwise, Customer shall pay all costs of transportation, which include but are not limited to government duties, local taxes, customs fees, and shipping costs regardless of whether they arise before, during, or after performance of the Services.

7. Late Payments. Late payments shall bear interest at the lesser of the rate of 1.5% per month (18% per annum) and the highest rate permitted under applicable law, calculated daily and compounded monthly, from the date such payment was due until the date paid in full. In addition to all other remedies available to it (which Hawthorne does not waive by the exercise of any rights hereunder), Hawthorne shall be entitled to suspend the provision of any Services until all amounts due from Customer have been paid, if Customer fails to pay any amounts when due, all unpaid sums shall become immediately due and payable within ten (10) days. Additionally, Hawthorne shall have the right, but not the obligation, to apply any funds paid by Customer to Hawthorne at any time to satisfy unpaid amounts.

8. Taxes. Customer shall be responsible for all sales, use, and excise taxes, and any other applicable governmental fees, that are imposed on, charged to, or included in the price of the Services. Customer shall pay or reimburse Hawthorne for similar taxes, duties, and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder, excluding any taxes applicable to Hawthorne’s income, revenues, gross receipts, personnel or real or personal property or other assets unless otherwise specified.

9. Hours of Operation. Unless specified otherwise in writing, the Services shall be provided during Hawthorne’s publicized business hours. Services performed outside of such hours will be billed at applicable overtime or double-time rates.

10. Ancillary Systems. Hawthorne may deactivate or interrupt mechanical and electrical systems (including fire suppression systems) to perform the Services. Customer shall have no responsibility for reactivating, testing, or operating any such system.

11. Limitations of Liability. Customer acknowledges and agrees that: (1) any express warranties by Hawthorne are limited in time period; (2) Hawthorne makes no warranty whatsoever with respect to the Services, including, without limitation, any warranty of fitness for a particular purpose or warranty against infringement of intellectual property rights of a third party; (3) in no event shall Hawthorne be liable to Customer or any third party for any loss of use, revenue or profit or loss of data or diminution in value, or for any consequential, indirect, incidental, special, exemplary or punitive damages (including attorneys' fees and costs and expert-witness services).
22. Exceptions and Limitations to Indemnification

incurred pursuant to an indemnity obligation.

connection with such settlement or agreement. The Indemnified Party shall not unreasonably

used for the Indemnified Party's defense) provided that the Indemnifying Party will obtain the

any third party claim to the Indemnifying Party (with the exception of the choice of counsel

"notice of any claim to the Indemnifying Party; (ii) cooperate with all reasonable requests of

"(ii) NEGLECT OR MORE CULPABLE ACT OR OMISSION OF

"Indemnifying Party in performing its obligations under the Agreement; (v) capacity or authority to bind the Indemnifying Party or transaction(s) entered into by the Indemnifying Party; (vi) any third party claim to the Indemnifying Party (with the exception of the choice of counsel used for the Indemnified Party’s defense) provided that the Indemnifying Party will obtain the Indemnified Party’s written consent prior to agreeing to any settlement or agreement that requires the Indemnifying Party to make any admission of fault or to pay any amounts in connection with such settlement or agreement. The Indemnifying Party shall not unreasonably withhold or delay any consent required under this section. The Indemnifying Party shall not withhold any sums from payment for any costs or liabilities incurred or anticipated to be incurred pursuant to an indemnity obligation.

23. Insurance

"i) negligence or more culpable act or omission (including recklessness or willful misconduct); (ii) bad faith failure to comply with any of its obligations set forth in the Agreement; or (iii) use of the Services or serviced equipment in any manner that does not materially conform with the usage specifications provided by Hawthorne or the equipment manufacturer, as applicable.

24. Intellectual Property

"(i) negligence or more culpable act or omission (including recklessness or willful misconduct); (ii) bad faith failure to comply with any of its obligations set forth in the Agreement; or (iii) use of the Services or serviced equipment in any manner that does not materially conform with the usage specifications provided by Hawthorne or the equipment manufacturer, as applicable.

25. Confidentiality

other tangible form is clearly labeled as “confidential,” or if disclosed orally, is identified as confidential when disclosed and promptly thereafter is summarized in writing and confirmed as confidential (“Confidential Information”); provided, however, that Confidential Information does not include any information that (i) is or becomes generally available to the public other than as a result of Receiving Party’s breach of this section; (ii) is or becomes available to Receiving Party on a non-confidential basis from a third party source, provided that Receiving Party does not know and has no reason to know that such source is prohibited from disclosing such Confidential Information; (iii) was in Receiving Party’s possession prior to Disclosing Party’s disclosure hereunder; (iv) was or is independently developed by Receiving Party without using any Confidential Information; or (v) is disclosed to a third person by Disclosing Party without similar restrictions. Except as otherwise specified in these Customer Support Agreement Terms and Conditions, Receiving Party shall (x) protect and safeguard the confidentiality of Disclosing Party’s Confidential Information with at least the same degree of care as Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care, (y) not use Disclosing Party’s Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights hereunder; (z) not disclose Confidential Information to any person or entity, except to Receiving Party’s representatives who need to know the Confidential Information to assist Receiving Party, or act on its behalf, to exercise its rights or perform its obligations. If Receiving Party is required by applicable law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify Disclosing Party of such requirements to afford Disclosing Party the opportunity to seek, at Disclosing Party’s sole cost and expense, a protective order or other remedy. Each Party shall be entitled to injunctive relief for any violation of this Section.

26. Term

"(ii) NEGLECT OR MORE CULPABLE ACT OR OMISSION OF

"indemnify, hold harmless, and defend the other Party, its AFFILIATES and their RESPECTIVE OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND PERMITTED ASSIGNS FROM ANY AND ALL CLAIMS, LOSSES, DEFICIENCIES, JUDGMENTS, SETTLEMENTS, INTEREST, AWARDS, FINES, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS, PENALTIES, TAXES, ASSESSMENTS, CHARGES, PUNITIVE DAMAGES AND EXPENSES OF WHATSOEVER KIND, INCLUDING REASONABLE ATTORNEYS’ FEES, THAT MAY BE INCURRED BY INDEMNIFIED PARTY (COLLECTIVELY, "LOSSES") AS A RESULT OF ANY (i) BREACH OF OR NON-FULFILLMENT OF ANY REPRESENTATION, WARRANTY OR COVENANT UNDER THE AGREEMENT BY INDEMNIFYING PARTY; (ii) NEGLECT OR MORE CULPABLE ACT OR OMISSION OF INDEMNIFYING PARTY (INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT) IN PERFORMING ITS OBLIGATIONS UNDER THE AGREEMENT; (v) capacity or authority to bind the Indemnifying Party or transaction(s) entered into by the Indemnifying Party; (vi) any third party claim to the Indemnifying Party (with the exception of the choice of counsel used for the Indemnified Party’s defense) provided that the Indemnifying Party will obtain the Indemnified Party’s written consent prior to agreeing to any settlement or agreement that requires the Indemnifying Party to make any admission of fault or to pay any amounts in connection with such settlement or agreement. The Indemnifying Party shall not unreasonably withhold or delay any consent required under this section. The Indemnifying Party shall not withhold any sums from payment for any costs or liabilities incurred or anticipated to be incurred pursuant to an indemnity obligation.

21. Indemnification Procedure

"(ii) NEGLECT OR MORE CULPABLE ACT OR OMISSION OF

"(b) we have reasonable doubt as to the finality of any action, determination or order; (c) the effectiveness of any action taken by us on your behalf in connection with the services we render to you; (d) any other matters as to which we have provided you with notice; (e) the Services; or (f) the other party to the Agreement. In no event shall Hawthorne be responsible for (i) a loss (whether direct or indirect and whether in contract or tort, including negligence and other equally undefined terms) resulting from a third party’s negligence or more culpable act or omission (including recklessness or willful misconduct); or (ii) failure by Indemnifying Party to comply with any applicable federal, state or local laws, rules, regulations, standards, codes or guidelines in the performance of its obligations under the Agreement.

22. Exceptions and Limitations to Indemnification

"(i) negligence or more culpable act or omission (including recklessness or willful misconduct); (ii) bad faith failure to comply with any of its obligations set forth in the Agreement; or (iii) use of the Services or serviced equipment in any manner that does not materially conform with the usage specifications provided by Hawthorne or the equipment manufacturer, as applicable.

23. Insurance

"(i) negligence or more culpable act or omission (including recklessness or willful misconduct); (ii) bad faith failure to comply with any of its obligations set forth in the Agreement; or (iii) use of the Services or serviced equipment in any manner that does not materially conform with the usage specifications provided by Hawthorne or the equipment manufacturer, as applicable.

24. Intellectual Property

"(i) negligence or more culpable act or omission (including recklessness or willful misconduct); (ii) bad faith failure to comply with any of its obligations set forth in the Agreement; or (iii) use of the Services or serviced equipment in any manner that does not materially conform with the usage specifications provided by Hawthorne or the equipment manufacturer, as applicable.

25. Confidentiality

"(i) negligence or more culpable act or omission (including recklessness or willful misconduct); (ii) bad faith failure to comply with any of its obligations set forth in the Agreement; or (iii) use of the Services or serviced equipment in any manner that does not materially conform with the usage specifications provided by Hawthorne or the equipment manufacturer, as applicable.

26. Term

"(i) negligence or more culpable act or omission (including recklessness or willful misconduct); (ii) bad faith failure to comply with any of its obligations set forth in the Agreement; or (iii) use of the Services or serviced equipment in any manner that does not materially conform with the usage specifications provided by Hawthorne or the equipment manufacturer, as applicable.

27. Termination by Customer

"(i) negligence or more culpable act or omission (including recklessness or willful misconduct); (ii) failure by Indemnifying Party to comply with any applicable federal, state or local laws, rules, regulations, standards, codes or guidelines in the performance of its obligations under the Agreement.

28. Termination by Hawthorne

"(i) negligence or more culpable act or omission (including recklessness or willful misconduct); (ii) failure by Indemnifying Party to comply with any applicable federal, state or local laws, rules, regulations, standards, codes or guidelines in the performance of its obligations under the Agreement.

29. Force Majeure

"(i) negligence or more culpable act or omission (including recklessness or willful misconduct); (ii) failure by Indemnifying Party to comply with any applicable federal, state or local laws, rules, regulations, standards, codes or guidelines in the performance of its obligations under the Agreement.

30. Communications

"(i) negligence or more culpable act or omission (including recklessness or willful misconduct); (ii) failure by Indemnifying Party to comply with any applicable federal, state or local laws, rules, regulations, standards, codes or guidelines in the performance of its obligations under the Agreement.

31. Applicable Law/Venue

"(i) negligence or more culpable act or omission (including recklessness or willful misconduct); (ii) failure by Indemnifying Party to comply with any applicable federal, state or local laws, rules, regulations, standards, codes or guidelines in the performance of its obligations under the Agreement.

32. Waiver of Jury Trial

"(i) negligence or more culpable act or omission (including recklessness or willful misconduct); (ii) failure by Indemnifying Party to comply with any applicable federal, state or local laws, rules, regulations, standards, codes or guidelines in the performance of its obligations under the Agreement.

33. Communications

"(i) negligence or more culpable act or omission (including recklessness or willful misconduct); (ii) failure by Indemnifying Party to comply with any applicable federal, state or local laws, rules, regulations, standards, codes or guidelines in the performance of its obligations under the Agreement.

34. Intellectual Property

"(i) negligence or more culpable act or omission (including recklessness or willful misconduct); (ii) failure by Indemnifying Party to comply with any applicable federal, state or local laws, rules, regulations, standards, codes or guidelines in the performance of its obligations under the Agreement.

35. Confidentiality

"(i) negligence or more culpable act or omission (including recklessness or willful misconduct); (ii) failure by Indemnifying Party to comply with any applicable federal, state or local laws, rules, regulations, standards, codes or guidelines in the performance of its obligations under the Agreement.

36. Applicable Law/Venue

"(i) negligence or more culpable act or omission (including recklessness or willful misconduct); (ii) failure by Indemnifying Party to comply with any applicable federal, state or local laws, rules, regulations, standards, codes or guidelines in the performance of its obligations under the Agreement.

37. Waiver of Jury Trial
EXCEPTIONS. EACH PARTY (i) UNDERSTANDS THAT THIS IS A WAIVER OF IMPORTANT LEGAL RIGHTS AND (ii) ACKNOWLEDGES HAVING HAD A REASONABLE OPPORTUNITY TO DISCUSS THIS WAIVER AND ITS EFFECTS WITH LEGAL COUNSEL.

33. Dispute Resolution. Any dispute or controversy arising under or in connection with this Agreement shall first be resolved by informal discussion between senior management of the Parties. If informal discussions prove unsuccessful, the Parties must then attend non-binding mediation in the San Diego County, California with a mutually agreeable mediator. If mediation fails to produce a resolution, or if the Parties cannot agree on a mediator, any dispute or controversy arising out of or relating to this Agreement shall be settled by binding arbitration. Either Party may initiate arbitration, which shall be conducted in San Diego, California, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Each Party shall share equally the cost of the arbitration and shall bear its own attorneys’ fees, unless the arbitrator awards such fees and costs to a Party. The arbitrator shall not have the power to award any punitive damages.

34. Enforcement. Subject to Section 33, Customer shall pay all costs Hawthorne may incur in enforcing its rights under or in connection with this Agreement.

35. Severability. If any provision of this Agreement shall be declared invalid, illegal, or unenforceable by any court of competent jurisdiction, such provision shall be automatically modified to the minimum extent necessary to render the same valid and enforceable, giving due consideration to the purpose and economic substance of this Agreement, or if no such modification shall be possible, deleted, and the remainder of this Agreement will remain valid and enforceable.

36. Amendments. This Agreement shall only be modified or amended by an instrument in writing signed by the Parties. Any changes, additions, stipulations or deletions, by Customer, shall not be deemed to be agreed to or binding upon Hawthorne unless agreed to in writing in the form of an amendment signed by Hawthorne and Customer.

37. No Waiver. No extension, delay, nor any failure or delay by either Party in the exercise of, any right or remedy available hereunder, at law or in equity shall be deemed an election of remedies or a waiver of any such rights and/or remedies. 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 delivered for payment, or any disbursement of funds, or 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)

38. Assignment. Hawthorne shall not assign any of its rights or obligations under the Agreement without the prior written consent of Customer, which consent will not be unreasonably withheld. If an assignee agrees to assume the obligations of Hawthorne, Customer agrees that Hawthorne shall be released from all further liability hereunder. Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Hawthorne. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve Customer of any of its obligations under this Agreement.

39. No Third Party Beneficiaries. This Agreement benefits solely the Parties and their respective permitted successors and assigns. Nothing in this Agreement, whether express or implied, confers on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

40. Headings. Headings are for reference and do not affect the interpretation of the Agreement.

41. Time to Bring Claim. No claim which concerns a dispute arising under this Agreement may be commenced by Customer more than one year after the Services are performed.

42. Equipment Management Electronic Data Sharing Product Link™ and VisionLink® User Agreement/Privacy Notice. For machines equipped with Product Link™ and VisionLink®, CAT equipment during the rendering of any part of the Services that requires Hawthorne to perform testing of the equipment, the equipment will not be available for use. Customer hereby agrees to assume this risk and waives any and all rights to seek compensation, restitution, or indemnification for any injuries, claims, or damages that might arise from said damage. Customer also agrees and understands that during the testing and/or servicing of Customer’s equipment, the equipment will not be available for use. Customer hereby agrees to assume this risk and waives any and all rights to seek compensation, restitution, or indemnification for any injuries, claims, or damages that might arise from these circumstances. Hawthorne and Customer agree that Hawthorne will not be liable for any damage caused to Customer’s equipment during the rendering of any part of the Services that requires Hawthorne to test the Customer’s equipment.

43. Parts Cores. Customer agrees that the purchase price of all parts cores (“Cores”) not paid in full at the time of delivery is provided to Customer on credit, which purchase price may be redeemed in part or in full by Customer by returning Cores in a condition that meets Hawthorne’s inspection criteria. Customer agrees that it will be liable for and shall pay the full purchase price of any Cores not returned to Hawthorne. Customer also agrees that the parties, in the event Hawthorne seeks to redeem Cores, will cooperate in good faith to determine whether any Cores returned to Hawthorne, which will be determined by Hawthorne in its sole discretion.

44. Title to Goods. Hawthorne retains title to goods until Customer performs all of its obligations under the Agreement. In order to secure payment and performance of the obligations, Customer hereby grants to Hawthorne a security interest in the purchased goods and all proceeds thereof. Customer agrees to deliver to Hawthorne all financing statements required by Hawthorne to evidence the transaction. In the event Customer fails to execute and deliver said notes, contracts, security agreements and financing statements to Hawthorne, the entire balance of the purchase price of the equipment shall, at Hawthorne’s option, become immediately due and payable.

46. Transportation. Customer understands and consents to Hawthorne’s use of third party vendors to provide transportation services (“Transportation Company”). Customer also agrees that Hawthorne’s responsibility for shipment of any goods ceases upon delivery of said goods to a Transportation Company, and any claims for shortages, delays or damages occurring thereafter shall be made timely by Customer directly to the Transportation Company.

47. Nonconforming Goods. Should the Agreement include Customer purchasing machines or equipment from Hawthorne, Customer shall have the right to reject nonconforming goods, or a nonconforming tender only if such nonconformity impairs the value of the goods by more than ten (10%) percent of the contract price. Customer’s failure to give notice of any claim within ten (10) days from the date of delivery shall constitute an unqualified acceptance of the goods and a waiver by Customer of all claims with respect to the goods. Hawthorne shall have the right to cure nonconformities in the goods or in their tender, provided that Customer notifies Hawthorne within ten (10) days of notification of the nonconformity of its intent to cure. Any such cure must occur within fourteen (14) days of the notification of the nonconformity.

48. Used Goods. Should the Agreement include the purchase of used machinery, parts, or equipment, said used machinery, parts, and equipment are sold “AS IS” AND “WITH ALL FAULTS”. HAWTHORNE MAKES NO WARRANTY RELATED TO THE TITLE OF THE GOODS FOR SALE UNDER THIS AGREEMENT, NOR TO THE RIGHTFUL TRANSFER OF THE GOODS, NOR TO THE EXISTENCE OF SECURITY INTEREST, LIENS, OR OTHER ENCUMBRANCES AGAINST THE GOODS. HOWEVER, HAWTHORNE WARRANTS THAT, AT THE TIME OF SALE, HAWTHORNE DID NOT KNOW OF ANY HOSTILE CLAIM OF TITLE OR ANY ENCUMBRANCES AGAINST THE GOODS FOR SALE UNDER THIS AGREEMENT.

49. Assumption of Risk. Customer hereby acknowledges and understands that there are risks associated with the service and testing of its equipment, which include but are not limited to damage to Customer’s equipment during routine testing. Customer agrees to assume these risks and waives any and all rights to seek compensation, restitution, or indemnification for any injuries, claims, or damages that might arise from said damage. Customer also agrees and understands that during the testing and/or servicing of Customer’s equipment, the equipment will not be available for use. Customer hereby agrees to assume this risk and waives any and all rights to seek compensation, restitution, or indemnification for any injuries, claims, or damages that might arise from these circumstances. Hawthorne and Customer agree that Hawthorne will not be liable for any damage caused to Customer’s equipment during the rendering of any part of the Services that requires Hawthorne to test the Customer’s equipment.

50. Storage. Should Hawthorne be in possession of equipment, parts, or merchandise related to the Services beyond any delivery date contemplated by the Agreement, Customer agrees to pay Hawthorne a monthly storage fee in an amount to be determined by Hawthorne taking into account the size and nature of the equipment or merchandise stored on Customer’s behalf. Customer is entitled to possession of said equipment at any time upon first giving Hawthorne reasonable notice of not less than five (5) business days. Customer agrees that Customer bears all risk of loss or damage to its equipment while stored by Hawthorne.

51. Survival. Provisions of this Agreement that by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, Section 18 (Disclaimer of Warranties), Section 19 (Limitation of Liability), Section 20 (Mutual Indemnification), Section 21 (Indemnification Procedure), Section 22 (Exceptions and Limitations on Indemnification), Section 23 (Insurance), Section 25 (Confidentiality), Section 31 (Applicable Law/Venue), Section 32 (Waiver of Jury Trial), Section 33 (Agreement to Mediate), Section 34 (Enforcement), and Section 51 (Survival).

52. Consent to Share Customer Data. By signing the Agreement, Customer consents to Hawthorne sharing information relating to or generated pursuant to this Agreement or the Services with Caterpillar, Inc., its affiliates, and its vendors hired for the purpose of aggregation of data and analysis.

A LARGER FONT COPY OF THESE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.