These Service Authorization Terms and Conditions and the Service Authorization, including all documents, exhibits, schedules, and addendums attached thereto or specifically incorporated by the Service Authorization 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 Service Authorization) ("Hawthorne") and the purchasing customer ("Customer") (collectively, the "Parties") for all Services, including those not listed to this date or in the future, together with all documents, exhibits, schedules, and addendums attached hereto or specifically incorporated by the Service Authorization by reference (the "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 by Hawthorne in writing. The provisions of this Agreement shall control. The Parties agree that the Services will be governed by the terms proposed by such document to the extent they do not conflict with the terms of the Agreement. The Parties agree that any change requested by Customer or Customer’s agent is in the order of precedence: Service Authorization, including all documents, exhibits, schedules, and addendums attached thereto and 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 the Agreement. The甲方s will not be bound by any proposal, request, or any other terms or conditions contained in any request for proposal, purchase order, statement of work, or other similar document, but the purpose of this Agreement shall control. The Parties agree that the Services will be governed by the following documents in this order of precedence: Service Authorization, Service Authorization 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 make 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 available for inspection or repair. If any part of the above is 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 estimate of the total cost of such Additional Work. Hawthorne may terminate this Agreement in accordance with Section 28.

4. Change in Scope of Work. Subject to Section 3 above, in 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. Promptly after receipt of any proposed change, the change will be subject to a written agreement signed by both Parties. 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.

5. Customer Warranties. Customer warrants that (i) if an entity, it is duly organized and has the power to own or lease and operate the property; (ii) it is duly authorized to maintain, prepare or price 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 estimate of the total cost of such Additional Work. Hawthorne may terminate this Agreement in accordance with Section 28.

6. Customer Obligations. Customer shall pay or reimburse all prices, fees, expenses, or charges for materials required to perform 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, approvals, authorizations, decisions or performance of the Services, or any portion thereof, as specified by Hawthorne in writing. Customer acknowledges and agrees that: (1) any express warranties by such manufacturer are not the responsibility of Hawthorne; (2) such manufacturer’s warranty may contain limitations; and (3) CUSTOMER MAY INCUR CERTAIN REPAIR, TRANSPORTATION OR OTHER CHARGES WHICH ARE NOT COVERED BY SUCH MANUFACTURER’S WARRANTY. A LARGER FONT COPY OF THESE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.
BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEN OR CONSIDERED RELEASED OR NOT CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITH THE EXCEPTION OF ANY INDEMNITY OBLIGATIONS, IN NO EVENT SHALL HAWTHORNE’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO PERFORMANCE OF THE SERVICES, THE DELIVERABLES, OR OTHER OBLIGATIONS UNDER THIS AGREEMENT, EXCEED THE LESSER OF (i) THE FEES PAID TO HAWTHORNE PURSUANT TO THE AGREEMENT IN THE ONE-YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM AND (ii) $25,000.

20. Mutual Indemnification. SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN SECTION 22, EACH PARTY (AN “INDEMNIFYING PARTY”) SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE OTHER PARTY, ITS AFFILIATES AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND PERMITTED ASSIGNS (COLLECTIVELY, “INDEMNIFIED PARTY”) FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DEFICIENCIES, JUDGMENTS, SETTLEMENTS, INTEREST, AWARDS, FINES, CAUSES OF ACTION, DAMAGES, LIABILITIES, COSTS, PENALTIES, TAXES, ASSESSMENTS, CHARGES, PUERILE DAMAGES AND EXPENSES OF WHATSOEVER KIND, INCLUDING REASONABLE ATTORNEYS’ FEES, THAT ARE INCURRED BY INDEMNIFIED PARTY (COLLECTIVELY, “LOSSES”) AS A RESULT OF ANY (i) BREACH OR NON-FULFILLMENT OR ANY REPRESENTATION, WARRANTY OR COVENANT UNDER THE AGREEMENT BY INDEMNIFYING PARTY; (ii) NEGLIGENT OR MORE CULPABLE ACT OR OMISSION OF INDEMNIFYING PARTY (INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT) IN PERFORMING ITS OBLIGATIONS UNDER THE AGREEMENT; (iii) BODILY INJURY, DEATH OF ANY PERSON OR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY, WHETHER CAUSED BY THE NEGLIGENCE OR MORE CULPABLE ACTS OR OMISSIONS OF INDEMNIFYING PARTY (INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT); OR (iv) FAILURE BY INDEMNIFYING PARTY TO COMPLY WITH ANY APPLICABLE FEDERAL, STATE OR LOCAL LAWS, REGULATIONS OR CODES IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THE AGREEMENT.

21. Indemnification Procedure. The Indemnified Party shall (i) provide prompt written notice of any claim to the Indemnifying Party; (ii) cooperate with all reasonable requests of the Indemnifying Party; and (iii) surrender exclusive control of the defense and settlement of any third party claim to the Indemnifying Party (with the exception of the choice of counsel for the Indemnifying Party’s defense). The Indemnifying Party shall obtain the Indemnified Party’s written consent prior to agreeing to any settlement or agreement that would (i) prejudice the Indemnified Party’s defense or claims with respect to such third party claim; (ii) settle any third party claim to the Indemnifying Party (with the exception of the choice of counsel for the Indemnifying Party); and (iii) surrender exclusive control of the defense and settlement of any third party claim to the Indemnifying Party; and (iii) use of the Services or serviced equipment in any manner that does not comply with the requirements of this Section. Communications shall be deemed received when actually received by the receiving Party has designated in accordance with this Section. Unless otherwise agreed to in writing, all notices, requests, consents, claims, demands, waivers and other communications required or permitted to be given under this Agreement must be in writing and delivered by certified mail, return receipt requested; registered mail, return receipt requested; courier delivery, overnight service, or other expedited delivery, and postage prepaid. A Communication is effective only on the receipt by the receiving Party if the party giving the Communication has complied with the requirements of this Section. Communications shall be deemed received (i) if given by facsimile or e-mail, on the date of transmission if sent prior to 3:00 p.m. (PST) on a business day and otherwise on the following business day, (ii) if by courier or personal delivery, on the date of delivery, and (iii) if mailed, on the date of mailing.

22. Term, Notice and Cancellation. This Agreement shall commence as of the date of the last signature of the Parties on the Service Authorization and shall continue until the completion of the Services unless sooner terminated pursuant to this Agreement, or, if a term is specified in the Service Authorization, the Agreement will automatically terminate on the date specified for the end of such term. Either Party may terminate the Agreement for any reason following forty-five (45) days’ written notice sent to Hawthorne in accordance with the terms of this Agreement. Either Party may terminate the Agreement prior to the delivery date for the Services for any reason by giving to the other Party forty-five (45) days’ written notice. Such notice shall specifically describe the breach and specify the date such breach first occurred. On termination of this Agreement, Customer will remain liable for payment of any charges that become due for payment before or after termination, actual costs for all work performed through the date of termination, and all direct and indirect costs associated with winding up any business relationship, including, without limitation, temporary labor, service, labor, and non-cancelable commitments made by Hawthorne prior to termination in anticipation of performing the Services. Should the Agreement consist of a specified term, upon termination by Customer all amounts to be paid pursuant to or under the Agreement for the term will be immediately due and payable without notice. In the event of service suspension by Hawthorne, Hawthorne may terminate this Agreement for any reason upon giving Customer forty-five (45) days’ prior written notice. Hawthorne may terminate this Agreement following thirty (30) days’ written notice if Hawthorne breaches a material obligation under this Agreement and fails to cure said breach within thirty (30) days after receipt of notice from Customer of said breach. This Agreement shall be governed in all respects by the laws of the State of California without regard to any conflicts of law provisions.

23. Confidentiality. Customer shall (i) protect and safeguard Confidential Information with at least the same degree of care as Customer would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care, (ii) not disclose Using Party’s Confidential Information to any person or entity unless the person or entity is under a confidentiality agreement enforceable by law that affords such Confidential Information with at least the same degree of care as Customer would, (iii) 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.

24. Force Majeure. Hawthorne shall not be liable, nor be deemed to have defaulted or breached this Agreement, for any failure or delay caused by or resulting from acts or circumstances beyond Hawthorne’s reasonable control including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), civil insurrection, labor insurrection, riot, embargo, government or law (including the failure or suspension of any governmental authority or public utility), labor strike, lockout, decrease in or breakdown of power, breakdown or power outage.

25. Communications. All notices, requests, consents, claims, demands, waivers and other communications (each, a “Communication”) must be in writing and addressed to the other Party at the address provided in the Service Authorization, or such other address that the receiving Party has designated in accordance with this Section. Unless otherwise agreed to in writing, all Communications must be delivered by facsimile, e-mail, personal delivery, courier delivery, overnight service, or other expedited delivery, and postage prepaid. A Communication is effective only on the receipt by the receiving Party if the party giving the Communication has complied with the requirements of this Section. Communications shall be deemed received (i) if given by facsimile or e-mail, on the date of transmission if sent prior to 3:00 p.m. (PST) on a business day and otherwise on the following business day, (ii) if by courier or personal delivery, on the date of delivery, and (iii) if mailed, on the date of mailing.

26. Termination by Customer. Customer may terminate this Agreement for any reason following forty-five (45) days’ written notice sent to Hawthorne in accordance with the terms of this Agreement. Neither Party's non-performance of obligations hereunder shall constitute a breach of this Agreement provided that such Party has complied with the requirements of this Section. Neither Party shall be liable for any breach of this Agreement resulting from any act or omission beyond its reasonable control including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), civil insurrection, labor insurrection, riot, embargo, government or law (including the failure or suspension of any governmental authority or public utility), labor strike, lockout, decrease in or breakdown of power, breakdown or power outage.

27. Application Law/Venue. This Agreement (and all matters arising out of or relating to it) will be governed in all respects by the laws of the State of California without regard to any choice or conflict of law provisions. When applicable, each Party hereby irrevocably submits to the exclusive jurisdiction of the courts situated in San Diego County in the State of California for the resolution of any dispute hereunder.

A LARGER FONT COPY OF THESE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.
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 discussion fails to produce a resolution, 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 either Party initiates arbitration, then 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. 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 or exercising its rights under this Agreement, whether or not suit is filed.

35. Severability. If any provision of this Agreement shall be deemed invalid, illegal, or unenforceable, then such provision shall be 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. Assignment. 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 exercise, 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 defenses. 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 paid by such Party). The rights and/or remedies hereunder shall not be deemed to be an 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 paid by such Party). The rights and/or remedies hereunder shall not be deemed to be an exclusive, but shall be cumulative and in addition to all other remedies existing at law or in equity.

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 Vision Link® User Agreement/Privacy Notice. For machines equipped with Product Link™ and VisionLink®, Customer understands that data concerning the machine, its condition, and operation will be transmitted to Caterpillar Inc. and/or its dealers to better serve Customer and improve upon the Services. The information may include but is not limited to machine serial number, machine location, operational data, fault codes, emissions data, fuel usage, service meter hours, software and hardware version numbers, and installed attachments. Caterpillar Inc. recognizes and respects customer privacy. Caterpillar Inc. and/or its dealers will not sell or rent collected information to any third party and will exercise all reasonable efforts to keep the information secure. Customer, by executing the Agreement, understands the disclosures in this Section and grants permission to allow the referenced data to be accessed by Caterpillar Inc., and/or its dealers.

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 portion of the purchase price that Customer may redeem is dependent on the condition of the Cores returned to Hawthorne, which will be determined by Hawthorne in its sole discretion.

44. Title to Core. If the Parts_cores cannot agree on a mediator, any 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 described in this agreement to secure the performance of all of Customer’s obligations under this Agreement.

45. Equipment. Should the Agreement include the purchase of machines or equipment from Hawthorne, when the machines necessary for the Agreement have been identified and appropriated, Customer agrees on demand to execute and deliver to Hawthorne all notes, contracts, security agreements, and 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 required by Hawthorne to evidence the transaction, the information transmitted may include but is not limited to machine serial number, machine location, operational data, fault codes, emissions data, fuel usage, service meter hours, software and hardware version numbers, and installed attachments. The equipment retained by Customer shall be at a 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 percent (10%) 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 unequivocal 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 intention 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 EXISTS OF SECURITY INTERESTS, 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. Customer agrees to cover its equipment under its own property damage insurance policy and to name Hawthorne as an additional insured.

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 (Dispute Resolution), 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.