



Client Value Agreement

Date: 9/1/2024

City of Flagstaff (#0035203) Lube CVA

Schedule A

Premium Plan – Cost Per Service (each)									
N/U	Model	Serial #	Equip #	PM1	PM2	PM3	PM4	PM5	Enrollment #
U	140M3	N9G00101	S3191	\$1,464.24	\$2,149.02	\$2,852.04	\$4,557.79	\$5,038.01	
U	140M3	N9G00114	S3189	\$1,464.24	\$2,149.02	\$2,852.04	\$4,557.79	\$5,038.01	
U	140M3	N9G00115	S3190	\$1,464.24	\$2,149.02	\$2,852.04	\$4,557.79	\$5,038.01	
U	262D	DTB07951	S3049	\$807.98	\$888.46	\$1,361.57	\$1,841.41	N/A	
U	305E2	H5M05086	S3048	\$981.28	\$1,095.34	\$1,246.36	\$1,723.16	N/A	
U	307.5-07	GW702867	S4007	\$1,057.39	\$1,133.53	\$1,322.50	\$1,713.36	\$2,180.14	
U	826K	23206416	G8006	\$1,745.22	\$2,482.36	\$3,224.68	\$5,525.15	\$6,471.24	
U	906	MZ600436	G8211	\$1,340.06	\$1,532.73	\$2,170.64	\$2,170.64	\$2,893.42	
U	906H	JRF03020	G8202	\$1,171.74	\$1,637.32	\$2,627.77	N/A	N/A	
U	D5K	RRE00256	S2016	\$1,168.88	\$1,296.18	\$1,501.96	\$1,870.48	\$2,637.36	
U	D8T	FMC00538	G8030	\$1,668.16	\$2,097.33	\$3,447.70	\$3,816.63	\$4,340.53	

Quote valid for 90 days from September 1st, 2024

- 1.0 Statement of Intent:** This Client Value Agreement (“CVA”) is a contractual agreement between Empire Southwest, LLC (“Empire”) and City of Flagstaff (“Client”) (each may be referred to herein individually as “Party” or collectively as the “Parties”), pursuant to which Empire agrees to provide certain discounts with respect to Scheduled PM Lube Services described below. In return, Client agrees to give Empire 100% of its Scheduled PM Lube Service business for the equipment listed in **Schedule A** (the “Equipment”).
- 2.0 Term:** “CVA Term” is for two (2) years. The CVA Term shall commence on the date of expiration of Client’s existing agreement with Empire.
- 3.0 Population:** All amounts set forth in **Schedule A** of this CVA were created solely for the Equipment listed in **Schedule A**, during the CVA Term with such Equipment to be located at Local Flagstaff, Arizona at the time of each service.
- 4.0 Definitions:** All definitions listed below are definitions of nomenclature used in this CVA:
- 4.1 Scheduled PM Lube Services (PM):** Preventative maintenance services recommended by the Manufacturer Operation and Maintenance Manual, except for daily and weekly inspections and adjustments.
- 4.1.1 PM1:** starting at 0 hours, the PM1 occurs at the first 250 hours and then occurs every 500 hours thereafter (i.e., 750, 1,250, 1,750, etc.)
- 4.1.2 PM2:** starting at 0 hours, the PM2 occurs at the first 500 hours and then occurs every 1,000 hours thereafter (i.e., 1,500, 2,500, 3,500, etc.)
- 4.1.3 PM3:** starting at 0 hours, the PM3 occurs at the first 1,000 hours and then occurs every 2,000 hours thereafter (i.e., 3,000, 5,000, 7,000, etc.)
- 4.1.4 PM4:** starting at 0 hours, the PM4 occurs at the first 2,000 hours and then occurs every 4,000 hours thereafter (i.e., 6,000, 10,000, etc.)
- 4.1.5 PM5:** starting at 0 hours, the PM5 occurs at the first 4,000 hours and then occurs every 4,000 hours thereafter (i.e., 8,000, 12,000, etc.)
- 4.2 Staging Area:** An area on Client’s site which is accessible by field trucks and suitable for safely performing service tasks.
- 4.3 OEM:** Original Equipment Manufacturer.
- 4.4 Consumable Goods:** Parts that have an undefined service life. Consumable Goods include, but are not limited to: light bulbs, fuses, lenses, windshield wiper blades, etc.
- 4.5 N/U:** New or used Equipment at the time it enters into this CVA.
- 4.6 Equipment:** The Equipment listed in **Schedule A**.
- 5.0 Inclusions:** Empire agrees to provide and schedule all labor, parts and service truck capacity as needed, to perform Scheduled PM Lube Services for the Equipment, during Empire’s regular business hours, at the rates set forth in **Schedule A**.
- 5.1** All amounts are to be associated only with this CVA and exclude all items in the **Exclusions** section.
- 5.2** Empire agrees to schedule each service.
- 5.3** Machine operation hours shall be collected using Product Link.
- 5.4** Travel as needed to perform these tasks is included in the rate in **Schedule A** and is based on one (1) hour round trip, originating from the closest Empire store with applicable resources. If more than a one (1) hour round trip is required, additional time will be billed at Empire’s prevailing rates.
- 5.5 Motor Grader: 140M3**
- 5.6 PM1-Service:** Change engine oil and filter; SOS engine, transmission / differential, tandem, hydraulic, and front wheel drive oils; check all fluid levels; change cab filters; change primary air filter; change fuel filters; lubricate machine; and perform visual and operational inspection.
- 5.7 PM2-Service:** Includes PM1 service items, plus change hydraulic and transmission filters; clean pre-cleaner and change secondary air filter.
- 5.8 PM3-Service:** Includes PM1 and PM2 service items, plus change transmission / differential oil and clean suction screen; and obtain a level 1 coolant sample.
- 5.9 PM4-Service:** Includes PM1, PM2, and PM3 service items, plus change circle drive oil; change tandem oil; change front wheel drive oil; change engine fumes filter.
- 5.10 PM5-Service:** Includes PM1, PM2, PM3, and PM4 service items, plus change hydraulic oil.

- 5.11 Skid Steer: 262D**
- 5.12** PM1-Service: Change engine oil and filter; SOS engine, chain drive, and hydraulic oils; check all fluid levels; change cab filters; change fuel filters; change primary air filter; lubricate machine; and perform visual and operational inspection.
- 5.13** PM2-Service: Includes PM1 service items, plus clean pre-cleaner and change secondary air filter.
- 5.14** PM3-Service: Includes PM1 and PM2 service items, plus change hydraulic filter; change chain drive oil; and obtain a level 1 coolant sample.
- 5.15** PM4-Service: Includes PM1, PM2, and PM3 service items, plus change hydraulic oil and change engine fumes filter.
- 5.16 Mini Excavator: 305E2**
- 5.17** PM1-Service: Change engine oil and filter; SOS engine, final drive, and hydraulic oils; check all fluid levels; change cab filter; change primary air filter; change fuel filters; lubricate machine and perform visual and operational inspection.
- 5.18** PM2-Service: Includes PM1 service items, plus clean pre-cleaner and change secondary air filter.
- 5.19** PM3-Service: Includes PM1 and PM2 service items, plus change final drive oil; and obtain a level 1 coolant sample.
- 5.20** PM4-Service: Includes PM1, PM2, and PM3 service items, plus change hydraulic oil and filter.
- 5.21 Excavator: 307.5**
- 5.22** PM1-Service: Change engine oil and filter; SOS engine, final drive, and hydraulic oils; check all fluid levels; change cab filters; change primary air filter; change fuel filters; lubricate machine; and perform visual and operational inspection.
- 5.23** PM2-Service: Includes PM1 service items, plus clean pre-cleaner; and change secondary air filter.
- 5.24** PM3-Service: Includes PM1 and PM2 service items, plus obtain a level 1 coolant sample; and change engine fumes filter.
- 5.25** PM4-Service: Includes PM1, PM2, and PM3 service items, plus change final drive oil; change hydraulic filter; and change fuel tank cap filter.
- 5.26** PM5-Service: Includes PM1, PM2, PM3, and PM4 service items, plus change hydraulic oil; and clean hydraulic tank suction screen.
- 5.27 Wheel Compactor: 826K**
- 5.28** PM1-Service: Change engine oil and filter; SOS engine, transmission / torque converter, differential, final drive, and hydraulic oils; check all fluid levels; change primary air filter; change cab filters; change fuel filters; lubricate machine; and perform visual and operational inspection.
- 5.29** PM2-Service: Includes PM1 service items, plus change transmission and hydraulic filters; clean pre-cleaner; change secondary air filter; and obtain a level 1 coolant sample.
- 5.30** PM3-Service: Includes PM1 and PM2 service items, plus transmission / torque converter oils; and clean suction screen.
- 5.31** PM4-Service: Includes PM1, PM2, and PM3 service items, plus change differential / final drive oils.
- 5.32** PM5-Service: Includes PM1, PM2, PM3, and PM4 service items, plus change hydraulic oil.
- 5.33 Wheel Loader: 906**
- 5.34** PM1-Service: Change engine oil and filter; SOS engine, differential / final drive, and hydraulic oils; check all fluid levels; change cab filters; change primary air filter; change fuel filters; lubricate machine; and perform visual and operational inspection.
- 5.35** PM2-Service: Includes PM1 service items, plus change hydraulic filter; clean pre-cleaner; and change secondary air filter.
- 5.36** PM3-Service: Includes PM1 and PM2 service items, plus change transfer drive oil; change differential / final drive oils; and obtain a level 1 coolant sample.
- 5.37** PM4-Service: Includes PM1, PM2, and PM3 service items.
- 5.38** PM5-Service: Includes PM1, PM2, PM3, and PM4 service items, plus change hydraulic oil.
- 5.39 Wheel Loader: 906H**
- 5.40** PM1-Service: Change engine oil and filter; SOS engine, transfer drive, differentials, final drive, and hydraulic oils; check all fluid levels; change primary air filter; change cab filters; change fuel filters; lubricate machine and perform visual and operational inspection.
- 5.41** PM2-Service: Includes PM1 service items plus change powertrain filter; clean pre-cleaner and change secondary air filter.
- 5.42** PM3-Service: Includes PM1 and PM2 hour service items plus change axle oils; change hydraulic oil; and obtain coolant level 1 sample.
- 5.43 Track type Tractor: D5K**
- 5.44** PM1-Service: Change engine oil and filter; SOS engine, final drive, hydraulic oils; check all fluid levels; change primary air filter; change fuel filters; change cab filters; lubricate machine; and perform visual and operational inspection.
- 5.45** PM2-Service: Includes PM1 service items, plus clean pre-cleaner; and change secondary air filter.
- 5.46** PM3-Service: Includes PM1 and PM2 service items, plus change hydraulic filter; and obtain coolant level 1 sample.
- 5.47** PM4-Service: Includes PM1, PM2, and PM3 service items, plus change final drive oil; change engine fumes filter.
- 5.48** PM5-Service: Includes PM1, PM2, PM3, and PM4 service items, plus change hydraulic tank oil and hydraulic tanks breather.
- 5.49 Track Type Tractor: D8T**
- 5.50** PM1-Service: Change engine oil and filter; SOS engine, transmission / torque converter, final drive, and hydraulic oils; check all fluid levels; change cab filters; change primary air filter; change fuel filters; lubricate machine; and perform visual and operational inspection.
- 5.51** PM2-Service: Includes PM1 service items, plus change transmission and hydraulic filters; clean pre-cleaner and change secondary air filter.
- 5.52** PM3-Service: Includes PM1 and PM2 service items, plus change transmission / torque converter oil and clean suction screen; and obtain level 1 coolant sample.
- 5.53** PM4-Service: Includes PM1, PM2, and PM3 service items, plus change final drive oil.
- 5.54** PM5-Service: Includes PM1, PM2, PM3, and PM4 service items, plus change hydraulic oil.
- 6.0 Exclusions:** Use tax, fuel surcharge, complete Equipment cleaning or washing; fueling; daily lube and grease; top off fluids, fire suppression maintenance and repair; any fire or other damage related to trash and debris not being fully cleared from Equipment; auto lube system maintenance and repair, initial services, Equipment transport; Ground Engaging Tool replacement; drive belts and tracks, bucket, blade and truck bed maintenance and repair, tires, rims, rim retaining hardware (nuts, bolts/studs and washers), tire handling, any maintenance related to the glass, mirrors and radios of any machine, any Consumable Goods, any maintenance due to improper usage or machine operation beyond guidelines in the Manufacturer Operation and Maintenance Manual; and any items under the **Client Responsibilities** section below.
- 6.1** Maintenance of any attachment or add on from the original Equipment configuration, including but not limited to emissions control mandates.
- 6.2** Maintenance of any modification to the original Equipment configuration, including but not limited to all safety items.
- 6.3** DPF filter cleaning/replacement, ARD spark plug and electric fuel pump replacement are not included for Equipment with Tier IV engines.
- 6.4** Modification to Scheduled PM Lube Services based on auxiliary hydraulic system operation (such as operating a hammer) is not included.



Client Value Agreement

- 6.5 Scheduled PM Lube Services at any interval other than the defined 250 hour Scheduled PM Lube Services.
- 6.6 Any overtime charges in the event Client requests services be performed outside of Empire's regular business hours.
- 6.7 Charges associated with round trip travel time that exceeds the round trip travel time in the **Inclusions** section of this **CVA**.
- 6.8 If more than one item of Equipment is serviced at a time, only one trip charge will apply.
- 6.9 Any services not listed in the **Inclusions** section of this **CVA**.

- 7.0 **Client Responsibilities:**
- 7.1 Client shall provide a designated Staging Area as defined in Section 4.2, and allow the Equipment to be available at this area at the time of scheduled service for all service tasks.
- 7.2 Client is responsible for fueling.
- 7.3 Client agrees that services provided pursuant to this **CVA** shall be performed within Empire's service territory.
- 7.4 Client is responsible for services and inspections on a daily (every 10 service hours) basis, weekly (every 50 service hours) basis, biweekly (every 100 service hours) basis and "when required" as outlined by the OEM.
- 7.5 Client is responsible for notifying Empire of changes in application, environment or SOS analysis that may dictate a need to amend oil change intervals.
- 7.6 Client agrees that it is the sole discretion of Empire to execute maintenance and repair tasks as Empire deems necessary based on the conditions set forth in this **CVA**, Client Equipment application and operation requirements, and the work load of Empire Service Departments.
- 7.7 Client shall pay the cost per service invoice amount in accordance with Section 9.

- 8.0 **Currency & Adjustments:** All rates in **Schedule A** have been created based upon today's USD parts pricing and labor rates.
- 8.1 The rates in **Schedule A** shall remain in effect for the duration of the **CVA** Term in accordance with the terms and conditions of this **CVA**.

- 9.0 **Invoicing:** This **CVA** shall be invoiced on a Cost Per Service basis.
- 9.1 PM Lube Service invoicing will take place at the time of each service at the rates in **Schedule A**.

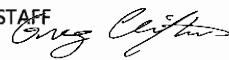
- 10.0 **Time and Materials:** At Client's request, Empire agrees to provide all of the services listed in the **Exclusions** section of this **CVA** on a time and materials basis at Empire's then prevailing labor rates, parts pricing and fuel surcharge posted at: <http://www.empire-cat.com/search.aspx?searchtext=fuel+surcharge>

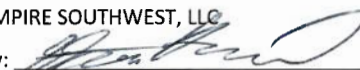
- 11.0 **Addendum Protocol:** If Client desires to add Equipment covered under this **CVA**, a separate addendum shall be signed by both Parties.
- 11.1 If Equipment is added to this **CVA** by an addendum, all inclusions, exclusions, and terms herein shall apply to any signed addendum.
- 11.2 This **CVA** shall incorporate all addendums and the addendums shall govern any conflicting terms, exclusions, or inclusions in this **CVA**.
- 11.3 Unless any of the sections in this **CVA** are changed in a signed addendum, this **CVA** shall prevail.

- 12.0 **Confidential Information:** This **CVA**, and all information Empire provides to Client that is not available to the general public, constitutes confidential information of Empire. Without prior written consent by a vice president of Empire, Client shall not disclose or use Empire's confidential information for any purpose other than performance of this **CVA**.

- 13.0 **Entire Agreement:**
- 13.1 The purchase of services and related parts and consumables from Empire is governed by Empire's Client Value Agreement Terms and Conditions (the "Terms"), which are available at http://www.empire-cat.com/Company/CVA_Terms_and_Conditions.aspx or such other successor website at which Empire posts its Terms from time to time. A hard copy of the Terms is available upon written request to terms.conditions@empire-cat.com. Empire's Terms are hereby incorporated by reference into this **CVA**. Empire's Terms, together with this **CVA** constitute the entire agreement between the Parties with respect to the work described herein, and there are no representations, warranties, terms, or conditions other than as stated herein and in the Terms.
- 13.2 This **CVA** can only be modified by a written document signed by both Parties.
- 13.3 No purchase order or other document issued by Client in connection with this **CVA** shall supersede or modify this **CVA**, notwithstanding that Empire may have executed such purchase order or other document to facilitate payment. The terms and conditions of any such document are hereby objected to.
- 13.4 The terms and conditions of this **CVA** shall govern in the event of any conflict with the Terms.

- 14.0 **Acceptance:** Upon signing this **CVA**, Empire and Client agree to uphold their respective responsibilities as set forth herein and thereby contribute to the success of this **CVA**.
- 14.1 Any misconceptions or unforeseen situations pertaining to this **CVA** shall be resolved in a timely manner between management of both Parties.

CLIENT: CITY OF FLAGSTAFF
 By: 
 Printed Name: **Greg Clifton signed on 1/16/2025 3:41:37 PM**
 Title: City Manager
 Date: _____


EMPIRE SOUTHWEST, LLC
 By: 
 Printed Name: S. Hillbrand
 Title: PSSR
 Date: 12-5-24

Approved as to Form:


 City Attorney's Office

Christina Kinnear signed on 1/15/2025 8:43:45 AM
 Empire Southwest, LLC, 1725 S. Country Club Dr., Mesa, AZ 85210

Attest:


 City Clerk
Stacy Salzburg signed on 1/17/2025 11:40:57 AM

CLIENT VALUE AGREEMENT TERMS AND CONDITIONS

1. Agreement. These Client Value Agreement Terms and Conditions (“Terms”) govern the purchase of services and related parts and consumables (collectively, the “Services”) that an individual or entity (a “Client”) purchases from Empire Southwest, LLC (“Empire”) pursuant to a written Client Value Agreement (“CVA”) signed by Empire and Client or when a machine is enrolled in the CVA program in conjunction with a purchase of a machine from Empire as shown on Client’s sales invoice (the “Invoice”). Empire and Client are sometimes referred to collectively in these Terms as the “Parties,” and individually as a “Party.” These Terms and the applicable CVA or Invoice (including all exhibits, schedules and addenda attached thereto) are collectively referred to herein as the “Agreement.” Empire hereby rejects the terms of any purchase order or other document submitted by Client, unless the document submitted by Client is signed by a vice president of Empire. Execution of a CVA with Empire or the receipt or acceptance of Services by Client constitutes Client’s acceptance of these Terms exactly as written.

2. Scope and Delivery of Services. The scope of work for Services to be performed by Empire shall be as set forth in the CVA or Invoice. Empire shall use reasonable efforts to meet any performance dates specified in the CVA or Invoice, but Client agrees that any such dates are estimates only. Empire shall have no liability for any delay in performance of Services caused by any act or omission of Client or its agents, subcontractors, consultants, or employees, nor shall Empire have any liability for delays related to any circumstances beyond its reasonable control, including, but not limited to, delays caused by acts of God, acts of war or terrorism, fire or other casualty, storms or adverse weather, strikes, labor shortages or disturbances, pandemics or quarantine orders, shortages of materials, manufacturer delays, theft or vandalism, transport and handling accidents, or revisions to laws, regulations or governmental requirements.



3. Pricing. The rates for Services shall be as set forth in the CVA or Invoice. Client will promptly pay to Empire any taxes that Empire is required to collect with respect to the purchase of Services, including, but not limited to, value added, personal property, sales, use and similar taxes ("Taxes"). For any Taxes from which Client claims exemption, Client shall provide Empire with properly completed exemption certificates and any documentation needed to validate the exemption prior to the purchase of the applicable Services. If Client fails to provide an appropriate exemption certificate and supporting documentation, as determined by Empire, Client will remain liable for all such Taxes and will indemnify Empire for any liability related to the same.

4. Additional Services. Client understands and acknowledges that Empire has quoted the Services relying on representations made by Client regarding the cleanliness, functionality, operational status, application, and condition of the equipment or machinery that will be the subject of the Services. Should any of the representations on which Empire relied in preparing or pricing the Services be false or incomplete, or if Empire reasonably determines, in the course of performing the Services, that additional repair, maintenance, or improvement services are necessary to satisfy its obligations under the Agreement ("Additional Services"), Empire shall promptly provide to Client an estimated cost of the Additional Services necessary. If Client fails to agree to the Additional Services within ten (10) days of receipt from Empire, Empire shall have the option to terminate the Agreement in accordance with Section 13 below.

5. Change in Scope of Services. Subject to Section 4 above, if either Party wishes to change the scope of the Services, such Party shall submit details of the requested change to the other Party in writing. Promptly after receipt of any proposed change, the Parties shall negotiate and agree on the terms of such change in a writing signed by all Parties. Notwithstanding the above, Empire may from time to time change the Services without the consent of Client, provided that such change does not materially affect the nature or scope of the Services, the fees, or any performance dates set forth in the Agreement.

6. Cancellations/Partially Completed Services. Empire reserves the right to charge for any cancellation by Client of scheduled Services. In addition to the items set forth in Section 12 below, Client shall pay for partially completed Services based on time and materials at Empire's prevailing rates. Additional handling and storage fees may apply to partially completed Services.

7. Payment Terms. Empire's obligation to deliver Services pursuant to the Agreement are subject to credit approval by Empire in its sole discretion. For Clients with an open credit account with Empire, unless otherwise provided in the CVA or Invoice, all payments are due Net 30. For Clients who do not have an open credit account with Empire, payment is due upon completion of Services. Empire may, in its sole discretion, at any time: (a) revoke credit; (b) modify terms and conditions of credit; (c) require payment in advance; and/or (d) withhold scheduled Services until receipt of payment. If Client fails to pay for Services as and when due, Client shall pay a late charge of 1.5% of the invoice balance each month until charges are paid in full, and Client shall pay Empire all reasonable attorneys' fees and collection costs incurred by Empire. In addition to any other right of set-off or recoupment Empire has under applicable law, Client agrees that, with respect to any amounts due

from Client or Client's affiliates to Empire or Empire's affiliates, Empire and its affiliates may set-off such amounts against any amounts owing to Client or Client's affiliates.

8. Warranties.

(a) Services. Empire warrants that the Services will be completed in a good and workmanlike manner, with such warranty extending for a period of twelve (12) months from completion of the original Services. If Empire performs a repair pursuant to its service warranty, the warranty period remains twelve (12) months from completion of the original Services; the twelve (12) month service warranty period does not start over with the repair. If replacement parts used by Empire in connection with the provision of Services include a manufacturer's warranty, Empire will pass such warranty through to Client to the extent permitted by the terms of the manufacturer's warranty, subject to all conditions and exclusions set forth in such manufacturer's warranty. Empire's service warranty will be voided in the event of any of the following: misuse or abuse of equipment by Client; subsequent repairs performed by Client or vendors other than Empire; use beyond ordinary wear and tear; failure to maintain and operate equipment 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.

(b) **WARRANTY DISCLAIMER. Empire makes no warranty, express or implied, with respect to any Services other than the foregoing warranties (provided, however, none of the foregoing warranties shall apply to fire suppression systems or the installation, removal, maintenance or servicing of the same), including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose or any implied warranties that may arise from the course of dealing between the Parties. To the maximum extent permitted by law, all such warranties are hereby disclaimed by Empire and waived by Client.**

9. Caterpillar Parts and Services Commitments. Certain Caterpillar equipment that is covered by a client value agreement 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 the Agreement 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 Client for the lesser of the following: (a) the price paid by Client for the specific maintenance part or repair part, or (b) \$1,000 (the "Cat Prepaid Credit"). The Cat Prepaid Credit rules are set forth at:

<https://www.cat.com/catcardrewards>. Empire shall have no obligation to issue a Cat Prepaid Credit to Client. 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

10. Indemnification. Each Party agrees to defend, indemnify and hold harmless the other Party for, from and against any third party claims related to the Services 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 the indemnifying Party's negligent acts

or omissions, subject to the limitations set forth in Section 11 below. To the fullest extent permitted by law, Client agrees to defend, indemnify and hold harmless Empire, its affiliates and subsidiaries, and all of their respective owners, directors, officers, managers, employees, agents or representatives for, from and against any and all liabilities, claims, actions, suits, damages, losses and expenses (including, but not limited to, reasonable attorneys' fees, expert witness fees, costs and expenses) that are caused by, arising from or related in any way to fire suppression systems (including, but not limited to losses related to the death or injury of any person(s) or damage to or destruction of any real or personal property).

11. Liability Limitation. In no event shall either Party be liable, whether based in contract, warranty, indemnity, tort, strict liability or any other theory of law or equity, for any special, incidental, indirect, punitive, exemplary, or consequential damages, including, but not limited to, lost profits, loss of use of property or equipment, downtime, loss of third party contracts or lost production, regardless of whether or not such Party was advised of the possibility of such damages. In addition, Empire's maximum aggregate liability (whether in contract, warranty, indemnity, tort, strict liability or any other theory of law or equity) for damages or loss, howsoever arising or caused, shall in no event exceed the amount Client paid to Empire for the Services to which the liability relates. The Parties recognize that the pricing associated with Services reflects this allocation of risk and is the basis of the bargain between the Parties. The foregoing limitations shall be valid and enforceable, notwithstanding any alleged failure of essential purpose of the limited remedies set forth herein. Any and all claims arising out of or relating to the Services will be barred unless a legal proceeding is commenced within one (1) year from completion of the Services to Client.

12. Termination by Client. Client may terminate the Agreement for any reason upon forty five (45) days' prior written notice to Empire in accordance with the terms of the Agreement. Client may terminate the Agreement upon thirty (30) days' written notice if Empire breaches a material obligation under the Agreement and fails to cure said breach within thirty (30) days after receipt of notice from Client of said breach. Such notice shall specifically describe the breach and specify the date such breach first occurred. Upon termination of the Agreement, Client will remain liable for payment of any charges that become due before or after termination, actual costs for all Services performed through the date of termination, and all direct and indirect costs associated with termination of the Agreement, which include, but are not limited to, costs for parts ordered, service, labor, and non-cancelable commitments made by Empire prior to termination in anticipation of performing the Services. If the Agreement sets forth a specified term, upon termination by Client, all amounts to be paid pursuant to or under the Agreement for the term will become immediately due and payable without notice.

13. Termination by Empire. Empire may terminate the Agreement for any reason upon forty-five (45) days' prior written notice to Client. Empire may terminate the Agreement following thirty (30) days' written notice to Client upon the occurrence of a material breach by Client, or if Client becomes insolvent, files a petition for bankruptcy, commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors, or otherwise breaches the Agreement.

14. Privacy Policy. Client consents to the collection, use, retention and disclosure of information by Empire and its parent, subsidiary and affiliated entities (collectively, "Empire Entities") in accordance with Empire's Privacy Policy, which is posted at <https://www.empire-cat.com/legal/privacy-policy> (as such statement may be revised from time to time), and agrees that such information may be accessed by, and shared between, the Empire Entities and their partners and manufacturers with a legitimate business reason to access it, as well as third parties who may process such information on their behalf. Without limiting the generality of the foregoing, Empire retains ownership of all records relating to Services provided to Client ("Records") and may disclose the Records pursuant to a court order or in the event disclosure of the Records becomes part of Empire's defense in a legal matter.

15. Product Information. If Caterpillar equipment that is purchased, owned or rented by Client is equipped with Product Link or other equipment monitoring technology, data concerning the equipment, its condition and its operation ("Telematics Information") is being transmitted to Caterpillar, its affiliates, the Empire Entities and/or other Caterpillar dealers to better serve Client and to improve Caterpillar products and services. Telematics Information being transmitted may include machine serial number, machine location, and other machine data including, but not limited to, fault codes, emissions data, fuel usage, service meter hours, software and hardware version numbers and installed attachments. The Telematics Information will be collected, used, retained and disclosed in accordance with the Caterpillar Data Governance Statement, which is posted at <https://www.caterpillar.com/en/legal-notice/data-governance-statement.html> (as such statement may be revised from time to time) ("Statement"). Client consents to the collection, use, retention and disclosure of the Telematics Information in accordance with the Statement and agrees that the Telematics Information may be accessed by Caterpillar, its partners, its affiliates, its subsidiaries, the Empire Entities and/or other dealers with a legitimate business reason to access it, as well as third parties who may process the Telematics Information on their behalf. As set forth in the Statement, Caterpillar may use Telematics Information in combination with information about Client. Client further acknowledges and agrees that Telematics Information may be made available to subsequent owners of equipment. If Client does not want Telematics Information transmitted as described above, Client can request documentation to opt out of the transmission of such information by sending an email to optout@empire-cat.com.

16. Choice of Law. These Terms shall be governed by and construed in accordance with the laws of the State of Arizona without giving effect to conflict of law provisions. The Parties agree that exclusive jurisdiction and venue for any proceeding at law or in equity will be in the state or federal courts located in Maricopa County, Arizona.

17. General Provisions. Client may not assign Client's rights or obligations under the Agreement without Empire's prior written consent, and any such attempted assignment will be void. If any provision in these Terms is found to be invalid, unlawful or unenforceable, the remaining provisions in these Terms shall remain in full force and effect. A Party's waiver of any breach will not constitute a waiver of any different or subsequent breach. No employment, agency, joint venture, or similar arrangement is created or intended between Client and Empire. In the event of any conflict between

the provisions of a CVA and these Terms, the provisions of the CVA shall govern and control. Empire is an EEO/Affirmative Action Employer. Client warrants that the invoiced Services will be used for business or agricultural purposes and not for personal, family or household purposes. When operated in California, any on-road heavy-duty diesel vehicle, alternative-diesel vehicle, off-road diesel vehicle, or portable diesel engine may be subject to the California Air Resources Board's Regulation to Reduce Particulate Matter and Criteria Pollutant Emissions from In-Use Heavy-Duty Diesel Vehicles, In-Use Off-Road Diesel Vehicle Regulation, or Airborne Toxic Control Measure For Diesel Particulate Matter From Portable Engines Rated At 50 Horsepower And Greater. It therefore could be subject to retrofit, exhaust retrofit, or accelerated turnover requirements to reduce emissions of air pollutants. For more information, please visit the California Air Resources Board websites at <https://www.arb.ca.gov/dieseltruck>, <https://www.arb.ca.gov/msprog/ordiesel/ordiesel.htm>, or <https://www.arb.ca.gov/portable/portable.htm>.

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