

**SUBSCRIPTION AGREEMENT TERMS AND CONDITIONS**

1. **Terms and Conditions.** These terms and conditions form part of the Subscription Agreement (together with any Change Orders (as defined below), exhibits, schedules, attachments and appendices, this "Subscription") by and between IMT and Customer (together with IMT, the "Parties," and each a "Party"). In consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree that IMT shall provide to Customer the Deliverables (as defined below) and the services (the "Services") described in the attached proposal (the "Proposal") in accordance with the following terms and conditions.
2. **Definitions.** The following terms have the meanings appearing beside each:
- "IMT" means Intermountain Mining Technology or its relevant affiliate(s).
  - "Change Order" means a written agreement between the Parties to modify the scope of Services, the Deliverables, or the terms on which the Services and Deliverables are provided.
  - "Content" means the Documentation, reports, products and any other work product created by IMT that Customer receives in connection with this Subscription.
  - "Customer" means the customer identified on the cover page of this Subscription.
  - "Customer Data" means any data, information or material provided or submitted by Customer or its representatives to IMT or its representatives in the course of utilizing the Services, including but not limited to data concerning equipment purchased, rented or leased from IMT, as well as data related to the condition and operation of such equipment.
  - "Deliverables" means Maintenance Releases, Documentation and Content.
  - "Documentation" means any manuals, instructions, specifications and other documents and materials that IMT provides or makes available to Customer in any medium and that describe the functionality, components, features or requirements of the Hardware or the Licensed Material, including the installation, configuration, integration, operation, use, support or maintenance thereof.
  - "Hardware" means any hardware, part, component or device in or through which the Licensed Material operates and/or Customer accesses or uses any of the Deliverables or Services.
  - "Intellectual Property Rights" means all intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights.
  - "License Agreement" means the agreement, if any, entered into by and between Customer and Licensor identified on the cover page of this Subscription.
  - "Licensed Material" means any software or other material, together with any Maintenance Releases related thereto, provided to Customer pursuant to the License Agreement.
  - "Licensor" means the licensor of the Licensed Material, as may be identified on the cover page of this Subscription.
  - "Losses" means any claims, losses, deficiencies, judgments, settlements, interest, awards, fines, causes of action, damages, liabilities, costs, penalties, taxes, assessments, charges, punitive damages and expenses (including reasonable attorneys' fees) of whatever kind.
  - "Maintenance Release" means any update, upgrade, release or other adaptation or modification of the Licensed Material, including any updated Documentation, that IMT, Licensor or any of their authorized representatives may provide to Customer from time to time during the term of this Subscription, which may contain, *inter alia*, error corrections, enhancements, improvements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the Licensed Material. IMT shall use reasonable efforts to meet any performance dates specified in the Proposal. Any such dates shall be estimates only.
4. **Partial Information.** Customer understands and acknowledges that IMT has prepared the Proposal in reliance on representations made by Customer regarding, *inter alia*, the condition, cleanliness, functionality, operational status, contents and nature of Customer Data and the Customer's equipment or machinery that will be subject to the Services. Should any of the representations on which IMT relied in preparing the Services be false or incomplete, or if IMT shall reasonably determine in the course of performing the Services that additional services or hardware are necessary to satisfy its obligations hereunder, IMT shall promptly provide to Customer an estimated cost of the additional work and materials necessary to satisfy its obligations hereunder ("Additional Work"). If Customer either declines or fails to agree to modify the Proposal and scope of Services to include the Additional Work within thirty (30) days, IMT shall be entitled to terminate this Subscription in accordance with Section 27.
5. **Change Orders.** Subject to Section 4 above, if either Party wishes to change the scope or performance of the Services or Deliverables, it shall submit details of the requested change to the other Party in writing. IMT shall, within a reasonable time after such request, provide a written estimate to Customer of (i) the likely time required to implement the change and (ii) any necessary variations to the fees and other charges for the Services and Deliverables arising from the change. Promptly after delivery of the written estimate, the Parties shall negotiate and agree on the terms of such change in the form of a Change Order in accordance with Section 37. Notwithstanding the above, IMT 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 or the Deliverables, or the fees or any performance dates set forth in the Proposal or relevant Change Order.
6. **Customer Warranties.** Customer warrants that (i) if an entity, it is duly organized and validly existing in good standing; (ii) it is duly authorized to execute, deliver and perform its obligations under this Subscription; (iii) when duly executed and delivered by each Party, this Subscription will constitute Customer's legal, valid and binding obligation, enforceable against it in accordance with its terms; (iv) it is not insolvent and is paying all of its debts as they become due; (v) any payments made pursuant to this Subscription are intended by it to be a
- substantially contemporaneous exchange for new value given to it; (vi) each payment made of a debt incurred by it under this Subscription is or was in the ordinary course of its business or financial affairs; and (vii) it is the owner of all Intellectual Property Rights in the Customer Data.
7. **Customer Obligations.** Customer shall comply with all terms and conditions of this Subscription and the License Agreement. Customer shall cooperate with IMT in all matters relating to the Services and provide such access to Customer's premises and facilities as may reasonably be requested by IMT for the purposes of performing the Services. Customer shall use the Licensed Material and Hardware strictly in accordance with the terms and conditions set forth in the License Agreement and the Documents. Customer shall provide reasonable and uninterrupted access, both physical and virtual, to the Licensed Material, Hardware and Customer's personnel, systems, operations, applications and networks. Customer shall provide directions, information, approvals, authorizations and consents (whether third party or otherwise), cooperation, assistance, access, decisions and materials that IMT reasonably requests or are reasonably necessary to enable IMT to perform its obligations (including the provision of the Services) and exercise its rights under and in accordance with the terms and conditions of this Subscription. Customer shall maintain the premises on and around which the Services will be performed in a reasonably safe condition and shall notify IMT in advance of any hazards, dangerous conditions and defects that cannot be abated. Customer shall set up, maintain and operate in good repair and in accordance with the Documentation all Hardware, networks and systems in or through which (a) the Licensed Material operates and/or (b) Customer accesses or uses any of the Services. Customer shall provide IMT with all information reasonably requested by IMT from time to time relating to Customer's use of the Licensed Material, Services, Deliverables and/or Content, including information on the Hardware or Customer's networks and systems. Customer is permitted to store, manipulate, analyze, reformat, print and display the Content only for Customer's internal business use. Unauthorized use, resale or commercial exploitation of the Services and/or Deliverables in any way is expressly prohibited.
8. **Technical Contact.** At IMT's request, Customer shall designate one or more individuals to serve as its primary point of contact for day-to-day communications, consultation and decision-making regarding the Services (each, a "Technical Contact"). Customer shall ensure that each Technical Contact has the requisite authority, skill, experience and other qualifications needed to perform these duties.
9. **Compliance with Law.** Each Party agrees to comply fully, at its sole cost, with all applicable federal, state and local laws, rules and regulations applicable to it, the Deliverables, the Services and this Subscription.
10. **Customer's Acts or Omissions.** If IMT's performance under this Subscription is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees, IMT shall not be deemed in breach of its obligations under this Subscription or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.
11. **Cancellations / Partial Work.** IMT reserves the right to charge for any cancellation by Customer of scheduled Services. Customer shall pay for partially completed work based on time and materials at IMT's prevailing rates. Additional handling and storage fees may apply to partially completed work.
12. **Fees and Expenses.** Customer shall (i) reimburse IMT for all reasonable costs and expenses incurred in connection with the Services or in collecting any late payments and (ii) pay all other amounts due under this Subscription, in each case within thirty (30) days of receipt by the Customer of an invoice from IMT. Failure to notify IMT in writing of any dispute regarding an invoice within sixty (60) days of receipt thereof waives Customer's right to dispute such invoice. Subject to Section 27, 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.
13. **Late Payments.** All 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 under this Subscription or at law (which IMT does not waive by the exercise of any rights hereunder), IMT shall be entitled to suspend the provision of any Services if the Customer fails to pay any amounts when due hereunder.
14. **Taxes.** Customer shall be responsible for all sales, use, excise and any other 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 imposed on, or with respect to, IMT's income, revenues, gross receipts, personnel or real or personal property or other assets.
15. **Hours of Operation.** The Services shall be performed during IMT's publicized business hours. Services performed outside of such hours will be billed at the applicable overtime rate or, as applicable, at the double-time rate.
16. **Ancillary Systems.** IMT may deactivate or interrupt mechanical and electrical systems (including fire suppression systems) to perform the Services. Customer shall be responsible for reactivating such systems after completion of the Services. IMT shall have no responsibility for reactivating, testing or operating any such system.
17. **Limited Warranty.** IMT warrants to Customer that it shall perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services. IMT shall not be liable for a breach of the warranty set forth above unless Customer gives written notice of the defective Services, reasonably described, to IMT within thirty (30) days of completion of the allegedly defective Services. IMT shall, in its sole discretion, either (i) use commercially reasonable efforts to cure any breach of this warranty or (ii) credit or refund the price of any defective Services, less a deduction equal to the fees for receipt or use of such Services on a pro-rated basis. If IMT does not cure such breach or provide Customer a refund within thirty (30) days after Customer's written notice of such breach, Customer may, at its

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option, terminate this Subscription in accordance with Section 27. In the event this Subscription is terminated in accordance with this Section 17, IMT shall within thirty (30) days after the effective date of termination, credit or refund the price of any defective Services, less a deduction equal to the fees for receipt or use of such Services on a pro-rated basis. THE REMEDIES SET FORTH ABOVE SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE LIMITED WARRANTY ABOVE.

18. Disclaimer of Warranties. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH ABOVE IN SECTION 17, IMT MAKES NO WARRANTY WHATSOEVER HEREUNDER, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. IMT IS NEITHER A DEVELOPER OF ANY INTELLECTUAL PROPERTY USED IN THE PERFORMANCE OF THIS SUBSCRIPTION NOR AN AGENT THEREOF. WITHOUT LIMITING THE FOREGOING, IMT MAKES NO WARRANTY OF ANY KIND AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, COMPLETENESS, CORRECTNESS, ACCURACY, UNRESTRICTED USE OR UNINTERRUPTED USE OF THE SERVICES OR CONTENT OR THAT THE LICENSED MATERIAL, THE SERVICES, THE DELIVERABLES OR ANY OTHER GOODS, SERVICES, TECHNOLOGIES, INFORMATION OR MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE OF ANY OF THEM, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS OR EXPECTATIONS, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OTHER GOODS, SERVICES, TECHNOLOGIES, INFORMATION OR MATERIALS, OR BE SECURE, FREE OF HARMFUL CODE OR ERROR-FREE. THE LICENSED MATERIAL, DELIVERABLES AND ALL OPEN-SOURCE COMPONENTS AND OTHER THIRD-PARTY MATERIALS USED IN CONNECTION WITH THIS SUBSCRIPTION ARE PROVIDED "AS IS, WHERE AS" AND ANY REPRESENTATION OR WARRANTY CONCERNING ANY OF THEM IS STRICTLY BETWEEN CUSTOMER AND LICENSOR, THE THIRD-PARTY OWNER OR DISTRIBUTOR OF SUCH COMPONENTS OR MATERIALS. ALTHOUGH IMT MAY ADMINISTER WARRANTIES ISSUED BY A DEVELOPER OR MANUFACTURER, CUSTOMER ACKNOWLEDGES AND AGREES THAT: (1) ANY EXPRESS WARRANTIES BY SUCH DEVELOPER OR MANUFACTURER ARE NOT THE RESPONSIBILITY OF IMT; (2) SUCH DEVELOPER'S OR MANUFACTURER'S WARRANTY MAY CONTAIN LIMITATIONS; AND (3) CUSTOMER MAY INCUR CERTAIN REPAIR, TRANSPORTATION OR OTHER CHARGES BY IMT WHICH ARE NOT COVERED BY SUCH DEVELOPER'S OR MANUFACTURER'S WARRANTY. IMT ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY IMT OR ANY OTHER PERSON ON IMT'S BEHALF OTHER THAN AS EXPRESSLY SET FORTH IN THIS SUBSCRIPTION. ANY WARRANTY BY IMT SHALL BE NULL AND VOID AND HAVE NO LEGAL EFFECT. ~~IF THE CUSTOMER HAS PAID TO SPAN A NETWORK AFFILIATE UNDER THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND PERMITTED ASSIGNS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY UNDER ANY LEGAL OR EQUITABLE THEORY FOR ANY BUSINESS INTERRUPTION, INCREASED COSTS OR ANY LOSS OF USE, BUSINESS, REVENUE, PROFIT, VALUE, GOODWILL, REPUTATION OR DATA, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, ENHANCED OR PUNITIVE DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS SUBSCRIPTION (INCLUDING BUT NOT LIMITED TO THE USE OF OR INABILITY TO USE THE SERVICES, OR FOR ANY CONTENT, INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE, IN THE CONTENT), WHETHER ARISING OUT OF ANY BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT IMT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL IMT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS SUBSCRIPTION EXCEED THE LESSER OF (i) THE FEES PAID TO IMT PURSUANT TO THIS SUBSCRIPTION IN THE ONE-YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM AND (ii) \$25,000.00. The limitations on liability set forth above shall not apply to IMT's obligations under Section 21 or to liability resulting from IMT's gross or wanton negligence or willful misconduct.~~

20. Customer Indemnification. SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN SECTION 22, CUSTOMER SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND IMT, ITS AFFILIATES AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND PERMITTED ASSIGNS (COLLECTIVELY, "IMT INDEMNIFIED PARTY") FROM AND AGAINST ANY AND ALL LOSSES THAT ARE INCURRED BY IMT INDEMNIFIED PARTY AS A RESULT OF (i) BREACH OR NON-FULFILLMENT BY CUSTOMER OF ANY REPRESENTATION, WARRANTY OR COVENANT UNDER THIS SUBSCRIPTION; (ii) NEGLIGENT OR MORE CULPABLE ACTS OR OMISSIONS OF CUSTOMER (INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT) IN PERFORMING ITS OBLIGATIONS UNDER THIS SUBSCRIPTION; (iii) BODILY INJURY, DEATH OF ANY PERSON OR DAMAGE TO PROPERTY CAUSED BY THE NEGLIGENT OR MORE CULPABLE ACTS OR OMISSIONS OF CUSTOMER (INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT); (iv) INFRINGEMENT BY THE CUSTOMER DATA OF THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY (INCLUDING IMT);

OR (v) INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY (INCLUDING IMT) ARISING FROM CUSTOMER'S MODIFICATION, INCORPORATION, OPERATION OR USE OF THE LICENSED MATERIAL, DELIVERABLES OR SERVICES WITH ANY GOOD, SERVICE, TECHNOLOGY, PROCESS OR OTHER MATTER WITHOUT IMT'S EXPRESS AUTHORIZATION; OR (vi) FAILURE BY CUSTOMER TO COMPLY WITH ANY APPLICABLE FEDERAL, STATE OR LOCAL LAWS, REGULATIONS OR CODES IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS SUBSCRIPTION.

21. IMT Indemnification. SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN SECTION 22, IMT SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CUSTOMER, ITS AFFILIATES AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND PERMITTED ASSIGNS (COLLECTIVELY, "CUSTOMER INDEMNIFIED PARTY") FROM AND AGAINST ANY AND ALL LOSSES THAT ARE INCURRED BY CUSTOMER INDEMNIFIED PARTY AS A RESULT OF (i) THE INFRINGEMENT BY THE SERVICES OR THE CONTENT OF THE INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY OR (ii) THE BREACH OR NON-FULFILLMENT BY IMT OF ANY REPRESENTATION, WARRANTY OR COVENANT UNDER THIS SUBSCRIPTION.

22. Exceptions and Limitations on Indemnification. Notwithstanding anything to the contrary in this Subscription, no Party shall not be obligated to indemnify, hold harmless or defend any other person for any or all Losses which result from, in whole or in part, such person's (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 this Subscription; or

(iii) use of the Services or Content in any manner that does not materially conform with the usage instructions, guidelines or specifications provided by IMT, Licensor, any Hardware ~~Indemnification Procedures. The Party seeking indemnification shall (i) promptly give written notice of the Losses to the other Party; (ii) give the indemnifying Party sole control of the defense and settlement of such Losses (provided that the indemnifying Party may not settle or defend any claim unless it unconditionally releases the other Party of all liability); (iii) provide to the indemnifying Party all available information and assistance; and (iv) not compromise or settle such Losses. The indemnifying Party shall immediately take control of the defense and investigation of such Losses and shall employ counsel reasonably acceptable to both Parties to handle and defend the same at the indemnifying Party's sole cost and expense. Failure by the Party seeking indemnification to perform any obligations under this Section 23 will not relieve the indemnifying Party of its obligations under Section 20 or Section 21, as applicable, except to the extent that the indemnifying Party can demonstrate that it has been materially prejudiced as a result of such failure. The Party seeking indemnification may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.~~

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

25. Intellectual Property. Customer hereby grants IMT and its affiliates, employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors and other representatives a perpetual, worldwide, royalty-free, fully paid-up, non-exclusive, nontransferable right and license to copy, reproduce, store, record, disclose, transmit, display, access and use Customer Data in connection with this Subscription. Customer shall retain all Intellectual Property Rights in the Customer Data during the term of this Subscription. Customer, not IMT, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright to all Customer Data. Subject to payment of all amounts owed by Customer under this Subscription, IMT hereby grants Customer a perpetual, worldwide, royalty-free, fully paid-up, non-exclusive, nontransferable license to use the Content to the extent necessary to enable Customer to make reasonable use of the Deliverables and the Services. IMT shall retain all Intellectual Property Rights in the Content.

26. Confidentiality. From time to time during the term of this Subscription, either Party (as "**Disclosing Party**") may disclose or make available to the other Party (as "**Receiving Party**") non-public proprietary and confidential information that, if disclosed in writing or 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 26; (ii) is or becomes available to Receiving Party on a non-confidential basis from a third party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; 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

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restrictions. 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 or perform its obligations under this Subscription; and (z) subject to [Section 35](#), not disclose any such 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 under this Subscription. 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](#).

27. **Term and Termination.** This Subscription shall commence as of the date of the last signature hereto and shall continue until the earlier of (i) the Subscription End Date set forth on the cover page of this Subscription, (ii) the date specified in the Proposal and (iii) the one (1) year anniversary of the date of the last signature hereto. Thereafter, this Subscription will automatically renew for successive one (1) year terms unless earlier terminated pursuant to this [Section 27](#) or a Party gives the other Party written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current term (each a "Renewal Term"). IMT may adjust the fees associated with this Subscription for any Renewal Term and notify Customer of such adjustment by providing Customer with an invoice for such amount. Either Party may terminate this Subscription, effective upon written notice to the other Party (the "**Non-Terminating Party**"), if the **Non-Terminating Party** (i) fails to pay any amount when due under this Subscription; (ii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors; or (iii) otherwise breaches this Subscription or the License Agreement, and such breach is either incapable of cure or is not cured within thirty (30) days of receipt of notice of such breach. This Subscription will automatically terminate, effective immediately, on expiration or termination of the License Agreement. IMT may terminate this Subscription at any time upon thirty (30) days' written notice to Customer. Customer may terminate this Subscription by written notice to IMT within thirty (30) days of receipt of the first invoice for a Renewal Term.

28. **Force Majeure.** IMT shall not be liable, nor be deemed to have defaulted or breached this Subscription, for any failure or delay in fulfilling or performing any term of this Subscription to the extent such failure or delay is caused by or results from acts or circumstances beyond IMT's reasonable control including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions (including the passage of any laws after the date of this Subscription by any governmental or public authority), war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riots or other civil unrest, embargoes or blockades, national or regional emergencies, revolution, insurrections, epidemics, lock-outs, strikes or other labor disputes (whether or not relating to either Party's workforce), any complete or partial government shutdown, restraints or delays affecting carriers, an inability or delay in obtaining supplies of adequate or suitable materials, telecommunication breakdowns, delays caused by Licensor, Hardware or software damage or power outages.

29. **Entire Subscription.** This Subscription constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings and agreements, both written and oral, regarding such subject matter. The Parties acknowledge and agree that if there is any conflict between the terms and conditions of this Subscription and the terms and conditions of any Change Order, the terms and conditions of this Subscription shall supersede and control unless the Change Order expressly states that the terms and conditions of such Change Order shall control. The terms and conditions of this Subscription shall prevail over any terms or conditions contained in any other documentation and expressly exclude any terms and conditions contained in any purchase order or other document issued by Customer. In the event of any conflict between the terms and conditions of this Subscription and the terms and conditions of any purchase order or any other document issued by Customer, the terms and conditions of this Subscription shall prevail.

30. **Communications.** All notices, requests, consents, claims, demands, waivers and other communications under this Subscription (each, a "**Communication**") must be in writing and addressed to the other Party at its address set forth on the first page of this Subscription or such other address that the receiving Party has designated in accordance with this [Section 30](#). Unless otherwise agreed, all Communications must be delivered by facsimile, e-mail, personal delivery, courier or certified or registered mail (return receipt requested, postage prepaid). A Communication is effective only on receipt by the receiving Party if the Party giving the Communication has complied with the requirements of this [Section 30](#). 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. (PT) 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 by mail, two (2) days after the date of mailing.

31. **Applicable Law/Venue.** This Subscription (and all matters arising out of or relating to this Subscription) will be governed in all respects by the laws of the state of Utah without regard to any choice or conflict of law provisions. Each Party hereby irrevocably submits to the exclusive jurisdiction of the courts situated in Salt Lake City, Utah and waives all claims that such courts lie in an inconvenient forum.

32. **Waiver of Jury Trial.** EACH PARTY KNOWINGLY, VOLUNTARILY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED ON OR ARISING OUT OF THIS SUBSCRIPTION OR THE SUBJECT MATTER HEREOF (INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, BREACH OF DUTY, AND ALL OTHER COMMON LAW AND STATUTE CLAIMS). THIS WAIVER SHALL APPLY TO ALL SUCH CLAIMS AND

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 Subscription 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 County of Clark, Nevada 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 Subscription shall be settled by binding arbitration. Either Party may initiate arbitration, which shall be conducted in the County of Clark, Nevada 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 IMT may incur in enforcing or exercising its rights under this Subscription, whether or not suit is filed.

35. **Data Sharing.** Customer Data may be collected and transmitted to Caterpillar Inc., its affiliates and/or its dealers, including IMT. BY EXECUTING THIS SUBSCRIPTION, CUSTOMER ACKNOWLEDGES RECEIPT AND REVIEW OF THE IMT DATA GOVERNANCE STATEMENT AND CATERPILLAR DATA GOVERNANCE STATEMENT INCORPORATED HEREIN BY REFERENCE AND AVAILABLE AT [www.IMT-im.com](http://www.IMT-im.com).

36. **Severability.** If any provision of this Subscription shall be deemed 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 Subscription, or if no such modification shall be possible, deleted, and the remainder of this Subscription will remain valid and enforceable.

37. **Amendments.** No amendment to or modification of or rescission, termination or discharge of this Subscription is effective unless in a writing signed by an authorized representative of each Party.

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

39. **Assignment.** IMT may assign all or any portion of its rights and obligations under this Subscription without notice or consent. If an assignee agrees to assume the obligations of IMT, Customer agrees that IMT shall be released from all further liability hereunder. Customer shall not assign any of its rights or delegate any of its obligations under this Subscription without the prior written consent of IMT. Any purported assignment or delegation in violation of this [Section 39](#) shall be null and void *ab initio*. No assignment or delegation shall relieve Customer of any of its obligations under this Subscription.

40. **Independent Contractors.** The relationship of the Parties is that of independent contractors. Nothing contained in this Subscription shall be construed to create any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

41. **No Third Party Beneficiaries.** This Subscription benefits solely the Parties and their respective permitted successors and assigns. Nothing in this Subscription, 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 Subscription.

42. **Headings.** Headings are for reference only and do not affect the interpretation of this Subscription.

43. **Future Services.** The terms and conditions of this Subscription will apply to all additional subscription services provided by IMT to Customer (except that the fees for such subscription services will be the published rates as of the date of such subscription service), unless provided pursuant to a separate written agreement.

44. **Interpretation.** Any rule of construction that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Subscription.

45. **Survival.** Provisions of this Subscription that by their nature should apply beyond their terms will remain in force after any termination or expiration of this Subscription including, but not limited to, [Sections 18 \(Disclaimer of Warranties\)](#), [19 \(Limitation of Liability\)](#), [20 \(Customer Indemnification\)](#), [21 \(IMT Indemnification\)](#), [22 \(Exceptions and Limitations on Indemnification\)](#), [23 \(Indemnification Procedure\)](#), [24 \(Insurance\)](#), [25 \(Intellectual Property\)](#), [26 \(Confidentiality\)](#), [31 \(Applicable Law/Venue\)](#), [32 \(Waiver of Jury Trial\)](#), [33 \(Dispute Resolution\)](#), [34 \(Enforcement\)](#), [43 \(Future Services\)](#), [44 \(Interpretation\)](#) and [45 \(Survival\)](#).