

SCHEDULE 2: TERMS AND CONDITIONS FOR MINESTAR SOFTWARE TERMS AND CONDITIONS FOR MINESTAR SOFTWARE SUBSCRIPTION(S) AND ADDITIONAL SERVICES (v3)

1. Definitions and Order of Precedence

- 1.1. Any capitalised terms have the meaning given in these terms and conditions ("**Terms**") or in the quote provided by Dealer to Customer for the MineStar Software ("**Quote**").
 - 1.2. The Customer may offer to purchase the Software Subscription(s) included in a Quote by issuing a purchase order to the Dealer for an amount equal to the Subscription Fee for the Initial Term.
 - 1.3. The Dealer may, in its discretion, accept or reject the Customer's offer to purchase the Software Subscriptions.
 - 1.4. If the Dealer accepts the Customer's offer to purchase, a binding contract ("**Agreement**") will be formed, comprising the following documents in order of precedence:
 - (a) the Quote, including any Updated Quotes issued in accordance with clause 6.3 and 6.4;
 - (b) these Terms including the SEUA referenced in clause 2.4;
 - (c) any schedules to the Quote and/or Updated Quote; and
 - (d) the relevant purchase order issued by Customer to Dealer for the Subscriptions detailed in the Quote and/or Updated Quote.
 - 1.5. Any terms included with any Customer purchase order do not apply and are expressly rejected by Dealer. The Agreement is the sole and exclusive agreement governing Customer's access to and receipt of Software Subscriptions, Bronze support, and Additional Services.
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2. MineStar Product Subscriptions

- 2.1. The Customer subscribes to the Software for the registered assets ("**Assets**") located at the mine sites ("**Sites**") detailed in the Quote and/or Updated Quote for the term specified in clause 2.2 below ("**Subscription**").
- 2.2. The initial term of the Subscription is for the period from the Start Date until the End Date ("**Initial Term**"), as extended by any renewal in accordance with clause 2.3 below ("**Term**").
- 2.3. At the end of the Initial Term, the Subscription will automatically renew for a further 12 months and will subsequently renew thereafter on the day after each anniversary of the End Date unless terminated in accordance with clause 4.1.
- 2.4. The Software is licensed by Caterpillar Inc. ("**Caterpillar**"). The Customer expressly agrees to the terms and conditions of the Software End User Agreement and Acceptable Use Policy available at <https://www.caterpillar.com/en/legal-notice/minestar-software-end-user-agreement.html> ("**SEUA**") as updated from time to time. Customer understands and agrees that by issuing a purchase order in accordance with clause 1.2, Customer is expressly entering into the agreement with Caterpillar as set forth in the SEUA.
- 2.5. Notwithstanding anything to the contrary in the Agreement, Caterpillar is expressly made and intended to be made a third-party beneficiary of the Agreement with respect to the Software and Subscription with full rights and abilities to enforce the same in its entirety. The Customer hereby consents to the Dealer providing the Agreement in its entirety to Caterpillar.
- 2.6. Subject to clause 2.7 below, the Agreement together with the SEUA, constitutes the entire agreement governing the purchase and license of the Software and supersedes all prior representations, agreements, and other understandings, oral or written, between and with respect thereto.

- 2.7. If the Customer (or an affiliate of the Customer for the Customer's benefit) and Caterpillar have entered into a Supplementary Agreement in relation to the Software and that Supplementary Agreement is specified in the Quote, that Supplementary Agreement will take precedence over the SEUA to the extent of any inconsistency.
 - 2.8. By signing the Agreement, issuing a purchase order which references the Quote, or by accessing or using the Software, the Customer, and the Customer's end-user, consents to be bound by the terms and conditions of the Agreement including the SEUA.
 - 2.9. To the extent permitted by law, Dealer is not liable for any loss or damage incurred or suffered by Customer arising from or in connection with the Software, Bronze Support services or Additional Services being delayed, terminated, interrupted or operating in a way reasonably unanticipated due to events beyond the reasonable control of the Dealer.
 - 2.10. To the extent permitted by law, the Dealer's liability arising out of or in connection with the Software, Subscription, Bronze Support and Additional Services under the Agreement including for negligence is limited to the warranties contained in the SEUA.
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3. Critical Components

- 3.1. The Customer acknowledges that the Dealer has provided the Customer with a customer requirements document setting out the critical components to be provided by the Customer that are necessary to operate the Software.
 - 3.2. The Customer must provide the critical components on or before the installation of the Software and maintain the critical components during the Term.
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4. Changes to MineStar Subscriptions

- 4.1. The Customer may terminate:
 - (a) a Subscription(s) with respect to a specific Asset from a Quarterly Date; or
 - (b) all Subscription(s) from the end of the current Term,by providing the Dealer with written notice of the Subscription(s)/Asset(s) it intends to terminate not less than thirty (30) days prior to the relevant Quarterly Date or end of the Term (as applicable).
 - 4.2. Any additional Subscription(s) ordered by Customer under clause 6.4 will:
 - (a) be subject to the terms of the Agreement without the requirement for any further changes to this Agreement; and
 - (b) subject to Dealer's receipt of a valid purchase order, commence from the date specified in the Updated Quote.
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5. Bronze Support and Additional Services

- 5.1. During the Term, Caterpillar/Dealer will provide the Bronze Support services specified in Annexure to Schedule 2 – MineStar Support Agreement, subject to the terms of that annexure.
- 5.2. The Dealer and Customer may agree to provision of additional support services including support, maintenance, training, installation, customisation, implementation, or other services that do not form part of the Bronze Support in 5.1 above ("**Additional Services**") by either:
 - a) executing a scope of work for such Additional Services; or
 - b) by the Customer issuing a Purchase Order for such Additional Services, which may be accepted or rejected by the Dealer in writing.

- 5.3. Such Additional Services will be provided on a time and materials basis at the Dealer's published rates unless other rates are expressly agreed in writing between Dealer and Customer in the relevant scope of work.
 - 5.4. Such Additional Services will be expressly subject to the Dealer's terms and conditions for the sale of goods and services (excluding rental) available at <https://www.westrac.com.au/terms> unless the Dealer and Customer have entered into separate terms governing the supply of Additional Services which are referenced in the relevant scope of work or purchase order.
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6. Fees and Charges

- 6.1. The Subscription Fees are in AUD and indicative only. Subject to clause 6.2, the Subscription Fees are payable by Customer to Dealer quarterly in advance of the following dates ("**Quarterly Dates**"):
 - a) 1 January;
 - b) 1 April;
 - c) 1 July; and
 - d) 1 October.
 - 6.2. The first quarterly invoice for the Initial Term will be pro-rated and payable prior to the Start Date. Any Subscription Fee in Schedule 1 specified as being ("**OTO**") is one time only and is only payable once per Asset or Site.
 - 6.3. Before each Quarterly Date, the Dealer will issue an updated quote recalculating the Subscription Fees ("**Updated Quote**") based on the lowest AUD/USD Reserve Bank of Australia foreign exchange conversion factor within the six (6) months preceding the date of the Updated Quote as well as any pricing adjustments in accordance with clause 7.
 - 6.4. Dealer may add Subscription Fees for additional Site/s, Software or Assets requested by the Customer to the Updated Quote or may quote the Subscription Fees for the additional Site/s, Software or Assets in a separate Updated Quote. For the avoidance of doubt, a new Exhibit A must be completed for each additional Site which is added to an existing Agreement.
 - 6.5. Where the Updated Quote exceeds the value remaining on the existing purchase order for the Subscription Fee(s), the Customer must issue an updated purchase order to Dealer in the amount of the Updated Quote not less than 21 days prior to the relevant Quarterly Date. The Dealer will then issue the Customer with an invoice in the amount of the Updated Quote which is payable by Customer to Dealer prior to the relevant Quarterly Date.
 - 6.6. In the case of Subscription Fees payable for the Technician Toolbox Software licensed under the Agreement ("**Technician Toolbox**"), the Dealer may review the actual number of Subscriptions activated by the Customer on a quarterly basis. Where the actual number of subscriptions activated by the Customer in the previous quarter exceeds the number of Subscriptions set out in the Updated Quote, the Dealer may, without limitation, issue an additional invoice to the Customer.
 - 6.7. The Customer shall pay the Dealer amounts for Additional Services (including any hardware) in accordance with the terms referenced in clause 5.4.
 - 6.8. Where the Customer adds Subscriptions or Assets in accordance with clause 4.2 between Quarterly Dates, the Dealer will invoice the Customer for the additional Subscription(s) from the relevant Start Date for those additional Subscriptions specified in the relevant Updated Quote, until the first Quarterly Date to occur following that Start Date.
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7. Subscription Fee Adjustment

- 7.1. If Caterpillar increases its Subscription pricing for the Software, the Dealer will apply a price increase to the Subscription Fees in accordance with the percentage movement in the Caterpillar Subscription price from the date of that increase.

- 7.2. Dealer may issue a further invoice to the Customer for any increase in the Subscription Fee where the quarterly fees for the relevant Subscription have already been invoiced to the Customer prior to the increase in Subscription Fees taking effect.
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8. Termination

- 8.1. The Subscription(s) the subject of the Agreement are terminable by Dealer immediately in whole or in part if:
- a) the Customer is or becomes Insolvent; or
 - b) the Customer no longer has a valid license for the use of the Software; or
 - c) the Customer materially breaches the Agreement and does not rectify the breach within fourteen (14) days of being notified of it.
- 8.2. On termination or expiration, Customer shall not be entitled to a refund of any Subscription Fees.
- 8.3. Clauses 2.9 and 2.10 survive termination or expiry of this Agreement together with any other term which by its nature it intended to do so.