

SERVICE AGREEMENT TERMS AND CONDITIONS (SERVICES AND GOODS)

Upon (a) the Customer's execution of the Service Agreement and/or (b) the Customer's oral or written acceptance of parts, goods, accessories, and attachments described in the Service Agreement, and/or (c) Customer's oral or written acceptance of services to be performed as detailed in the Service Agreement, the Customer, agrees to the following Terms and Conditions. The Service Agreement and Service Agreement Terms and Conditions, as set forth below, are incorporated herein and therein, and together, shall be deemed to constitute one agreement, binding on all parties hereto.

1. OFFER TO SELL: Agri-Service, LLC, an Idaho limited liability company, or its affiliates ("**Agri-Service**") agrees to provide the service repair work ("**Services**") and supply the parts, goods, equipment, accessories, and/or attachments described in the Work Order (the "**Services and Goods**") to the Customer, under the terms and conditions specified herein. Customer, together with Agri-Service, the "**Parties**," and each a "**Party**".

2. ORDERS. Customer's intent to receive Services and Goods in accordance with this Service Agreement, and Customer's acknowledgement and acceptance of this Service Agreement (including, the terms and conditions as incorporated herein), ***shall be evidenced by any or all of the following:*** (a) Customer's acceptance of any quote, proposal, bid or any other document issued by Agri-Service for the Services and Goods (together with any exhibits, schedules, attachments and appendices thereto ("**Bid**")); (b) Customer's issuance to Agri-Service of a purchase order or other document evidencing Customer's intent to receive the Services and Goods (together with any exhibits, schedules, attachments and appendices thereto ("**Purchase Order**")); (c) Customer's acceptance of the Services and Goods when provided or delivered (notwithstanding that a Bid, Purchase Order, or other document or agreement is or is not signed); or (d) Customer's payment of any invoice issued by Agri-Service for the Services and Goods. Any Bid accepted by Customer or Purchase Order accepted by Agri-Service shall constitute an "**Order**" for the Services and Goods described therein.

a. Acceptance and Rejection of Purchase Orders. Agri-Service has no obligation to accept any third-party Purchase Order; however, Agri-Service may accept a Purchase Order by confirming the Purchase Order in writing or by delivering the applicable Services and Goods to Customer, whichever occurs first. Agri-Service may reject a Purchase Order without liability or penalty and without constituting a waiver of any of Agri-Service's rights or remedies under this Service Agreement.

b. Partial Information. Customer understands and acknowledges that Agri-Service may perform the Services in reliance on representations made by Customer regarding, inter alia, the cleanliness, functionality, operational status, contents and/or nature of the property, equipment or machinery that will be the subject of the Services. Should any of the representations on which Agri-Service relied in providing the Services and Goods be false or incomplete, or if Agri-Service shall reasonably determine in the course of performing the Services that additional testing and analysis services are necessary to satisfy its obligations hereunder, Agri-Service shall promptly provide to Customer an estimated cost of the additional work necessary to satisfy its obligations hereunder ("**Additional Work**"). If the Customer either declines or fails to agree to modify the Services Agreement and scope of Services to include the Additional Work within thirty (30) days, Agri-Service shall be entitled to terminate this Agreement.

- c. **Change Orders.** Subject to Section 2.b above, if either Party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other Party in writing. Agri-Service 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 Goods arising from the change. Promptly after receipt of the written estimate, the Parties shall negotiate and agree in writing on the terms of such change (a “**Change Order**”). Neither Party shall be bound by any Change Order unless mutually agreed upon in orally or in writing. Notwithstanding the above, Agri-Service 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 fees or any performance dates set forth in the Services Agreement or relevant Change Order.
- d. **Cancellation or Modification of Orders.** Customer shall be obligated to purchase from Agri-Service the Services and Goods specified in an Order. Cancellation or modification of all or part of any Order is subject to Agri-Service’s prior written consent in each instance. If cancellation or modification is allowed, Customer agrees to pay to Agri-Service all expenses incurred, and damage sustained by Agri-Service as a result of such cancellation or modification.
- e. **Shipment.** In the event of shipment of any Goods, Agri-Service shall select the method of shipment of and the carrier for the Goods. Agri-Service, in its sole discretion, without liability or penalty, may make partial shipments of the Goods at Agri-Service’s designated service facility. Each shipment will constitute a separate sale and Customer shall pay for the Goods shipped in accordance with the payment terms specified in this Service Agreement, whether such shipment is in whole or partial fulfillment of an Order.
- f. **Delivery.** Unless otherwise agreed in this Service Agreement, or writing, the sales price is offered F.O.B. at Agri-Service’s designated facility as stated on the Work Order and Customer is responsible for all shipping charges as provided in this Service Agreement. Agri-Service will, at Customer’s cost and expense, deliver the Goods to the location specified in the Order (the “**Delivery Location**”) using Agri-Service’s standard methods for packaging and shipping.
- g. **Late Delivery.** Any time quoted for delivery of Services and Goods is an estimate only; provided, however, that Agri-Service shall use commercially reasonable efforts to deliver all Services and Goods within a reasonable time consistent with the Order.

3. TITLE TO GOODS. Title to the Goods shall pass to Customer upon receipt by Agri-Service of payment in full for the Goods, and any Services provided in conjunction with the Goods.

4. TITLE TO EQUIPMENT. Title to Customer’s equipment, during the provision of Services by Agri-Service, shall at all times remain with Customers, notwithstanding that the Equipment may be stored by Agri-Service. Customer is entitled to possession of Customer’s Equipment at any time, upon first giving Agri-Service reasonable notice of not less than one (1) business day. Customer has no “in and out” privileges with respect to Customer’s Equipment, while on Agri-Service’s premises. Upon completion of the Service, and notice by Agri-Service to Customer of the same, Agri-Service shall store the Equipment at Agri-Service’s location for a period of fourteen (14) days. After such storage period, Customer shall be charged \$50.00 per day for storage of the Equipment at Agri-Service. Customer acknowledges that Customer bears all risk of loss or damage to Customer’s Equipment during provision of the Services and storage, including damage

as a result of fire, theft, vandalism, or any other cause. Customer agrees to cover Customer's Equipment under Customer's own policy of property damage insurance.

5. ACCEPTANCE AND TERMS AND CONDITIONS: Acceptance of this Service Agreement is limited to the express terms stated herein. Any proposal in Customer's acceptance for additional or different terms or any attempt by Customer to vary in any degree any of the (i) terms and conditions or (ii) representations or warranties, of this Service Agreement, is expressly objected to and hereby rejected. Once accepted, this Service Agreement shall constitute the entire agreement between Agri-Service and Customer. Agri-Service is not bound by any representation or agreements, express, or implied, oral, or otherwise, which are not stated within this Service Agreement (including, for purposes of clarity, any general terms and conditions contained in Customer's Purchase Order or other documents submitted by Customer). This Service Agreement will supersede all previous communications and agreements with respect to the subject matter hereof and no understanding, agreement, term, condition, or trade custom at variance with this Service Agreement will be binding on Agri-Service. No waiver or modification of the terms and conditions hereof will be effective.

6. WARRANTIES AND LIMITATIONS.

- a. Clean Air Act.** Customer represents and warrants that (i) Customer has operated and serviced the equipment or motor vehicle in compliance with all applicable federal, state, local and other laws and regulations and in compliance with all applicable industry standards, including (without limitation) the Clean Air Act, and (ii) the equipment is in compliance with all applicable federal, state, local and other laws, rules, and regulations and in compliance with all applicable industry standards, including (without limitation) the Clean Air Act; whereby, under the Clean Air Act, it is prohibited for any person to (A) manufacture or sell, or offer to sell, or install, a part or component, where a principle effect of the part or component is to bypass, defeat, or render inoperative any emission control device, (B) remove or render inoperative an emission control component on any equipment, motor vehicle, or engine. In the event Agri-Service elect to provide Services to any equipment or motor vehicle for the Customer, which may violate the Clean Air Act, so long as the Services provided by Agri-Service do not directly violate the Clean Air Act, Agri-Service may elect to provide such Services and the Customer shall (i) indemnify Agri-Service against any actions of any federal, state, local or other government authority with respect to the equipment or motor vehicle, including, without limitation, violations of the Clean Air Act, as provided and permitted under Section 20.a, and (ii) be responsible for any additional costs incurred by Agri-Service with respect to the Service.
- b. Service Returns.** At Agri-Service's sole election, Agri-Service has the right to return the equipment to Customer, and stop all Services, in the event that (i) Customer breaches Section 6.a, or (ii) Agri-Service determines, that the equipment is in violation of the Clean Air Act. In the event Agri-Service determines that the equipment is in violation of the Clean Air Act, or any other federal, state, or local laws, rules, and regulations, at Agri-Service's determination, Agri-Service (A) can return the equipment to the Customer, and Customer shall pay for (and be liable for) and Services and Goods provided prior to the return, or (B) may retain the equipment, and provide such additional Services to ensure equipment is compliant with the Clean Air Act, and Customer shall pay Agri-Service for all Services and Goods necessary to ensure the equipment is compliant with the Clean Air Act.

7. PAYMENT TERMS:

- a. **Payment.** Customer shall pay to Agri-Service all invoiced amounts within thirty (30) days from the date of such invoice, unless otherwise set forth on the Work Order and/or Credit Agreement. Notwithstanding the foregoing, for any Customer who (i) does not have a Credit agreement with Agri-Service, or (ii) payment terms are not set forth on the Work Order, full payment is due upon delivery of Services and Goods. Customer shall make all payments in US dollars by check, credit card or wire transfer.
- b. **Late Payments.** Customer shall pay interest on all late payments, calculated daily, and compounded monthly at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall also reimburse Agri-Service for all reasonable costs incurred in collecting any late payments, including, without limitation, attorney's fees.
- c. **Disputed Invoice.** Failure to notify Agri-Service in writing of any dispute regarding an invoice within thirty (30) days of receipt thereof waives Customer's right to dispute such invoice. Customer's obligation to pay amounts invoiced is and will be absolute and unconditional and shall not be subject to any delay, reduction, set-off, defense or counterclaim.
- d. **No Set-off Right.** Customer shall not have, and acknowledges that it does not have, any right to withhold, offset, recoup, or debit any amounts owed (or to become due and owing) to Agri-Service under this Service Agreement.

8. UNSATISFACTORY CREDIT STATUS. Customer shall furnish Agri-Service with statements evidencing Customer's financial condition as Agri-Service may, from time to time, reasonably request, and shall notify Agri-Service immediately of any and all events that may have a material adverse effect on Customer's business or financial condition. If Agri-Service determines in its sole discretion that Customer's financial condition or creditworthiness is inadequate or unsatisfactory, then in addition to Agri-Service's other rights, Agri-Service may without liability or penalty take any of the following actions:

- a. require that Customer provide a standby letter of credit satisfactory to Agri-Service in its sole discretion;
- b. accelerate all amounts owed by Customer to Agri-Service under this Service Agreement;
- c. modify the payment terms specified in Section 7 (Payment Terms) for outstanding and future Orders, including requiring Customer to pay cash in advance;
- d. cancel any previously accepted Orders;
- e. delay any further shipment of Goods;
- f. terminate this Service Agreement; or
- g. any combination of the above.

No actions taken by Agri-Service under this Section 8 (nor any failure of Agri-Service to act under this Section 8) shall constitute a waiver by Agri-Service of any of its rights to enforce Customer's obligations under this Service Agreement including, but not limited to, the obligation of Customer to make payments as required under this Service Agreement.

9. SALES TAXES: Under certain state laws, Agri-Service is required to collect sales tax for sales made on Services and Goods. Prices stated in this Service Agreement, Order, or Purchase Order, do not include any applicable state, county, city, or local sales taxes. This Service Agreement is accepted with the understanding that such taxes and charges shall be added, as required by law, at the time the Services and Goods are invoiced. Where applicable, Agri-Service will charge sales tax at the time of invoice unless the Customer has a valid sales tax exemption certificate on file. In states where Agri-Service is not required to collect and pay sales tax, the Customer is obligated to self-report and pay the sales and/or use tax to the Customer's appropriate state and or local Department of Revenue. In the event that Customer fails to pay any applicable tax or other charge as agreed herein or fails to provide a valid exemption certificate, Customer agrees to indemnify and hold Agri-Service harmless from any liability and expense by reason of Customer's failure to pay said taxes or assessments, including, but not limited to, Agri-Service's reasonable attorney's fees and costs and other necessary legal expenses resulting from such failure.

10. GRANT OF SECURITY INTEREST: To the extent permitted under applicable law, in order to secure payment and performance of Customer's obligations arising under this Service Agreement, Customer grants Agri-Service: (i) a security interest in and to all right, title, and interest of Customer in, to, and under the Services and Goods and any and all additions, replacements, substitutions, and proceeds of the same ("**Collateral**") to secure payment of the service and sales price and any and all other obligations or amounts owed or owing by Customer hereunder whether now existing or hereafter created and all renewals, extensions, and rearrangement of such liabilities; and (ii) a mechanic's lien or bond on the equipment or worksite and all improvements, constructed therein or thereon, as permitted by law. Customer appoints Agri-Service as Customer's irrevocable attorney-in-fact to file, at Customer's cost, any financing statement(s) (and any amendments, renewals, and related instruments) to: (a) to perfect such security interest, and/or (b) to release, terminate and void Agri-Service security interest. Customer shall execute any such statements or other documentation necessary to perfect such security interest. The security interest granted under this provision constitutes a purchase money security interest under the Idaho Uniform Commercial Code. Customer will reimburse Agri-Service for all expenses for the perfection and the continuation of the perfection of Agri-Service's security interest in the Collateral. During such period in which Agri-Service has a security interest in and to the Services and Goods, Customer may not assign, transfer, move, or otherwise sell any of the Collateral without the written consent of Agri-Service. Customer promptly will notify Agri-Service before any changes in Customer's name including any changes to the assumed business name of Customer.

11. LOADING AND UNLOADING. Customer is responsible for the loading and unloading of the Goods and any equipment related thereto. IF AGRI-SERVICE EMPLOYEES ASSIST IN LOADING OR UNLOADING THE GOODS OR EQUIPMENT, CUSTOMER ASSUMES THE RISK OF ANY RESULTING DAMAGE OR INJURY AND SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS AGRI-SERVICE FROM AND AGAINST ANY LOSS, COST OR EXPENSE (INCLUDING ATTORNEY'S FEES AND EXPENSES) ARISING FROM OR RELATED TO THE SAME, WHETHER OR NOT CAUSED, IN WHOLE OR IN PART, BY AGRI-SERVICE'S NEGLIGENCE OR THE NEGLIGENCE OF AGRI-SERVICE'S EMPLOYEES, AGENTS OR ASSIGNS.

12. TIME OF DELIVERY: Orders for Services and Goods are processed in the order of their acceptance by Agri-Service. Agri-Service will use commercially reasonable efforts to deliver the Services and Goods to Customer on the scheduled completion date as stated in this Service Agreement, Order, or Purchase Order. However, delivery dates are estimates and dependent

upon factors outside of Agri-Service's control, including, but not limited to, the manufacturer's production schedule, material and labor shortages, equipment and inventory shortages, shipping delays, the Goods necessary to provide the Services may not arrive on the scheduled date. Agri-Service shall not be liable for any damages caused by delays in delivery or shipment of the Services and Goods. Unless otherwise agreed to in writing by the Parties, the Services and Goods shall not be delivered to Customer until payment terms are mutually agreed upon in writing.

13. RISK OF LOSS/SHORTAGES: As applicable, risk of loss of any Goods shall pass to Customer as soon as the Goods are properly loaded on the carrier, as elected by Agri-Service. Agri-Service's responsibility for shipment ceases upon delivery of the Goods to the carrier. In the event that Agri-Service serves as the carrier, Agri-Service's responsibility for shipment will cease upon delivery acceptance by the Customer. Any claim by Customer for shortage in shipment shall be made by written notice to Agri-Service within ten (10) days after receipt of the shipment. Customer will be deemed to have accepted the Goods unless it notifies Agri-Service in writing of any nonconforming products during the inspection period and furnishes such written evidence or other documentation as required by Agri-Service.

14. COMPLIANCE WITH LAWS: Customer shall at all times comply with all federal, state, and local laws, rules, or regulations applicable to this Service Agreement, Customer's performance of its obligations hereunder, and Customer's use of the Services and Goods. Without limiting the generality of the foregoing, Customer shall: (a) at its own expense, maintain all certifications, credentials, licenses and permits necessary to conduct its business relating to the purchase or use of the Services and Goods; and, (b) not engage in any activity or transaction involving the Services and Goods, by way of shipment, use or otherwise, that violates any federal, state, and local laws, rules, or regulations.

15. TERMINATION. In addition to any remedies that may be provided under this Service Agreement, Agri-Service may terminate this Service Agreement with immediate effect upon written notice to Customer, for any reason or no reason, or if Customer: (a) fails to pay any amount when due under this Service Agreement; (b) has not otherwise performed or complied with any terms of this Service Agreement, in whole or in part; or (c) 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. Any termination under this Service Agreement automatically operates as a cancellation of any deliveries of Services and Goods to Customer that are scheduled to be made subsequent to the effective date of termination, whether or not any orders for such Services and Goods had been accepted by Agri-Service. With respect to any Services and Goods that are still in transit upon termination of this Service Agreement, Agri-Service, in its sole discretion, may require that all deliveries of such Services and Goods be made on either a cash-only or certified-check basis.

16. LIMITED WARRANTY.

- a. **New Goods.** If Customer is purchasing new Goods from Agri-Service, Customer acknowledges that (i) Agri-Service is not the manufacturer of the Goods; (ii) if the Goods include a manufacturer's warranty, Agri-Service will pass through to Customer the manufacturer's warranty to the extent permitted by the terms of such warranty; and (iii) the manufacturer's warranty will be subject to all conditions and exclusions set forth therein. Upon request, Agri-Service shall provide Customer a copy of the applicable manufacturer's warranty. For example purposes only, AGCO Inc. provides a one (1) year part warranty for any AGCO, Inc. parts.

- b. Remanufactured Goods.** If Customer is purchasing remanufactured Goods from Agri-Service: (i) Agri-Service is not the manufacturer of the remanufactured Goods; (ii) if the remanufactured Goods include a manufacturer's warranty, Agri-Service will pass through to Customer the manufacturer's warranty to the extent permitted by the terms of such warranty; and (iii) the manufacturer's warranty will be subject to all conditions and exclusions set forth therein. Upon request, Agri-Service shall provide Customer a copy of the applicable manufacturer's warranty. Customer acknowledges that the only warranties with respect to remanufactured Goods are those warranties, if any, expressly set forth in the manufacturer's warranty or as specifically set forth in the Sales Agreement.
- c. Used Goods.** If Customer is purchasing used Goods from Agri-Service, Customer acknowledges that the only warranties with respect to such used Goods are those warranties, if any, expressly set forth in this Service Agreement.
- d. Services.** For Services purchased by Customer from Agri-Service, Agri-Service warrants that its Services will be performed and completed in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services. Manufacturer's warranties for the Goods, as applicable, shall be provided to the Customer, upon request. Agri-Service's service warranty will be voided in the event of any of the following: misuse or abuse of Goods by Customer; subsequent repairs performed by Customer or vendors other than Agri-Service; use beyond ordinary wear and tear; failure to maintain and operate Goods 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 to the Goods due to theft, vandalism or casualty.
- e. Limitation of Remedies:** During the limited warranty, if any, as provided herein, if, for any reason, the Services and Goods do not perform satisfactorily, as judged by Agri-Service in its sole discretion, Agri-Service may repair or replace the Services and Goods or any part thereof, at its option, without affecting any of the terms of this Service Agreement. This remedy does not apply if the Services and Goods has failed or performs less than satisfactorily due to Customer's improper use of the Services and Goods, accident (including, damage during shipment), neglect, abuse, misuse, or exposure of the Services and Goods to conditions beyond capacity, power, environmental design limits, or operation constraints, as specified by Agri-Service and/or the Services and Goods manufacturer. Customer is responsible for all expenses related to repair or replacement due to these causes.

THE REMEDIES IN THIS SECTION 16 ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF THE LIMITED WARRANTY.

17. DISCLAIMER OF WARRANTIES: Except for the limited warranties set forth in Section 16: (i) by receiving the Services and Goods, Customer acknowledges the Services and Goods to be in good, safe, and serviceable condition, and Customer accepts the Services and Goods "**AS IS, WHERE IS**" and "**WITH ALL FAULTS,**" regardless of defects, latent or otherwise; and, (ii) Agri-Service makes no warranties, express or implied, for any Services and Goods, equipment, product, or other items sold or furnished under this Service Agreement, unless agreed to in a separate writing between Customer and Agri-Service. **AGRI-SERVICE MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (A) WARRANTY OF**

MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY AGRI-SERVICE, OR ANY OTHER PERSON ON AGRI-SERVICE'S BEHALF, EXCEPT AS SPECIFICALLY SET FORTH IN THIS SERVICE AGREEMENT. ALTHOUGH AGRI-SERVICE MAY ADMINISTER WARRANTIES ISSUED BY A MANUFACTURER, CUSTOMER ACKNOWLEDGES AND AGREES THAT: (1) ANY EXPRESS WARRANTIES BY SUCH MANUFACTURER ARE NOT THE RESPONSIBILITY OF AGRI-SERVICE; (2) SUCH MANUFACTURER'S WARRANTY MAY CONTAIN LIMITATIONS; AND (3) CUSTOMER MAY INCUR CERTAIN REPAIR, TRANSPORTATION OR OTHER CHARGES BY AGRI-SERVICE WHICH ARE NOT COVERED BY SUCH MANUFACTURER'S WARRANTY. Any warranty by Agri-Service shall be null and void and have no legal effect if Customer fails to pay any amounts due for the Services and Goods at issue.

18. LIMITATION OF LIABILITY: In no event will Agri-Service, its subsidiaries, affiliates, agents or employees be liable for any liquidated, incidental, indirect, exemplary, punitive, enhanced, special, or consequential damages in connection with, arising out of, or relating to this Service Agreement or furnishing of any Services, Goods, equipment, or other items or any third party's ownership, maintenance, or use of any Services, Goods, equipment, or other items furnished under this Service Agreement, including, but not limited to, lost profits or revenues, loss of use of the Services and Goods or any associated equipment, damage to associated goods, costs of capital, cost of substitute goods, or claims of Customer for such damages, whether or not the possibility of such damages has been disclosed in advance or could have been reasonably foreseen by Customer, regardless of the legal or equitable theory (contract, tort or otherwise) upon which the claim is based, and notwithstanding the failure of any agreed or other remedy of its essential purpose. Agri-Service is not responsible for meeting any federal, state, local or municipal code, rules, regulations, or specifications (whether statutory, regulatory, or contractual), unless Customer specifies it in writing and Agri-Service agrees to it in writing. Customer agrees that it has selected the Services and Goods, and associated equipment, if any, based upon its own judgment and particular needs and disclaims any reliance upon any statements, advice, or presentations made by Agri-Service. **IN NO EVENT SHALL AGRI-SERVICE'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS SERVICE AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF AGREEMENT, WARRANTY, STRICT LIABILITY TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO AGRI-SERVICE UNDER THIS SERVICE AGREEMENT FOR THE PREVIOUS TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE SUBJECT CLAIM.** The parties recognize that the pricing associated with Services and Goods reflects this allocation of risk and is the basis of the bargain between the parties.

19. ASSUMPTION OF RISK. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CUSTOMER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED BY THE USE OF ANY SERVICES OR GOODS BY CUSTOMER, ITS SUBSIDIARIES, AFFILIATES, AGENTS, OR EMPLOYEES, WHETHER IN TERMS OF OPERATING COSTS, GENERAL EFFECTIVENESS, SUCCESS, OR FAILURE, AND REGARDLESS OF ANY ORAL OR WRITTEN STATEMENTS MADE BY AGRI-SERVICE, BY WAY OF TECHNICAL ADVICE, CONSULTING, DEMOS, TRAINING, OR OTHERWISE, RELATED TO THE USE OF THE SERVICES AND GOODS.

20. INDEMNITY:

- a. Customer agrees to indemnify, defend and hold harmless Agri-Service from and against any and all claims, actions, suits, proceedings, costs, expenses, damages (including but not limited to consequential and incidental damages), liabilities, deficiencies, fees, interest, awards, penalties, fines, costs (including, but not limited to, attorney fees and court costs), judgements, and settlements, (including those brought or incurred by or in favor of Customer's employees, agents and subcontractors), arising out of or related to: (i) the selection, delivery, loading, unloading, towing, possession, use, misuse, failure or maintenance of the Services, operation, handling, retaking, or transportation of the Services (inclusive of any of the foregoing by employees or agents of Customer, or third parties); (ii) personal injury, death or property damage or loss of any nature whatsoever arising out of or related to Customer or Customer's employees, agents, subcontractors, affiliates or invitees negligent acts or omissions; (iii) any breach by Customer of this Service Agreement or any applicable law; (iv) use of the Services or serviced equipment in any manner that does not materially conform with the usage specifications provided by Agri-Service or the equipment manufacturer, as applicable; (v) any actions of any federal, state, local or other government authority with respect to the equipment, including, without limitation, violations of the Clean Air Act; or, (vi) any act or omission of Customer or Customer's employees, agents, contractors, subcontractors, affiliates or invitees. Additionally, Customer agrees to defend, at its expense, any and all suits brought against Agri-Service either alone or in conjunction with others (including any third-party suits or actions) and additionally to satisfy, pay and discharge any and all judgments and fines against Agri-Service in any such suits or actions, whether based in gross negligence, willful misconduct, negligence or otherwise.
- b. **Agri-Service Indemnification.** Subject to the limitations and conditions set forth in Section 18, Agri-Service shall indemnify, hold harmless, and defend Customer from and against any third-party claims related to the Services provided by Agri-Service, 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 Agri-Service's negligent acts or omissions in provision of such Services.

21. INSURANCE. During the term of this Service Agreement, 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 employer's liability in a sum no less than \$1,000,000; and (iii) any additional insurance Agri-Service 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.

22. DEFAULT BY CUSTOMER:

- a. **Event of Default.** An "Event of Default" shall occur if (a) Customer fails to pay when due the invoice for Services and Goods; (b) Customer fails to perform or observe any covenant, condition, or agreement to be performed by it hereunder; (c) Customer ceases doing business as a going concern, makes an assignment for the benefit of creditors,

admits in writing an inability to pay debts as they become due, files a petition in bankruptcy, or if owners, shareholders, or members of Customer's business organization take actions towards dissolution or liquidation of Customer; (d) Customer attempts to sell, transfer, or encumber, sublease or convey the Goods or any part thereof; or (e) Agri-Service, in good faith deems itself, insecure relative to payment of the sales price.

- b. Occurrence of an Event of Default.** Upon the occurrence of any Event of Default, Agri-Service may exercise the following rights and remedies: (i) declare the invoice for Services and Goods immediately due and payable; (ii) require Customer to assemble the Goods and make them available to Agri-Service at a place and time designated by Agri-Service; (iii) Agri-Service shall have full power to enter upon the property or jobsite of the Customer and take possession of and remove the Goods; (iv) Agri-Service shall have full power and authority to sell, lease, transfer or otherwise deal with the Goods or proceeds thereof; (v) if Agri-Service chooses to sell or lease the reclaimed Goods, Agri-Service may obtain a judgment against Customer for any deficiency remaining on the invoice for Goods and Services after application of all amounts received from the exercise of its rights under this Service Agreement; and (vi) all rights and remedies of a secured creditor under the provisions of the Idaho Uniform Commercial Code, as amended from time to time. All of Agri-Service's rights and remedies, whether evidenced by this Service Agreement or other related agreement, shall be cumulative and may be exercised singularly or concurrently. Customer agrees to pay all costs incurred by Agri-Service in enforcing this Service Agreement or any of its provisions, including without limitation reasonable attorney's fees and costs and all costs of reclaiming the Goods, whether or not legal action is commenced.

23. DATA GOVERNANCE: The Services and Goods governed by this Service Agreement may be equipped with a wireless data communication system or similar system. In such case, Customer understands data reflecting the machine performance, condition, operation, and other information is being transmitted to Agri-Service and applicable manufacturers, to better serve the Customer and to improve upon Agri-Service's and manufacturer's products and services

24. MARKETING. The Customer consents that, in the provision of the Services, Customer's equipment may be used in any Agri-Service or third-party promotional materials, pictures, videos, or other mediums. The Customer's name or trademarks shall not be used without express written consent from the Customer.

25. WAIVER. No waiver of any provision of this Service Agreement shall be effective unless it shall: (a) be in writing; (b) specifically identify this Service Agreement; (c) specifically state that such document waives certain terms of this Service Agreement; and (d) be accepted and signed by an authorized representative of Agri-Service. Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion. None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege, or condition arising from this Service Agreement: (i) any failure or delay in exercising any right, remedy, power, or privilege or in enforcing any condition under this Service Agreement; or (ii) any act, omission, or course of dealing between the Parties. Unless otherwise specified, 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).

26. TARIFFS. If, after the date of this Service Agreement, or applicable Purchase Order, Proposal, or Quote, any new or increased tariffs, duties, or other government-imposed costs on materials used in the work becomes effective, the associated contract price of the Goods shall be adjusted to reflect the actual increased cost to Agri-Service. Agri-Service shall notify the Customer of any such cost impact. Failure to agree on a price adjustment shall not relieve the Customer's obligation to pay the increased cost, and Agri-Service shall be entitled to an extension of time if such tariffs result in material shortages or delays and/or Agri-Service may permanently suspend performance because of a delay or the inability of the parties to agree upon an adjusted price.

27. FORCE MAJEURE: Agri-Service shall not be responsible or liable, and Agri-Service's obligation to perform under this Service Agreement will be excused during each period of delay, for any delay or failure to deliver any or all of the Goods and/or performance of the services where such delay or failure is caused by any act of God, any worldwide or national epidemic or pandemic, fire, flood, inclement weather, explosion, war, insurrection, riot, embargo, statute, ordinance, regulation or order of any government or agent thereof, shortage of power, shortage of labor, material fuel, supplies or transportation, strike or other labor dispute, or any other cause, contingency, occurrence or circumstance of any nature, whether or not similar to those herein before specified beyond Agri-Service's control, which prevents, hinders or interferes with manufacture, assembly or delivery of the Services and Goods or performance of the services. Any such cause, contingency, occurrence, or circumstances shall release Agri-Service from performance of its obligations hereunder. In the event of a Force Majeure event, such party shall: (i) immediately notify the other party of the Force Majeure event and its expected duration, and (ii) take all reasonable steps to recommence performance as soon as possible.

28. JURISDICTION AND VENUE: This Service Agreement and the relationship between Agri-Service and Customer shall be governed and construed according to the laws of the State of Idaho. At the sole and exclusive election of Agri-Service, jurisdiction and venue for any action or dispute arising under this Service Agreement shall be in the in the Fifth Judicial District of the State of Idaho, in and for Twin Falls County, which is Agri-Service's corporate headquarters and principal place of business, wherein the parties acknowledge having done business sufficient to establish minimum contacts under the Idaho long arm statute, and which is a mutually convenient forum. In addition, Customer waives any and all rights to jurisdiction and/or venue in any other forum, including waiver of any and all rights to remove the action from any court originally acquiring jurisdiction.

29. JURY WAIVER. TO THE FULLEST EXTENT PERMITTED BY LAW, ALL PARTIES TO THIS SERVICE AGREEMENT HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY, AND UNCONDITIONALLY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, ARISING UNDER, BASED UPON, OR IN WAY RELATED OR CONNECTED TO THIS SERVICE AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ACTIONS ARISING OUT OF CONTRACT, TORT, EQUITABLE, OR DECLARATORY CLAIMS.

30. FAILURE OR OMISSIONS. No delay or failure by either party to exercise any right or remedy under this Service Agreement, and no partial or single exercise of that right or remedy, shall constitute a waiver of that or any other right or remedy, unless otherwise expressly provided in this Service Agreement.

31. SEVERABILITY. If any part of this Service Agreement shall be determined to be invalid, illegal, or unenforceable, or declared null and void by any court of competent jurisdiction, then (i) such part shall be reformed, if possible, to conform to the law and (ii) in any event the remaining

parts of this Service Agreement shall be fully effective and operative insofar as reasonably possible.

32. COUNTERPARTS; FACSIMILE AND ELECTRONIC SIGNATURES. This Service Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and when taken together with the other signed counterparts, shall constitute one agreement that shall be binding upon and effective as to all parties. Facsimile or electronic transmission of any signed original of this Service Agreement, and retransmission of any signed facsimile or electronic transmission, shall be the same as delivery of an original and shall be binding upon the parties.

33. ASSIGNMENTS: No right or interest in this Service Agreement shall be assigned by Customer without the written permission of Agri-Service, and no delegation of any obligation owed or of the performance of any obligation by Customer shall be made without written permission of Agri-Service. Any attempted assignment or delegation by Customer shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

34. AMENDMENTS. No amendment to or modification of or rescission, termination or discharge of this Service Agreement is effective unless in a writing signed by an authorized representative of each Party.

35. ENTIRE AGREEMENT. This Service Agreement, and associated invoices, constitute the entire agreement between the parties and supersedes all prior oral and written agreements and understandings between the parties. The Parties intend for the express terms and conditions contained in this Service Agreement (including any invoice and Service Agreement terms and conditions herein) to exclusively govern and control each of the Parties' respective rights and obligations regarding the subject matter of this Service Agreement, and this Service Agreement is expressly limited to such terms and conditions. Without limitation of the foregoing, any additional, contrary, or different terms contained in any proposal, purchase order, third-party agreement, or other request or communication by Customer pertaining to the Services by Agri-Service, and any attempt to modify, supersede, supplement, or otherwise alter this Service Agreement, will not modify this Service Agreement (inclusive of any Customer's invoice) or be binding on the parties. The entering of a Service Agreement with Agri-Service, the issuance of a purchase order for the Services to be provided by Agri-Service, or the receipt, acknowledgement, or acceptance of the Services provided by Agri-Service, constitutes Customer's acceptance of this Service Agreement, and the Service Agreement Terms and Conditions exactly as written herein. Agri-Service reserves the right, in its sole discretion, to modify or replace any of these Terms and Conditions at any time, and such modifications or replacements shall apply to all Services from Agri-Service after the date of such modification or replacement. It is the Customer's responsibility to review the Service Agreement Terms and Conditions each time Customer receives Services from Agri-Service.