1. Agreement. These Service Authorization Terms and Conditions and the Service Authorization, Proposal, Quote, or other document(s) incorporating them by reference, including all documents, exhibits, schedules, and addendums attached thereto or specifically incorporated by reference by them, constitute the sole and entire agreement ("Agreement") between Hawthorne Machinery Co. or its applicable subsidiary or affiliate ("Hawthorne") and the purchasing customer ("Customer") (together with Hawthorne, the "Parties," and each a "Party") for the performance of the work or the provision of the goods to be provided by Hawthorne ("Services") on behalf of Customer. This Agreement supersedes all prior and contemporaneous understandings and agreements, both written and oral regarding the Services. No purchase order, work order, or statement of work issued in connection with the Services by Customer or a third party shall be binding on Hawthorne unless accepted by Hawthorne in writing. In the event a purchase order, work order, or statement of work issued by Customer or a third party conflict with the terms and conditions of this Agreement, the terms of this Agreement shall control. The Parties agree that the Services will be governed by the following documents in this order of precedence: the Service Authorization, Proposal, Quote, or other document(s) incorporating these terms and conditions by reference, Service Authorization Terms and Conditions, other writings signed by the Parties, other documents issued by the Parties relating to the Services. Acceptance of any portion of the Services, providing payment in whole or in part, or acceptance of the Agreement in any form (whoever occurs first) shall constitute acceptance of these Service Authorization Terms and Conditions and any terms set forth in the document(s) incorporating them by reference.

2. Times. Hawthorne shall use reasonable efforts to meet any performance dates specified in the Agreement. Customer agrees that any such dates shall be estimates only.

3. Partial Information. Customer understands and acknowledges that Hawthorne has quoted the Services relying on representations made by Customer regarding the cleanliness, functionality, operational status, contents, and nature of the equipment or machinery that will be the subject of the proposed work or statement of work issued by Customer or a third party related to the Services. Any representation or statement made by Customer or a third party will be subject to verification by Hawthorne and will be binding on Customer and will constitute a warranty that the information provided will be the subject of the Services. Should any of the representations on which Hawthorne relied in preparing the Proposal fail to be true, complete, or accurate, Customer will reimburse Hawthorne for all reasonable additional costs incurred by Hawthorne in preparing or pricing the Services be false or incomplete, or if Hawthorne shall reasonably determine in the course of performing the Services that additional repair, maintenance, or improvement services are necessary to satisfy its obligations hereunder ("Additional Work"), Hawthorne shall promptly provide to Customer an estimate cost of the additional work necessary to fulfill its obligations hereunder. Customer will pay all such amounts to Hawthorne in accordance with the terms of the Agreement. Customer must agree to the Additional Work within thirty (30) days of receipt of the proposal from Hawthorne, Hawthorne may terminate this Agreement in accordance with Section 28.

4. Change in Scope of Work. Subject to Section 3 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. Promptly after receipt of any proposed change, the Parties shall negotiate and agree in a writing signed by all parties on the terms of such change. Notwithstanding the above, Hawthorne may from time to time change the Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Services, the fees, or any performance dates set forth in the Agreement.

5. Customer Warranties. Customer warrants that (i) if an entity, it is duly organized and validly existing in good standing; (ii) it is duly authorized to execute, deliver, and perform its obligations under this Agreement; (iii) when duly executed and delivered by each Party, the Agreement 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 the Agreement are intended by it to be a substantially contemporaneous exchange for new value given to it; (vi) each payment made of a purchase price or part of a purchase price under the Agreement is for consideration for the sale or lease of property, other than property sold in the ordinary course of a Party’s business; (vii) all information supplied by Customer is complete and accurate, and (viii) the performance of the Services does not require Hawthorne to remove, replace, or alter any part of a building or structure.

6. Customer Obligations. Customer shall pay or reimburse all prices, fees, expenses, or charges related to the Services when they become due, cooperate with Hawthorne in all matters relating to the Services, and provide such access to Customer’s premises and facilities as may reasonably be requested by Hawthorne for the purposes of performing the Services. Customer shall provide all direction, information, approvals, authorizations, notes, contracts, security agreements, financing statements, decisions or materials requested by Hawthorne to perform the Services. Customer promises to do all acts in connection with the Services and the payment for the Services as may reasonably be required of it in connection therewith. Customer shall pay all sums due to Hawthorne on demand, all charges and shipping costs regardless of whether they arise before, during, or after performance of the Services. All credit card charges of $3,000 or more will be subject to an additional three percent (3%) charge.

7. Taxes. Customer shall be responsible for all sales, use, and excise taxes, 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, Hawthorne’s income, revenues, gross receipts, personnel or real property, or any other items on which tax is imposed by a governmental entity.

8. Hours of Operation. Unless specified otherwise in writing, the Services shall be performed during Hawthorne’s publicized business hours. Services performed outside of such hours will be billed at applicable overtime or double-time rates.

9. Ancillary Systems. Hawthorne may deactivate or interrupt mechanical and electrical systems or components that are not part of the Services. Customer shall be responsible for reactivating such systems after completion of the Services. Hawthorne shall have no responsibility for reactivating, testing, or operating any such system.

10. Fees and Expenses. Customer shall (i) reimburse Hawthorne 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 within thirty (30) days of receipt of an invoice from Hawthorne unless specified otherwise in the Service Authorization, Proposal, Quote, or other document(s) incorporating these terms and conditions by reference, in which case the terms of payment specified in that document by Hawthorne will control. Failure to notify Hawthorne of a dispute or disagreement with any amount shall result in the loss of any right hereunder, Hawthorne shall be entitled to suspend the provision of any Services if Customer fails to pay any amounts due. If Customer fails to pay any amounts when due, all unpaid sums shall become immediately due and payable within ten (10) days. Additionally, Hawthorne shall have the right, but not the obligation, to apply any funds paid by Customer to Hawthorne at any time to satisfy unpaid amounts.

11. Late Payments. All late payments shall bear interest at the lesser of the rate of 1.5% per month (18% per annum) or 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 the event of any late payment, Customer shall pay all reasonable costs and expenses of collection, including all reasonable attorneys’ fees, costs, and expenses incurred in connection with the Services or in connection with any collection or set-off, defense, or counter-claim. Unless specified otherwise in writing, Customer shall pay all costs of transportation, which include but are not limited to government duties, local taxes, and insurance rates or other applicable charges.

12. Confidentiality Agreement. In connection with the Services, Hawthorne may receive, learn, or otherwise come into possession of Confidential Information and Confidential Information will remain the exclusive property of the owner of Confidential Information.

13. Disclaimer of Warranties. Any warranties provided by Hawthorne are subject to the limitations set forth below and any self-determined defects in the Services by Hawthorne may, in its sole discretion, either (i) use commercially reasonable efforts to cure any defect, or (ii) credit or refund the price of any defective Services, less a deduction equal to the pro-rata share of the Services used. The REMEDIES SET FORTH ABOVE SHALL BE CUSTOMER’S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE WARRANTY ABOVE.

14. Limited Warranty. Hawthorne 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. Hawthorne warrants its service labor to be free from defect in workmanship for five hundred (500) service meter hours, 12,500 highway miles (where applicable), or ninety (90) calendar days, whichever occurs first. All warranties on products or equipment sold are limited to the warranty provided by the manufacturer of said products and equipment. Hawthorne does not provide a warranty in addition to that provided by the manufacturer of a product. Customer understands that warranties for equipment and parts are limited in time and scope and can vary according to the source from which they were obtained.

15. Exclusions from Limited Warranty. Any limited warranty offered by Hawthorne does not cover (i) defects, error, or damage to Customer’s equipment due to accident, abuse, misuse, negligent use, failure to follow proper maintenance procedures, and any use other than use in a normal and customary manner, (ii) defects, errors, or nonconformities due to modifications, alterations, additions or changes to Customer’s equipment not made or authorized by Hawthorne, (iii) normal wear and tear, or (iv) damage caused by force of nature or by an act of any third party. Hawthorne’s warranty shall be null and void and have no legal effect in the event Customer has failed to pay for the service or parts at issue or failed to bring the service or parts at issue to a reasonably agreed upon location. Customer acknowledges and agrees that any EXPRESS WARRANTIES BY SUCH MANUFACTURER ARE NOT THE RESPONSIBILITY OF HAWTHORNE; (2) SUCH MANUFACTURER’S WARRANTY MAY CONTAIN LIMITATIONS AND
A LARGER FONT COPY OF THESE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.
Communication is effective only on receipt by the receiving Party if the giving of the Communication has complied with the requirements of this Section. Communications shall be deemed received (i) if given by facsimile or e-mail, on the date of transmission if sent prior to 3:00 p.m. (PST) on a business day and otherwise on the following business day, (ii) by courier or personal delivery, on the date of delivery, and (iii) if by mail, two (2) days after the date of mailing.

32. Waiver of Jury Trial. This Agreement (and all matters arising out of or relating to it) will be governed in all respects by the laws of the State of California without regard to any choice or conflict of law provisions. When applicable, each Party hereby irrevocably submits to the exclusive jurisdiction of the courts situated in San Diego County in the State of California or Honolulu County in the State of Hawaii and waives all claims that such venue is inconvenient. The Parties agree that no event occurring thereafter shall be deemed an election of

33. Dispute Resolution. Any dispute or controversy arising under or in connection with this Agreement shall first be resolved by informal discussion between senior management of the Parties. If informal discussion fails to produce a resolution, the Parties must then attend non-binding mediation in the San Diego County, California with a mutually agreeable mediator. If mediation fails to produce a resolution, or if the Parties cannot agree on a mediator, any dispute, claim or controversy arising out of or relating to this Agreement shall be settled by binding arbitration. Either Party may initiate arbitration, which shall be conducted in San Diego, California in accordance with the commercial arbitration rules of the American Arbitration Association. Each Party shall share equally the cost of the arbitration and shall bear its own attorneys’ fees, unless the arbitrator awards such fees and costs to a Party. The arbitrator shall not have the power to modify, add to, or delete any provisions of this Agreement.

34. Enforcement. Subject to Section 33, Customer shall pay all costs Hawthorne may incur in enforcing or exercising its rights under this Agreement, whether or not suit is filed.

35. Severability. If any provision of this Agreement shall be deemed invalid, illegal, or unenforceable 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 Agreement, or if no such modification shall be possible, deleted, and the remainder of this Agreement will remain valid and enforceable.

36. Amendments. This Agreement shall only be modified or amended by an instrument in writing signed by the Parties. No changes, additions, stipulations or deletions, by Customer, shall not be deemed to be agreed to or binding upon Hawthorne unless agreed to in writing in the form of an amendment signed by Hawthorne and Customer.

37. No Waiver. No exercise, nor any failure or delay by either Party in the exercise of, any right or remedy available hereunder, at law or in equity 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 fund).

38. Assignment. Neither Party may assign this Agreement without the prior written consent of Customer. If an assignee agrees to assume the obligations of Hawthorne, Customer agrees that Hawthorne shall be released from all further liability hereunder. Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Hawthorne. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve Customer of any of its obligations under this Agreement.

39. No Third Party Beneficiaries. This Agreement benefits solely the Parties and their respective permitted successors and assigns. Nothing in this Agreement, whether express or implied, confers on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

40. Headings. Headings are for reference and do not affect the interpretation of the Agreement.

41. Time to Bring Claim. No claim which concerns a dispute arising under this Agreement may be commenced by Customer more than one year after the Services are performed or rendered.

42. Servicing/Repair/Replacement. (a) Product Link®. (b) Vision Link® User Agreement/Privacy Notice. For machines equipped with Product Link® and VisionLink®, Customer understands that data concerning the machine, its condition, and operation will be transmitted to Caterpillar Inc. and/or its dealers to better serve Customer and improve upon Caterpillar Inc. products and services. The information transmitted may include, but is not limited to, machine serial numbers, data, machine codes, emissions data, fuel usage, service meter hours, software and hardware version numbers, and installed attachments. Caterpillar Inc. recognizes and respects customer privacy. Caterpillar Inc. and/or its dealers will not sell or rent collected information to any third party and will exercise all reasonable efforts to keep the information secure. Customer, by entering into the Agreement, and by accessing the Web site referred to in this Section, grants permission to allow the referenced data to be accessed by Caterpillar Inc., and/or its dealers.

43. Parts Cores. Customer agrees that the purchase price of all parts cores (“Cores”) not paid in full at the time of delivery is provided to Customer on credit, which purchase price may be redeemed in part or in full by Customer by returning Cores in a condition that meets Hawthorne’s inspection criteria. Customer agrees that it will be liable for and shall pay the full purchase price of any Cores not returned to Hawthorne. Customer also agrees that the portion of the purchase price that Customer may redeem is dependent on the condition of the Cores returned to Hawthorne, which will be determined by Hawthorne in its sole discretion.

44. Title to Goods. Hawthorne retains title to goods until Customer performs all of its obligations under the Agreement. Unless otherwise specifically agreed in writing by both Parties, no title or security interest in the goods or any part thereof actually received by the other Party in cash or other good funds shall be deemed received (i) if given by facsimile or e-mail, on the date of transmission if sent prior to 3:00 p.m. (PST) on a business day and otherwise on the following business day, (ii) by courier or personal delivery, on the date of delivery, and (iii) if by mail, two (2) days after the date of mailing.

45. Equipment. Should the Agreement include the purchase of machines or equipment, Customer acknowledges and understands that there are exceptions to the provisions of this Section. Should the Agreement include Customer purchasing machines or equipment from Hawthorne, Customer shall have the right to reject nonconforming goods, or a nonconforming tender only if such nonconformity impairs the value of the goods by more than ten percent (10%) of the contract price. Customer’s failure to give notice of any claim or action on such nonconformity within ten (10) days of discovery of the nonconformity shall constitute a waiver by Customer of all claims with respect to the goods. Hawthorne shall have the right to cure nonconformities in the goods or in their tender, provided that Customer notifies Hawthorne within ten (10) days of notification of the nonconformity of its intent to cure. Any such cure must occur within fourteen (14) days of the notification of the nonconformity.

46. Transportation. Costs of transportation of the Services or any part thereof are the responsibility of the Customer, unless otherwise specifically agreed in writing by both Parties. Hawthorne shall not be held liable for any claim of the other Party arising hereunder or in connection herewith (except as to the portion of the purchase price that Customer may redeem is dependent on the condition of the Cores returned to Hawthorne, which will be determined by Hawthorne in its sole discretion).

47. Nonconforming Goods. Should the Agreement include Customer purchasing machines or equipment from Hawthorne, Customer shall have the right to reject nonconforming goods, or a nonconforming tender only if such nonconformity impairs the value of the goods by more than ten percent (10%) of the contract price. Customer’s failure to give notice of any claim or action on such nonconformity within ten (10) days of discovery of the nonconformity shall constitute a waiver by Customer of all claims with respect to the goods. Hawthorne shall have the right to cure nonconformities in the goods or in their tender, provided that Customer notifies Hawthorne within ten (10) days of notification of the nonconformity of its intent to cure. Any such cure must occur within fourteen (14) days of the notification of the nonconformity.

48. Used Goods. Should the Agreement include the purchase of used machinery, parts, or equipment, said used machinery, parts, and equipment are sold “AS IS” AND “WITH ALL FAULTS”. Hawthorne makes no warranty related to the title of the goods for sale under this Agreement, nor to the rightfulness of the goods, nor to the existence of security interests, liens, or other encumbrances against the goods. However, Hawthorne warrants that, at the time of sale, Hawthorne did not have any hostile claim of title or any encumbrances against the goods for sale under this Agreement.

49. Assumption of Risk. Customer hereby acknowledges and understands that there are risks associated with the service and testing of its equipment, which include but are not limited to damage to Customer’s property during routine testing. Customer agrees to assume these risks and waives any and all rights to seek compensation, restitution, or indemnification for any injuries, claims, or damages that might arise from said damage. Customer also agrees and understands that during the testing and/or servicing of Customer’s equipment, the equipment will not be available for use. Customer hereby agrees to assume this risk and waives any and all rights to seek compensation, restitution, or indemnification for any injuries, claims, or damages that might arise from these circumstances. Hawthorne and Customer agree that Hawthorne will not be liable for any damage caused to Customer’s equipment during the rendering of any part of the Services that requires Hawthorne to test or service the equipment.

50. Storage. Should Hawthorne be in possession of equipment, parts, or merchandise related to the Services beyond any delivery date contemplated by the Agreement, Customer agrees to pay Hawthorne a monthly storage fee in an amount to be determined by Hawthorne taking into account the size and nature of the equipment or merchandise stored on Customer’s behalf. Customer is entitled to possession of said equipment at any time upon giving Hawthorne reasonable notice of not less than five (5) business days. Customer agrees that Hawthorne bears all risk of loss or damage to its equipment while stored by Hawthorne. Customer agrees to cover its equipment under its own property damage insurance policy and to name Hawthorne as an additional insured. If Customer fails to pay in full for the Services or Equipment, Hawthorne reserves the right to sell or otherwise dispose of Customer’s property as it sees fit and apply any proceeds to amounts due and owing.

51. Survival. Provisions of this Agreement that by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, Section 19 (Claim of Customer), Section 20 (Mishal Indemnification), Section 21 (Indemnification Procedure), Section 22 (Exceptions and Limitations on Indemnification), Section 23 (Insurance), Section 25 (Confidentiality), Section 31 (Applicable Law/Venue), Section 32 (Waiver of Jury Trial), Section 33 (Dispute Resolution), Section 34 (Enforcement), and Section 51 (Survival).