

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, DC 20549

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**FORM 10-Q**

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF  
THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended April 30, 2017

Commission File No. 001-33866

**TITAN MACHINERY INC.**  
(Exact name of registrant as specified in its charter)

**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**No. 45-0357838**  
(IRS Employer  
Identification No.)

**644 East Beaton Drive**  
**West Fargo, ND 58078-2648**  
(Address of Principal Executive Offices)

Registrant's telephone number (701) 356-0130

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Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES ☒ NO ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). YES ☒ NO ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an "emerging growth company". See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	(Do not check if smaller reporting company)	
Emerging growth company	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. YES ☐ NO ☒

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES ☐ NO ☒

The number of shares outstanding of the registrant's common stock as of May 26, 2017 was: Common Stock, \$0.00001 par value, 21,845,592 shares.

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**TITAN MACHINERY INC.  
QUARTERLY REPORT ON FORM 10-Q**

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**PART I. — FINANCIAL INFORMATION**
**ITEM 1. FINANCIAL STATEMENTS**
**TITAN MACHINERY INC.  
CONSOLIDATED BALANCE SHEETS (UNAUDITED)  
(in thousands, except per share data)**

	April 30, 2017	January 31, 2017
<b>Assets</b>		
Current Assets		
Cash	\$ 56,241	\$ 53,151
Receivables (net of allowance of \$3,587 and \$3,630 as of April 30, 2017 and January 31, 2017, respectively)	62,946	60,082
Inventories	484,090	478,266
Prepaid expenses and other	7,868	10,989
Income taxes receivable	5,371	5,380
Total current assets	616,516	607,868
Noncurrent Assets		
Intangible assets, net of accumulated amortization	4,980	5,001
Property and equipment, net of accumulated depreciation	159,753	156,647
Deferred income taxes	332	547
Other	1,347	1,359
Total noncurrent assets	166,412	163,554
<b>Total Assets</b>	<b>\$ 782,928</b>	<b>\$ 771,422</b>
<b>Liabilities and Stockholders' Equity</b>		
Current Liabilities		
Accounts payable	\$ 20,123	\$ 17,326
Floorplan payable	259,634	233,228
Current maturities of long-term debt	1,371	1,373
Customer deposits	23,620	26,366
Accrued expenses and other	23,636	30,533
Total current liabilities	328,384	308,826
Long-Term Liabilities		
Senior convertible notes	70,361	88,501
Long-term debt, less current maturities	56,245	38,236
Deferred income taxes	4,948	9,500
Other long-term liabilities	5,694	5,180
Total long-term liabilities	137,248	141,417
Commitments and Contingencies		
Stockholders' Equity		
Common stock, par value \$.00001 per share, 45,000 shares authorized; 21,834 shares issued and outstanding at April 30, 2017; 21,836 shares issued and outstanding at January 31, 2017	—	—
Additional paid-in-capital	242,938	240,615
Retained earnings	78,163	85,347
Accumulated other comprehensive loss	(3,805)	(4,783)
Total stockholders' equity	317,296	321,179
<b>Total Liabilities and Stockholders' Equity</b>	<b>\$ 782,928</b>	<b>\$ 771,422</b>

See Notes to Consolidated Financial Statements

**TITAN MACHINERY INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)**  
(in thousands, except per share data)

	<b>Three Months Ended April 30,</b>	
	<b>2017</b>	<b>2016</b>
Revenue		
Equipment	\$ 167,915	\$ 184,874
Parts	56,583	57,509
Service	28,766	30,992
Rental and other	10,854	11,485
Total Revenue	264,118	284,860
Cost of Revenue		
Equipment	155,517	170,324
Parts	40,357	40,501
Service	10,794	11,600
Rental and other	8,531	8,887
Total Cost of Revenue	215,199	231,312
Gross Profit	48,919	53,548
Operating Expenses	51,987	54,502
Restructuring Costs	2,344	247
Loss from Operations	(5,412)	(1,201)
Other Income (Expense)		
Interest income and other income (expense)	778	137
Floorplan interest expense	(2,656)	(3,743)
Other interest expense	(2,120)	(993)
Loss Before Income Taxes	(9,410)	(5,800)
Benefit from Income Taxes	(3,478)	(1,942)
Net Loss Including Noncontrolling Interest	\$ (5,932)	\$ (3,858)
Less: Loss Attributable to Noncontrolling Interest	—	(174)
Net Loss Attributable to Titan Machinery Inc.	\$ (5,932)	\$ (3,684)
Net Loss Allocated to Participating Securities - Note 1	114	68
Net Loss Attributable to Titan Machinery Inc. Common Stockholders	\$ (5,818)	\$ (3,616)
Earnings (Loss) per Share - Note 1		
Earnings (Loss) per Share - Basic	\$ (0.27)	\$ (0.17)
Earnings (Loss) per Share - Diluted	\$ (0.27)	\$ (0.17)
Weighted Average Common Shares - Basic	21,373	21,203
Weighted Average Common Shares - Diluted	21,373	21,203

See Notes to Consolidated Financial Statements

**TITAN MACHINERY INC.**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS) (UNAUDITED)**  
**(in thousands)**

	<b>Three Months Ended April 30,</b>	
	<b>2017</b>	<b>2016</b>
Net Loss Including Noncontrolling Interest	\$ (5,932)	\$ (3,858)
Other Comprehensive Income (Loss)		
Foreign currency translation adjustments	461	754
Unrealized gain (loss) on interest rate swap cash flow hedge derivative instrument, net of tax expense (benefit) of \$19 and (\$57) for the three months ended April 30, 2017 and 2016	29	(87)
Reclassification of loss on interest rate swap cash flow hedge derivative instrument included in net loss, net of tax benefit of \$326 and \$148 for the three months ended April 30, 2017 and 2016	488	223
Total Other Comprehensive Income (Loss)	978	890
Comprehensive Loss	(4,954)	(2,968)
Comprehensive Loss Attributable to Noncontrolling Interest	—	(186)
Comprehensive Loss Attributable To Titan Machinery Inc.	<u>\$ (4,954)</u>	<u>\$ (2,782)</u>

See Notes to Consolidated Financial Statements

**TITAN MACHINERY INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)**  
(in thousands)

	Three Months Ended April 30,	
	2017	2016
Operating Activities		
Net loss including noncontrolling interest	\$ (5,932)	\$ (3,858)
Adjustments to reconcile net loss including noncontrolling interest to net cash provided by (used for) operating activities		
Depreciation and amortization	6,095	6,208
Deferred income taxes	(3,603)	609
Stock-based compensation expense	789	627
Noncash interest expense	914	1,378
Unrealized foreign currency (gain) loss on loans to international subsidiaries	(84)	(842)
Gain on repurchase of senior convertible notes	(40)	(2,102)
Other, net	849	89
Changes in assets and liabilities		
Receivables, prepaid expenses and other assets	283	4,702
Inventories	(3,814)	9,422
Manufacturer floorplan payable	51,139	(26,996)
Accounts payable, customer deposits, accrued expenses and other and other long-term liabilities	(5,744)	(14,892)
Income taxes	80	781
Net Cash Provided by (Used for) Operating Activities	40,932	(24,874)
Investing Activities		
Rental fleet purchases	(5,612)	(561)
Property and equipment purchases (excluding rental fleet)	(4,575)	(1,051)
Proceeds from sale of property and equipment	417	892
Other, net	21	48
Net Cash Used for Investing Activities	(9,749)	(672)
Financing Activities		
Net change in non-manufacturer floorplan payable	(25,484)	25,117
Repurchase of senior convertible notes	(19,340)	(24,983)
Proceeds from long-term debt borrowings	20,115	—
Principal payments on long-term debt	(2,335)	(526)
Other, net	(1,123)	(158)
Net Cash Used for Financing Activities	(28,167)	(550)
Effect of Exchange Rate Changes on Cash	74	413
Net Change in Cash	3,090	(25,683)
Cash at Beginning of Period	53,151	89,465
Cash at End of Period	\$ 56,241	\$ 63,782
Supplemental Disclosures of Cash Flow Information		
Cash paid (received) during the period		
Income taxes, net of refunds	\$ —	\$ (3,327)
Interest	\$ 3,429	\$ 4,667
Supplemental Disclosures of Noncash Investing and Financing Activities		
Net property and equipment financed with long-term debt, accounts payable and accrued expenses and other	\$ 354	\$ 941
Net transfer of assets from property and equipment to inventories	\$ (1,200)	\$ (1,882)

See Notes to Consolidated Financial Statements

**TITAN MACHINERY INC.  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS  
(UNAUDITED)**

**NOTE 1—BUSINESS ACTIVITY AND SIGNIFICANT ACCOUNTING POLICIES**

*Basis of Presentation*

The unaudited consolidated financial statements included herein have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”) for interim reporting. Accordingly, they do not include all the information and footnotes required by accounting principles generally accepted in the United States of America (“GAAP”) for complete financial statements. In the opinion of management, all adjustments, consisting of normal recurring accruals, considered necessary for a fair presentation have been included. The quarterly operating results for Titan Machinery Inc. (the “Company”) are subject to fluctuation due to varying weather patterns, which may impact the timing and amount of equipment purchases, rentals, and after-sales parts and service purchases by the Company’s Agriculture, Construction and International customers. Therefore, operating results for the three-month period ended April 30, 2017 are not necessarily indicative of the results that may be expected for the fiscal year ending January 31, 2018. The information contained in the balance sheet as of January 31, 2017 was derived from the audited financial statements for the Company for the year then ended. These consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto included in the Company’s Annual Report on Form 10-K for the fiscal year ended January 31, 2017 as filed with the SEC.

*Nature of Business*

The Company is engaged in the retail sale, service and rental of agricultural and construction machinery through its stores in the United States and Europe. The Company’s North American stores are located in Arizona, Colorado, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Dakota, Wisconsin and Wyoming, and its European stores are located in Bulgaria, Romania, Serbia and Ukraine.

*Estimates*

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates, particularly related to realization of inventory, impairment of long-lived assets, collectability of receivables, and income taxes.

*Principles of Consolidation*

The consolidated financial statements include the accounts of the Company and its wholly-owned and majority-owned subsidiaries. All material accounts, transactions and profits between the consolidated companies have been eliminated in consolidation.

In June 2016, the Company acquired all of the outstanding ownership interest held by the non-controlling interest holder of the Company’s Bulgarian subsidiary. Subsequent to this acquisition, all of the Company’s subsidiaries are wholly-owned.

*Earnings (Loss) Per Share (“EPS”)*

The Company uses the two-class method to calculate basic and diluted EPS. Unvested restricted stock awards are considered participating securities because they entitle holders to non-forfeitable rights to dividends during the vesting term. Under the two-class method, basic EPS was computed by dividing net income (loss) attributable to Titan Machinery Inc. after allocation of net income (loss) to participating securities by the weighted-average number of shares of common stock outstanding during the relevant period.

Diluted EPS was computed by dividing net income attributable to Titan Machinery Inc. after allocation of net income (loss) to participating securities by the weighted-average shares of common stock outstanding after adjusting for potential dilution related to the conversion of all dilutive securities into common stock. All potentially dilutive securities were included in the computation of diluted EPS. All anti-dilutive securities were excluded from the computation of diluted EPS.

The following table sets forth the calculation of the denominator for basic and diluted EPS:

	Three Months Ended April 30,	
	2017	2016
	(in thousands, except per share data)	
Basic Weighted-Average Common Shares Outstanding	21,373	21,203
Plus: Incremental Shares From Assumed Exercise of Stock Options	—	—
Diluted Weighted-Average Common Shares Outstanding	21,373	21,203
Anti-Dilutive Shares Excluded From Diluted Weighted-Average Common Shares Outstanding:		
Stock Options	153	146
Shares Underlying Senior Convertible Notes (conversion price of \$43.17)	1,748	2,777
Earnings (Loss) per Share - Basic	\$ (0.27)	\$ (0.17)
Earnings (Loss) per Share - Diluted	\$ (0.27)	\$ (0.17)

#### Recent Accounting Guidance

##### Accounting guidance adopted

In July 2015, the Financial Accounting Standards Board (the "FASB") amended authoritative guidance on accounting for the measurement of inventory, codified in ASC 330, *Inventory*. The amended guidance requires inventory to be measured at the lower of cost and net realizable value. Net realizable value is the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. The Company adopted this guidance on a prospective basis on February 1, 2017. Under the former guidance for measuring inventory, the Company recognized lower of-cost-or-market adjustments using a definition of market value as net realizable value reduced by an allowance for a normal profit margin. Upon implementation of the new authoritative guidance, market is defined solely as net realizable value. The adoption of this guidance did not have a material effect on the Company's consolidated financial statements.

In March 2016, the FASB amended authoritative guidance on stock-based compensation, codified in ASC 718, *Compensation - Stock Compensation*. The amended guidance changes the accounting for certain aspects of share-based payments, including the income tax consequences, forfeitures, classification of awards as either equity or liabilities, and classification on the statements of cash flows. The Company adopted this guidance on February 1, 2017. Under the new guidance, excess tax benefits or deficiencies related to share-based compensation that were previously recorded to equity are now recognized as a discrete tax benefit or expense in the statement of operations. The impact on income tax expense (benefit) was not material for the first quarter of fiscal 2018. Excess tax benefits are no longer reclassified out of cash flows from operating activities to financing activities in the statement of cash flows. We elected to apply this cash flow presentation requirement prospectively. The amount of excess tax benefits recognized for the three months ended April 30, 2017 and 2016 were not material. Cash paid by an employer when directly withholding shares for tax withholding purposes are required to be classified as a financing activity in the statement of cash flows. This method of presentation is consistent with the Company's historical presentation. Also under the new standard, the Company elected to account for forfeitures of share-based instruments as they occur, as compared to the previous guidance under which the Company estimated the number of forfeitures. The Company applied the accounting change on a modified retrospective basis as a cumulative-effect adjustment to retained earnings as of February 1, 2017. The following table summarizes the impact to the Company's consolidated balance sheet:

	As of February 1, 2017		
	Balance Sheet Classification		
	Additional paid-in capital	Deferred income tax liability	Retained earnings
	(in thousands)		
	Increase (Decrease)		
Impact of cumulative-effect adjustment from adoption of ASU 2016-09	\$ 2,087	\$ (835)	\$ (1,252)



### Accounting guidance not yet adopted

In May 2014 and August 2015, the FASB issued authoritative guidance on accounting for revenue recognition, codified in ASC 606, *Revenue from Contracts with Customers*. This guidance has been amended on various occasions and supersedes the revenue recognition requirements in ASC 605, *Revenue Recognition*. This guidance is based on the principle that revenue is recognized to depict the transfer of goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The guidance also requires additional disclosure about the nature, amount, timing and uncertainty of revenue and cash flows arising from customer contracts, including significant judgments and changes in judgments and assets recognized from costs incurred to obtain or fulfill a contract. The Company will adopt this guidance on February 1, 2018.

We are in the process of assessing the impact adoption of this standard will have on our consolidated financial statements and related disclosures. Our implementation efforts to date consist of an identification and assessment of our primary revenue streams and performing contract analyses over a sample of contracts within each of our revenue streams. Based on our assessment to date, we do not expect the adoption of this standard to have a material impact on our revenue recognition policies for our equipment and parts revenues. We are continuing to evaluate the potential impact adoption of this standard will have, if any, on our service revenue transactions. The guidance does not apply to the recognition of our rental revenues as the accounting for such revenues is governed by other authoritative guidance. We are still evaluating whether to use a full retrospective or a modified retrospective approach to adopt this standard. In addition, we are continuing to evaluate the changes necessary to our business processes, systems and controls to support recognition and disclosure under the new standard.

In February 2016, the FASB amended authoritative guidance on leases, codified in ASC 842, *Leases*. The amended guidance requires lessees to recognize most leases on their balance sheets related to the rights and obligations created by those leases. The new standard also requires new disclosures to help financial statement users better understand the amount, timing, and uncertainty of cash flows arising from leases. This guidance is effective for reporting periods beginning after December 15, 2018, with early adoption permitted. The provisions of this guidance are to be applied using a modified retrospective approach, with elective reliefs, which requires application of the guidance for all periods presented. We anticipate adopting the new standard on February 1, 2019, and expect to elect the package of practical expedients afforded under the guidance, including the use of hindsight to determine the lease term. While we continue to evaluate this standard, we anticipate this standard will have a material impact on our consolidated balance sheets due to the capitalization of a right-of-use asset and lease liability associated with our current operating leases, but do not believe it will have a material impact on our consolidated statements of operations or cash flows.

In May 2017, the FASB amended authoritative guidance on modifications related to Stock Compensation, codified in ASC 718, *Compensation - Stock Compensation*. The amendments provide guidance on determining which changes to the terms and conditions of share-based payment awards require an entity to apply modification accounting. The guidance is effective for the Company as of the first quarter of its fiscal year ending January 31, 2019. The Company does not believe the update will have a material impact on its consolidated financial statements.

### NOTE 2—INVENTORIES

	April 30, 2017	January 31, 2017
	(in thousands)	
New equipment	\$ 257,863	\$ 235,161
Used equipment	144,893	160,503
Parts and attachments	79,706	81,734
Work in process	1,628	868
	<u>\$ 484,090</u>	<u>\$ 478,266</u>

**NOTE 3—PROPERTY AND EQUIPMENT**

	April 30, 2017	January 31, 2017
	(in thousands)	
Rental fleet equipment	\$ 126,298	\$ 124,417
Machinery and equipment	22,523	22,255
Vehicles	36,281	36,384
Furniture and fixtures	41,070	39,875
Land, buildings, and leasehold improvements	62,188	59,481
	288,360	282,412
Less accumulated depreciation	(128,607)	(125,765)
	<u>\$ 159,753</u>	<u>\$ 156,647</u>

**NOTE 4—LINES OF CREDIT / FLOORPLAN PAYABLE**
*Floorplan Lines of Credit*

Floorplan payable balances reflect the amount owed for new equipment inventory purchased from a manufacturer and for used equipment inventory, which is primarily acquired through trade-in on equipment sales. Certain of the manufacturers from which the Company purchases new equipment inventory offer financing on these purchases, either offered directly from the manufacturer or through the manufacturers' captive finance subsidiaries. CNH Industrial's captive finance subsidiary, CNH Industrial Capital, also provides financing of used equipment inventory. The Company also has floorplan payable balances with non-manufacturer lenders for new and used equipment inventory. Cash flows associated with manufacturer floorplan payable are reported as operating cash flows, while cash flows associated with non-manufacturer floorplan payable are reported as financing cash flows in the Company's consolidated statements of cash flows. The Company has three significant floorplan lines of credit for U.S. operations, floorplan credit facilities for its foreign subsidiaries, and other floorplan payable balances with non-manufacturer lenders and manufacturers.

As of April 30, 2017, the Company had discretionary floorplan lines of credit for equipment inventory purchases totaling approximately \$808.0 million, which includes a \$210.0 million Floorplan Payable Line under its second amended and restated credit agreement with Wells Fargo (the "Wells Fargo Credit Agreement"), a \$450.0 million credit facility with CNH Industrial Capital, a \$45.0 million credit facility with DLL Finance and the U.S. dollar equivalent of \$103.0 million in credit facilities related to our foreign subsidiaries. Floorplan payables relating to these credit facilities totaled approximately \$258.6 million of the total floorplan payable balance of \$259.6 million outstanding as of April 30, 2017 and \$228.3 million of the total floorplan payable balance of \$233.2 million outstanding as of January 31, 2017. The remaining outstanding balances relate to equipment inventory financing from manufacturers and non-manufacturer lenders other than the lines of credit described above. As of April 30, 2017, the interest-bearing U.S. floorplan payables carried various interest rates primarily ranging from 3.23% to 6.39%, and the foreign floorplan payables carried various interest rates primarily ranging from 0.92% to 7.70%.

As of April 30, 2017, the Company had a compensating balance arrangement under one of its foreign floorplan credit facilities which requires a minimum cash deposit to be maintained with the lender in the amount of \$5.0 million for the term of the credit facility.

*Working Capital Line*

As of April 30, 2017, the Company had a \$65 million Working Capital Line under the Wells Fargo Credit Agreement. The Company had \$33.0 million and \$13.0 million outstanding on this Working Capital Line as of April 30, 2017 and January 31, 2017. As of April 30, 2017, the Working Capital Line carried an interest rate of 3.23%.

## NOTE 5—SENIOR CONVERTIBLE NOTES

The Company's 3.75% senior convertible notes issued on April 24, 2012 ("senior convertible notes") consisted of the following:

	April 30, 2017	January 31, 2017
	(in thousands except conversion rate and conversion price)	
Principal value	\$ 75,470	\$ 95,725
Unamortized debt discount	(4,507)	(6,368)
Unamortized debt issuance costs	(602)	(856)
Carrying value of senior convertible notes	\$ 70,361	\$ 88,501
Carrying value of equity component, net of deferred taxes	\$ 15,192	\$ 15,546
Conversion rate (shares of common stock per \$1,000 principal amount of notes)	23.1626	
Conversion price (per share of common stock)	\$ 43.17	

For the three months ended April 30, 2017, the Company repurchased an aggregate of \$20.3 million face value of its senior convertible notes with \$19.3 million in cash.

The Company recognized interest expense associated with its senior convertible notes as follows:

	Three Months Ended April 30,	
	2017	2016
	(in thousands)	
Cash Interest Expense		
Coupon interest expense	\$ 783	\$ 1,337
Noncash Interest Expense		
Amortization of debt discount	571	910
Amortization of transaction costs	80	133
	\$ 1,434	\$ 2,380

The senior convertible notes mature on May 1, 2019, unless purchased earlier by the Company, redeemed or converted. As of April 30, 2017, the unamortized debt discount will be amortized over a remaining period of approximately 2.0 years. As of April 30, 2017 and January 31, 2017, the if-converted value of the senior convertible notes did not exceed the principal balance. The effective interest rate of the liability component was equal to 7.3% for each of the consolidated statements of operations periods presented.

## NOTE 6—DERIVATIVE INSTRUMENTS

The Company holds derivative instruments for the purpose of minimizing exposure to fluctuations in foreign currency exchange rates and benchmark interest rates to which the Company is exposed in the normal course of its operations.

### *Cash Flow Hedge*

On October 9, 2013, the Company entered into a forward-starting interest rate swap instrument, which has a notional amount of \$100.0 million, an effective date of September 30, 2014 and a maturity date of September 30, 2018. The objective of the instrument is to, beginning on September 30, 2014, protect the Company from changes in benchmark interest rates to which the Company is exposed through certain of its variable interest rate credit facilities. The instrument provides for a fixed interest rate of 1.901% up to the maturity date. The interest rate swap instrument was designated as a cash flow hedging instrument and accordingly changes in the effective portion of the fair value of the instrument have been recorded in other comprehensive income and only reclassified into earnings in the period(s) in which the related hedged item affects earnings or the anticipated underlying hedged transactions are no longer probable of occurring. Any hedge ineffectiveness is recognized in earnings immediately.

In April 2017, the Company elected to terminate its outstanding interest rate swap instrument. The Company paid \$0.9 million to terminate the instrument. This cash payment is presented as a financing cash outflow in the consolidated statements of cash flows.

#### *Derivative Instruments Not Designated as Hedging Instruments*

The Company uses foreign currency forward contracts to hedge the effects of fluctuations in exchange rates on outstanding intercompany loans. The Company does not formally designate and document such derivative instruments as hedging instruments; however, the instruments are an effective economic hedge of the underlying foreign currency exposure. Both the gain or loss on the derivative instrument and the offsetting gain or loss on the underlying intercompany loan are recognized in earnings immediately, thereby eliminating or reducing the impact of foreign currency exchange rate fluctuations on net income.

The following table sets forth the notional value of the Company's outstanding derivative instruments.

	Notional Amount as of:	
	April 30, 2017	January 31, 2017
	(in thousands)	
Cash flow hedges:		
Interest rate swap	\$ —	\$ 100,000
Derivatives not designated as hedging instruments:		
Foreign currency contracts	13,300	18,021

The following table sets forth the fair value of the Company's outstanding derivative instruments. Liability derivatives are included in accrued expenses in the consolidated balance sheets.

	Fair Value as of:	
	April 30, 2017	January 31, 2017
	(in thousands)	
Liability Derivatives:		
Derivatives designated as hedging instruments:		
Cash flow hedges:		
Interest rate swap	\$ —	\$ 1,155
Derivatives not designated as hedging instruments:		
Foreign currency contracts	28	200
Total Liability Derivatives	\$ 28	\$ 1,355

The following table sets forth the gains and losses (before the related income tax effects) recognized in other comprehensive income (loss) ("OCI") and income (loss) related to the Company's derivative instruments for the three months ended April 30, 2017 and 2016, respectively.

	Three Months Ended April 30,			
	2017		2016	
	OCI	Income (Loss)	OCI	Income (Loss)
	(in thousands)			
Derivatives Designated as Hedging Instruments:				
Cash flow hedges:				
Interest rate swap <sup>(a)</sup>	48	(814)	(144)	(371)
Derivatives Not Designated as Hedging Instruments:				
Foreign currency contracts <sup>(b)</sup>	—	(68)	—	(640)
Total Derivatives	\$ 48	\$ (882)	\$ (144)	\$ (1,011)

<sup>(a)</sup> No material hedge ineffectiveness has been recognized. The amounts shown in Income (Loss) above are reclassification amounts from accumulated other comprehensive income (loss) and are recorded in floorplan interest expense in the consolidated statements of operations.

<sup>(b)</sup> Amounts are included in Interest income and other income (expense) in the consolidated statements of operations.

For the three months ended April 30, 2017, the Company reclassified \$0.6 million of pre-tax accumulated losses on its interest rate swap instrument from accumulated other comprehensive income (loss) to income as the original forecasted interest payments, which served as the hedged item underlying the interest rate swap instrument, were no longer probable of occurring during the time period over which such transactions were previously anticipated to occur. As of April 30, 2017, the Company had \$0.3 million in remaining pre-tax net unrealized losses associated with its interest rate swap cash flow hedging instrument recorded in accumulated other comprehensive income (loss), all of which the Company expects will be reclassified into income over the next 12 months.

**NOTE 7—FAIR VALUE OF FINANCIAL INSTRUMENTS**

The liabilities which are measured at fair value on a recurring basis as of April 30, 2017 and January 31, 2017 are as follows:

	April 30, 2017				January 31, 2017							
	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total				
	(in thousands)				(in thousands)							
Financial Liabilities												
Interest rate swap	\$	—	\$	—	\$	—	\$	1,155	\$	—	\$	1,155
Foreign currency contracts	—		28		—		28		—		200	
Total Financial Liabilities	\$	—	\$	28	\$	—	\$	28	\$	—	\$	1,355

The valuation for the Company's foreign currency contracts and interest rate swap derivative instruments were valued using discounted cash flow analyses, an income approach, utilizing readily observable market data as inputs.

The Company also valued certain long-lived assets at fair value on a non-recurring basis as of January 31, 2017 as part of its long-lived asset impairment testing. The estimated fair value of such assets as of January 31, 2017 was \$3.6 million and consisted of real estate assets and fair value was determined by utilizing market and income approaches incorporating both observable and unobservable inputs, and are deemed to be Level 3 fair value inputs. The most significant unobservable inputs used in the fair value measurements under the market approach include adjustments to observable market sales information to incorporate differences in geographical locations and age and condition of subject assets, and the most significant unobservable inputs under the income approach include forecasted net cash generated from the use of the subject assets and the discount rate applied to such cash flows to arrive at a fair value estimate. In addition, in certain instances as of January 31, 2017, the Company estimated the fair value of long-lived assets to approximate zero as no future cash flows were assumed to be generated from the use of such assets and the expected sales values were deemed to be nominal. All such fair value measurements were based on unobservable inputs and thus are Level 3 fair value inputs. No long-lived assets were valued at fair value on a non-recurring basis as of April 30, 2017.

The Company also has financial instruments that are not recorded at fair value in its consolidated financial statements. The carrying amount of cash, receivables, payables, short-term debt and other current liabilities approximates fair value because of the short maturity and/or frequent repricing of those instruments, which are Level 2 fair value inputs. Based upon current borrowing rates with similar maturities, which are Level 2 fair value inputs, the carrying value of long-term debt approximates the fair value as of April 30, 2017 and January 31, 2017, respectively. The following table provides details on the senior convertible notes as of April 30, 2017 and January 31, 2017. The difference between the face value and the carrying value of these notes is the result of the allocation between the debt and equity components, and unamortized debt issuance costs. Fair value of the senior convertible notes was estimated based on Level 2 fair value inputs.

	April 30, 2017			January 31, 2017		
	Estimated Fair Value	Carrying Value	Face Value	Estimated Fair Value	Carrying Value	Face Value
	(in thousands)			(in thousands)		
Senior convertible notes	\$ 73,000	\$ 70,361	\$ 75,470	\$ 87,000	\$ 88,501	\$ 95,725

## NOTE 8—SEGMENT INFORMATION AND OPERATING RESULTS

The Company has three reportable segments: Agriculture, Construction and International. Revenue between segments is immaterial. The Company retains various unallocated income/(expense) items and assets at the general corporate level, which the Company refers to as “Shared Resources” in the table below. Shared Resources assets primarily consist of cash and property and equipment.

Certain financial information for each of the Company’s business segments is set forth below.

	Three Months Ended April 30,	
	2017	2016
	(in thousands)	
<b>Revenue</b>		
Agriculture	\$ 163,625	\$ 178,807
Construction	63,420	78,001
International	37,073	28,052
Total	<u>\$ 264,118</u>	<u>\$ 284,860</u>
<b>Income (Loss) Before Income Taxes</b>		
Agriculture	\$ (3,897)	\$ (3,758)
Construction	(2,633)	(2,044)
International	595	(517)
Segment income (loss) before income taxes	<u>(5,935)</u>	<u>(6,319)</u>
Shared Resources	(3,475)	519
Total	<u>\$ (9,410)</u>	<u>\$ (5,800)</u>

	April 30, 2017	January 31, 2017
	(in thousands)	
<b>Total Assets</b>		
Agriculture	\$ 395,274	\$ 411,726
Construction	226,379	221,092
International	115,338	106,899
Segment assets	<u>736,991</u>	<u>739,717</u>
Shared Resources	45,937	31,705
Total	<u>\$ 782,928</u>	<u>\$ 771,422</u>

## NOTE 9—RESTRUCTURING COSTS

In February 2017, to better align the Company’s cost structure and business in certain markets, the Company announced a restructuring plan (the “Fiscal 2018 Restructuring Plan”), which included the anticipated closure of one Construction location and 14 Agriculture locations. To date, the Company has closed the one Construction location and has closed and fully exited one Agriculture location. The remaining Agriculture locations are expected to be fully exited by the end of July 2017, the end of the Company’s second fiscal quarter. The Fiscal 2018 Restructuring Plan is expected to result in a significant reduction of expenses while allowing the Company to continue to provide a leading level of service to its customers. In total, over the term of the Fiscal 2018 Restructuring Plan, the Company anticipates recognizing \$13.0 million of restructuring charges consisting primarily of fixed asset impairment charges, lease termination costs and termination benefits. The Company anticipates the restructuring charges to be approximately \$10.0 million, \$2.0 million and \$1.0 million within its Agriculture, Construction and Shared Resources segments.

Restructuring costs associated with the Company's Fiscal 2018 Restructuring Plan are summarized in the following table. Such costs are included in the restructuring costs line in the consolidated statements of operations.

	Three Months Ended April 30, 2017	Cumulative Amount
	(in thousands)	
Lease accrual and termination costs	\$ 253	\$ 253
Termination benefits	1,818	1,818
Impairment of fixed assets, net of gains on asset disposition	—	2,957
Asset relocation and other costs	273	321
	<u>\$ 2,344</u>	<u>\$ 5,349</u>

Restructuring charges associated with the Company's Fiscal 2018 Restructuring Plan are summarized by segment in the following table:

	Three Months Ended April 30, 2017	Cumulative Amount
	(in thousands)	
<b>Segment</b>		
Agriculture	\$ 1,478	\$ 2,581
Construction	86	1,988
Shared Resources	780	780
<b>Total</b>	<u>\$ 2,344</u>	<u>\$ 5,349</u>

A reconciliation of the beginning and ending exit cost liability balance, of which \$0.2 million is included in other long-term liabilities and \$0.2 million is included in accrued expenses in the consolidated balance sheets, follows:

	Lease Accrual & Termination Costs	Termination Benefits	Asset Relocation & Other Costs	Total
	(in thousands)			
Balance, January 31, 2017	\$ —	\$ —	\$ —	\$ —
Exit costs incurred and charged to expense	253	1,688	273	2,214
Exit costs paid	—	(1,551)	(273)	(1,824)
Balance, April 30, 2017	<u>\$ 253</u>	<u>\$ 137</u>	<u>\$ —</u>	<u>\$ 390</u>

Restructuring charges recognized in the three months ended April 30, 2016 totaled \$0.2 million and were the result of prior cost reduction plans. As of January 31, 2017, these plans were substantially complete.

#### NOTE 10—RELATED PARTY TRANSACTIONS

Effective February 1, 2017, the Company and Peter Christianson (our former President and former member of our Board of Directors), who is a brother of Tony Christianson (a member of our Board of Directors), agreed to terminate a consulting arrangement between the parties. In connection with the termination, the Company agreed to pay Mr. Peter Christianson the sum of \$0.7 million, payable in two equal installments in fiscal 2018 and 2019. All unvested stock options and shares of restricted stock held by Mr. Peter Christianson will continue to vest as scheduled. As a result of the termination agreement, the Company recognized for the three months ended April 30, 2017, a total of \$0.8 million in termination costs, consisting of \$0.7 million for future cash payments owed to Mr. Peter Christianson and \$0.1 million for unvested shares of restricted stock. These termination costs are included in restructuring costs in the consolidated statements of operations.



## NOTE 11—INCOME TAXES

The components of loss before income taxes are as follows:

	Three Months Ended April 30,	
	2017	2016
	(in thousands)	
U.S.	\$ (10,005)	\$ (5,283)
Foreign	595	(517)
Total	\$ (9,410)	\$ (5,800)

A reconciliation of the statutory federal income tax rate to the Company's effective income tax rate is as follows:

	Three Months Ended April 30,	
	2017	2016
U.S. statutory rate	(35.0)%	(35.0)%
Foreign statutory rates	0.6 %	2.1 %
State taxes on income net of federal tax benefit	(5.0)%	(4.1)%
Change in valuation allowance	3.9 %	6.6 %
Tax effect of Ukrainian hryvnia devaluation <sup>(a)</sup>	1.7 %	(6.0)%
All other, net	(3.2)%	2.9 %
	(37.0)%	(33.5)%

<sup>(a)</sup> Represents the tax impact of differences in foreign currency losses recognized as the result of Ukrainian hryvnia devaluation between Ukrainian taxable income (loss) and financial reporting income (loss).

## NOTE 12— SUBSEQUENT EVENTS

As a result of our equipment inventory reduction and related reduction in floorplan financing needs, in May 2017, the Company provided notice to Wells Fargo of its election to reduce the maximum credit amount available under the Wells Fargo Credit Agreement from an aggregate \$275.0 million to an aggregate \$200.0 million, comprised of a \$70.0 million reduction in the Floorplan Payable Line, from \$210.0 million to \$140.0 million, and a \$5.0 million reduction in the Working Capital Line, from \$65.0 million to \$60.0 million. As a result of these reductions, the Company's total discretionary floorplan lines of credit for equipment purchases was reduced from approximately \$808.0 million to approximately \$738.0 million.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our interim unaudited consolidated financial statements and related notes included in Item 1 of Part I of this Quarterly Report, and the audited consolidated financial statements and related notes thereto and Management's Discussion and Analysis of Financial Condition and Results of Operations contained in our Annual Report on Form 10-K for the year ended January 31, 2017.

### Overview

We own and operate a network of full service agricultural and construction equipment stores in the United States and Europe. Based upon information provided to us by CNH Industrial N.V. or its U.S. subsidiary CNH Industrial America, LLC, we are the largest retail dealer of Case IH Agriculture equipment in the world, the largest retail dealer of Case Construction equipment in North America and a major retail dealer of New Holland Agriculture and New Holland Construction equipment in the U.S. We operate our business through three reportable segments, Agriculture, Construction and International. Within each segment, we have four principal sources of revenue: new and used equipment sales, parts sales, service, and equipment rental and other activities.

The agriculture industry has been experiencing challenging conditions such as decreases in agricultural commodity prices and net farm income, which, among other things, have a negative effect on customer sentiment and our customers' ability to secure financing for their equipment purchases. Changes in actual or anticipated net farm income generally have a direct correlation with agricultural equipment purchases by farmers. In February 2017, the U.S. Department of Agriculture ("USDA") published its U.S. farm sector financial indicators. The USDA projected net farm income for calendar year 2017 to decrease 8.7% as compared to calendar year 2016 and decrease 32.5% as compared to the most recent five-year average. These industry conditions have negatively impacted our customer demand, resulting in decreased same-store sales and equipment revenue and an oversupply of equipment inventory in our geographic footprint.

Certain of our Construction stores, particularly those in the northern and western parts of our footprint, are impacted by the strength of the oil industry. The significant decrease in oil prices, which began in the third quarter of fiscal 2015, continued through 2016, and remained at lower prices in fiscal 2017 and 2018, caused a decrease in oil production and infrastructure activity in these areas. In addition, the aforementioned agriculture industry conditions have also led to a reduction of purchases of construction equipment by customers in the agriculture industry, negatively affecting certain of our Construction stores. These factors have reduced demand for equipment purchases, equipment rentals, and service work and parts, and have caused an oversupply of equipment inventory and rental fleet equipment in these areas.

Our net loss including noncontrolling interest was \$5.9 million, or \$0.27 per diluted share, for the three months ended April 30, 2017, compared to a net loss including noncontrolling interest of \$3.9 million, or \$0.17 per diluted share, for the three months ended April 30, 2016. On a non-GAAP basis, adjusted diluted loss per share was \$0.19 for the three months ended April 30, 2017, compared to non-GAAP adjusted diluted loss per share of \$0.21 for the three months ended April 30, 2016. See the Non-GAAP Financial Measures section below for a reconciliation of these non-GAAP measures to the most comparable GAAP measures. Significant factors impacting the quarterly comparisons were:

- Revenue decreased 7.3% for the first quarter of fiscal 2018, as compared to the first quarter last year, driven by a decrease in same-store sales in both our Agriculture and Construction segments and as a result of our store closings associated with our Fiscal 2018 Restructuring Plan.
- Total gross profit margin decreased to 18.5% for the first quarter of fiscal 2018, as compared to 18.8% for the first quarter of fiscal 2017. The decrease in gross profit margin was primarily the result of lower gross profit margins on equipment revenues.
- Floorplan interest expense decreased 29% in the first quarter of fiscal 2018, as compared to the first quarter last year, primarily due to a decrease in our average interest-bearing inventory in the first quarter of fiscal 2018; other interest expense was \$2.1 million in the first quarter of fiscal 2018, as compared to \$1.0 million in the first quarter last year. Other interest expense in the first quarter of fiscal 2017 included a \$2.1 million gain recognized as the result of repurchasing \$30.1 million of face value of our senior convertible notes. Interest expense associated with our senior convertible notes decreased \$0.9 million in the first quarter of fiscal 2018 compared to the first quarter of fiscal 2017.

- Restructuring costs amounted to \$2.3 million in the first quarter of fiscal 2018, as compared to \$0.2 million in the first quarter last year. See the Fiscal 2018 Restructuring Plan section below for further details.

### **Fiscal 2018 Restructuring Plan**

In February 2017, to better align the Company's cost structure and business in certain markets, the Company announced a dealership restructuring plan, which included the anticipated closure of one Construction location and 14 Agriculture locations. To date, the Company has closed the one Construction location and has closed and fully exited one Agriculture location. The remaining Agriculture locations are expected to be fully exited by the end of July 2017, the end of the Company's second fiscal quarter. The restructuring plan is expected to result in a significant reduction of expenses while allowing the Company to continue to provide a leading level of service to its customers. In total, the Company anticipates recognizing approximately \$13.0 million of restructuring charges consisting primarily of fixed asset impairment charges, lease termination costs and termination benefits. The Company recognized \$3.0 million of restructuring charges in the fourth quarter of fiscal 2017 and \$2.3 million in restructuring charges during the first quarter of fiscal 2018.

See also the Non-GAAP Financial Measures section below for the impact of these costs on adjusted Diluted EPS.

### **Critical Accounting Policies and Estimates**

There have been no material changes in our Critical Accounting Policies and Estimates, as disclosed in our Annual Report on Form 10-K for the year ended January 31, 2017.

### **Results of Operations**

The results shown below include the operating results of any acquisitions made during these periods. The period-to-period comparisons included below are not necessarily indicative of future results. Segment information is provided later in this discussion and analysis of our results of operations.

Same-store sales for any period represent sales by stores that were part of the Company for the entire comparable periods in the current and preceding fiscal years. We do not distinguish relocated or newly-expanded stores in this same-store analysis. Closed stores are excluded from the same-store analysis. Stores that do not meet the criteria for same-store classification are described as excluded stores throughout the Results of Operations section in this Quarterly Report on

Form 10-Q. Comparative financial data for each of our four sources of revenue are expressed below.

	Three Months Ended April 30,	
	2017	2016
	(dollars in thousands)	
Equipment		
Revenue	\$ 167,915	\$ 184,874
Cost of revenue	155,517	170,324
Gross profit	\$ 12,398	\$ 14,550
Gross profit margin	7.4%	7.9%
Parts		
Revenue	\$ 56,583	\$ 57,509
Cost of revenue	40,357	40,501
Gross profit	\$ 16,226	\$ 17,008
Gross profit margin	28.7%	29.6%
Service		
Revenue	\$ 28,766	\$ 30,992
Cost of revenue	10,794	11,600
Gross profit	\$ 17,972	\$ 19,392
Gross profit margin	62.5%	62.6%
Rental and other		
Revenue	\$ 10,854	\$ 11,485
Cost of revenue	8,531	8,887
Gross profit	\$ 2,323	\$ 2,598
Gross profit margin	21.4%	22.6%

The following table sets forth our statements of operations data expressed as a percentage of total revenue for the periods indicated:

	Three Months Ended April 30,	
	2017	2016
Revenue		
Equipment	63.6 %	64.9 %
Parts	21.4 %	20.2 %
Service	10.9 %	10.9 %
Rental and other	4.1 %	4.0 %
Total Revenue	100.0 %	100.0 %
Total Cost of Revenue	81.5 %	81.2 %
Gross Profit Margin	18.5 %	18.8 %
Operating Expenses	19.6 %	19.1 %
Impairment and Realignment Costs	0.9 %	0.1 %
Income from Operations	(2.0)%	(0.4)%
Other Income (Expense)	(1.6)%	(1.6)%
Income (Loss) Before Income Taxes	(3.6)%	(2.0)%
Provision for (Benefit from) Income Taxes	(1.4)%	(0.6)%
Net Income (Loss) Including Noncontrolling Interest	(2.2)%	(1.4)%
Less: Net Income (Loss) Attributable to Noncontrolling Interest	— %	(0.1)%
Net Income (Loss) Attributable to Titan Machinery Inc.	(2.2)%	(1.3)%

### Three Months Ended April 30, 2017 Compared to Three Months Ended April 30, 2016

#### Consolidated Results

##### Revenue

	Three Months Ended April 30,			Percent
	2017	2016	(Decrease)	Change
	(dollars in thousands)			
Equipment	\$ 167,915	\$ 184,874	\$ (16,959)	(9.2)%
Parts	56,583	57,509	(926)	(1.6)%
Service	28,766	30,992	(2,226)	(7.2)%
Rental and other	10,854	11,485	(631)	(5.5)%
Total Revenue	<u>\$ 264,118</u>	<u>\$ 284,860</u>	<u>\$ (20,742)</u>	<u>(7.3)%</u>

The decrease in revenue for the first quarter of fiscal 2018 was driven by a decrease in same-store sales of 4.4% over the comparable prior year period and the impact of our store closings associated with our fiscal 2018 restructuring plan. A decrease in same-stores sales occurred in the Agriculture and Construction segments and was the result of the continued challenging industry conditions discussed in the Overview section above and the impact of incremental revenue associated with our expanded marketing of aged equipment inventory occurring in the first quarter of fiscal 2017. The decrease in Agriculture and Construction segment revenue in the first quarter of fiscal 2018 was partially offset by an increase in revenue in our International segment.

##### Gross Profit

	Three Months Ended April 30,		Increase/	Percent
	2017	2016	(Decrease)	Change
	(dollars in thousands)			
<b>Gross Profit</b>				
Equipment	\$ 12,398	\$ 14,550	\$ (2,152)	(14.8)%
Parts	16,226	17,008	(782)	(4.6)%
Service	17,972	19,392	(1,420)	(7.3)%
Rental and other	2,323	2,598	(275)	(10.6)%
Total Gross Profit	<u>\$ 48,919</u>	<u>\$ 53,548</u>	<u>\$ (4,629)</u>	<u>(8.6)%</u>
<b>Gross Profit Margin</b>				
Equipment	7.4%	7.9%	(0.5)%	(6.3)%
Parts	28.7%	29.6%	(0.9)%	(3.0)%
Service	62.5%	62.6%	(0.1)%	(0.2)%
Rental and other	21.4%	22.6%	(1.2)%	(5.3)%
Total Gross Profit Margin	18.5%	18.8%	(0.3)%	(1.6)%
<b>Gross Profit Mix</b>				
Equipment	25.3%	27.2%	(1.9)%	(7.0)%
Parts	33.3%	31.7%	1.6 %	5.0 %
Service	36.7%	36.2%	0.5 %	1.4 %
Rental and other	4.7%	4.9%	(0.2)%	(4.1)%
Total Gross Profit Mix	<u>100.0%</u>	<u>100.0%</u>		

The \$4.6 million decrease in gross profit for the first quarter of fiscal 2018, as compared to the same period last year, was primarily due to a decrease in revenue. The decrease in total gross profit margin from 18.8% for the first quarter of fiscal 2017 to 18.5% for the first quarter of fiscal 2018 was mainly due to lower gross profit margins on equipment revenue.

Our company-wide absorption increased to 73.1% for the first quarter of fiscal 2018 compared to 72.1% during the same period last year as our decrease in gross profit from parts, service and rental and other in fiscal 2018 was more than offset by a reduction in our fixed operating costs and floorplan interest expense.

#### Operating Expenses

	Three Months Ended April 30,		Increase/	Percent
	2017	2016	(Decrease)	Change
	(dollars in thousands)			
Operating Expenses	\$ 51,987	\$ 54,502	\$ (2,515)	(4.6)%
Operating Expenses as a Percentage of Revenue	19.6%	19.1%	0.5%	2.6 %

Our operating expenses in the first quarter of fiscal 2018 decreased \$2.5 million as compared with the same period last year. The \$2.5 million decrease in operating expenses, as compared to the same period last year, was primarily the result of our fiscal 2018 restructuring plan. The slight increase in operating expenses as a percentage of total revenue was primarily due to the decrease in total revenue in the first quarter of fiscal 2018, as compared to the first quarter of fiscal 2017, which negatively affected our ability to leverage our fixed operating costs.

#### Restructuring Costs

	Three Months Ended April 30,		Increase	Percent
	2017	2016		Change
	(dollars in thousands)			
Restructuring Costs	\$ 2,344	\$ 247	\$ 2,097	849.0%

The restructuring costs recognized in the first quarters of fiscal 2018 and 2017 are charges associated with the result of our restructuring plans and associated exit costs, including accruals for lease terminations and remaining lease obligations, termination benefits, and the costs associated with relocating certain assets of our closed stores. The Company anticipates recognizing approximately \$7.0 million of additional restructuring costs during the remainder of fiscal 2018.

#### Other Income (Expense)

	Three Months Ended April 30,		Increase/	Percent
	2017	2016	(Decrease)	Change
	(dollars in thousands)			
Interest income and other income (expense)	\$ 778	\$ 137	\$ 641	467.9 %
Floorplan interest expense	(2,656)	(3,743)	(1,087)	(29.0)%
Other interest expense	(2,120)	(993)	1,127	113.5 %

The decrease in floorplan interest expense for the first quarter of fiscal 2018, as compared to the first quarter of fiscal 2017, was primarily due to a decrease in our average interest-bearing inventory in the first quarter of fiscal 2018. Floorplan interest expense for the first quarter of fiscal 2018 includes \$0.6 million of expense resulting from the termination and reclassification of accumulated losses on interest rate swap instrument. We elected to terminate our interest rate swap as the result of current and anticipated future lower levels of outstanding floorplan payables, which served as the underlying hedged item to our interest rate swap. For the first quarter of fiscal 2017, other interest expense includes a \$2.1 million gain recognized as a result of our repurchase of \$30.1 million face value of senior convertible notes. Interest expense associated with our senior convertible notes decreased \$0.9 million in the first quarter of fiscal 2018 compared to the first quarter of fiscal 2017 due to interest savings resulting from our repurchases.

#### Benefit from Income Taxes

	Three Months Ended April 30,		Increase	Percent
	2017	2016		Change
	(dollars in thousands)			
Benefit from Income Taxes	\$ (3,478)	\$ (1,942)	\$ 1,536	79.1%

Our effective tax rate was 37.0% for the first quarter of fiscal 2018 and 33.5% for the same period last year. The difference in our effective tax rate is primarily due to the change in mix of our domestic and foreign losses before income taxes

in relation to our total loss before income taxes. In addition, as the majority of our foreign operations have full valuation allowances on deferred tax assets including net operating losses, they do not recognize any income tax expense or benefit. See Note 11 to our consolidated financial statements for further details on our effective tax rate and the components of income (loss) before income taxes.

## Segment Results

Certain financial information for our Agriculture, Construction and International business segments is set forth below. "Shared Resources" in the table below refers to the various unallocated income/(expense) items that we have retained at the general corporate level. Revenue between segments is immaterial.

	Three Months Ended April 30,		Increase/ (Decrease)	Percent Change
	2017	2016		
(dollars in thousands)				
<b>Revenue</b>				
Agriculture	\$ 163,625	\$ 178,807	\$ (15,182)	(8.5)%
Construction	63,420	78,001	(14,581)	(18.7)%
International	37,073	28,052	9,021	32.2 %
Total	<u>\$ 264,118</u>	<u>\$ 284,860</u>	<u>\$ (20,742)</u>	<u>(7.3)%</u>
<b>Income (Loss) Before Income Taxes</b>				
Agriculture	\$ (3,897)	\$ (3,758)	\$ (139)	(3.7)%
Construction	(2,633)	(2,044)	(589)	(28.8)%
International	595	(517)	1,112	215.1 %
Segment income (loss) before income taxes	<u>(5,935)</u>	<u>(6,319)</u>	<u>384</u>	<u>6.1 %</u>
Shared Resources	(3,475)	519	(3,994)	(769.6)%
Total	<u>\$ (9,410)</u>	<u>\$ (5,800)</u>	<u>\$ (3,610)</u>	<u>(62.2)%</u>

### Agriculture

Agriculture segment revenue for the first quarter of fiscal 2018 decreased 8.5% compared to the same period last year. The revenue decrease was due to a same-store sales decrease of 4.2% over the first quarter of fiscal 2017 and the impact of our store closings associated with our restructuring plan. The decrease in same-store sales was the result of reduced equipment revenue resulting from the challenging industry conditions discussed in the Overview section above and the impact of the incremental revenue associated with our expanded marketing of aged equipment inventory occurring in the first quarter of fiscal 2017. Approximately \$8.0 million of equipment revenue was recognized in the first quarter of fiscal 2017 as the result of our expanded marketing plan.

Agriculture segment loss before income taxes was \$3.9 million for the first quarter of fiscal 2018 compared to a \$3.8 million loss before income taxes for the first quarter of fiscal 2017. The decrease in equipment, parts and service gross profit was offset by decreases in operating expenses and floorplan interest expense. The decrease in operating expenses is the result of cost savings associated with our restructuring plan, while the decrease in floorplan interest expense is the result of a decrease in our average interest-bearing inventory in the first quarter of fiscal 2018.

### Construction

Construction segment revenue for the first quarter of fiscal 2018 decreased 18.7% compared to the same period last year. The revenue decrease was due to a same-store sales decrease of 18.2% over the first quarter of fiscal 2017, and was primarily the result of decreased equipment revenue, largely resulting from the challenging industry conditions discussed in the Overview section above and the impact of the incremental revenue associated with our expanded marketing of aged equipment inventory occurring in the first quarter of fiscal 2017. Construction segment revenue for the first quarter of fiscal 2017 included approximately \$8.6 million of revenue resulting from our expanded marketing plan.

Our Construction segment loss before income taxes was \$2.6 million for the first quarter of fiscal 2018 compared to a loss before income taxes of \$2.0 million for the first quarter of fiscal 2017. The decline in segment results was primarily due to the decrease in revenue noted above, but partially offset by decreases in operating expenses and floorplan interest expense. The decrease in operating expenses reflects cost savings associated with our restructuring plan, and the decrease in floorplan interest

expense is the result of a decrease in our average interest-bearing inventory in the first quarter of fiscal 2018. The dollar utilization of our rental fleet decreased slightly from 19.7% in the first quarter of fiscal 2017 to 19.3% in the first quarter of fiscal 2018.

### *International*

International segment revenue for the first quarter of fiscal 2018 increased 32.2% compared to the same period last year primarily due to increased equipment revenue. Equipment revenue increased in the first quarter of fiscal 2018 primarily due to the build-out of our footprint, availability of subvention funds and positive crop conditions in certain of our markets.

Our International segment income before income taxes was \$0.6 million for the first quarter of fiscal 2018 compared to loss before income taxes of \$0.5 million for the same period last year. The increase in segment income before income taxes was primarily due to the increase in segment revenue as noted above, but partially offset by an increase in operating expenses resulting from the continued build-out of our footprint and presence in our European markets.

### *Shared Resources/Eliminations*

We incur centralized expenses/income at our general corporate level, which we refer to as “Shared Resources,” and then allocate these net expenses to our segments. Since these allocations are set early in the year, unallocated balances may occur. Shared Resource segment loss before income taxes was \$3.5 million for the first quarter of fiscal 2018 compared to income before income taxes of \$0.5 million for the same period last year. For the first quarter of fiscal 2018, loss before income taxes was impacted by \$0.8 million in restructuring costs related to the Fiscal 2018 Restructuring Plan and \$0.6 million in floorplan interest expense related to the interest rates swap termination and reclassification. For the first quarter of fiscal 2017, income before taxes included a \$2.1 million gain recognized as a result of our repurchase of \$30.1 million face value of senior convertible notes.

### *Non-GAAP Financial Measures*

To supplement net income (loss) including noncontrolling interest and our earnings (loss) per share - diluted ("Diluted EPS"), both GAAP measures, we use adjusted net income (loss) including noncontrolling interest and adjusted Diluted EPS, both non-GAAP measures, which exclude the impact of the gain on repurchase of senior convertible notes, the write-off of debt issuance costs, long-lived asset impairment charges, restructuring costs associated with our realignment/store closings, the gain recognized on insurance recoveries, reclassification of accumulated losses on our interest rate swap and foreign currency remeasurement losses in Ukraine resulting from a devaluation of the UAH. We believe that the presentation of adjusted net income (loss) including noncontrolling interest and adjusted Diluted EPS is relevant and useful to our management and investors because it provides a measurement of earnings on activities that we consider to occur in the ordinary course of our business. Adjusted net income (loss) including noncontrolling interest and adjusted Diluted EPS should be evaluated in addition to, and not considered a substitute for, or superior to, the most comparable GAAP measure. In addition, other companies may calculate these non-GAAP measures in a different manner, which may hinder comparability of our results with those of other companies.



The following tables reconcile (i) net income (loss) including noncontrolling interest, a GAAP measure, to adjusted net income (loss) including noncontrolling interest and (ii) Diluted EPS, a GAAP measure, to adjusted Diluted EPS:

	Three Months Ended April 30,	
	2017	2016
	(dollars in thousands, except per share data)	
<b>Net Loss Including Noncontrolling Interest</b>		
Net Loss Including Noncontrolling Interest	\$ (5,932)	\$ (3,858)
Adjustments		
Gain on Repurchase of Senior Convertible Notes	(40)	(2,102)
Restructuring	2,344	247
Ukraine Remeasurement (1)	—	195
Interest Rate Swap Termination & Reclassification	631	—
Total Pre-Tax Adjustments	2,935	(1,660)
Less: Tax Effect of Adjustments (2)	1,174	(742)
Total Adjustments	1,761	(918)
Adjusted Net Loss Including Noncontrolling Interest	\$ (4,171)	\$ (4,776)
<b>Earnings (Loss) per Share - Diluted</b>		
Loss per Share - Diluted	\$ (0.27)	\$ (0.17)
Adjustments (3)		
Gain on Repurchase of Senior Convertible Notes	—	(0.10)
Restructuring Costs	0.11	0.01
Ukraine Remeasurement (1)	—	0.01
Interest Rate Swap Termination & Reclassification	0.03	—
Total Pre-Tax Adjustments	0.14	(0.08)
Less: Tax Effect of Adjustments (2)	0.06	(0.04)
Total Adjustments	0.08	(0.04)
Adjusted Loss per Share - Diluted	\$ (0.19)	\$ (0.21)

(1) Beginning in the second quarter of fiscal 2017 we discontinued incorporating Ukraine remeasurement losses into our adjusted income (loss) and earnings (loss) per share calculations. The UAH remained relatively stable subsequent to April 30, 2016 and therefore did not significantly impact our consolidated statement of operations during this period. Absent any future significant hryvnia volatility and resulting financial statement impact, we will not include Ukraine remeasurement losses in our adjusted amounts in future periods.

(2) The tax effect of Adjustments was calculated using a 40% tax rate for all U.S. related items that was determined based on a 35% federal statutory rate and a blended state statutory rate of 5% and no tax effect for foreign related items as all Adjustments occurred in foreign jurisdictions that have full valuation allowances on deferred tax assets, therefore we are not recognizing any income tax expense or benefit in these jurisdictions.

(3) Adjustments are net of the impact of amounts attributable to noncontrolling interests and allocated to participating securities.

## Liquidity and Capital Resources

### Sources of Liquidity

Our primary sources of liquidity are cash reserves, cash generated from operations, and borrowings under our floorplan payable and other credit facilities. We expect these sources of liquidity to be sufficient to fund our working capital requirements, acquisitions, capital expenditures and other investments in our business, service our debt, pay our tax and lease obligations and other commitments and contingencies, and meet any seasonal operating requirements for the foreseeable future, provided, however, that our borrowing capacity under our credit agreements is dependent on compliance with various covenants as further described in the "Risk Factors" section of our Annual Report on Form 10-K.

#### *Equipment Inventory and Floorplan Payable Credit Facilities*

As of April 30, 2017, the Company had discretionary floorplan payable lines of credit for equipment purchases totaling approximately \$808.0 million, which included a \$210.0 million Floorplan Payable Line with Wells Fargo, a \$450.0 million credit facility with CNH Industrial Capital, a \$45.0 million credit facility with DLL Finance and the U.S. dollar equivalent of \$103.0 million in credit facilities related to our foreign subsidiaries. Floorplan payables relating to these credit facilities totaled approximately \$258.6 million of the total floorplan payable balance of \$259.6 million outstanding as of April 30, 2017.

In May 2017, as a result of the Company's equipment inventory reduction and related reduction in floorplan financing needs, the Company provided notice to Wells Fargo of its election to reduce the maximum credit amount available under the Wells Fargo Credit Agreement from an aggregate \$275.0 million to an aggregate \$200.0 million, comprised of a \$70.0 million reduction in the Floorplan Payable Line, from \$210.0 million to \$140.0 million, and a \$5.0 million reduction in the Working Capital Line, from \$65.0 million to \$60.0 million. As a result of these reductions, the Company's total discretionary floorplan lines of credit for equipment purchases was reduced from approximately \$808.0 million to approximately \$738.0 million.

Our equipment inventory turnover was 1.5 for the four quarters ended April 30, 2017 compared to 1.2 for the four quarters ended April 30, 2016. Our equipment inventories decreased 31.2% from April 30, 2016 to April 30, 2017; however, this decrease was partially offset by lower equipment sales in the four-quarter period ended April 30, 2017. Our equity in equipment inventory, which reflects the portion of our equipment inventory balance that is not financed by floorplan payables, decreased to 35.5% as of April 30, 2017 from 41.1% as of January 31, 2017.

### Adequacy of Capital Resources

Our primary uses of cash have been to fund our operating activities, including the purchase of inventories and providing for other working capital needs, meeting our debt service requirements, making payments due under our various leasing arrangements, funding capital expenditures, including rental fleet assets, and, from time to time, opportunistically repurchasing our outstanding senior convertible notes. Based on our current operational performance, we believe our cash flow from operations, available cash and available borrowings under our existing credit facilities will adequately provide our liquidity needs for, at a minimum, the next 12 months. Our main financing arrangements, in which we had discretionary floorplan lines of credit totaling approximately \$808.0 million as of April 30, 2017, are described in Note 4 of the notes to our consolidated financial statements. As of April 30, 2017, the Company was in compliance with the financial covenants under these agreements, and was not subject to the fixed charge coverage ratio covenant under the Wells Fargo Credit Agreement as our adjusted excess availability plus eligible cash collateral (as defined therein) was not less than 15% of the total amount of the credit facility as of April 30, 2017. If anticipated operating results create the likelihood of a future covenant violation, we would expect to work with our lenders on an appropriate modification or amendment to our financing arrangements.

### Cash Flow

#### *Cash Flow Provided By (Used For) Operating Activities*

Net cash provided by operating activities was \$40.9 million for the three months ended April 30, 2017, compared to net cash used for operating activities of \$24.9 million for the three months ended April 30, 2016. Net cash provided by operating activities for the three month period ending April 30, 2017 was primarily attributable to a changing mix of manufacturer versus non-manufacturer floorplan financing. Net cash used by operating activities for the three month period ending April 30, 2016 was primarily attributable to a changing mix of manufacturer versus non-manufacturer floorplan financing, and reduction in our inventories.

We evaluate our cash flow from operating activities net of all floorplan activity and maintaining a constant level of equity in our equipment inventory. Taking these adjustments into account, our adjusted cash flow used by operating activities was \$6.8 million and \$5.8 million for the three months ended April 30, 2017 and 2016, respectively. See the Adjusted Cash

Flow Reconciliation below for a reconciliation of this non-GAAP financial measure to the GAAP measure of cash flow provided by operating activities.

*Cash Flow Used For Investing Activities*

Net cash used for investing activities was \$9.7 million for the three months ended April 30, 2017, compared to net cash used for investing activities of \$0.7 million for the three months ended April 30, 2016. Cash used for investing activities was primarily for the purchase of rental fleet and property and equipment, net of any proceeds from the sale of property and equipment.

*Cash Flow Used For Financing Activities*

Net cash used for financing activities was \$28.2 million for the three months ended April 30, 2017 compared to net cash used for financing activities of \$0.6 million for the three months ended April 30, 2016. For the three months ended April 30, 2017, net cash used for financing activities was the result of paying down our non-manufacturer floorplan payables, increased borrowings under our working capital line under our Wells Fargo Credit Agreement and the \$19.3 million of cash used to repurchase senior convertible notes. We may, from time to time, continue to repurchase our senior convertible notes depending on prevailing market conditions, our available liquidity and other factors. These repurchases may be material to our consolidated financial statements. For the three months ended April 30, 2016, net cash used for financing activities primarily resulted from the use of \$25.0 million to repurchase senior convertible notes, offset by an increase in non-manufacturer floorplan payables.

*Adjusted Cash Flow Reconciliation*

We consider our cash flow from operating activities to include all equipment inventory financing activity regardless of whether we obtain the financing from a manufacturer or other source. We consider equipment inventory financing with both manufacturers and other sources to be part of the normal operations of our business and use an adjusted cash flow measure in the evaluation of our equipment inventory and inventory flooring needs, which we refer to as "Adjusted Cash Flow." The adjustment is equal to the net change in non-manufacturer floorplan payable, as shown on the consolidated statements of cash flows. GAAP categorizes non-manufacturer floorplan payable as financing activities in the consolidated statements of cash flows.

Adjusted Cash Flow is also impacted by the change in our equity in equipment inventory, which reflects the portion of our equipment inventory balance that is not financed by floorplan payables. Equity in equipment inventory decreased to 35.5% as of April 30, 2017 from 41.1% as of January 31, 2017, and decreased to 23.8% as of April 30, 2016 from 24.8% as of January 31, 2016. We analyze our cash flow provided by operating activities by assuming a constant level of equipment inventory financing throughout each respective fiscal year. The adjustment eliminates the impact of this fluctuation of equity in our equipment inventory, and is equal to the difference between our actual level of equity in equipment inventory at each period end presented on the consolidated statements of cash flows, compared to the actual level of equity in equipment inventory at the beginning of the fiscal year.

Adjusted Cash Flow is a non-GAAP financial measure. We believe that the presentation of Adjusted Cash Flow is relevant and useful to our investors because it provides information on activities we consider to be the normal operation of our business, regardless of financing source and level of financing for our equipment inventory. The following table reconciles net cash provided by (used for) operating activities, a GAAP measure, to adjusted net cash provided by (used for) operating activities and net cash provided by (used for) financing activities, a GAAP measure, to adjusted cash flow provided by (used for) financing activities.

	Net Cash Provided by (Used for) Operating Activities		Net Cash Used for Financing Activities	
	Three Months Ended	Three Months Ended	Three Months Ended	Three Months Ended
	April 30, 2017	April 30, 2016	April 30, 2017	April 30, 2016
	(in thousands)		(in thousands)	
Cash Flow, As Reported	\$ 40,932	\$ (24,874)	\$ (28,167)	\$ (550)
Adjustment for Non-Manufacturer Floorplan Net Payments	(25,484)	25,117	25,484	(25,117)
Adjustment for Constant Equity in Equipment Inventory	(22,226)	(6,004)	—	—
Adjusted Cash Flow	\$ (6,778)	\$ (5,761)	\$ (2,683)	\$ (25,667)

Adjusted net cash flow used for operating activities and adjusted net cash used for financing activities should be evaluated in addition to, and not considered a substitute for, or superior to, the GAAP measures of net cash provided by (used for) operating and financing activities.

### Certain Information Concerning Off-Balance Sheet Arrangements

As of April 30, 2017, we did not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. We are, therefore, not exposed to any financing, liquidity, market or credit risk that could arise if we had engaged in these relationships. In the normal course of our business activities, we lease real estate, vehicles and equipment under operating leases.

### FORWARD-LOOKING STATEMENTS

The Private Securities Litigation Reform Act of 1995 provides a “safe harbor” for forward-looking statements. Such “forward-looking” information is included in this Quarterly Report on Form 10-Q, including in “Management’s Discussion And Analysis Of Financial Condition And Results Of Operations,” as well as in our Annual Report on Form 10-K for the year ended January 31, 2017, and in other materials filed or to be filed by the Company with the Securities and Exchange Commission (as well as information included in oral statements or other written statements made or to be made by the Company).

Forward-looking statements include all statements based on future expectations and specifically include, among other things, all statements relating to our expectations regarding exchange rate and interest rate impact on our business, the impact of farm income levels on our customers' demand for agricultural equipment and services, the impact of oil prices on market demand for equipment and services, the general market conditions of the agricultural and construction industries, equipment inventory levels, and our primary liquidity sources and adequacy of our capital resources. Any statements that are not based upon historical facts, including the outcome of events that have not yet occurred and our expectations for future performance, are forward-looking statements. The words “potential,” “believe,” “estimate,” “expect,” “intend,” “may,” “could,” “will,” “plan,” “anticipate,” and similar words and expressions are intended to identify forward-looking statements. Such statements are based upon the current beliefs and expectations of our management. Such forward-looking information involves important risks and uncertainties that could significantly affect anticipated results in the future and, accordingly, such results may differ from those expressed in any forward-looking statements made by or on behalf of the Company. These risks and uncertainties include, but are not limited to, adverse market conditions in the agricultural and construction equipment industries, and those matters identified and discussed under the section titled “Risk Factors” in our Annual Report on Form 10-K and this Quarterly Report on Form 10-Q.

### ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to various market risks, including changes in interest rates and foreign currency exchange rates. Market risk is the potential loss arising from adverse changes in market rates and prices, such as interest rates and foreign currency exchange rates.

#### *Interest Rate Risk*

Exposure to changes in interest rates results from borrowing activities used to fund operations. For fixed rate debt, interest rate changes affect the fair value of financial instruments but do not impact earnings or cash flows. Conversely, for floating rate debt, interest rate changes generally do not affect the fair market value but do impact future earnings and cash flows, assuming other factors are held constant. We have both fixed and floating rate financing. Some of our floating rate credit facilities contain minimum rates of interest to be charged. Based upon our interest-bearing balances and interest rates as of April 30, 2017, holding other variables constant, a one percentage point increase in interest rates for the next 12-month period would decrease pre-tax earnings and cash flow by approximately \$1.9 million. Conversely, a one percentage point decrease in interest rates for the next 12-month period would result in an increase to pre-tax earnings and cash flow of approximately \$1.9 million. At April 30, 2017, we had floorplan payables of \$259.6 million, of which approximately \$159.5 million was variable-rate floorplan payable and \$100.1 million was non-interest bearing. In addition, at April 30, 2017, we had total long-term debt, including our senior convertible notes, of \$126.6 million, of which \$33.0 million was variable-rate debt and \$93.6 million was fixed rate debt.

#### *Foreign Currency Exchange Rate Risk*

Our foreign currency exposures arise as the result of our foreign operations. We are exposed to transactional foreign currency exchange rate risk through our foreign entities' holding assets and liabilities denominated in currencies other than their functional currency. In addition, the Company is exposed to foreign currency transaction risk as a result of certain intercompany financing transactions. The Company attempts to manage its transactional foreign currency exchange rate risk through the use of derivative financial instruments, primarily foreign exchange forward contracts, or through natural hedging instruments. Based upon balances and exchange rates as of April 30, 2017, holding other variables constant, we believe that a hypothetical 10% increase or decrease in all applicable foreign exchange rates would not have a material impact on our results of operations or cash flows. As of April 30, 2017, our Ukrainian subsidiary had \$1.6 million of net monetary assets denominated in Ukrainian hryvnia (UAH). We have attempted to minimize our net monetary asset position in Ukraine through reducing overall asset levels in Ukraine and through borrowing in UAH which serves as a natural hedging instrument offsetting our net UAH denominated assets. At certain times, currency and payment controls imposed by the National Bank of Ukraine have limited our ability to manage our net monetary asset position. The UAH devalued significantly during the six month period ended July 31, 2015, but has remained relatively stable since that time. Continued and significant devaluation of the UAH could have a material impact on our results of operations and cash flows.

In addition to transactional foreign currency exchange rate risk, we are also exposed to translational foreign currency exchange rate risk as we translate the results of operations and assets and liabilities of our foreign operations from their functional currency to the U.S. dollar. As a result, our results of operations, cash flows and net investment in our foreign operations may be adversely impacted by fluctuating foreign currency exchange rates. We believe that a hypothetical 10% increase or decrease in all applicable foreign exchange rates, holding all other variables constant, would not have a material impact on our results of operations or cash flows.

### ITEM 4. CONTROLS AND PROCEDURES

(a) *Evaluation of disclosure controls and procedures.* After evaluating the effectiveness of the Company's disclosure controls and procedures pursuant to Rule 13a-15(b) of the Securities Exchange Act of 1934 (the "Exchange Act") as of the end of the period covered by this Quarterly Report, the Company's Chief Executive Officer and Chief Financial Officer, with the participation of the Company's management, have concluded that the Company's disclosure controls and procedures (as defined in Exchange Act Rule 13a-15(e)) are effective.

(b) *Changes in internal controls.* There has not been any change in the Company's internal control over financial reporting (as defined in Exchange Act Rule 13a-15(f)) during its most recently completed fiscal quarter that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

## **PART II. - OTHER INFORMATION**

### **ITEM 1. LEGAL PROCEEDINGS**

We are, from time to time, subject to claims and suits arising in the ordinary course of business. Such claims have, in the past, generally been covered by insurance. There can be no assurance that our insurance will be adequate to cover all liabilities that may arise out of claims brought against us, or that our insurance will cover all claims. We are not currently a party to any material litigation.

### **ITEM 1A. RISK FACTORS**

In addition to the other information set forth in this Quarterly Report, including the important information in “Forward-Looking Statements,” you should carefully consider the “Risk Factors” discussed in our Form 10-K for the year ended January 31, 2017 as filed with the Securities and Exchange Commission. Those factors, if they were to occur, could cause our actual results to differ materially from those expressed in our forward-looking statements in this report, and may materially adversely affect our financial condition or future results. Although we are not aware of any other factors, aside from those discussed in our Form 10-K, that we currently anticipate will cause our forward-looking statements to differ materially from our future actual results, or materially affect the Company’s financial condition or future results, additional risks and uncertainties not currently known to us or that we currently deem to be immaterial may materially adversely affect our business, financial condition and/or operating results.

In connection with entry into the new CNH Industrial Dealer Agreements (as defined below), we are hereby amending and updating the following similarly titled risk factors set forth in our Annual Report on Form 10-K.

#### ***CNH Industrial may change or terminate our CNH Industrial Dealer Agreements.***

We have entered into the CNH Industrial Dealer Agreements under which we sell CNH Industrial’s branded agricultural and construction equipment, along with after-market parts and repair services. Subject to applicable state statutes that may govern the dealer-manufacturer legal relationship, CNH Industrial America, LLC (“CNH Industrial”) may terminate the CNH Industrial Dealer Agreements with us immediately in certain circumstances or following written notice and cure periods upon the occurrence of certain breaches under such agreements. If CNH Industrial were to terminate all or any of the CNH Industrial Dealer Agreements with us, our business could be harmed.

Furthermore, CNH Industrial may unilaterally change its operating practices under the terms of its CNH Industrial Dealer Agreements with us to, among other things, change our sales and service areas, limit our product offerings, and change pricing or delivery terms. If CNH Industrial were to change the terms of our CNH Industrial Dealer Agreements or its operating practices in a manner that adversely affects us, our business would be harmed.

#### ***Our CNH Industrial Dealer Agreements impose obligations and restrictions on us.***

Under the CNH Industrial Dealer Agreements, we are obligated to actively promote the sale of CNH Industrial equipment within our designated geographic areas of responsibility, fulfill the product warranty obligations of CNH Industrial, maintain adequate facilities and workforce to service the needs of our customers, maintain sufficient parts inventory to service the needs of our customers, maintain equipment and parts inventories at the level deemed necessary by CNH Industrial to meet sales goals as stated in the annual business plan mutually agreed upon by us and CNH Industrial, maintain adequate working capital, and maintain stores only in authorized locations. The CNH Industrial Dealer Agreements do not provide us with exclusive dealerships in any territory, and CNH Industrial could elect to create additional dealers in our market areas in the future, subject to restrictions imposed by state laws.

Consent of CNH Industrial is required for certain material changes in our ownership, governance or business structure, including the acquisition by another party of 30% or more of our outstanding stock (or 20% or more of our outstanding stock in the case of a competitor of CNH Industrial). This requirement may have the effect of discouraging a sale or other change in control of the Company, including transactions that our stockholders might otherwise deem to be in their best interests.

The acquisition of additional CNH Industrial geographic areas of responsibility and store locations in our Agriculture, Construction and International segments requires the consent of CNH Industrial under the terms of the CNH Industrial Dealer Agreements. We cannot assume that CNH Industrial will consent to any acquisition of any stores or dealerships that we may desire to make in the future.

Our CNH Industrial Dealer Agreement for Case construction equipment prohibits us from marketing or selling products (new equipment and parts) of other suppliers at our Case construction stores that are competitive with CNH Industrial's products. Our CNH Industrial Dealer Agreements require that any business activity of a considerable nature not involving the representation of the CNH Industrial products be conducted in separate facilities and operated using separate personnel and resources apart from the CNH Industrial distributorship operations. These restrictions set forth in the CNH Industrial Dealer Agreements may prevent us from pursuing business activities that we believe are in the best interests of our stockholders.

**ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

We did not have any unregistered sales of equity securities during the fiscal quarter ended April 30, 2017.

**ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None.

**ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

**ITEM 5. OTHER INFORMATION**

On May 30, 2017, the Company entered into new dealership agreements and associated amendment agreements to the dealership agreements, replacing the Company's existing dealership agreements with CNH Industrial America, LLC (the "Prior Dealer Agreements"), with CNH Industrial America, LLC ("CNH Industrial") for each of the Case IH Agriculture, New Holland Agriculture, Case Construction and New Holland Construction brands (collectively the "CNH Industrial Dealer Agreements"). Separate CNH Industrial Dealer Agreements were entered into by the Company for each of the Company's North American stores or store complexes.

The terms of the new CNH Industrial Dealer Agreements remain substantially similar to the terms of the existing dealership agreements with CNH Industrial. The CNH Industrial Dealer Agreements assign to us a geographically defined area of principal responsibility, providing us with distribution and product support rights within the identified territory for specific equipment products of the manufacturer. Although the dealer appointment is non-exclusive, in each territory there is typically only one dealership responsible for retail sales to end-users, as well as after-sales product support of the equipment. Under the CNH Industrial Dealer Agreements, we have both the right and obligation to sell the manufacturer's equipment and related parts and products and provide customers with services. The CNH Industrial Dealer Agreements impose various requirements on us regarding the location and appearance of facilities, maintaining the level of new equipment and parts inventories deemed necessary by CNH Industrial to meet the annual business plan mutually agreed upon by the Company and CNH Industrial, the training of personnel, adequate business enterprise and information technology system, adequate working capital, maximum adjusted debt to tangible net worth ratio, development of annual sales and marketing goals, and furnishing of monthly and annual financial information.

The Case IH dealer agreement and the Case Construction dealer agreement have fixed terms expiring on December 31, 2027, and renew automatically for successive 5-year terms unless either party notifies the other party of its intention not to renew or otherwise exercises its termination rights under the agreement. The New Holland dealer agreement has a fixed term expiring December 31, 2018, with automatic 1-year renewals unless either party notifies the other party of its intention not to renew or otherwise exercises its termination rights under the agreement. CNH Industrial has the right to terminate the CNH Industrial Dealer Agreements immediately upon the occurrence of certain circumstances, including in the event of (i) insolvency or bankruptcy of the Company, (ii) a material breach by the Company of provisions of the agreement or (iii) the failure to secure the consent of CNH Industrial prior to the occurrence of "change in control" events. The CNH Industrial Dealer Agreements governing Case construction equipment grants CNH Industrial the right to terminate these dealer agreements for any reason upon 120 days written notice. In addition, the Company has the right to terminate any of the CNH Industrial Dealer Agreements at any time, with or without cause, upon 60 days prior written notice. Subject to protections provided under state dealer protection laws, in the event that CNH Industrial offers new a dealer agreement or an amendment to the CNH Industrial Dealer Agreements to all authorized CNH Industrial dealers located in the state, CNH Industrial is permitted to terminate our existing CNH Industrial Dealer Agreements for stores located in that state upon at least 180 days' prior written notice if we refuse or otherwise fail to enter into such new agreements or amendments. In addition, to the extent CNH Industrial determines that the Company is not meeting its obligations under the CNH Industrial Dealer Agreement with respect to a particular product, CNH Industrial may, upon 60 days prior written notice to the Company, remove such product from the authorized product list allowed to be sold or serviced by the Company. The Company must obtain the approval or



consent of CNH Industrial in the event of proposed fundamental changes to our ownership, governance or business structure (defined as “change in control” events), including, among other things, (i) a merger, consolidation or reorganization, unless securities representing more than 50% of the total combined voting power of the successor corporation are immediately owned, directly or indirectly, by persons that owned our securities prior to the transaction; (ii) a sale of all or substantially all of our assets; (iii) any transaction or series of transactions resulting in a person or affiliated group acquiring 30% or more of the combined voting power of our securities or, in the case of a competitor of CNH Industrial, 20% or more of the combined voting power of our securities; (iv) a substantial disposition of shares of our common stock by our executive management team; (v) certain significant changes in the composition of our Board of Directors; and (vi) replacement of our Chief Executive Officer.

The CNH Industrial Dealer Agreements generally do not include non-compete provisions that apply after the term of such agreements or limit our operations apart from our designated CNH Industrial dealership store locations. Our CNH Industrial Dealer Agreements for Case construction equipment, absent consent of CNH Industrial, contains an exclusivity requirement, which restricts our ability to market or sell competing products (new equipment and parts) of other manufacturers at our Case dealership store locations during the term of such agreements. Our CNH Industrial Dealer Agreements require that any business activity of a considerable nature not involving the representation of the CNH Industrial products be conducted in separate facilities and operated using separate personnel and resources apart from the CNH Industrial distributorship operations.

The foregoing description of the CNH Industrial Dealer Agreements is qualified in its entirety by reference to the full text of the form of each of the CNH Industrial Dealer Agreement, copies of which are filed as [Exhibits 10.1 to 10.6] to this Quarterly Report on Form 10-Q and incorporated herein by reference.

## **ITEM 6. EXHIBITS**

Exhibits - See “Exhibit Index” on page following signatures.



## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this Report to be signed on its behalf by the undersigned thereunto duly authorized.

Dated: June 2, 2017

**TITAN MACHINERY INC.**

By /s/ Mark Kalvoda  
Mark Kalvoda  
Chief Financial Officer  
(Principal Financial Officer)

EXHIBIT INDEX  
TITAN MACHINERY INC.  
FORM 10-Q

No.	Description
10.1	Case Construction Equipment Sales and Service Agreement, dated May 30, 2017, between CNH Industrial America LLC and Titan Machinery Inc.
10.2	Amendment dated May 30, 2017 to Case Construction Equipment Sales and Service Agreement between CNH Industrial America LLC and Titan Machinery Inc.
10.3	Case IH Agricultural Equipment Sales and Service Agreement, dated May 30, 2017, between CNH Industrial America LLC and Titan Machinery Inc.
10.4	Amendment dated May 30, 2017 to Case IH Agricultural Equipment Sales and Service Agreement between CNH Industrial America LLC and Titan Machinery Inc.
10.5	New Holland Equipment Sales and Service Agreement, dated May 30, 2017, between CNH Industrial America LLC and Titan Machinery Inc.
10.6	Amendment dated May 30, 2017 to New Holland Equipment Sales and Service Agreement between CNH Industrial America LLC and Titan Machinery Inc.
31.1	Certification of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certification of Chief Executive Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	Certification of Chief Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101	Financial statements from the Quarterly Report on Form 10-Q of the Company for the quarter ended April 30, 2017, formatted in XBRL: (i) the Consolidated Balance Sheets, (ii) the Consolidated Statements of Operations, (iii) the Consolidated Statements of Stockholders' Equity, (iv) the Consolidated Statements of Cash Flows, and (v) the Notes to the Consolidated Financial Statements.

## CONSTRUCTION EQUIPMENT SALES & SERVICE AGREEMENT

This Case Construction Equipment Sales and Service Agreement (the “Agreement”) is between CNH Industrial America LLC, a Delaware limited liability company with a principal place of business at 700 State Street, Racine, Wisconsin, 53404 (“Case”), and, a [corporation/limited liability company] with its address as listed on Schedule A (“Dealer”) (hereinafter “Parties” when referring to Dealer and Case jointly). The “Effective Date” of this Agreement is the date of acceptance by Case as indicated by its authorized signature. Unless sooner terminated in accordance with its provisions, this Agreement will expire on December 31, 2027 (“Expiration Date”).

### 1. Purpose Statement

- 1.1 The purpose of this Agreement is to describe the respective functions, obligations and responsibilities of the Parties, so that each fully understands the nature of their required commitments of time, effort and capital. This Agreement establishes Dealer as an independent contractor for the promotion, retail sale and after-sale service and support of Products to Customers in Dealer’s local market.

### 2. Definitions

- 2.1 Affiliate: as to Case, any entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with Case. The term “control” means the power to direct the management and policies of an entity through the ownership of more than 50% of the voting securities, rights or other similar interests of that entity.
- 2.2 Branch Location(s): Dealer’s additional place(s) of business listed in Schedule D for the sale, rental, lease and service of Products, separate from Dealer’s Primary Location.
- 2.3 Case IP: any and all intellectual property including but not limited to patents, Trademarks (including the Licensed Trademarks), designs, copyrights, trade secrets, computer software (whether imbedded in Products or otherwise) and other proprietary technology and information, whether technical or business related, including registrations for and applications to register any of the foregoing, which are incorporated or used in or with Products or which are owned or licensed by Case for use with Products.
- 2.4 Case National Dealer Market Share a percentage figure calculated by taking the number of units of new Case brand equipment for a given Product Line or Product Line grouping, sold by Case dealers in the United States during a designated time period determined by Case, divide by the total industry volume of all comparable new units of equipment (including Case and competitive units) sold in the United States during the same time period. Total industry volume of new equipment sales shall be as reported by the Association of Equipment Manufacturers (or other replacement organization selected by Case, hereinafter “AEM”).
- 2.5 Case Regional Market Share a percentage figure calculated by taking the number of units of new Case brand equipment for a given Product Line or Product Line grouping, sold by Case dealers in a regional sales area (a multi-state area determined by Case in its sole discretion) during a designated time period determined by Case, divided by the total industry volume of all comparable new units of equipment (including Case and competitive units) sold in that same regional sales area during that same time period. Total industry volume of new equipment sales shall be as reported by AEM.
- 2.6 Customer(s): an end-user that purchases, leases or rents Products from an authorized dealer or Case for its own use and not for resale.
- 2.7 Dealer Claims: Dealer’s claims to Case for Warranty Service, Other Required Service, or any retail promotional or sales incentive, including but not limited to refunds, credits, rebates, incentives, allowances, discounts, or payments under any Case program.
- 2.8 Dealer Location(s): Dealer’s Primary Location and Branch Locations, if any, authorized by Case for the sale, rental, lease and service of Equipment and/or Parts.

- 2.9 Dealer Market Share a percentage figure for measuring Dealer's sales performance calculated by taking the number of units of new Equipment, by Product Line or Product Line grouping, sold by Dealer to Customers located within Dealer's Sales and Service Market ("SSM") during given time period as determined by Case, divided by the total industry volume of all new units of equipment of that same Product Line or Product Line grouping (including Case and competitive units) sold within Dealer's SSM during that same period, as determined and reported by AEM. For market share purposes, Dealer will only be measured against the industry sales in a given county of Dealer's SSM to the extent of the percentage of that county assigned to Dealer.
- 2.10 DOG: refers to both the Dealer Operating Guide and Parts Policy Manual or any equivalent or successor documents and amendments thereto issued by Case setting forth for all dealers the various policies, procedures and operating standards for doing business with Case.
- 2.11 Domestic: within the 50 states of the United States of America.
- 2.12 Equipment: whole good machinery and any related attachments designated on Schedule B by Product Line and Licensed Trademark.
- 2.13 Licensed Trademarks: the Trademarks listed in Schedule B that Case authorizes Dealer to use for the sole purpose of performing its obligations hereunder with respect to Products.
- 2.14 Limited Warranty: the Warranty and Limitation of Liability agreement furnished by Case with respect to any Product sold to Customers.
- 2.15 Other Required Service: service that Case, in its sole discretion, has deemed necessary or desirable and in the best interests of Customers and the goodwill associated with the Licensed Trademarks, including but not limited to, policy service, campaign service, or field improvement program service.
- 2.16 Parts: proprietary replacement parts sold by Case for Equipment listed on Schedule B (specifically not including replacement parts for Case equipment not listed on Schedule B), together with all other common service or maintenance items (for example, including but not limited to filters, hoses, lubricants, etc.) and accessories which are offered for sale by Case to Dealer (either directly from Case or from an authorized source of supply), which Case has authorized to be identified with the Licensed Trademarks. Parts do not include 'merchandise' items such as clothing, toys, binders, gloves, etc.
- 2.17 Primary Location: the primary Dealer facility location specified in Schedule D.
- 2.18 Product(s): Equipment and Parts that Dealer is authorized to represent under this Agreement.
- 2.19 Product Line: the categories of Products set forth in Schedule B.
- 2.20 Sales and Service Market ("SSM"):

a market comprised of the total industry sales of all new Equipment (as

reported by AEM), including Case and competitive equipment, sold (including first rentals or leases) within the geographic area designated in Schedule C.

- 2.21 Strategic Accounts: customer accounts typically referred to as "national accounts," "corporate accounts," national or regional equipment rental companies, or any customer designated by Case as such an account.
- 2.22 Trademarks: all words, slogans, designs, pictures, logotypes or other symbols, including trademarks, service marks, trade dress, and trade names, regardless of whether registration has been sought or obtained therefor, used to (a) identify, distinguish or advertise the Products and services of Case or its Affiliates, (b) identify Case as the source or licensor of Products and services, or (c) identify the business of Case and its authorized dealers.
- 2.23 Warranty Service: service that is required for any Product (a) to ensure that Case is in compliance with Case's Limited Warranty obligations for such Product and (b) to comply with any extended service or maintenance plan purchased for that Product.
- 2.24 Will Call: a program whereby Case, in its sole discretion, may permit Dealer to take delivery and possession of Products directly from a Will Call Provider or Case, in lieu of such Products being transported to Dealer at Dealer Location(s). The procedures for the Will Call program will be as set forth in the DOG.
- 2.25 Will Call Provider: a third-party engaged by Case to facilitate Dealer's pick-up of Products at Case plant locations or port facilities under the terms of the Will Call program.

### 3. Appointment

- 3.1 Scope of Appointment. Pursuant to the provisions of this Agreement, Case hereby authorizes Dealer to market, promote, sell, lease or rent new Products and to provide Warranty Service for Products to Customers solely from the authorized Dealer Location(s) listed in Schedule D. The foregoing appointment is limited to Products identified with the Licensed Trademarks on Schedule B. Dealer accepts this appointment and agrees that the relationship between Dealer and Case shall be governed by the terms and conditions of this Agreement as well as the policies outlined in the DOG.
- 3.2 Incorporation of DOG The DOG includes the standards of quality and performance that Case seeks to have associated with its Trademark and is hereby incorporated by reference into this Agreement. It is expressly understood and agreed that Case reserves the right to modify the DOG unilaterally to reflect reasonable standards of quality and performance so long as such standards do not conflict with the terms of this Agreement.
- 3.3 Material Inducement Section 3.2 is a material inducement upon which Case relied in entering into this Agreement with Dealer, the breach or unenforceability of which represents a failure of consideration entitling Case to void this Agreement in its entirety.

### 4. Owner and Management Requirements

- 4.1 Dealer Representations and Warranties. The appointment of Dealer is made in reliance on Dealer's representation and warranty that the information set forth in any dealer application provided to Case as well as in Schedule A regarding Dealer's legal name, ownership (if corporation, as listed in a Stock Ownership Certificate), management personnel, business structure, and state of residence or organization is accurate and complete. Dealer also represents and warrants that entering into this Agreement does not violate any other contract or agreement to which Dealer is a party and that any person signing this Agreement on behalf of Dealer has the authority to do so. Any breach of any of the foregoing representations and warranties represents a failure of consideration entitling Case to void this Agreement in its entirety.
- 4.2 Personal Services Nature of Agreement Dealer ownership and management are important to the successful working relationship between the Parties. Case has chosen to contract with the present ownership and management of Dealer, and the Parties acknowledge that this Agreement represents a personal services relationship, and that any change to the ownership, management or business structure of Dealer could seriously and adversely impact such relationship. As such, Case may refuse to appoint as an authorized dealer any purchaser or prospective purchaser of any of the shares or assets of Dealer.
- 4.3 Changes in Dealer Form and Control Except as otherwise stated in Section 4.4, Dealer shall provide Case with sixty (60) days' prior written notice of Dealer's intention to change it: (a) legal form or entity; or (b) control, ownership or management. Prior to consummating any such change, Dealer must obtain Case's written consent, which shall be in Case's sole discretion. A "change in control, ownership or management" shall mean one or more of the following events: (i) if Dealer is an individual proprietor, withdrawal of that individual proprietor from the operation or control of Dealer; (ii) if Dealer is a partnership or limited liability company, any addition to or subtraction from the partners or members involved; (iii) if Dealer is a corporation, any change in the beneficial ownership of any of Dealer's shares or the voting rights associated therewith; (iv) any sale of all or substantially all of Dealer's assets; (v) any change in the composition of Dealer's management as set forth in Schedule A; or (vi) any event, including entering into an agreement, that substantially affects, directly or indirectly, the operation or control of Dealer's business.
- 4.4 Death or Incapacity of Dealer Principals In the event of the death or incapacity of any person listed in Schedule A or in the Stock Ownership Certificate ("Dealer Principal(s)"), Dealer shall provide Case: (a) notice of such occurrence within thirty (30) days; and (b) within ninety (90) days of such occurrence, an ownership or management succession plan for the replacement of such deceased or incapacitated Dealer Principal(s), if Dealer proposes to continue operation under this Agreement. Case retains sole discretion whether to approve Dealer's proposed succession plan or terminate the Agreement.
- 4.5 Ancillary Documents Dealer will execute such agreements or other documents as Case in its sole discretion may deem necessary to preserve Case's rights under this Agreement in response to (a) any change or

proposed change in Dealer's legal form or entity, (b) any change in Dealer's control, ownership, or management, or (c) death or incapacity of any Dealer Principal.

## **5. Products**

### **5.1 Authorized Products.**

- (a) The Products which Dealer is authorized to purchase from Case for retail sale, lease or rental are those Product Lines listed on Schedule B that Case has authorized to be identified with the Licensed Trademarks listed on Schedule B.
- (b) Upon sixty (60) days' written notice to Dealer, Case in its sole discretion may amend Schedule B to:
  - i) add a Product Line(s), ii) remove a Product Line if Case is withdrawing such Product Line from the Domestic market, or iii) add or remove any Licensed Trademark(s).
- (c) In the event Dealer is not meeting its obligations under this Agreement with respect to a particular Product Line or specific Equipment in a Product Line, Case in its sole discretion may remove such Product Line or Equipment from Schedule B with sixty (60) days' written notice to Dealer. Dealer thereafter will no longer be authorized to sell or perform Warranty Service for such Products, and Case will repurchase such new Equipment from Dealer as provided in Section 29.1(a).
- (d) This Agreement does not give Dealer the right to, and under the terms of this Agreement Dealer may not, purchase, market, promote, sell, lease or rent any other new (i.e. not previously sold) CNH Industrial America LLC products that are not listed on Schedule B or are not authorized to be identified with the Licensed Trademarks listed on Schedule B.

### **5.2 Dealer Obligation to Support New Equipment Models** Case may introduce new models of Equipment for Product Lines that Dealer is authorized to sell on Schedule B. In order to provide service to Customers for such Equipment, Dealer shall support such new models by complying with Case-designated requirements for:

- (a) stocking all required Parts; (b) purchasing all required service tools; and (c) attending sales and service training for such new models. Case has no obligation to fill orders or ship such new models of Equipment to Dealer if Dealer fails to fulfill the foregoing Parts, tools and training requirements.

### **5.3 Product Packaging and Labels** Dealer shall not modify or remove any warning labels affixed to Products. Further, without Case's prior written consent, Dealer shall not modify any packaging or other labeling for Products.

### **5.4 Installation of Non-Standard Attachments or Accessories** Without prior written approval from Case, Dealer shall not install or attach non-standard, "self-designed," or "one-off" attachments or accessories to Equipment. Such non-standard, "self-designed," or "one-off" attachments or accessories are those that are not manufactured and sold by established equipment manufacturers for the application and purpose for which they are being used. Dealers that install standard attachments or accessories from established equipment manufacturers shall ensure that the Equipment can properly and safely operate with such attachment or accessory.

### **5.5 Prohibited Modifications to Product** Dealer shall not perform any of the following actions: (a) modify Equipment without Case's prior written consent; (b) install upon Equipment any attachment, accessory or equipment that is beyond the rated capacity of that Equipment as stated in the Operator's Manual furnished with the Equipment or as otherwise instructed by Case; or (c) perform any adjustment or assembly procedures to Equipment not recommended by or in contravention of the Operator's Manual, Service Manual or other Case instruction.

## **6. Sales & Service Market**

### **6.1 Assignment of SSM** The SSM assigned to Dealer is set forth in Schedule C. The Dealer's SSM may vary by Equipment or Product Line. Case's assignment to Dealer of an SSM is for the purpose of: (a) focusing Dealer's sales, marketing, and product support efforts; (b) measuring Dealer Market Share performance; and (c) maximizing the goodwill associated with Products and Licensed Trademarks. Dealer Market Share shall be measured only within Dealer's SSM. Upon sixty (60) days' written notice to Dealer, Case in its sole discretion may amend Schedule C to add to, subtract from, or otherwise modify Dealer's SSM.

- 6.2 No Obligation to Support Sales Outside SSM To the extent Case decides to offer marketing programs, retail sales incentives, or other promotions, it shall have no obligation to do so for Dealer's sales or marketing activities outside of Dealer's SSM.
- 6.3 Sales & Service Fee Case may assess Dealer a sales and service fee for sales of new Equipment by Dealer that are registered in a county outside of Dealer's SSM. The amount of such fee, the operative regulations and policies, and the Equipment to which it applies are published in the DOG, and may be amended by Case in its sole discretion. Case reserves the right not to assess a sales and service fee against other dealer for their sales to Customers within Dealer's SSM, if Dealer is failing to meet the market share obligations contained in Section 9.1(a).
- 6.4 SSM Non-Exclusive. Dealer's SSM is non-exclusive. Without incurring any liability to Dealer, Case may determine the number and locations of authorized dealers necessary for adequate sales and service representation of Products within any geographic area, or within the designated SSM. Nothing in this Agreement shall be construed as requiring Dealer's consent to the establishment of new or additional dealer representation for Products in Dealer's SSM or elsewhere.

## **7. Dealer Financial Requirements**

- 7.1 Wholesale Line of Credit. Dealer shall establish and at all times maintain an unrestricted wholesale line of credit for the purchase and stocking of new Products in an amount acceptable to Case in order to meet Dealer's inventory and sales obligations hereunder. If within any six (6)-month period, Dealer's primary wholesale line of credit is cumulatively reduced by twenty percent (20%) or more and such reduction is not for valid business reasons, said line of credit shall be deemed unacceptable to Case.
- 7.2 Adjusted Debt to Tangible Net Worth Ratio. Dealer hereby covenants and agrees that it will maintain an Adjusted Debt to Tangible Net Worth Ratio of not more than four to one (4.0:1.0). Unless specifically approved in advance in writing by Case, Dealer will not make any acquisition or initiate new business activities if Dealer's Adjusted Debt to Tangible Net Worth Ratio exceeds four to one (4.0:1.0) or if such ratio would increase beyond four to one (4.0:1.0) as a result of such actions. This ratio shall be calculated using the consolidated balance sheets and income statements of Dealer (and of Dealer's related entities and affiliates, if Case so elects). All such balance sheets and income statements must be prepared in accordance with Generally Accepted Accounting Principles ("GAAP"). For purposes of calculating this ratio, the following definitions will apply:
- (a) "Adjusted Debt to Tangible Net Worth Ratio" means the ratio of Debt minus Subordinated Debt to Tangible Net Worth plus Subordinated Debt.
  - (b) "Debt" shall mean the aggregate amount of the Dealer's items properly shown as liabilities on its balance sheet, determined in accordance with GAAP;
  - (c) "Subordinated Debt" shall mean Debt that is expressly subordinated to CNH Industrial Capital America LLC in writing acceptable to CNH Industrial Capital America LLC;
  - (d) "Net Worth" shall mean the aggregate amount of the items properly shown as assets on Dealer's balance sheet minus the aggregate amount of the items properly shown as liabilities on Dealer's balance sheet, determined in accordance with GAAP;
  - (e) "Tangible Net Worth" shall mean Net Worth, plus an amount equal to 70% of the amount reflected on Dealer's balance sheet as a LIFO reserve, minus the aggregate amount of the items properly shown as the following types of assets on Dealer's balance sheet determined in accordance with GAAP:
    - (i) goodwill, patents, non-competes, copyrights, mailing lists, trade names, trademarks, servicing rights, organizational costs, and other like assets properly classified as intangibles; and
    - (ii) receivables, loans and other amount due from any shareholder, director or officer of the Dealer, and receivables, loans and other amounts due from any other related or affiliated party of the Dealer.

- 7.3 Working Capital Requirements. Dealer shall maintain net working capital in amounts necessary for Dealer to comply with its obligations under this Agreement.

## **8. Dealer Inventory and Display Responsibilities**

- 8.1 Equipment Stocking Requirements. Dealer shall order, maintain in inventory and prominently display, at all Dealer Locations unless otherwise excepted in writing by Case, representative models of each type of new Equipment Dealer is authorized to sell as set forth in Schedule B, at the level deemed necessary by Case to meet Dealer's Equipment sales obligations in accordance with Dealer's Business Plan provided pursuant to Section 13 of this Agreement.
- 8.2 Parts Stocking Requirements. For the purpose of providing prompt Customer support, Dealer agrees to order and maintain in inventory all Parts at the level deemed necessary by Case to meet Dealer's Parts sales obligations in accordance with Dealer's Business Plan provided pursuant to Section 13 of this Agreement. Dealer must provide a retail display area for Parts acceptable to Case.
- 8.3 Licensed Trademark Use. At any Dealer Location and in all advertising for such Dealer Locations, Dealer shall not use or display the Licensee's Trademarks in any way that might cause confusion with, or dilute the distinctive quality of, the Licensed Trademarks, or in any way that violates any Case trademark guidelines. In furtherance of this provision, if Dealer represents non-Case products, Dealer shall at any such location: (a) maintain internal and external display areas for new Products separate from non-Case products; (b) display new Products in the most visible and desirable position and in an area of greater size or space than the area used to display non-Case products.

## **9. Dealer Sales Responsibilities**

- 9.1 Sales Responsibilities. Dealer is solely responsible for developing its own plan for marketing and selling Products, and shall fulfill its sales obligations in several ways, including but not limited to the following:
- (a) Equipment Market Share. Dealer shall aggressively promote and sell new Equipment to attain within Dealer's SSM for all Equipment designated on Schedule B, a Dealer Market Share that is equal to at least 90% of either, in Case's sole discretion, the Case National Dealer Market Share or the Case Regional MarketShare. In evaluating Dealer's market shareperformance, Case, in its sole discretion, may (i) group Product Lines and/or (ii) evaluate Dealer's performance on a per Dealer Location basis.
  - (b) Parts Sales Objectives. Dealer shall aggressively promote and sell all Parts offered by Case.
  - (c) Advertising and Promotion. Dealer shall conduct aggressive advertising and sales promotion activities, including but not limited to open houses, field days, product demonstrations, radio and/or television advertising, print advertising, trade shows and community events. Dealer shall appropriately display and distribute current Product sales literature, brochures and advertisements at its Dealer Locations and shall also maintain a dealer website that prominently displays new Products. Dealer's use of Licensed Trademarks and its display of Products on Dealer's website shall be subject to Case's approval. Upon Case's request, Dealer shall participate in national or regional sales promotion and advertising programs as Case may periodically conduct.
  - (d) Sales Staff. Dealer shall employ a sufficient number of properly trained Product-dedicated sales personnel based on the industry potential in Dealer's SSM and as required by Case to call on all potential customers within the SSM. Such sales personnel shall attend Case's sales training sessions as required in the DOG.
  - (e) Extended Service Plans. Dealer shall promote and sell extended service and maintenance plans.
  - (f) Customer Surveys. Case from time to time may conduct surveys (by use of questionnaires or otherwise) of Dealer's Customers to determine the satisfaction of those Customers with the sales, leasing, rental and service efforts of Dealer. Case may use the results of these surveys in assessing Dealer's performance under this Agreement.
  - (g) Other Performance Standards. Dealer shall meet such other sales performance standards or best business practices as may be established by Case in the DOG.



- 9.2 Dealer Resource Commitment and Exclusivity. The Parties mutually recognize that one of the purposes of this Agreement is to assure that Dealer focuses its resources and efforts on the sale of new Products and the performance of its obligations under this Agreement. Therefore, Dealer agrees that:
- (a) If Dealer undertakes or engages in another business activity at a Dealer Location(s) separate from its representation of new Product pursuant to this Agreement, which activity involves a considerable commitment of Dealer's effort and resources, Dealer agrees to make such separation of the personnel, facilities, capital (including, but not limited to, appropriate wholesale credit lines, sufficient working capital, sufficient equity) and other resources devoted to that business as is satisfactory to Case, provided that Case specifies in writing the separation of personnel, facilities and capital resources that are required. Case shall provide Dealer with twenty-four (24) months' prior written notice for Dealer to complete any required separation of facilities.
  - (b) Dealer shall refrain from marketing, selling (at retail or wholesale) or entering into any agreement to do same, at any Dealer Location any product competitive with Products, including without limitation product which may not compete with Case Products as of the date of this Agreement but which become competitive in the future, due to the offering of new products by Case (whether as a result of new product development, acquisition, or otherwise). Within twenty-four (24) months of signing this Agreement, Dealer shall terminate any existing agreement to represent any competitive line of product. Unless otherwise mutually agreed to by Dealer and Case, Dealer shall have eighteen (18) months within which to phase out its representation of competitive products after Case's development or acquisition of new product offerings that would compete with those existing competitive lines.
- 9.3 Sales Reporting Dealer shall report all new Equipment retail sales to Case, and shall provide true and accurate information on such sales as required by Case, including but not limited to registering the location of such Equipment sales and the end-use designation in compliance with Case guidelines.

## **10. Dealer Service Responsibilities**

- 10.1 Warranty Service and Other Required Service Dealer shall provide Warranty Service for any Product, regardless of whether Dealer sold that specific Product; provided, however, Dealer may not provide Warranty Service for any Case (or other CNH Industrial America LLC) product not listed on Schedule B. Dealer also shall provide Other Required Service as directed by Case in its sole discretion. Dealer shall provide Warranty Service and Other Required Service in a prompt, professional and courteous manner, and shall fulfill these responsibilities in several ways, including but not limited to the following:
- (a) Service Technicians. Dealer shall employ at all times a sufficient number of trained and fully certified service technicians based on industry sales in Dealer's SSM. Dealer must have service technicians at each Dealer Location who are trained and fully certified to service each type of Equipment listed on Schedule B, and Dealer's service technicians must attend Case service training sessions as required by Case in the DOG.
  - (b) Service Tools and Manuals. Dealer shall maintain, or have access to, at each Dealer Location all special service tools, electronic diagnostic tools or websites, electronic parts catalogs, service manuals, parts manuals and operator's manuals required by Case to service the Equipment listed in Schedule B. Dealer may comply with the service tool requirements by subscribing to any Case tool rental program.
  - (c) Service Standards. Dealer shall perform Warranty Service and/or Other Required Service in a timely manner and in strict compliance with the DOG and any service bulletins or other instructions issued by Case. Dealer shall give priority to performing such Warranty Service or Other Required Service before general maintenance if a Customer's Product is not operable.
  - (d) Use of Case-Sourced Parts Except as otherwise instructed by Case in writing, Dealer shall use only Parts obtained from Case or Case's authorized sources of supply in performing Warranty Service or Other Required Service.

- (e) Certification Standards Dealer shall meet or exceed Case's service certification standards including pre-delivery, delivery and after-delivery requirements for all Products, as defined by Case in the DOG.
  - (f) Compliance with Service Policies Dealer shall abide by all Case policies and procedures contained in the DOG when performing Warranty Service and Other Required Service or when submitting Dealer Claims, including creating and retaining all supporting documentation for such claims.
- 10.2 Strategic Account Service Dealer shall provide Warranty Service and/or Other Required Service for any Product sold by Case to Strategic Accounts, as well as for any Product sold or donated to charitable, educational or governmental entities.

#### **11. Dealer Pre-Delivery and Post-Delivery Responsibilities**

- 11.1 Product Setup To ensure the proper operation of Products, before delivery of Products to a Customer Dealer shall perform the inspections, adjustments, conditioning, installations or servicing of such Products in accordance with instructions and procedures provided by Case.
- 11.2 Product Literature Dealer shall deliver to each Customer of a Product the appropriate current publications and forms for owners covering operation, maintenance, warranty and other matters as determined by Case.
- 11.3 Customer Instruction At the time of delivery, Dealer shall instruct each Customer of a Product in the safe use, proper operation and required maintenance of that Product. Such instruction shall include, at a minimum:
  - (a) reference to the operators manual and decals identifying hazards and how to avoid them, (b) identification of the safety features and functions of the Equipment, and (c) demonstration of such features and functions.
- 11.4 Accident Reporting Dealer shall promptly notify Case, pursuant to guidelines contained in the DOG, of any reports of accidents or injuries involving Products of which Dealer becomes aware, as well as any information concerning the existence of any significant Product failure or malfunction.
- 11.5 Post-Delivery Services Dealer shall perform all required post-delivery inspections and adjustments to Products as prescribed by instructions and procedures provided by Case from time to time or as stated in the DOG.

#### **12. Facility Requirements and Dealer Locations**

- 12.1 Facility Requirements Dealer shall establish and maintain at each authorized Dealer Location listed on Schedule D a facility to sell, service display and store Products in accordance with facility standards contained in the DOG.
- 12.2 Unauthorized Locations Without Case's prior written consent, Dealer shall not at any location other than those listed in Schedule D, directly or indirectly: (a) advertise or represent itself as an authorized dealer of Case Products; (b) use the Licensed Trademarks or any other Trademarks (c) store, stock or display Products; (d) sell, advertise or market any Products; or (e) provide Warranty Service and/or Other Required Service.
- 12.3 Closure and Relocation Without Case's prior written consent, Dealer may not close or relocate any Dealer Location listed on Schedule D. Dealer shall seek Case's consent for the closure or relocation of a Dealer Location at least sixty (60) days prior to the proposed closure or relocation. Should Case give its consent, Case, in its sole discretion, may modify or reassign the SSM associated with the relocated or closed Dealer Location. Dealer acknowledges and agrees that any consent granted by Case for the closure of a Dealer Location shall not initiate the inventory repurchase obligations set forth in Section 29.
- 12.4 Brand Identification Dealer shall: (a) display a primary identification sign (flag mast or monument) and comply with dealer identity standards as specified in the DOG for each Dealer Location listed on Schedule D; and (b) comply with Case's vehicle identity standards as set forth in the DOG.
- 12.5 Trademark Display Dealer's use of Trademarks or Licensed Trademarks at any Dealer Location, including but not limited to signs, banners or displays, shall be subject to Case approval. Any such use not approved by Case must be removed immediately by Dealer.

### 13. Business Plan

- 13.1 Business Plan Requirements Annually, or as otherwise requested by Case, Dealer shall complete and make available for review by Case a written plan for the subsequent fiscal year (or additional years if requested by Case) that shall contain the information and objectives required by Case for a business plan ("Business Plan"), which may include but not be limited to the following:
- (a) Equipment inventory stocking and sales objectives to maximize Dealer's Equipment sales in its SSM, but at a minimum to obtain Dealer's Market Share requirements stated in Section 9.1(a), including action plans for obtaining such objectives;
  - (b) Parts inventory stocking plan and sales objectives to maximize Dealer's Parts sales;
  - (c) training plans for Dealer sales and service personnel, including Case provided training;
  - (d) advertising, promotional and marketing plans and budgets;
  - (e) action plans for Dealer's possible expansion or upgrading of its current facilities, or for the proposed addition of new facilities; and
  - (f) any additional information required by Case as set forth in the DOG.
- 13.2 Business Plan Acceptance. Dealer agrees that providing a Business Plan reasonably acceptable to Case is a requirement for Dealer to effectively promote and sell Products under this Agreement. Case may conduct periodic reviews of Dealer's performance against its approved Business Plan, and during such reviews Dealer agrees to make available all Dealer's records and employees which would contribute to the overall value of these reviews.

### 14. Insurance and Taxes

- 14.1 Insurance Coverage. Dealer shall maintain an occurrence-based policy of Comprehensive General Liability insurance (including Products and Property Damage Liability) with a maximum per occurrence deductible of \$50,000; a minimum liability limit of \$5,000,000 per occurrence for personal injury claims; and a minimum liability limit of \$500,000 per occurrence for property damage claims. If Dealer is self-insured, the per occurrence deductible maximum is not applicable. Case may modify the deductible and policy limit amounts as set forth in the DOG. Any annual aggregate liability limits under such policies shall not be less than \$5,000,000. Upon request, Dealer shall furnish to Case certificates of such insurance, which shall provide for at least thirty (30) days' prior written notice to Case of an increase in deductible amounts or the cancellation, lapse, or expiration of said policy.
- 14.2 Payment of Taxes. Dealer shall pay all license fees, sales, use, personal property, and excise taxes, duties, and any other fees, assessments or taxes which may be assessed or levied by any governmental authority against any Products which are shipped to, or are in the possession of, Dealer.
- 14.3 Dealer Tax Representations. By submitting an order to Case for the purchase of any Product, Dealer represents and warrants that (a) such Products are being purchased for resale, lease or rent to Customers in the ordinary course of Dealer's business, and (b) Dealer has complied and will comply with all requirements for collection and payment of applicable sales, use and similar taxes. Upon request, Dealer shall provide evidence satisfactory to Case of Dealer's compliance with the foregoing representations and warranties.

### 15. Warranty

- 15.1 Warranty Obligations. Case's warranties covering Products are as set forth in the Limited Warranty furnished by Case with respect to such Products. The performance and administration of the warranties so extended, and the reimbursement to Dealer for Warranty Service performed on Products, are as set forth herein and in the DOG in effect at the time warranty work is performed. The Parties shall promptly fulfill their respective warranty obligations as set forth in the Limited Warranty and DOG.
- 15.2 Dealer Obligations Upon Sale At the time of any retail sale of Products pursuant to this Agreement, Dealer shall (a) deliver to and review with the Customer Case's Limited Warranty for such Products in force at the time of such sale, (b) have the Customer complete the operator's manual/warranty receipt verification section of the Limited Warranty, (c) obtain the Customer's signature on the Limited Warranty and (d) submit the signed Limited Warranty to Case within ten (10) days of the sales transaction. Case reserves the right not to

- reimburse Dealer for Warranty Service claims should Dealer fail to timely submit to Case the signed Limited Warranty.
- 15.3 No Other Warranty Provisions. Dealer is not authorized to assume or purport to assume for Case any additional obligations or liabilities in connection with the sale, lease, rental or service of Products covered by this Agreement, and Dealer shall not do so. Case shall not be liable nor shall it defend, indemnify or in any way be obligated to assist Dealer in defense of any notice, claim, or lawsuit alleging the existence of a warranty beyond the terms and conditions of Case's Limited Warranty for any Product.
- 15.4 Disclaimer of Other Warranties. Dealer agrees and acknowledges that, except for the warranty extended to Customers under Case's Limited Warranty, and to the extent allowed by law, Case makes no other representations or warranties, express or implied (including implied warranties of merchantability and fitness for a particular purpose) to Dealer or any Customer with respect to Products.
- 15.5 Non-Case Equipment and Service. If Dealer installs on or attaches to a Product any non-Case equipment, attachment, accessory or part Dealer shall advise Customer in writing that the non-Case equipment, attachment, accessory or part is not covered by the Limited Warranty. If Dealer sells any service contract not provided by Case or its Affiliates in conjunction with the sale of Equipment, Dealer will disclose to Customer the identity of the service contract provider and will further advise that Case has no responsibility to fulfill the obligations of such service contract.
- 15.6 Actions Voiding Limited Warranty. Dealer acknowledges and agrees that any breach of Sections 5.4 or 5.5 may result in Case voiding the Limited Warranty for Products in its sole discretion, and Dealer must so advise its Customer in writing to whom such Product has been sold. In such a case where Case elects to void the Limited Warranty, as between Dealer and Case, Dealer shall be solely responsible for any Warranty Service claims relating to such Product.
- 15.7 Use of Unauthorized Parts. In the event Dealer breaches Section 10.1(d), Case in its sole discretion may (a) refuse to reimburse Dealer for such Warranty Service and/or Other Required Service, (b) void Case's Limited Warranty for such Products, and/or (c) hold Dealer solely responsible for all Warranty Service relating to such Products.

## **16. Records and Inspections**

- 16.1 Financial Statements. Dealer shall submit to Case, within ninety (90) days after the end of Dealer's fiscal year, audited (or where audited are not available then certified) balance sheets and financial statements for that year.
- 16.2 Supplemental Financial Records. Dealer shall submit monthly financial statements to Case in the manner directed by Case. Case reserves the right to request at any time personal financial statements from the Dealer Principal(s) or guarantor(s) of Dealer and Dealer shall supply such statements within thirty (30) days.
- 16.3 Sales Reports. Dealer shall maintain and provide to Case upon request current reports of Equipment or Parts sales, owner registration inventory, service and warranty reports, as well as such other reports as may be requested by Case.
- 16.4 Inspections. Dealer shall permit Case or its authorized representatives during normal business hours to (a) enter and inspect all Dealer Locations, (b) examine Dealer's Product inventory, (c) test Equipment in Dealer's possession, custody or control, (d) examine and audit Dealer's books and records and all supporting data of Dealer's business, and (e) make copies of any such records or accounts.
- 16.5 Records Retention. Dealer shall maintain for at least two (2) years all original records and documents relating to Dealer Claims submitted to or paid by Case.
- 16.6 Chargeback for Improper or Unsubstantiated Claims. Dealer's submission of unsubstantiated Dealer Claims or Dealer Claims not in compliance with the requirements of the DOG will result in a chargeback to Dealer for such claims, including interest at the then current prime rate. If Dealer refuses to permit an audit, fails to maintain a substantial amount of the required records, or intentionally submits false or fraudulent Dealer Claims, the chargeback will include all amounts paid on Dealer Claims for the prior two (2) years, including any dealer settlement allowances plus interest at the then current prime rate. This remedy is in addition to those available to Case for breach of this Agreement, including but not limited to termination of this Agreement.

## **17. Computer Business System**

- 17.1 Dealer Management System Requirements Dealer shall install and maintain in good working order at each Dealer Location: (a) a computerized dealer management system ("DMS") satisfactory to Case that maintains the current Case-to-DMS interfaces and functions to communicate and conduct business with Case's computer applications and systems (the "System"); (b) a Dealer-to-Case network connection that meets or exceeds Case specified Dealer-to-Case connectivity requirements; and (c) all necessary hardware and software to maintain compatibility with the System.
- 17.2 Case Applications. Dealer shall subscribe to, install and maintain required software applications as communicated to Dealer by Case or as set forth in the DOG, including (but not limited to) the Electronic Parts Catalog applications.
- 17.3 Operating Costs Dealer shall pay all costs, including taxes, for the DMS, the Dealer-to-Case network connection, and any monthly access charges for use of the System.
- 17.4 Confidentiality. Dealer shall keep confidential any information and data contained in the System, and shall not use the System or any information or data derived from the System for purposes unrelated to Dealer's performance of its obligations under this Agreement.
- 17.5 Disclaimer of Liability. Case shall not be responsible or liable for any defects, problems or resulting damages incurred by Dealer from the operation and use of the DMS, the Dealer-to-Case network connection, or the System.

## **18. Marketing & Promotional Support**

- 18.1 Marketing Assistance. To assist Dealer in its marketing and promotional efforts, Case will develop the following marketing and promotional materials: (a) training and videos of Product features, operations, demonstrations and competitive comparisons; (b) Product sales literature and brochures; (c) Product and promotional posters, banners and point of sale materials; (d) print and media copy for advertisements in newspapers, magazines, and trade publications; and (e) radio and television advertising scripts. Case may also make cooperative advertising funds available to Dealers, in its sole discretion.
- 18.2 Communications to Dealer. Dealer expressly consents to the receipt of unsolicited commercial faxes, emails, text messages, instant messages or other form of electronic communication, from Case, its Affiliates, or other Case-designated sender.
- 18.3 Products and Services Provided by Case From time to time, Case will provide Dealer with certain products and services necessary for Dealer to market, sell and service Products. Dealer agrees that Case, in its discretion, may charge Dealer for any such products or services so provided.
- 18.4 Dealer Knowledge of SSM Case expects Dealer to know and understand its market area and the promotional activities that would best be used to market Products within Dealer's SSM. As such, it is Dealer's responsibility to determine which marketing and promotional materials to use in its marketing efforts to meet its sales responsibilities under this Agreement.

## **19. Orders, Delivery and Passage of Title**

- 19.1 Purchase Orders. Dealer may seek to purchase Products from Case under this Agreement by submitting purchase orders through Case's System in accordance with instructions provided by Case. Case may specify in writing the minimum quantity of a given Product that Dealer shall be obligated to order at one time as a condition for filling such order, provided that such minimum quantity requirements will be consistently imposed on Dealers.
- 19.2 Offer and Acceptance. Dealer's transmission of an order for Products through Case's System will be a binding offer by Dealer to purchase the Products ordered, unless Case rejects the order. Purchase orders submitted by Dealer shall not be binding upon Case unless and until accepted in writing or electronically by Case. All orders for Products may not be canceled by Dealer, and shall be subject to Case's then applicable conditions of sale.
- 19.3 Delivery Dates. Case shall endeavor to meet the delivery date specified in the System, but shall have no liability for failing to timely fill or deliver any order.

- 19.4 Product Allocation. Case shall have the right to allocate delivery of Dealer's Product orders based on their relative order or sales status as compared to other pending orders.
- 19.5 Product Shipment. Case shall arrange delivery of Products to Dealer and Case reserves the right to determine the method and routing for such delivery. Case shall not be responsible for guaranteeing shipping rates or for delays in shipment. Case, in its discretion, may permit Dealer to designate orders for Will Call delivery pursuant to the terms of the DOG.
- 19.6 Risk of Loss / Passage of Title. Case's release of Products to any carrier for transportation to Dealer shall constitute delivery to Dealer for purposes of passage of title, and Dealer shall bear all risk of loss or damage to Products thereafter. For Will Call orders, risk of loss and passage of title shall be as set forth in the DOG.
- 19.7 Equipment Transfer. The transfer of Equipment from Dealer to other authorized dealers of Products shall be in accordance with Case's transfer program described in the DOG. Case shall have no liability as a result of any such transfer.
- 19.8 Product Return Authorization. Dealer agrees that no Products delivered to it hereunder are to be returned to Case without prior written authorization. Dealer shall pay all transportation charges on any returned Products authorized by Case, and Dealer is responsible for payment of all restocking charges stated in the DOG.

## **20. Product Pricing and Payment**

- 20.1 Prices. Unless otherwise authorized by Case, the price charged to Dealer for any Product shall be the price in effect at the time the Product is invoiced to Dealer.
- 20.2 Price Changes. Case reserves the right at any time to change its prices, terms, discounts and any other pricing provision for Products.
- 20.3 Payment. Dealer shall pay Case for all Products immediately upon invoicing of Products to Dealer. The terms and conditions of sale and payments for all Products invoiced to Dealer shall be subject to Case's applicable conditions of sale and prices as published and modified from time to time by Case. Failure to make payment in accordance with this provision may, in Case's sole discretion, result in Case revoking the sale and repossessing the Product without notice or formality. Case reserves the right, without liability, to refuse to sell or deliver Products to Dealer when in Case's opinion Dealer's financial condition does not warrant or support further sales or deliveries.
- 20.4 Equipment Relocation. Case may request Dealer to transfer new Equipment to another authorized dealer to accommodate such dealer's sale to another Customer. If Dealer refuses, Case, in its sole discretion, may decline to pay, on Dealer's behalf, the wholesale finance interest charges associated with that specific Equipment, and may decline to make available to Dealer any retail sales programs for such Equipment.
- 20.5 Application of Money and Credits. Any money or credits due and payable or becoming due and payable from Case to Dealer may be applied in any order Case may determine for the satisfaction, in full or in part, of any debts, liabilities or obligations due and payable or becoming due and payable or owing from Dealer to Case or its Affiliates.

## **21. Negative Covenants and Compliance**

- 21.1 Domestic Sales Only. Without Case's prior written approval, Dealer shall not sell, lease or rent Products outside of the Domestic United States.
- 21.2 Retail Sales Only. Dealer shall sell Products only to retail Customers or to other authorized dealers of Products. As such, except for sales to authorized Case dealers, Dealer may not sell any Products at wholesale, including but not limited to sales to jobbers, jockeys, or other unauthorized dealers.
- 21.3 No Deceptive or Unethical Practices. Dealer shall conduct business in a manner that will reflect favorably at all times on Dealer, Case, Products Licensed Trademarks and other authorized dealers of Products. Dealer shall refrain from business practices, advertisements, promotions and conduct that are unethical, deceptive, misleading, fraudulent, confusing or would likely contravene any voluntary or involuntary advertising standard or any law. Dealer shall not make, directly or indirectly, any false or misleading statement or representation concerning any Product, its source, condition, capabilities, price, or charges for the Product's distribution, delivery, taxes or other items.

- 21.4 No Internet Sales. Dealer may not consummate sales of new Products on or through an Internet website, including but not limited to an auction-type website, except as otherwise authorized by Case.
- 21.5 Announcements. Dealer shall not publish public relation announcements that in any way involve or mention Case without Case's prior written consent.
- 21.6 Compliance with Federal, State and Local Laws Dealer shall comply with all applicable federal, state, and local laws and regulations governing Dealer's operations and its ordering, sales and service of Products, including without limitation those laws or regulations concerning safety, emissions control and customer service. Dealer shall obtain all governmental approvals, permits or licenses required to do business in its SSM.
- 21.7 Compliance With Export Laws Certain Products purchased by Dealer from Case may be subject to United States export control laws. Dealer agrees that it is responsible for knowing and complying with such laws. Diversion contrary to United States law is prohibited.
- 21.8 Compliance with Fraud and Anti-Corruption Laws.
- (a) Dealer and its Dealer Principals represent that they have not been convicted of, or pleaded guilty to, an offense involving fraud or corruption and that they are not now listed by any government agency as debarred, suspended, or proposed for suspension or debarment, or otherwise ineligible for any government bid or procurement programs. Dealer agrees to promptly inform Case of any change in this representation.
  - (b) Dealer shall become familiar with and strictly comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption, including but not limited to the United States Foreign Corrupt Practices Act and similar anti-corruption or anti-bribery laws. Dealer shall promptly report to Case any request or demand for any undue financial or other advantage of any kind received by Dealer in connection with the performance of this Agreement. Dealer warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this Agreement, and shall immediately notify Case in writing if a foreign public official becomes an officer or employee of Dealer or acquires a direct or indirect interest in Dealer.

## **22. Product Changes and Discontinuation**

- 22.1 Product Changes and Improvements. Case may make changes or improvements at any time in the specifications, construction, color and design of Products without incurring any obligation to Dealer or Dealer's Customers.
- 22.2 Product Discontinuation. Case reserves the right at any time, without liability to Dealer, to discontinue the manufacture of any and all model(s), Equipment, or Product Line(s) under the Licensed Trademarks covered by this Agreement. Products shall be considered discontinued notwithstanding the fact that similar or identical products continue to be manufactured or sold by CNH Industrial America LLC or its Affiliate under Trademarks other than the Licensed Trademarks or brands for which this Agreement grants Dealer certain Product distribution rights. For any models, Equipment or Product Line(s) so discontinued, Case shall not be required to offer Dealer the right to represent a similar model Equipment or Product Line(s), if any, marketed, manufactured or sold by CNH Industrial America LLC or its Affiliates under Trademarks other than the Licensed Trademarks or brand(s) listed on Schedule B.

## **23. Case Sales of Products**

- 23.1 Direct Sales in Dealer's SSM Within Dealer's SSM or elsewhere, Case reserves the unrestricted right, without liability to Dealer, to directly sell, rent or lease Products to any Customer, person or entity, including both at wholesale or retail, and permit such Customer, person or entity to service Products, including but not limited to the following: (a) governmental entities, agencies, institutions or subdivisions thereof; (b) educational and charitable institutions; (c) rental companies; and (d) accounts classified by Case as Strategic Accounts or other similar designation.

## 24. Licensed Trademarks

- 24.1 Trademark License. Subject to and only in accordance with the terms and conditions of this Agreement, Case grants Dealer the right and Dealer accepts the obligation to make only Permitted Uses of the Licensed Trademarks set forth in Section 24.2 and to refrain from engaging in Prohibited Uses of the Licensed Trademarks set forth in Section 24.3. Dealer's right to use the Licensed Trademarks is limited to the Permitted Uses during the term of this Agreement. Any unauthorized use of the Licensed Trademarks (including any of the Prohibited Uses) shall constitute an infringement of Case's rights to the Licensed Trademarks in addition to a breach of this Agreement. In the event Dealer's use of Licensed Trademarks (even though a Permitted Use) is unacceptable to Case in its sole discretion, Dealer must immediately cease such use of the Licensed Trademark upon notice from Case.
- 24.2 Permitted Uses. Dealer shall and is permitted to: (a) use the Licensed Trademarks to identify and advertise its business at Dealer Locations in connection with the marketing, sale, distribution and service of Products under the Licensed Trademarks; (b) use the Licensed Trademarks only in connection with the marketing, sale, distribution and service of the Products for which Case has authorized them to be used; (c) identify itself (and not Case) as the owner of Dealer's business in conjunction with any use of the Licensed Trademarks, including the use thereof on leases, invoices, order forms, receipts, and business stationery, as well as at such other locations and in the manner as Case may designate in the DOG and (d) use the Licensed Trademarks to identify itself as an authorized dealer of Products.
- 24.3 Prohibited Uses. Dealer shall not: (a) use the Licensed Trademarks (or any other Trademarks owned or licensed by Case or its Affiliates) as part of its corporate or other legal name without the prior written consent of Case; (b) sublicense or assign its right to use the Licensed Trademarks to any other person or entity; (c) use the Licensed Trademarks to incur any obligation or indebtedness on behalf of Case; (d) manufacture or purchase objects bearing Licensed Trademarks or Trademarks from unlicensed sources or apply, or have applied, Licensed Trademarks or Trademarks to objects that will be offered for sale or provided as promotional items by Dealer or any third party, specifically including but not limited to any clothing item (such as shirts, hats or other apparel), giftware, toys or other sundry items; and (e) register, attempt to register, obtain any ownership in, or otherwise use any Internet Registration (defined as any website, domain name, URL, internet/World Wide Web presence or feature, social media account designations, or other electronic communications portal) whose domain name, URL or other electronic communications portal contains, incorporates, or consists of the Licensed Trademarks or Trademarks without Case's express written consent, which may be withheld for any or no reason.
- 24.4 Unauthorized Internet Registrations. In the event that Dealer registers, attempts to register, obtains any ownership in, or otherwise uses any Internet Registration in violation of this Agreement, in addition to any rights Case may have under this Agreement, Dealer hereby acknowledges and agrees that any such Internet Registration, including any copyrights therein, shall be deemed to be the property of Case. Dealer will assign, transfer or assist in the perfection of any rights necessary to transfer said registration to Case with no compensation to Dealer and at no additional cost to Case. In the event that a court of competent jurisdiction determines that any ownership rights to any Internet Registration are not automatically transferred to Case pursuant to this Agreement, Dealer agrees to execute any documents deemed necessary by Case to give effect to this provision. Case may condition approval of Dealer's use of any such Internet Registration on the transfer to Case of any and all ownership rights therein, including any copyrights. In the event that this Agreement expires or is terminated, Dealer shall not use or register a domain name that includes, or in Case's sole discretion is confusingly similar to, a Licensed Trademark or any other Trademark.
- 24.5 Notice of Trademark Claims. Dealer shall promptly notify Case of any suspected unauthorized or infringing use of the Licensed Trademarks, any challenge to the validity of the Licensed Trademarks, any challenge to Case's ownership of the Licensed Trademarks, any challenge to Case's right to use and license others to use such Licensed Trademarks, or any challenge to Dealer's right to use the Licensed Trademarks.
- 24.6 Validity of Licensed Trademarks. Dealer expressly understands and acknowledges that the Licensed Trademarks are valid and serve to identify Products and those authorized by Case to market, sell, distribute, and service Products. Dealer shall not directly or indirectly contest, attack, oppose, attempt to cancel or





otherwise challenge in any manner or in any forum, the validity of the Licensed Trademarks or Case's ownership of, or Case's right to use or license others to use, the Licensed Trademarks, either during or after the term of this Agreement.

- 24.7 Ownership of Licensed Trademarks and Goodwill Dealer acknowledges the Licensed Trademarks are exclusively owned by Case. Dealer's use of the Licensed Trademarks pursuant to this Agreement does not give Dealer any ownership interest or other interest in or to the Licensed Trademarks. Dealer shall execute any documents deemed necessary or useful by Case to obtain protection for the Licensed Trademarks or to maintain their validity and enforceability. Any and all goodwill arising from Dealer's use of the Licensed Trademarks shall inure solely and exclusively to the benefit of Case. Upon expiration or termination of this Agreement, no monetary amount shall be attributable to any goodwill associated with Dealer's use of the Licensed Trademarks or the sale and service of Products.
- 24.8 Nonexclusive License This Agreement grants Dealer only a nonexclusive right and license to use the Licensed Trademarks. Case has and retains the rights to use the Licensed Trademarks itself in connection with selling Products and services and to grant other licenses for the Licensed Trademarks and for Trademarks.
- 24.9 Discontinuation and Substitution of Licensed Trademarks Case reserves the right in its sole discretion to discontinue any Licensed Trademark and to substitute or add different Licensed Trademarks for use in identifying Products or the dealers authorized to sell or service Products. Dealer shall implement promptly any such substitution or addition of new Licensed Trademarks.
- 24.10 Copyrights. Dealer shall not copy any aspect or portion of Case's website or other electronically stored information or printed documents or publications without the express prior written consent of Case.

## **25. Authorized Software**

- 25.1 Software License Dealer acknowledges that certain Products contain imbedded computer software and related technology (collectively, "Authorized Software") in which Case owns or licenses copyrights and/or other intellectual property rights. During the term of this Agreement Case grants Dealer a non-transferable, royalty-free license to use Authorized Software in object code form only ("Software License"). The Software License is limited to the sale and service of any Product containing Authorized Software only in the manner authorized by Case in writing. Except as expressly authorized by this Agreement, Dealer may not sublicense Authorized Software to any other entity nor assign its Software License. This Agreement does not grant Dealer any right, title, or interest in Authorized Software anywhere in the world except the Software License granted herein. Dealer acknowledges that the use of any Product containing Authorized Software may require a Software License from Case. Case reserves the right to require all users of Products containing Authorized Software to possess a valid license in the form prescribed by Case, and in such case Dealer shall not transfer or permit the transfer or use of any Product containing Authorized Software unless the transferee or user is subject to such valid license. This Software License shall continue until it is terminated in accordance with this Agreement, or for the useful life of the Product in which Authorized Software is imbedded or of which Authorized Software is an integral part or for the useful life of Authorized Software, whichever is shorter.
- 25.2 Automatic Termination. The Software License shall automatically terminate upon the occurrence of any of the following: (a) removal of Authorized Software from the Product for which it was obtained or authorized, (b) service by any unauthorized person, (c) use of Authorized Software on any product other than that for which it was obtained or authorized, or (d) breach of this Software License by Dealer.

## **26. Company Information and Case IP**

- 26.1 Company Information. Periodically, Case will provide Dealer with proprietary, confidential information, technical knowledge and/or assistance, and other materials that derive value from not being generally known in the industry ("Company Information") that are reasonably necessary for the distribution, sale, promotion and service of Products. Case has sole discretion to determine what information it provides to Dealer is Company Information. Dealer agrees that Company Information remains the property of Case. Dealer must take commercially reasonable measures, but in any event no less strict than the measures Dealer uses with

its own confidential information, to maintain the confidentiality of Company Information and to ensure that all Company Information is used only to sell and service Products in accordance with this Agreement. Dealer may disclose Company Information only to those of its employees who will need it and must take all necessary measures to ensure that those persons do not reveal Company Information to any third parties without the prior written authorization of Case. Dealer shall be responsible and liable to Case for any breach of this provision by its employees, agents or representatives.

- 26.2 Return of Company Information Dealer acknowledges that Case provides Company Information to Dealer for use by Dealer pursuant to this Agreement. Therefore, upon expiration or termination of this Agreement for any reason, Dealer shall immediately return to Case all Company Information in any form.
- 26.3 No Reverse Engineering Dealer shall not engage in, cause to be engaged in, or permit any reverse engineering of Authorized Software, Products, or component parts thereof. "Reverse engineering" is defined as attempting through analysis of Products or component parts thereof to determine their functionality and thereby gain the ability to alter or reproduce that functionality.
- 26.4 Right to Use Case IP Dealer shall use Case IP only in accordance with the provisions of and for the purposes contemplated by this Agreement and in accordance with any procedures that Case may establish for use of Case IP.

## **27. Term and Termination**

- 27.1 Term of Agreement and Renewal. This Agreement shall commence on the Effective Date and continue to the Expiration Date ("Term"). The Expiration Date of this Agreement shall be extended for additional successive five (5) year periods unless, at least ninety (90) days prior to the Expiration Date or the expiration date of any subsequent extension period, either party notifies the other of its intention not to extend. Upon such notification not to extend, this Agreement shall expire on the Expiration Date or at the expiration date of any extension period.
- 27.2 Replacement Agreement. In the event Case offers to all authorized dealers in the state of Dealer's Primary Location a new dealer agreement or an amendment to this Agreement ("Replacement Agreement"), Case may terminate this Agreement at any time by providing Dealer with at least one hundred eighty (180) days' prior written notice and shall furnish Dealer a copy of the Replacement Agreement with such notice. Dealer's return to Case of an executed Replacement Agreement shall not give rise to any repurchase rights and obligations provided for in Section 29.
- 27.3 Breach.
- (a) Except where termination of the Agreement due to Dealer's breach is allowed immediately pursuant to Section 27.4, and except as stated in Sections 27.3(b) and (c), in the event that either Dealer or Case fails to fulfill any of their responsibilities under this Agreement, the other party may terminate this Agreement by providing ninety (90) days' written notice listing the reasons for termination.
  - (b) If Dealer breaches Section 7.2, Case may, in its sole discretion, terminate the Agreement or remove authorized Dealer Locations from the Agreement upon ninety (90) days' advance written notice to Dealer. However, during this ninety (90)-day period, Dealer may cure its breach of Section 7.2 by providing Case, within sixty (60) days of Case's notice to Dealer, a written plan to return to compliance with Section 7.2 within twelve (12) months from the date of Case's notice. Thereafter, if Dealer fails to perform such submitted plan, Case may terminate the Agreement with thirty (30) days' written notice.
  - (c) If Dealer is in breach of Section 9.1(a) Case may terminate Dealer for such default only after providing Dealer with written notice and a twelve (12)-month period within which Dealer may cure such default to Case's sole satisfaction.
  - (d) A breach by Dealer of any other written agreements between Dealer and Case or its Affiliates, shall also be considered a breach under this Agreement permitting termination of this Agreement. Termination for such breach shall be pursuant to Section 27.3(a) unless the breach is of the type of conduct enumerated in subsections 27.4(f), (h), (j), (k), (l), (n) or (o), in which case Case may terminate this Agreement immediately.

- (e) As an additional or alternative remedy for any breach by Dealer of the Agreement, Case, in its sole discretion and after providing Dealer with an opportunity to cure said breach as provided in Sections 27.3(a), (b) or (c), may amend Schedule D to remove authorization for the Dealer Location at which such breach occurred. In such event, Dealer shall cease all activities related to the display, stocking, sales and service of Products at such Dealer Location, including the use of Licensed Trademarks, and Case will repurchase new Parts and Signs located only at such Dealer Location as provided in Sections 29.1(b) and (c).

27.4 Immediate Termination. Case may terminate this Agreement immediately upon the occurrence of any of the following events:

- (a) Dealer Financial Defaults: (i) Dealer's default in the payment when due of any obligations to Case or any of its Affiliates, including but not limited to CNH Industrial Capital America LLC ("CNH Capital"); (ii) Dealer's default under any chattel mortgage or other security agreement between Dealer and Case, any of its Affiliates or any other lender or financing entity; or (iii) the refusal or failure of Dealer upon demand to account to Case or any of its Affiliates for the proceeds of the sale of Products for which Dealer is indebted to Case or such Affiliates;
- (b) Loss of Wholesale Credit Line (i) the termination (or suspension where such suspension continues for more than sixty (60) calendar days), of any of Dealer's significant wholesale lines of credit for the purchase of new Products;
- (c) Insolvency: (i) the filing of a voluntary or involuntary petition in bankruptcy by or against Dealer; (ii) the making of an assignment by Dealer for the benefit of creditors; (iii) a closeout or sale of a substantial part of Dealer's assets related to the business; (iv) the commencement of dissolution, receivership or liquidation proceedings by or against Dealer; (v) the insolvency of Dealer; or (vi) the levy of a writ of attachment or execution against Dealer;
- (d) Change in Dealer Entity, Control, Ownership or Management without the prior written consent of Case: (i) any change in Dealer's legal form or entity; (ii) any change in Dealer's control, ownership or management (as defined in Section 4.3) listed in Schedule A; or (iii) any assignment or attempted assignment by Dealer of this Agreement;
- (e) Death or Incapacity: if Dealer fails to provide Case with an acceptable ownership or management succession plan as set forth in Section 4.4 upon the death or incapacity of any Dealer Principal;
- (f) Misrepresented or False Information: Dealer or anyone acting on its behalf has: (i) submitted false records, contracts, statements, reports or documents to Case or any of its Affiliates, including CNH Capital; (ii) submitted any false or fraudulent documents for Dealer Claim or in support thereof; (iii) knowingly accepted any payment from Case for any work not performed by Dealer in accordance with the provisions of this Agreement or the DOG; or (iv) submitted false information in applying for appointment as an authorized dealer of Products;
- (g) Failure to Operate: failure to operate any Dealer Location in the normal course of business for seven (7) consecutive calendar days;
- (h) Criminal and/or Tortious Conduct: Dealer or any Dealer Principal has pleaded guilty to or been convicted of a felony or any other violation of law that in Case's opinion affects adversely the operation or business of Dealer, or the good name, goodwill or reputation of Case, Products, Licensed Trademarks, Dealer, or other authorized dealers of Products;
- (i) Dealer Closure/Loss of License (i) a permanent closure of any Dealer Location without the prior written consent of Case; or (ii) the revocation, suspension or other invalidation of any Dealer license, permit or authorization necessary to conduct business pursuant to this Agreement;
- (j) Inspection/Audit Refusal any failure by Dealer to permit Case to inspect or audit Dealer's inventory or business and financial records pursuant to Section 16.4;
- (k) Detrimental Conduct: any conduct by Dealer or any Dealer Principal which in the sole discretion of Case: (i) is injurious or detrimental to Dealer's Customers, the public welfare, other authorized dealers of Products, or the reputation of Case, Products and the Licensed Trademarks; (ii) is unbecoming of a reputable business person; (iii) is abusive or threatening to any Case employee; or (iv) evidences a disagreement between any Dealer Principals that in Case's opinion adversely affects

- the operation of Dealer or the good name, goodwill or reputation of Case, Products, Licensed Trademarks, or Dealer;
  - (l) Breach of Confidentiality: any misuse or unauthorized disclosure of Case IP, Company Information or Authorized Software;
  - (m) Revocation of Guaranty: the withdrawal or revocation of a guaranty of Dealer's indebtedness to Case or its Affiliates by one or more personal or corporate guarantors;
  - (n) Incurable Breach: any breach of the Agreement that is incapable of being remedied by an affirmative present action by the Dealer;
  - (o) Repetitive Breach: breach of the Agreement by Dealer for which it has received notice by Case of that same type of breach on at least two (2) prior separate and distinct occasions;
  - (p) Unauthorized Location: any breach of Section 12.2 of the Agreement.
- 27.5 Case's Exercise of Termination Rights . Case may exercise its termination rights under Sections 27.3 and 27.4 without regard to the performance of other authorized dealers or to the circumstances under which Case has terminated or refrained from terminating the sales and service agreements of other authorized dealers.
- 27.6 Termination At Will. This Agreement may be terminated at any time at will, without cause, upon sixty (60) days' written notice by Dealer to Case, or upon one hundred twenty (120) days' written notice by Case to Dealer, or as mutually agreed upon in writing by both Parties.

## **28. Effect of Termination or Expiration**

- 28.1 Dealer's Obligations . Upon the termination or expiration of this Agreement, Dealer shall cease to operate or represent itself as an authorized dealer of Products under the Licensed Trademarks, and shall promptly: (a) cease using the Licensed Trademarks and remove from Dealer's Locations and vehicles all signs or advertising displays that bear the Licensed Trademarks; (b) remove and discontinue the use of, and cause any third party to remove, any identification and any promotion or advertising that associates Dealer with Products, the Licensed Trademarks, or Case; and (c) at Case's request, provide to Case all sales records, mailing lists, customer lists, service history records, microfiche, catalogs, registrations and any other material of any kind relating to the promotion, marketing, sale, operation or servicing of Products covered by this Agreement. If Dealer fails to promptly comply with any of its obligations upon the termination or expiration of this Agreement, including but not limited to Dealer's obligations under this section, Case may take steps, as it deems necessary in its sole discretion, to effect Dealer's compliance with such obligations or the same result as would be realized by Dealer's compliance, and Dealer shall reimburse Case for all costs and expenses, including attorney's fees, incurred by Case in effecting or enforcing such compliance.
- 28.2 Pending Orders. Termination or expiration of this Agreement shall relieve Case of any obligation to make any further shipments of Products, and Case may without liability cancel any of Dealer's unshipped orders for Products. For any Products which Case may ship after termination or notice thereof, Case may require payment prior to shipment.
- 28.3 Financial Obligations Upon the termination or expiration of this Agreement, all indebtedness of Dealer shall become immediately due and payable to Case, and Dealer shall promptly pay Case all sums owed by Dealer. Final settlement of Dealer's account with Case shall not be made until Dealer complies with all requirements of this Agreement.
- 28.4 Continued Market Presence In advance of the effective date of termination, the scheduled Expiration Date or the expiration of any extension period of this Agreement, Case may consummate arrangements to appoint a replacement authorized dealer for Dealer's SSM.
- 28.5 Post-Termination Transactions. Any business relations or transactions between the Parties after expiration or termination of this Agreement shall not constitute a waiver of the expiration or termination of this Agreement or in any manner reinstate the Parties' contractual relationship, or establish any new contractual relationship, and all such relations shall be governed by terms and conditions identical to the relevant provisions of this Agreement unless the Parties execute a new agreement superseding this Agreement.
- 28.6 Pre-Termination Warranty Service. Case will reimburse Dealer for all Warranty Service claims performed prior to the expiration or termination of this Agreement that meet the requirements of the DOG.

## 29. Inventory Repurchase and Return Obligations

29.1 Items Subject to Repurchase. Within thirty (30) days after the termination or expiration of this Agreement, either Case or Dealer may request in writing the return for repurchase of all of the following items originally purchased from Case by Dealer, on the terms specified herein, and Dealer shall return such items to Case as follows:

(a) Equipment.

- (i) Equipment Eligible for Repurchase. New, undamaged, salable, current, complete and unused Equipment, including attachments, purchased from Case and delivered to Dealer within twenty-four (24) months of the date this Agreement terminates or expires ("Repurchasable Equipment"). For purposes of this Section, "current" means the model or series of Equipment listed in Case's price book or price list at the date of termination or expiration of the Agreement. Case will only repurchase separate attachments that were not previously installed on Equipment and which were invoiced separately to Dealer.
- (ii) Equipment Repurchase Price. Repurchasable Equipment shall be repurchased at the price paid by Dealer (A) not including transportation costs actually paid or incurred by Dealer for initial delivery, (B) less any discounts which may have been allowed or paid thereon by Case, (C) adjusted where appropriate to account for any damage or weathering. Case shall not be obligated to reimburse Dealer's initial costs for unloading, set up, or preparation of Repurchasable Equipment.

(b) Parts.

- (i) Parts Eligible for Repurchase. New, undamaged, salable, complete and unused Parts purchased from Case by Dealer, that are listed as of the date of termination or expiration of the Agreement in Case's then current Price List and not identified as discontinued in such Price List ("Repurchasable Parts"). Repurchasable Parts must be in original Case packaging with the original authorized Case identification label and must be properly identified prior to shipment to Case for repurchase. Case specifically excludes from repurchase Parts that: (A) have a limited shelf life or contain flammable or hazardous materials; (B) are direct shipped from a supplier other than Case; (C) have an altered or counterfeited identification label; (D) are in broker packaging; (E) are not in correct order multiples; (F) are coded non-returnable in the current parts Price List; or (G) are common service or 'maintenance' items, rather than repair parts, such as oil, filters, fluids, lubricants, tires, batteries, tracks, bucket edges and teeth.
- (ii) Parts Repurchase Price. Repurchasable Parts shall be repurchased at the then current dealer price (less discounts and freight), less a restocking charge as set forth in the Parts Return Policy.
- (iii) Merchandise Items. 'Merchandise' items such as clothing, toys, binders, gloves, etc., are not eligible for repurchase.

(c) Signs.

- (i) Signs Eligible for Repurchase. External flag mast, pole or monument sign purchased from a vendor authorized by Case that displays the Licensed Trademarks or any other Trademarks, excluding any building fascia ("Repurchasable Signs").
- (ii) Sign Repurchase Price. Repurchasable Signs shall be repurchased at the amount paid by Dealer, less an annual depreciation of twenty-five percent (25%).

29.2 Return Procedures. Within sixty (60) days after the date of the written request made pursuant to Section 29.1, Dealer shall return to Case all items subject to repurchase or required to be returned pursuant to this Agreement. All items returned to Case shall be identified as required by Case, packed, boxed, crated and loaded by Dealer and shipped at Dealer's expense and risk of loss to the destination or destinations specified by Case. The procedure for the repurchase of Repurchasable Parts shall be further subject to the Parts Return Policy issued by Case and in effect on the date of termination or expiration of the Agreement. Upon receipt of returned items, Case shall inspect them and issue credit to Dealer for all such items returned that

meet the requirements specified in this Agreement and the DOG, less any amounts owed to Case or its Affiliates by Dealer. Any items returned to Case facilities that are not properly returnable as prescribed by this Agreement, shall be, at Dealer's option, either destroyed or returned to Dealer at its cost. Dealer shall transfer all returned items by warranty bills of sale satisfactory to Case, if so requested.

- 29.3 Conditions Precedent to Payment Any costs incurred by Case in discharging all or any part of Dealer's obligations under this Agreement, including but not limited to Dealer's obligations to cease all use of the Licensed Trademarks or to pack, load and ship Parts to Case, shall be deducted from any amount owed by Case to Dealer. Dealer shall not be entitled to payment or credit for returned items until Dealer has complied with all applicable laws, rules, regulations and other legal requirements governing the bulk transfer of inventory or similar protection of creditors. Case shall have the right to withhold from the price of any items repurchased pursuant to this section a sum sufficient to discharge any liens or encumbrances against such items and to discharge such liens or encumbrances. Dealer shall execute such documents and take any additional action requested by Case to transfer ownership of returned items, free and clear of any claims, liens or encumbrances.
- 29.4 Other Return Items Upon expiration or termination of this Agreement, Dealer shall return to Case any materials (such as sales promotion advertising and training materials, tools and signs) provided without charge to Dealer by Case or any predecessor. In addition, Dealer shall return for repurchase special service tools currently offered by Case. Case will repurchase such service tools at 50% of the price paid by Dealer, except service tools that are new, unused and in original packaging shall be repurchased at 100% of the price paid by Dealer.

### **30. Limitation of Liability**

- 30.1 Dealer Responsibility for Operating Capital This Agreement contemplates that Dealer, as an independent business, shall obtain on its own the capital investment necessary to operate its business. Nothing in this Agreement shall impose any liability on Case in connection with Dealer's operations under this Agreement or otherwise, or for any expenditure made or incurred by Dealer in preparation for performance or in performance of Dealer's responsibilities under this Agreement.
- 30.2 Disclaimer of Consequential Damages. The Parties both understand and agree that this Agreement is of a limited duration, and therefore, except as provided herein, neither party shall be liable to the other for any damages caused by the termination or expiration of this Agreement, whether based upon loss of anticipated sales or prospective profits, expenditures, investments, leases, property improvements or other matters related to the business of the Parties. The damages to which either party may be entitled for breach of this Agreement are limited to actual out-of-pocket expenses incurred as a direct result of the breach.
- 30.3 Waiver of Punitive Damages. The Parties hereby waive, to the fullest extent permitted by law, any right or claim for any punitive or exemplary damages against the other and agree that if there is a dispute with the other that each party shall be limited to the recovery of actual damages sustained by it.
- 30.4 No Group Litigation. The Parties agree that any and all dispute resolution proceedings between them, including litigation, arising from or related to this Agreement shall be conducted on an individual basis only. Neither Party shall commence any dispute resolution with a third-party against the other, or join with any third party in any dispute resolution involving Case and Dealer. Neither of the Parties shall attempt to consolidate or otherwise combine in any manner a dispute resolution proceeding involving Case or Dealer with another dispute resolution proceeding of any kind.
- 30.5 Limitations Period. All claims for any breach of this Agreement, and all claims arising out of the relationship between the Parties established by this Agreement, shall be made within two (2) years from the date such claim accrued.

### **31. Indemnification**

- 31.1 Indemnification By Case.
- (a) Licensed Trademarks. If Case reasonably determines that Dealer has used the Licensed Trademarks in accordance with this Agreement, Case shall defend, indemnify, and hold harmless

Dealer from all loss, cost, liability, and expense arising out of any claim, suit or demand regarding Dealer's use of the Licensed Trademarks. If Case, in its sole discretion, determines that Dealer has not used the Licensed Trademarks in accordance with this Agreement, Dealer shall bear the cost of such defense, judgment or settlement.

- (b) Authorized Software. Case shall defend, indemnify, and hold Dealer harmless from all loss, cost, liability, and expense arising out of any claim that Authorized Software used in accordance with its documentation infringes any valid patent, copyright, trade secret, or other enforceable proprietary right of any third party. Should any Authorized Software become (or in Case's opinion be likely to become) subject to such a claim, Dealer will permit Case, at Case's option and expense to

(a) procure for Dealer or Dealer's Customers the right to continue to use Authorized Software or

(b) modify the allegedly infringing Authorized Software so that it becomes non-infringing. Case's obligations under this Section will not apply if Authorized Software is modified without Case's consent.

- (c) Case IP. Except as otherwise provided in this Section with respect to Authorized Software and Licensed Trademarks, Case will indemnify, defend and hold harmless Dealer from all loss, cost, liability, and expense arising out of any claim based on an allegation that any Product infringes a valid patent, copyright, or trademark or misappropriates any protectable and enforceable trade secret. Case shall have no obligations under this provision for any Product that has been the subject of unauthorized modifications by Dealer or any third party or for infringement that results from the use of intellectual property other than Case IP in conjunction with Case IP that would otherwise not be infringing. If any Product becomes, or in Case's opinion is likely to become, subject to such a claim of infringement, Case will, at its expense and at its option, either procure the right for Dealer and Dealer's Customers to continue using the infringing Product(s) or replace or modify the Case Product(s) so that they are no longer infringing. Upon failure of the foregoing provisions, Case may, at its option, refund the purchase price for the infringing Product(s) less a reasonable allowance for use. This section states the entire liability of Case for infringement by any Product.

- (d) Dealer Cooperation. In the event of any litigation relating to Dealer's use of the Licensed Trademarks, Authorized Software, or Case IP Dealer shall promptly notify Case of such litigation and shall execute any and all documents and undertake such acts as may, in the opinion of Case, be necessary or useful to carry out such defense or prosecution, including becoming a nominal party to any legal action. Except to the extent that such litigation is the result of Dealer's use of the Licensed Trademarks, Authorized Software, or Case IP in a manner inconsistent with the terms and conditions of this Agreement, Case agrees to reimburse Dealer for its out-of-pocket costs in undertaking such acts.

- (e) Control of Litigation Dealer acknowledges that Case has the right to direct and control any administrative proceeding or litigation involving the Licensed Trademarks, Authorized Software, or Case IP, including any settlement thereof. Case agrees to consult with Dealer regarding any settlement in which Dealer would be required to financially participate and to obtain Dealer's consent to any such settlement, which consent will not be unreasonably withheld. Case has the right, but not the obligation, to take action against uses by others that may constitute infringement of the Licensed Trademarks, Authorized Software or Case IP. If Dealer fails to notify Case promptly of any litigation or refuses to give Case sole control of the defense and/or prosecution of such litigation and all settlement negotiations, Case will be relieved of its obligations under this Section.

- 31.2 Indemnification by Dealer. Dealer agrees to defend, hold harmless and indemnify Case, its Affiliates and their respective shareholders, directors, officers, agents, employees, successors and assigns from and against any and all claims, damages, demands, settlements, judgments, legal actions, liabilities, costs and expenses of any nature, including without limitation, attorney's fees and court costs, resulting from the acts and/or omissions of Dealer, including but not limited to: (i) Dealer's defrauding of or misrepresentations to customers; (ii) Dealer's actions in violation of Sections 5.3, 5.4, 5.5, 10.1(d), 11.1, 11.2, 11.3, 11.5, 14.2, 15.2, 15.3, 15.4, 15.5, 15.6, 21.3, 21.6, 21.7 and 21.8; or (iii) Dealer's negligent or improper, or alleged negligent or improper, repair or servicing of Products, whether such actions occur during or after the Term of this Agreement.



### 32. General Provisions

- 32.1 Governing Law. This Agreement shall be governed by and interpreted according to the laws of the state of Dealer's Primary Location, without regard to such state's conflicts of laws rules and except to the extent governed by the United States Trademark Act of 1946 (Lanham Act), the Copyright Act, and the Patent Act.
- 32.2 Consent to Jurisdiction and Venue. Dealer irrevocably submits itself to the exclusive jurisdiction of the federal court of the Milwaukee Division of the Eastern District of Wisconsin for the purpose of any suit, action, or other proceeding arising out of or relating to this Agreement, or of any of the transactions contemplated thereby, and irrevocably agrees that all claims in respect of such suit, action or proceeding may be heard and determined in such federal court, provided that Case may apply to any court of competent jurisdiction for interim protection or equitable relief such as an interlocutory or interim injunction. If the federal court of the Eastern District of Wisconsin lacks jurisdiction for any reason to hear such claims, Dealer irrevocably submits itself to the exclusive jurisdiction of the Circuit Court of Racine County, Wisconsin. By execution and delivery of this Agreement, Dealer irrevocably waives, to the fullest extent it may effectively do so, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action, or proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever. The Parties agree that a final judgment (as to which all appeals have been exhausted or the time within which such appeals may be made has expired) in any such suit, action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.
- 32.3 Compliance With Local Laws The rights and obligations of the Parties to this Agreement may be subject to certain laws, orders, regulations, directions, restrictions, and limitations of governments and governmental agencies having jurisdiction over the Parties. If a change in any such law, order, regulation, direction, or restriction (including any limitation, appropriation, seizure, or interpretation thereof) shall, in the judgment of either party, substantially alter the relationship between the Parties, this Agreement, or the advantages derived from the Parties' relationship, either party may request the other party to modify this Agreement. If, within thirty (30) days after such a request has been made, the Parties are unable to agree upon a mutually satisfactory modification of this Agreement, then the adversely affected party may terminate this Agreement on fifteen (15) days' notice given to the other party.
- 32.4 Information Sharing. Case shall be allowed to share information regarding Dealer, including but not limited to Dealer's financial and ownership information, with any of Case's Affiliates.
- 32.5 Dealer Relationship to Case The Parties are independent businesses and neither has any fiduciary obligation to the other, and Dealer is an independent retailer which purchases Products for resale for Dealer's principal benefit. Nothing in this Agreement shall be construed as constituting Dealer to be an employee, franchisee, agent or legal representative of Case for any purpose whatsoever. Dealer has no right or authority, express or implied, to assume or create any obligation or responsibility on behalf of or in the name of Case, or to bind Case in any manner.
- 32.6 Entire Agreement. This Agreement, together with the DOG and any changes thereto issued by Case from time to time, is and shall be deemed to be the complete and final expression of the agreement between the Parties as to the matters herein contained and provided for and supersedes all previous agreements between the Parties pertaining to such matters. IT IS CLEARLY UNDERSTOOD THAT NO PROMISE REPRESENTATION NOT CONTAINED HEREIN WAS AN INDUCEMENT TO EITHER PARTY OR WAS RELIED UPON BY EITHER PARTY IN ENTERING INTO THIS AGREEMENT.
- 32.7 Execution and Modification Except as expressly provided for herein, this Agreement may not be executed, amended or altered, or any of its provisions waived on behalf of Case, except in writing, signed by Case's Director of Network Development or other authorized director in a similar capacity.
- 32.8 Severability. In the event any part of this Agreement is held to be invalid or unenforceable under the law, this Agreement shall be enforceable to the maximum extent permitted by such law, without invalidating the remainder of this Agreement, or invalidating the effect of such portion of this Agreement elsewhere.
- 32.9 Assignment.
- (a) By Dealer. In view of the personal nature of this Agreement, the rights, privileges and obligations conferred on Dealer under this Agreement are not transferable, assignable or salable by Dealer

without the prior written consent of Case, and no property right or interest, direct or indirect, is sold, conveyed or transferred to Dealer under this Agreement. Any attempt by Dealer to assign its rights or obligations under this Agreement without Case's written consent shall be null and void.

- (b) By Case. Upon written notice to Dealer, Case may assign this Agreement and any rights and obligations thereunder to any Affiliate of Case or to any entity that succeeds to the interests of Case.

- 32.10 Waiver of Default. The waiver by Case of any default, or the failure of Case to exercise any of its rights, under this Agreement or otherwise shall not act as a waiver of any subsequent default or a waiver of such default or any of Case's rights hereunder.
- 32.11 Headings. The headings of sections and subsections in this Agreement are inserted for convenience of reference only and shall not in any way affect the construction, meaning or interpretation of any provision of this Agreement, and shall not be deemed or construed in any way to limit the meaning of such sections.
- 32.12 Interpretation. This Agreement is being entered into by and among competent and sophisticated parties who are experienced in business matters. Therefore, any language in this Agreement deemed to be ambiguous by a court of law will not be construed against any particular party as the drafter of the language.
- 32.13 Notice, Approval and Consent. Any notice, approval or consent required or allowed under this Agreement shall be given in writing and, without prejudice to other forms of actual service, shall be considered as served upon being mailed in a properly sealed envelope with first class, certified or registered postage prepaid. Notices to Case shall be addressed to the Case Director of Distribution and shall be delivered or mailed to CNH Industrial America LLC, 621 State Street, Racine, Wisconsin 53402. Notices to Dealer shall be delivered or mailed to any person designated in Schedule A or to Dealer at Dealer's Primary Location.
- 32.14 Survival. The Parties' obligations in the following sections shall survive the expiration or termination of this Agreement: 5.5, 10.1(f), 16.6, 17.4, 24.4, 26.1, 26.2, 28.1, 28.3, 28.6, 29.1, 29.2, 29.3, 29.4, 30.2, 30.3, 30.4, 30.5, 31.1, 31.2, 32.1, 32.2, and 32.3.
- 32.15 Review by Counsel. Dealer acknowledges that it has had an adequate opportunity to review this Agreement and consult with legal counsel of its own choosing regarding the content and meaning of this Agreement. IN WITNESS WHEREOF the Parties have duly executed this Agreement the dates written below:

**Dealer** \_\_\_\_

Dealer Name

By

Title (authorized owner, officer, partner, president)

Date

Signature of Other Partner(s) or Owner(s)

**Case**

CNH Industrial America LLC

By

Vice President, Case Construction, North America

Title

Date

SCHEDULE A  
Construction Equipment Sales and  
Service Agreement

CNH Industrial America LLC

DEALER LEGAL INFORMATION, OWNERSHIP AND MANAGEMENT

Legal Entity Name: Trade (DBA) Name: Primary Location  
Address:

(Street, City, State and Zip Code)

Business Structure Dealer Conducts Business Under: State of Organization:

Owners of Dealer (individual(s) having a financial interest in Dealer):

Name    Percent of Ownership

Name    Title

Management (person(s) responsible for key aspects of day to day operations of Dealer):

SCHEDULE B  
Construction  
Equipment  
Sales  
and  
Service  
Agreement

PRODUCTS &  
LICENSED  
TRADEMARKS

CNH Industrial America LLC

Legal Entity Name:    Trade (DBA) Name:    Primary Location Address:     
(Street, City, State and Zip Code)

AUTHORIZED PRODUCT LINE(S)

		Heavy Products				Light Products			Skid Steer Products
		CE	CX	CM	GR	UT	MW	MX	SL
	Dealer					Tractor Loader,			

Dealer City	State	CE Crawler Dozer and CE Wheel Loader	Excavator 10+ MT and Midi Excavator 7-10 MT	Compaction	Grader	Tractor Loader Backhoe, Forklif and Light Crawler Dozer	Compact Wheel Loader	Compact Excavator 0-6 MT	Skid Steer and Compact Track Loaders

Authorized Licensed Trademark(s): Case Construction, CNH Industrial Parts

CNH Industrial America LLC

By

Vice President, Case Construction, North America  
Title

Legal Entity Name: Trade (DBA) Name:  
Primary Location Address:

SCHEDULE C

Construction Equipment Sales and Service Agreement SALES  
AND SERVICE MARKET OF RESPONSIBILITY

(Street, City, State and Zip Code)

CNH Industrial America LLC

EX: If the Dealer is assigned 50% of the industry sales volume in county "X" in which 100 units of a given product line is sold, then the Dealer's SSM for that Product Line is 50% of the 100 units, or 50 units.

CNH Industrial America LLC

By

The chart below identifies, by Product Line, the percentage portion of the market of industry unit sales within the geographic area for which the Dealer has sales and service responsibility.

Date

				Product Lines and County SSM Assignment		
Dealer Code	Dealer City, State	County Assignment	ST	Heavy Products	Light Products	Skid Steer Products

Vice President, Case Construction, North America  
Title

SCHEDULE D

Construction

Equipment

Sales and

Service

Agreement

DEALER

LOCATIONS

CNH Industrial America LLC

Legal Entity Name:    Trade (DBA) Name:   

Type	Street Address	City	ST	Zip Code	Equipment, Parts & Service	Parts Only	Parts & Service Only	Corp Office	Dual Location
Primary									
Branch									
Branch									
Branch									
Branch									
Branch									
Branch									
Branch									
Branch									
Branch									
Branch									
Branch									
Branch									
Branch									
Branch									

CNH Industrial America LLC

By

Date

Vice President, Case Construction, North America  
Title

**AMENDMENT TO CASE CONSTRUCTION EQUIPMENT SALES AND SERVICE  
AGREEMENT**

**THIS IS AN AMENDMENT** to the CASE Construction Equipment Sales and Service Agreement between CNH Industrial America LLC, a Delaware limited liability company ( “Case”) and Titan Machinery Inc., a Delaware corporation (“Dealer”) dated \_\_\_ for Dealer’s locations in (“Agreement”).

**RECITALS**

WHEREAS, Case is engaged in the business of manufacturing construction and agricultural equipment and attachments; and

WHEREAS, Dealer is a publicly traded entity, and is also a dealer of Case IH agriculture equipment, New Holland agriculture equipment and New Holland construction equipment; and

WHEREAS, Dealer currently operates numerous Case dealership locations in eleven (11) states; and WHEREAS, the size and geographic diversity of Dealer’s CNH-branded dealership operations, along with its publicly-traded status, make it unlike most of Case’s other North American dealers; and

WHEREAS, the uniqueness of Dealer’s public company status and the extent and geographic diversity of its Case locations warrant modification to the Agreement;

**NOW THEREFORE**, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, Dealer and Case hereby agree as follows:

1. The above Recitals are hereby incorporated by reference.
2. Section 4.2 of the Agreement is deleted.
3. Section 4.3 of the Agreement is replaced in its entirety with the following:

“4.3 Changes in Dealer Form and Control Dealer shall provide Case with sixty (60) days’ prior written notice of Dealer’s intention to change its: (a) legal form or entity; or (b) control or management (a “Change of Control” as defined below); provided that, in the event that Dealer is not aware of such event, notice shall be furnished as soon as reasonably practical after Dealer acquires knowledge. Prior to consummating any such change described in this paragraph, or following such change if Dealer had no advance knowledge, Dealer must obtain Case’s written consent.

A “Change of Control” shall mean any one or more of the following events:

- (i) a merger, consolidation or reorganization approved by Dealer’s stockholders, unless securities representing more than fifty percent (50%) of the total combined voting
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power of the outstanding voting securities of the successor corporation are immediately thereafter beneficially owned, directly or indirectly, by the persons who

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beneficially owned Dealer's outstanding voting securities immediately prior to such transaction;

(ii) any sale of all or substantially all of Dealer's assets;

(iii) any transaction or series of related transactions (other than from the sale of shares issued or sold in any registered offering of Dealer's securities) pursuant to which any person or any group of persons comprising a "group" within the meaning of Rule 13d-5(b)(1) under the Securities Exchange Act of 1934, as amended (other than Dealer or a person that, prior to such transaction or series of related transactions, directly or indirectly controls, is controlled by or is under common control with, Dealer) becomes directly or indirectly the beneficial owner (within the meaning of Rule 13d-3 of the Securities Exchange Act of 1934, as amended) of securities possessing (or convertible into or exercisable for securities possessing) (A) twenty percent (20%) or more of the total combined voting power of Dealer's securities (determined by the power to vote with respect to the elections of Board members) outstanding immediately after the consummation of such transaction or series of related transactions, if such group is a competitor of Company; or (B) thirty (30%) percent or more of the total combined voting power of Dealer's securities (determined by the power to vote with respect to the elections of Board members) outstanding immediately after the consummation of such transaction or series of related transactions;

(iv) a change in the composition of the Board of Dealer over a period of eighteen

(18) consecutive months or less such that a majority of the Board members ceases, by reason of one or more contested elections for Board membership, to be comprised of individuals who either (x) were Board members at the beginning of such period or (y) have been elected or nominated for election as Board members during such period by at least a majority of the Board members described in clause (x) who were still in office at the time the Board approved such election or nomination;

(v) any attempt by Dealer's Chief Executive Officer and/or such person's direct reports (the "Executive Management Team") to sell or otherwise dispose of, in a single transaction or series of transactions over a period of time not to exceed twelve (12) months, an amount of Dealer's publicly-traded securities beneficially owned by the Executive Management Team member equal to ten (10%) percent or more of Dealer's then outstanding publicly-traded securities; or

(vi) a change in the identity of Dealer's management, defined as Dealer's Chief Executive Officer, as set forth on Schedule A.

Dealer shall inform Case in writing simultaneous with Dealer filing an initial registration statement with the Securities and Exchange Commission related to any future offering of Dealer's securities or in the event of any change in a Section 16 officer.

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Dealer's Executive Management Team shall meet as requested with Case's brand leaders to develop plans for Dealer's proposed expansion, if any, to coincide with Case's market representation plans. Prior to Dealer engaging in substantive

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discussions (directly or indirectly) for a possible purchase of a CNH-branded dealership with such CNH dealer that would result in an expansion of Dealer's total Sales and Service Market for Case Products, Dealer shall provide Case written notice of its intent to engage in such discussions and with whom. Case shall have the right to reject such a request or to withhold approval of Dealer's acquisitions of CNH-branded dealerships, in its sole discretion. Case shall maintain the confidentiality of all information disclosed respecting a proposed acquisition.

Should Case approve Dealer's acquisition of a CNH-branded dealership in the future, Dealer agrees that it will abide by Case's requirements for the approval of Dealer's purchase of such dealership, including without limitation Case's requirements regarding inventory levels, facilities, service coverage, market share objectives, and the representation of competitive products at said dealership."

4. Section 4.4 of the Agreement is replaced in its entirety with the following:

4.4 Death or Incapacity of Dealer Principals In the event of the death or incapacity of any person listed in Schedule A ("Dealer Principal(s)"), Dealer shall provide Case within ninety (90) days of such occurrence, an ownership or management succession plan for the replacement of such deceased or incapacitated Dealer Principal(s), if Dealer proposes to continue operation under this Agreement. Case may approve or deny Dealer's proposed succession plan in its reasonable discretion.

5. Section 4.5 of the Agreement is replaced in its entirety with the following:

4.5 Ancillary Documents. Dealer will execute such agreements or other documents as Case in its reasonable discretion may deem necessary to preserve Case's rights under this Agreement in response to (a) any change or proposed change in Dealer's legal form or entity, (b) any Change of Control of Dealer as defined above, or (c) death or incapacity of any Dealer Principal.

6. Section 9.1(a) of the Agreement is replaced in its entirety with the following:

9.1(a) Equipment Market Share Dealer shall aggressively promote and sell new Equipment to attain within Dealer's SSM for all Equipment designated on Schedule B, a Dealer Market Share that is equal to at least 90% of either, in Case's sole discretion, the Case National Dealer Market Share or the Case Regional Market Share. In evaluating Dealer's market share performance, Case, in its sole discretion, may (i) group Product Lines and/or (ii) evaluate Dealer's performance on a per Dealer Location basis. Should Dealer establish a new Case dealership or acquire a Case dealership, the requirement to attain either Case National Dealer Market Share or Case Regional Market Share shall not apply until after the end of the first thirty-six (36) months of Dealer's operations.

7. Section 9.2(a) of the Agreement is replaced in its entirety with the following:

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(a) The Parties mutually recognize that one of the purposes of this Agreement is to assure that Dealer focuses its resources and efforts on the sale of new Products and the performance of its obligations under this Agreement. Therefore, Dealer agrees that if Dealer undertakes or engages in another business activity at a Dealer Location(s) separate from its representation of new Products pursuant to this Agreement, which activity involves a considerable commitment of Dealer's effort and resources, Dealer agrees to make such separation of the personnel, facilities, capital (including, but not limited to, appropriate wholesale credit lines, sufficient working capital, sufficient equity) and other resources devoted to that business as is satisfactory to Case, provided that Case specifies in writing the separation of personnel, facilities and capital resources that are required. Case shall provide Dealer with two (2) years' prior written notice for Dealer to complete any required separation of facilities. Dealer shall provide Case with thirty (30) days' prior written notice of Dealer's intention, or the intention of any of its wholly or partially-owned affiliates or related entities (including Dealer's Chief Executive Officer, or any entities in which such person has at least a twenty-five (25%) percent ownership interest) to engage in or seek to acquire or invest in any other new business operations that are not directly related to Dealer's Case equipment dealership operations under this Agreement; provided, that the above notice requirement shall not apply to passive investments of Dealer's Chief Executive Officer which do not involve day-to-day management functions of such person. The restrictions of this Section 9.2(a) shall not apply to Dealer's rental operations.

8. Section 13.1 of the Agreement is replaced in its entirety with the following:

13.1 **Business Plan Requirements.** Annually, senior management of Dealer shall meet with Case representatives to review the following topics: (i) current year review of industry size, inventories, and market share performance by Dealer Location and by complex and by the respective parties; (ii) future forecasts of market demand by product category; (iii) pre-sale programs and other Case IH sponsored retail programs; (iv) estimate, by product line, of the next year's industry potential, market share targets by Dealer Location or complex, and market share objectives by Dealer Location, including action planning and resource allocation needed to achieve those objectives; (v) sound inventory turns; and (vi) Dealer's market coverage and expansion plans, including updates and resources required on a rolling five (5)-year basis. Within thirty (30) days thereafter, Dealer will submit and secure Case's approval of a comprehensive Business Plan (which includes goals and objectives for all Dealer Locations) containing: (a) Equipment inventory stocking and sales objectives to maximize Dealer's Equipment sales in its SSM, but at a minimum to obtain Dealer Market Share requirements stated in Section 9.1(a), including action plans for obtaining such objectives; (b) Parts inventory stocking plan and sales objectives to maximize Dealer's Parts sales; (c) training plans for Dealer sales and service personnel, including Case provided training; (d) advertising, promotional and marketing plans and budgets; (e) action plans for Dealer's possible expansion or upgrading of its current facilities, or for the proposed addition of new facilities; (f) any additional information required by Case as set forth in the DOG; (g) status of Dealer's Adjusted Debt to Tangible Net Worth Ratio (as well as any other metric criteria which Case may prescribe for dealers generally) for the plan year; and (h) such other elements or metrics as are set forth in Case's then-effective

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dealer standards program, or which Case may elect to require in dealer business plans generally. Dealer will substantially accomplish each material action plan contained in each year's Business Plan approved by Case.

On a semi-annual basis at Case's request, Dealer's Executive Management Team shall meet with Case representatives to review the following topics: (i) Dealer's progress against the market share objective plan, including updates to annual market share objectives based on industry actual units sales year-to-date; and (ii) inventory status and update to support retail sales plan and presell activity.

On a monthly basis at Case's request, Dealer's branch managers and sales managers shall meet with Case representatives to review the following topics: (i) by Dealer Location and by complex, sales against monthly market share objectives, and inventory and wholesale planning to support retail objectives; and (ii) market share gap analysis and corrective action planning.

If any of the above reviews reveal deficiencies in Dealer's operations, as determined in Case's sole discretion, Case may request and Dealer shall rectify the stated deficiencies."

9. Section 16.2 of the Agreement is hereby amended to delete the reference to "the Dealer Principals" from such section.

10. Section 16.6 of the Agreement is replaced in its entirety with the following:

16.6 Chargeback for Improper or Unsubstantiated Claims Dealer's submission of unsubstantiated Dealer Claims or Dealer Claims not in compliance with the requirements of the DOG will result in a chargeback to Dealer for such claims, including interest at the then current prime rate. If Dealer refuses to permit an audit or fails to maintain a substantial amount of the required records, the chargeback will include, at the particular Dealer Location(s) involved, all amounts paid on Dealer Claims for the prior two (2) years, including any dealer settlement allowances, plus interest at the then current prime rate. If Dealer intentionally submits false or fraudulent Dealer Claims, the chargeback will include, at the particular Dealer Location(s) involved, an amount equal to three (3) times the amount of the false or fraudulent claims submitted at the particular Dealer Location(s), plus interest at the then current prime rate. This remedy is in addition to those available to Case for breach of this Agreement, including but not limited to termination of this Agreement.

11. Section 20.4 of the Agreement is replaced in its entirety with the following:

20.4 Equipment Relocation. Case may request Dealer to transfer new Equipment to another authorized dealer to accommodate such dealer's sale to another Customer. Any Case request to transfer a unit must be made via email to the person(s) Dealer has designated to Case for this purpose. If Dealer refuses, Case, in its sole discretion, may decline to pay, on Dealer's behalf, the wholesale finance interest charges associated with that specific Equipment, and may decline to make available to

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Dealer any retail sales programs for such Equipment. Case's decision to remove retail sales programs for any such unit, and the details related thereto, must be documented by Case's Regional Sales Director ("RSD") via email to Dealer's Vice President North America CE Store Operations, who must acknowledge receipt of the email to Case within twenty-four (24) hours. If Dealer's Vice President does not respond within that time period, the RSD will first attempt to contact such person via telephone call, and if the Vice President is not available by telephone, the RSD will then attempt to contact either Dealer's CFO or CEO by telephone.

12. Section 21.1 of the Agreement is replaced in its entirety with the following:

21.1 Domestic Sales. Dealer shall concentrate its sales, lease and rental of whole good Products to the Domestic United States. Further, Dealer agrees to give Case notice of any of Dealer's occasional sales, lease or rental of whole good Products outside of the United States prior to shipment, and acknowledges that Case, in its sole discretion, may prohibit Dealer's sales, lease or rental of new whole good Products to a particular area outside of the United States upon written notice to Dealer.

13. Section 21.4 of the Agreement is replaced in its entirety with the following:

21.4 No Internet Sales. Dealer may not consummate sales of new Products on or through an Internet website, including but not limited to an auction-type website, except as otherwise authorized by Case; provided, that Dealer may consummate sales of Parts over the Internet to customers located within its SSM.

14. Section 21.5 of the Agreement is replaced in its entirety with the following:

21.5 Announcements. Prior to the filing of any statement with the Securities and Exchange Commission that includes disclosure of any information regarding Case that Case has advised Dealer in writing is material nonpublic information regarding Case, Dealer agrees to provide advance notice thereof to Case and to not disclose the same if so requested by Case, provided, however, that the foregoing shall not limit Dealer's rights and obligations to comply with applicable law.

15. The last sentence of Section 21.8(b) of the Agreement is replaced in its entirety with the following: "Dealer warrants that it has no foreign public officials as officers or employees at the date of this Agreement, and shall immediately notify Case in writing if a foreign public official becomes an officer or employee of Dealer."

16. Section 27.3(b) of the Agreement is replaced in its entirety with the following:

(b) If Dealer breaches Section 7.2, Case may, in its sole discretion, terminate the Agreement upon ninety (90) days' advance written notice to Dealer. However, during this ninety (90)-day period, Dealer may cure its breach of Section 7.2 by providing Case, within sixty (60) days of Case's notice to Dealer, a written plan to return to compliance with Section 7.2 within twelve (12) months from the date of Case's notice. Without Case's prior consent, Dealer's material reduction of assets shall not be a means to

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achieve covenant compliance. Thereafter, if Dealer fails to perform such submitted plan, Case may terminate the Agreement with thirty (30) days' written notice.

17. Subparagraphs (a), (c), (g), (h), (k) and (o) of Section 27.4 of the Agreement are amended as follows:

a. Subparagraph (a) of Section 27.4 is replaced in its entirety with the following:

(a) Dealer Financial Defaults (i) Dealer's default in the payment when due of any obligations to Case or any of its Affiliates, including but not limited to CNH Industrial Capital America LLC ("CNH Capital") after the expiration of any notice and cure periods in any applicable agreements with Case's Affiliates or CNH Capital; (ii) Dealer's default under any chattel mortgage or other security agreement between Dealer and Case, any of its Affiliates or any other lender or financing entity with whom Dealer has a material credit arrangement (i.e., a credit arrangement for which the relevant agreements must be publicly disclosed pursuant to federal securities laws), if such default results in an acceleration of the indebtedness owed under the credit facility; or (iii) the refusal or failure of Dealer, following written demand, to account to Case or any of its Affiliates for the proceeds of the sale of Products for which Dealer is indebted to Case or such Affiliates;

b. Subparagraph (c), clause (vi) of Section 27.4 is amended to add the language "that is not satisfied within ten (10) days" following the word Dealer;

c. Subparagraph (d) of Section 27.4 is replaced in its entirety with the following:

(d) Change in Dealer Entity, Control or Management: without the prior written consent of Case: (i) any change in Dealer's legal form or entity; (ii) any Change of Control (as defined in Section 4.3); (iii) any assignment or attempted assignment by Dealer of this Agreement; or (iv) a substantial ownership interest in Dealer is acquired by a competitor of Case.

d. Subparagraph (g) of Section 27.4 is replaced in its entirety with the following:

(g) Failure to Operate: failure to operate any Dealer Location in the normal course of business for seven (7) consecutive calendar days other than due to a force majeure event, provided that within three (3) months from the seventh day of closure due to the force majeure event, Dealer shall submit a plan to Case detailing how Dealer shall return to operation at the affected Dealer Location, which plan must be acceptable to Case in its reasonable discretion;

e. Subparagraph (h) is amended to delete "or any Dealer Principal" from such section.

f. Subparagraph (k) of Section 27.4 is replaced in its entirety with the following:

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- (k) Detrimental Conduct: any conduct by Dealer which in the sole discretion of Case:
- (i) is injurious or detrimental to Dealer's Customers, the public welfare, other authorized dealers of Products, or the good name, goodwill or reputation of Case, Products and the Licensed Trademarks
  - (ii) is unbecoming of a reputable business person; or (iii) is abusive or threatening to any Case employee;

g. Subparagraph (o) of Section 27.4 is replaced in its entirety with the following:

- (o) Repetitive Breach: breach of the Agreement by Dealer (excluding breaches of Sections 7.2 or 9.1(a)) for which it has received notice by Case of that same type of breach on at least two (2) prior separate and distinct occasions within the preceding thirty-six (36) months;

18. Other than as expressly provided for herein, nothing contained in this Amendment shall be construed as a waiver or modification of any terms, conditions, or rights contained in the Agreement between Case and Dealer except to the extent such terms, conditions, or rights are in conflict with this Amendment, in which event this Amendment shall supersede the Agreement, but only to the extent of the conflict.

19. Each party to this Amendment represents and warrants that it has taken all action required to authorize it to enter into this Amendment, and each party further represents that it has neither relied upon nor been induced by any representation, statement, or disclosure of the other party, but has relied upon its own knowledge and judgment in entering into the Amendment.

20. This Amendment cannot be modified, nor any party's rights hereunder waived, except in writing, and no waiver of any provision hereof shall preclude enforcement of any other provision hereof, or subsequent enforcement of the provision waived. This Amendment cannot be assigned without the prior written consent of the parties, which consent may be withheld with or without cause.

IN WITNESS WHEREOF, CNH Industrial America LLC and Titan Machinery Inc. have caused this Amendment to be executed by their respective, duly authorized officer or representatives, as of the \_\_\_ day of \_\_\_, 2017.

Titan Machinery Inc.  
(Dealer Name)

**CNH Industrial America LLC**

(Dealer Location)

By: \_\_\_\_  
Vice President, Case Construction, N. America

By: \_\_\_\_  
David J. Meyer, CEO

Dated: \_\_\_\_

Dated: \_\_\_\_

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## AGRICULTURAL EQUIPMENT SALES & SERVICE AGREEMENT

This Case IH Agricultural Equipment Sales and Service Agreement (the “Agreement”) is between CNH Industrial America LLC, a Delaware limited liability company with a principal place of business at 700 State Street, Racine, Wisconsin, 53404 (“Case IH”), and (corporation/limited liability company) with its address as listed on Schedule A (“Dealer”) (hereinafter “Parties” when referring to Dealer and Case IH jointly). The “Effective Date” of the Agreement is the date of acceptance by Case IH as indicated by its authorized signature. Unless sooner terminated in accordance with its provisions, this Agreement will expire on December 31, 2027 (expires).

### 1. Purpose Statement

- 1.1 The purpose of this Agreement is to describe the respective functions, obligations and responsibilities of the Parties, so that each fully understands the nature of their required commitments of time, effort and capital. This Agreement establishes Dealer as an independent contractor for the promotion, retail sale and after-sale service and support of Products to Customers in Dealer’s local market.

### 2. Definitions

- 2.1 Affiliate: as to Case IH, any entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with Case IH. For this definition, the term “control” means the power to direct the management and policies of an entity through the ownership of more than 50% of the voting securities, rights or other similar interests of that entity.
- 2.2 Branch Location(s): Dealer’s additional place(s) of business listed in Schedule D for the sale, rental, lease and service of Products, separate from Dealer’s Primary Location.
- 2.3 Case IH IP: any and all intellectual property including but not limited to patents, Trademarks (including the Licensed Trademarks), designs, copyrights, trade secrets, computer software (whether imbedded in Products or otherwise) and other proprietary technology and information, whether technical or business related, including registrations for and applications to register any of the foregoing, which are incorporated or used in or with Products or which are owned or licensed by Case IH for use with Products.
- 2.4 Case IH Regional Market Share: a percentage figure calculated by taking the number of units of new Case IH brand equipment for a given Product Line or Product Line grouping, sold by Case IH dealers in a regional sales area (a multi- state area determined by Case IH in its sole discretion during a designated time period determined by Case IH, divided by the total industry volume of all comparable new units of equipment (including Case IH and competitive units) sold in that same regional sales area during that same time period. Total industry volume of new equipment sales shall be as reported by the Association of Equipment Manufacturers (or other replacement organization selected by Case IH, hereinafter “AEM”).
- 2.5 Case IH State Market Share: a percentage figure calculated by taking the number of units of new Case IH brand equipment for a given Product Line or Product Line grouping, sold by Case IH dealers in a state during a designated time period determined by Case IH, divided by the total industry volume of all comparable new units of equipment (including Case IH and competitive units) sold in that same state during that same time period. Total industry volume of new equipment sales shall be as reported by AEM.
- 2.6 Customer(s): an end-user that purchases, leases or rents Products from an authorized dealer or Case IH for its own use and not for resale.
- 2.7 Dealer Claims: Dealer’s claims to Case IH for Warranty Service, Other Required Service, or any retail promotional or sales incentive, including but not limited to refunds, credits, rebates, incentives, allowances, discounts, or payments under any Case IH program.
- 2.8 Dealer Location(s): Dealer’s Primary Location and Branch Locations, if any, authorized by Case IH for the sale, rental, lease and service of Equipment and/or Parts.
- 2.9 Dealer Market Share: a percentage figure for measuring Dealer’s sales performance calculated by taking the number of units of new Equipment by Product Line or Product Line grouping, sold by Dealer to Customers located within Dealer’s

Sales and Service Market ("SSM") during a given time period as determined by Case IH, divided by the total industry volume of all new units (equipment of that same Product Line or Product Line grouping (including Case IH and competitive units) sold within Dealer's SSM during the same period, as determined and reported by AEM. For market share purposes, Dealer will only be measured against the industry sales in a given county of Dealer's SSM to the extent of the percentage of that county assigned to Dealer.

- 2.10 DOG: refers to both the Dealer Operating Guide and Parts Policy Manual or any equivalent or successor documents and amendments thereto issued by Case IH setting forth for all dealers the various policies, procedures and operating standards for doing business with Case IH.
- 2.11 Domestic: within the 50 states of the United States of America.
- 2.12 Equipment: whole good machinery and any related attachments designated on Schedule B by Product Line and Licensed Trademark.
- 2.13 Licensed Trademarks: the Trademarks listed in Schedule B that Case IH authorizes Dealer to use for the sole purpose of performing its obligation hereunder with respect to Products.
- 2.14 Limited Warranty: the Warranty and Limitation of Liability agreement furnished by Case IH with respect to any Product sold to Customers.
- 2.15 Other Required Service: service that Case IH, in its sole discretion, has deemed necessary or desirable and in the best interests of Customers and the goodwill associated with the Licensed Trademarks, including but not limited to, policy service, campaign service, or field improvement program service.
- 2.16 Parts: proprietary replacement parts sold by Case IH for Equipment listed on Schedule B (specifically not including replacement parts for Case IH equipment not listed on Schedule B), together with all other common service or maintenance items (for example, including but not limited to filters, hoses, lubricants, etc.) and accessories which are offered for sale by Case IH to Dealer (either directly from Case IH or from an authorized source of supply), which Case IH has authorized to be identified with the Licensed Trademarks. Parts do not include 'merchandise' items such as clothing, toys, binders, gloves, etc.
- 2.17 Primary Location: the primary Dealer facility location specified in Schedule D.
- 2.18 Product(s): Equipment and related Parts that Dealer is authorized to represent under this Agreement.
- 2.19 Product Line: the categories of Products set forth in Schedule B.
- 2.20 Sales and Service Market ("SSM"): a market comprised of the total industry sales of all new Equipment (as reported by AEM), including Case IH and competitive equipment, sold (including first rentals or leases) within the geographic area designated in Schedule C.
- 2.21 Strategic Accounts: customer accounts typically referred to as "national accounts," "corporate accounts," national or regional equipment rental companies, or any customer designated by Case IH as such an account.
- 2.22 Trademarks: all words, slogans, designs, pictures, logotypes or other symbols, including trademarks, service marks, trade dress, and trade names, regardless of whether registration has been sought or obtained therefor, used to (a) identify, distinguish or advertise the Products and services of Case IH or its Affiliates, (b) identify Case IH as the source or licensor of Products and services, or (c) identify the business of Case IH and its authorized dealers.
- 2.23 Warranty Service: service that is required for any Product (a) to ensure that Case IH is in compliance with Case IH's Limited Warranty obligation for such Product and (b) to comply with any extended service or maintenance plan purchased for that Product.
- 2.24 Will Call: a program whereby Case IH, in its sole discretion, may permit Dealer to take delivery and possession of Products directly from a Will Call Provider or Case IH, in lieu of such Products being transported to Dealer at Dealer Location(s). The procedures for the Will Call program will be as set forth in the DOG.
- 2.25 Will Call Provider: a third-party engaged by Case IH to facilitate Dealer's pick-up of Products at Case IH plant locations or port facilities under the terms of the Will Call program.

### 3. Appointment

- 3.1 Scope of Appointment. Pursuant to the provisions of this Agreement, Case IH hereby authorizes Dealer to market, promote, sell, lease or rent new Products and to provide Warranty Service for Products to Customers solely from the authorized Dealer Location(s) listed in Schedule D. The foregoing appointment is limited to Products identified with the Licensed Trademarks on Schedule B. Dealer accepts this appointment and agrees that the relationship between Dealer and Case IH shall be governed by the terms and conditions of this Agreement as well as the policies outlined in the DOG.
- 3.2 Incorporation of DOG. The DOG includes the standards of quality and performance that Case IH seeks to have associated with its Trademark and is hereby incorporated by reference into this Agreement. It is expressly understood

and agreed that Case IH reserves the right to modify the DOG unilaterally to reflect reasonable standards of quality and performance so long as such standards do not conflict with the terms of this Agreement.

- 3.3 Material Inducement. Section 3.2 is a material inducement upon which Case IH relied in entering into this Agreement with Dealer, the breach or unenforceability of which represents a failure of consideration entitling Case IH to void this Agreement in its entirety.

#### **4. Owner and Management Requirements**

- 4.1 Dealer Representations and Warranties. The appointment of Dealer is made in reliance on Dealer's representation and warranty that the information set forth in any dealer application provided to Case IH as well as in Schedule A regarding Dealer's legal name, ownership (if corporation, as listed in a Stock Ownership Certificate), management personnel, business structure, and state of residence or organization is accurate and complete. Dealer also represents and warrants that entering into this Agreement does not violate any other contract or agreement to which Dealer is a party and that any person signing this Agreement on behalf of Dealer has the authority to do so. Any breach of any of the foregoing representations and warranties represents a failure of consideration entitling Case IH to void this Agreement in its entirety.
- 4.2 Personal Services Nature of Agreement. Dealer ownership and management are important to the successful working relationship between the Parties. Case IH has chosen to contract with the present ownership and management of Dealer, and the Parties acknowledge that this Agreement represents a personal services relationship, and that any change to the ownership, management or business structure of Dealer could seriously and adversely impact such relationship. As such, Case IH may refuse to appoint as an authorized dealer any purchaser or prospective purchaser of any of the shares or assets of Dealer.
- 4.3 Changes in Dealer Form and Control. Except as otherwise stated in Section 4.4, Dealer shall provide Case IH with sixty (60) days' prior written notice of Dealer's intention to change its: (a) legal form or entity; or (b) control, ownership or management. Prior to consummating any such change, Dealer must obtain Case IH's written consent, which shall be in Case IH's sole discretion. A "change in control ownership or management" shall mean one or more of the following events: (i) if Dealer is an individual proprietor, withdrawal of that individual proprietor from the operation or control of Dealer; (ii) if Dealer is a partnership or limited liability company, any addition to or subtraction from the partners or members involved; (iii) if Dealer is a corporation, any change in the beneficial ownership of any of Dealer's shares or the voting rights associated therewith; (iv) any sale of all or substantially all of Dealer's assets; (v) any change in the composition of Dealer's management as set forth on Schedule A; or (vi) any event, including entering into an agreement, that substantially affects, directly or indirectly, the operation or control of Dealer's business.
- 4.4 Death or Incapacity of Dealer Principals. In the event of the death or incapacity of any person listed in Schedule A or in the Stock Ownership Certificate ("Dealer Principal(s)"), Dealer shall provide Case IH: (a) notice of such occurrence within thirty (30) days; and (b) within ninety (90) days of such occurrence, an ownership or management succession plan for the replacement of such deceased or incapacitated Dealer Principal(s), if Dealer proposes to continue operation under this Agreement. Case IH retains sole discretion whether to approve Dealer's proposed succession plan or terminate the Agreement.
- 4.5 Succession Plan. Upon request, Dealer shall provide a succession plan to Case IH in the format approved by Case IH. The submission of such succession plan shall not imply that Case IH has automatically accepted such plan. Case IH retains sole discretion whether to approve Dealer's proposed succession plan.
- 4.6 Ancillary Documents. Dealer will execute such agreements or other documents as Case IH in its sole discretion may deem necessary to preserve Case IH's rights under this Agreement in response to (a) any change or proposed change in Dealer's legal form or entity, (b) any change in Dealer's control, ownership, or management, or (c) death or incapacity of any Dealer Principal.

#### **5. Products**

- 5.1 Authorized Products.
- (a) The Products which Dealer is authorized to purchase from Case IH for retail sale, lease or rental are those Product Lines listed on Schedule B that Case IH has authorized to be identified with the Licensed Trademarks listed on Schedule B.
- (b) Upon sixty (60) days' written notice to Dealer, Case IH in its sole discretion may amend Schedule B to i) add a Product Line(s), ii) remove Product Line if Case IH is withdrawing such Product Line from the Domestic market, or iii) add or remove any Licensed Trademark(s).

(c) In the event Dealer is not meeting its obligations under this Agreement with respect to a particular Product Line or specific Equipment in a Product Line, Case IH in its sole discretion may remove such Product Line or Equipment from Schedule B with sixty (60) days' written notice to Dealer. Dealer thereafter will no longer be authorized to sell or perform Warranty Service for such Products, and Case IH will repurchase such new Equipment from Dealer as provided in Section 29.1(a).

(d) This Agreement does not give Dealer the right to, and under the terms of this Agreement Dealer may not, purchase, market, promote, sell lease or rent any other new (i.e. not previously sold) CNH Industrial America LLC products that are not listed on Schedule B or are not authorized to be identified with the Licensed Trademarks listed on Schedule B.

5.2 Dealer Obligation to Support New Equipment Models. Case IH may introduce new models of Equipment for Product Lines that Dealer is authorized to sell on Schedule B. In order to provide service to Customers for such Equipment, Dealer shall support such new models by complying with Case IH-designated requirements for: (a) stocking all required Parts; (b) purchasing all required service tools; and (c) attending sales and service training for such new models. Case IH has no obligation to fill orders or ship such new models of Equipment to Dealer if Dealer fails to fulfill the foregoing Parts, tools and training requirements.

5.3 Product Packaging and Labels. Dealer shall not modify or remove any warning labels affixed to Products. Further, without Case IH's prior written consent, Dealer shall not modify any packaging or other labeling for Products.

5.4 Installation of Non-Standard Attachments or Accessories. Without prior written approval from Case IH, Dealer shall not install or attach non-standard, "self-designed," or "one-off" attachments or accessories to Equipment. Such non-standard, "self-designed," or "one-off" attachments or accessories are those that are not manufactured and sold by established equipment manufacturers for the application and purpose for which they are being used. Dealers that install standard attachments or accessories from established equipment manufacturers shall ensure that the Equipment can properly and safely operate with such attachment or accessory.

5.5 Prohibited Modifications to Product. Dealer shall not perform any of the following actions: (a) modify Equipment without Case IH's prior written consent; (b) install upon Equipment any attachment, accessory or equipment that is beyond the rated capacity of that Equipment as stated in the Operator's Manual furnished with the Equipment or as otherwise instructed by Case IH; or (c) perform any adjustment or assembly procedures to Equipment not recommended by or in contravention of the Operator's Manual, Service Manual or other Case IH instruction.

## **6. Sales & Service Market**

6.1 Assignment of SSM. The SSM assigned to Dealer is set forth in Schedule C. The Dealer's SSM may vary by Equipment or Product Line. Case IH's assignment to Dealer of an SSM is for the purpose of: (a) focusing Dealer's sales, marketing and product support efforts; (b) measuring Dealer Market Share performance; and (c) maximizing the goodwill associated with Products and Licensed Trademarks. Dealer Market Share shall be measured only within Dealer's SSM. Upon sixty (60) days' written notice to Dealer, Case IH in its sole discretion may amend Schedule C to add to, subtract from, or otherwise modify Dealer's SSM.

6.2 No Obligation to Support Sales Outside SSM. To the extent Case IH decides to offer marketing programs, retail sales incentives, or other promotions, it shall have no obligation to do so for Dealer's sales or marketing activities outside of Dealer's SSM.

6.3 Sales & Service Fee. Case IH may assess Dealer a sales and service fee for sales of new Equipment by Dealer that are registered in a county outside of Dealer's SSM. The amount of such fee, the operative regulations and policies, and the Equipment to which it applies are published in the DOG, and may be amended by Case IH in its sole discretion. Case IH reserves the right not to assess a sales and service fee against other dealers for their sales to Customers within Dealer's SSM, if Dealer is failing to meet the market share obligations contained in Section 9.1(a).

6.4 SSM Non-Exclusive. Dealer's SSM is non-exclusive. Without incurring any liability to Dealer, Case IH may determine the number and locations of authorized dealers necessary for adequate sales and service representation of Products within any geographic area, or within the designated SSM. Nothing in this Agreement shall be construed as requiring Dealer's consent to the establishment of new or additional dealer representation for Products in Dealer's SSM or elsewhere.

## **7. Dealer Financial Requirements**

7.1 Wholesale Line of Credit. Dealer shall establish and at all times maintain an unrestricted wholesale line of credit for the purchase and stocking of new Products in an amount acceptable to Case IH in order to meet Dealer's inventory and sales obligations hereunder. If within any six (6)-month period, Dealer's primary wholesale line of credit is cumulatively



reduced by twenty percent (20%) or more and such reduction is not for valid business reasons, said line of credit shall be deemed unacceptable to Case IH.

- 7.2 Adjusted Debt to Tangible Net Worth Ratio. Dealer hereby covenants and agrees that it will maintain an Adjusted Debt to Tangible Net Worth Ratio of not more than four to one (4.0:1.0). Unless specifically approved in advance in writing by Case IH, Dealer will not make any acquisition or initiate new business activities if Dealer's Adjusted Debt to Tangible Net Worth Ratio exceeds four to one (4.0:1.0) or if such ratio would increase beyond four to one (4.0:1.0) as a result of such actions. This ratio shall be calculated using the consolidated balance sheets and income statements of Dealer (and of Dealer's related entities and affiliates, if Case IH so elects). All such balance sheets and income statements must be prepared in accordance with Generally Accepted Accounting Principles ("GAAP"). For purposes of calculating this ratio, the following definition will apply:
- (a) "Adjusted Debt to Tangible Net Worth Ratio" means the ratio of Debt minus Subordinated Debt to Tangible Net Worth plus Subordinated Debt.
  - (b) "Debt" shall mean the aggregate amount of the Dealer's items properly shown as liabilities on its balance sheet, determined in accordance with GAAP;
  - (c) "Subordinated Debt" shall mean Debt that is expressly subordinated to CNH Industrial Capital America LLC in writing acceptable to CNH Industrial Capital America LLC;
  - (d) "Net Worth" shall mean the aggregate amount of the items properly shown as assets on Dealer's balance sheet minus the aggregate amount of the items properly shown as liabilities on Dealer's balance sheet, determined in accordance with GAAP;
  - (e) "Tangible Net Worth" shall mean Net Worth, plus an amount equal to seventy percent (70%) of the amount reflected on Dealer's balance sheet as a LIFO reserve, minus the aggregate amount of the items properly shown as the following types of assets on Dealer's balance sheet determined in accordance with GAAP:
    - (i) goodwill, patents, non-competes, copyrights, mailing lists, trade names, trademarks, servicing rights, organizational costs, and other like assets properly classified as intangibles; and
    - (ii) receivables, loans and other amount due from any shareholder, director or officer of the Dealer, and receivables, loans and other amounts due from any other related or affiliated party of the Dealer.
- 7.3 Working Capital Requirements. Dealer shall maintain net working capital in amounts necessary for Dealer to comply with its obligations under this Agreement.

#### **8. Dealer Inventory and Display Responsibilities**

- 8.1 Equipment Stocking Requirements. Dealer shall order, maintain in inventory and prominently display, at all Dealer Locations unless otherwise excepted in writing by Case IH, representative models of each type of new Equipment Dealer is authorized to sell as set forth in Schedule B, at the level deemed necessary by Case IH to meet Dealer's Equipment sales obligations in accordance with Dealer's Business Plan provided pursuant to Section 13 of this Agreement.
- 8.2 Parts Stocking Requirements. For the purpose of providing prompt Customer support, Dealer agrees to order and maintain in inventory all Parts at the level deemed necessary by Case IH to meet Dealer's Parts sales obligations in accordance with Dealer's Business Plan provided pursuant to Section 13 of this Agreement. Dealer must provide a retail display area for Parts acceptable to Case IH.
- 8.3 Licensed Trademark Use. At any Dealer Location and in all advertising for such Dealer Locations, Dealer shall not use or display the License Trademarks in any way that might cause confusion with, or dilute the distinctive quality of, the Licensed Trademarks, or in any way that violates any Case IH trademark guidelines. In furtherance of this provision, if Dealer represents non-Case IH products, Dealer shall at any such location (a) maintain internal and external display areas for new Products separate from non-Case IH products; (b) display new Products in the most visible and desirable position and in an area of greater size or space than the area used to display non-Case IH products.

#### **9. Dealer Sales Responsibilities**

- 9.1 Sales Responsibilities. Dealer is solely responsible for developing its own plan for marketing and selling Products, and shall fulfill its sales obligations in several ways, including but not limited to the following:
- (a) Equipment Market Share. Dealer shall aggressively promote and sell new Equipment to attain within Dealer's SSM for all Equipment designated on Schedule B, a Dealer Market Share that is equal to at least 90% of either, in Case IH's sole discretion, the Case IH State Market Share or the Case IH Regional Market Share. In evaluating Dealer's market share performance, Case IH, in its sole discretion may (i) group Product Lines and/or (ii) evaluate Dealer's performance on a per Dealer Location basis.





- (b) Parts Sales Objectives. Dealer shall aggressively promote and sell all Parts offered by Case IH.
  - (c) Advertising and Promotion. Dealer shall conduct aggressive advertising and sales promotion activities, including but not limited to open houses, field days, product demonstrations, radio and/or television advertising, print advertising, trade shows and community events. Dealer shall appropriately display and distribute current Product sales literature, brochures and advertisements at its Dealer Locations, and shall also maintain a dealer website that prominently displays new Products. Dealer's use of Licensed Trademarks and its display of Product on Dealer's website shall be subject to Case IH's approval. Upon Case IH's request, Dealer shall participate in national or regional sale promotion and advertising programs as Case IH may periodically conduct.
  - (d) Sales Staff. Dealer shall employ a sufficient number of properly trained Product-dedicated sales personnel based on the industry potential in Dealer's SSM and as required by Case IH to call on all potential customers within the SSM. Such sales personnel shall attend Case IH's sales training sessions as required in the DOG.
  - (e) Extended Service Plans. Dealer shall promote and sell extended service and maintenance plans.
  - (f) Customer Surveys. Case IH from time to time may conduct surveys (by use of questionnaires or otherwise) of Dealer's Customers to determine the satisfaction of those Customers with the sales, leasing, rental and service efforts of Dealer. Case IH may use the results of these surveys in assessing Dealer's performance under this Agreement.
  - (g) Other Performance Standards. Dealer shall meet such other sales performance standards or best business practices as may be established by Case IH in the DOG.
- 9.2 Dealer Resource Commitment. The Parties mutually recognize that one of the purposes of this Agreement is to assure that Dealer focuses its resources and efforts on the sale of new Products and the performance of its obligations under this Agreement. Therefore, Dealer agrees that if Dealer undertakes or engages in another business activity at a Dealer Location(s) separate from its representation of new Products pursuant to this Agreement, which activity involves a considerable commitment of Dealer's effort and resources, Dealer agrees to make such separation of the personnel, facilities and other non-capital resources devoted to that business as is satisfactory to Case IH, provided that Case IH specifies in writing the separation of personnel, facilities and non-capital resources that are required. Case IH shall provide Dealer with two (2) years' prior written notice for Dealer to complete any required separation of facilities.
- 9.3 Sales Reporting. Dealer shall report all new Equipment retail sales to Case IH, and shall provide true and accurate information on such sales as required by Case IH, including but not limited to registering the location of such Equipment sales and the end-use designation in compliance with Case IH guidelines.

## **10. Dealer Service Responsibilities**

- 10.1 Warranty Service and Other Required Service. Dealer shall provide Warranty Service for any Product, regardless of whether Dealer sold that specific Product; provided, however, Dealer may not provide Warranty Service for any Case IH (or other CNH Industrial America LLC) product not listed on Schedule B. Dealer also shall provide Other Required Service as directed by Case IH in its sole discretion. Dealer shall provide Warranty Service and Other Required Service in a prompt, professional and courteous manner, and shall fulfill these responsibilities in several ways, including but not limited to the following:
- (a) Service Technicians. Dealer shall employ at all times a sufficient number of trained and fully certified service technicians based on industry sales in Dealer's SSM. Dealer must have service technicians at each Dealer Location who are trained and fully certified to service each type of Equipment listed on Schedule B, and Dealer's service technicians must attend Case IH service training sessions as required by Case IH in the DOG.
  - (b) Service Tools and Manuals. Dealer shall maintain, or have access to, at each Dealer Location all special service tools, electronic diagnostic tools or websites, electronic parts catalogs, service manuals, parts manuals and operator's manuals required by Case IH to service the Equipment listed in Schedule B. Dealer may comply with the service tool requirements by subscribing to any Case IH tool rental program.
  - (c) Service Standards. Dealer shall perform Warranty Service and/or Other Required Service in a timely manner and in strict compliance with the DOG and any service bulletins or other instructions issued by Case IH. Dealer shall give priority to performing such Warranty Service or Other Required Service before general maintenance if a Customer's Product is not operable.
  - (d) Use of Case IH-Sourced Parts. Except as otherwise instructed by Case IH in writing, Dealer shall use only Parts obtained from Case IH or Case IH's authorized sources of supply in performing Warranty Service or Other Required Service.

- (e) Certification Standards. Dealer shall meet or exceed Case IH's service certification standards including pre-delivery, delivery and after-delivery requirements for all Products, as defined by Case IH in the DOG.
  - (f) Compliance with Service Policies. Dealer shall abide by all Case IH policies and procedures contained in the DOG when performing Warranty Service and Other Required Service or when submitting Dealer Claims, including creating and retaining all supporting documentation for such claims.
- 10.2 Strategic Account Service. Dealer shall provide Warranty Service and/or Other Required Service for any Product sold by Case IH to Strategic Accounts, as well as for any Product sold or donated to charitable, educational or governmental entities.

#### **11. Dealer Pre-Delivery and Post-Delivery Responsibilities**

- 11.1 Product Setup. To ensure the proper operation of Products, before delivery of Products to a Customer Dealer shall perform the inspections, adjustments, conditioning, installations or servicing of such Products in accordance with instructions and procedures provided by Case IH.
- 11.2 Product Literature. Dealer shall deliver to each Customer of a Product the appropriate current publications and forms for owners covering operation, maintenance, warranty and other matters as determined by Case IH.
- 11.3 Customer Instruction. At the time of delivery, Dealer shall instruct each Customer of a Product in the safe use, proper operation and required maintenance of that Product. Such instruction shall include, at a minimum: (a) reference to the operators manual and decals identifying hazards and how to avoid them, (b) identification of the safety features and functions of the Equipment, and (c) demonstration of such features and functions.
- 11.4 Accident Reporting. Dealer shall promptly notify Case IH, pursuant to guidelines contained in the DOG, of any reports of accidents or injuries involving Products of which Dealer becomes aware, as well as any information concerning the existence of any significant Product failure or malfunction.
- 11.5 Post-Delivery Services. Dealer shall perform all required post-delivery inspections and adjustments to Products as prescribed by instructions and procedures provided by Case IH from time to time or as stated in the DOG.

#### **12. Facility Requirements and Dealer Locations**

- 12.1 Facility Requirements. Dealer shall establish and maintain at each authorized Dealer Location listed on Schedule D a facility to sell, service, display and store Products in accordance with facility standards contained in the DOG.
- 12.2 Unauthorized Locations. Without Case IH's prior written consent, Dealer shall not at any location other than those listed in Schedule D, directly or indirectly: (a) advertise or represent itself as an authorized dealer of Case IH Products; (b) use the Licensed Trademarks or any other Trademarks; (c) store, stock or display Products; (d) sell, advertise or market any Products; or (e) provide Warranty Service and/or Other Required Service.
- 12.3 Closure and Relocation. Without Case IH's prior written consent, Dealer may not close or relocate any Dealer Location listed on Schedule D. Dealer shall seek Case IH's consent for the closure or relocation of a Dealer Location at least sixty (60) days prior to the proposed closure or relocation. Should Case IH give its consent, Case IH, in its sole discretion, may modify or reassign the SSM associated with the relocated or closed Dealer Location. Dealer acknowledges and agrees that any consent granted by Case IH for the closure of a Dealer Location shall not initiate the inventory repurchase obligations set forth in Section 29.
- 12.4 Brand Identification. Dealer shall: (a) display a primary identification sign (flag mast or monument) and comply with dealer identity standards as specified in the DOG for each Dealer Location listed on Schedule D; and (b) comply with Case IH's vehicle identity standards as set forth in the DOG.
- 12.5 Trademark Display. Dealer's use of Trademarks or Licensed Trademarks at any Dealer Location, including but not limited to signs, banners or displays, shall be subject to Case IH approval. Any such use not approved by Case IH must be removed immediately by Dealer.

#### **13. Business Plan**

- 13.1 Business Plan Requirements. Annually, or as otherwise requested by Case IH, Dealer shall complete and make available for review by Case IH a written plan for the subsequent fiscal year (or additional years if requested by Case IH) that shall contain the information and objectives required by Case IH for a business plan ("Business Plan"), which may include but not be limited to the following:
- (a) Equipment inventory stocking and sales objectives to maximize Dealer's Equipment sales in its SSM, but at a minimum to obtain Dealer Market Share requirements stated in Section 9.1(a), including action plans for obtaining such objectives;

- (b) Parts inventory stocking plan and sales objectives to maximize Dealer's Parts sales;
  - (c) training plans for Dealer sales and service personnel, including Case IH provided training;
  - (d) advertising, promotional and marketing plans and budgets;
  - (e) action plans for Dealer's possible expansion or upgrading of its current facilities, or for the proposed addition of new facilities; and
  - (f) any additional information required by Case IH as set forth in the DOG.
- 13.2 Business Plan Acceptance. Dealer agrees that providing a Business Plan reasonably acceptable to Case IH is a requirement for Dealer to effectively promote and sell Products under this Agreement. Case IH may conduct periodic reviews of Dealer's performance against its approved Business Plan, and during such reviews Dealer agrees to make available all Dealer's records and employees which would contribute to the overall value of these reviews.

#### **14. Insurance and Taxes**

- 14.1 Insurance Coverage. Dealer shall maintain an occurrence-based policy of Comprehensive General Liability insurance (including Products and Property Damage Liability) with a maximum per occurrence deductible of \$50,000; a minimum liability limit of \$5,000,000 per occurrence for personal injury claims; and a minimum liability limit of \$500,000 per occurrence for property damage claims. If Dealer is self-insured, the per occurrence deductible maximum is not applicable. Case IH may modify the deductible and policy limit amounts as set forth in the DOG. Any annual aggregate liability limits under such policies shall not be less than \$5,000,000. Upon request, Dealer shall furnish to Case IH certificates of such insurance, which shall provide for at least thirty (30) days' prior written notice to Case IH of an increase in deductible amounts or the cancellation, lapse, or expiration of said policy.
- 14.2 Payment of Taxes. Dealer shall pay all license fees, sales, use, personal property, and excise taxes, duties, and any other fees, assessments or taxes which may be assessed or levied by any governmental authority against any Products which are shipped to, or are in the possession of, Dealer.
- 14.3 Dealer Tax Representations. By submitting an order to Case IH for the purchase of any Product, Dealer represents and warrants that (a) such Products are being purchased for resale, lease or rent to Customers in the ordinary course of Dealer's business, and (b) Dealer has complied and will comply with all requirements for collection and payment of applicable sales, use and similar taxes. Upon request, Dealer shall provide evidence satisfactory to Case IH of Dealer's compliance with the foregoing representations and warranties.

#### **15. Warranty**

- 15.1 Warranty Obligations. Case IH's warranties covering Products are as set forth in the Limited Warranty furnished by Case IH with respect to such Products. The performance and administration of the warranties so extended, and the reimbursement to Dealer for Warranty Service performed on Products, are as set forth herein and in the DOG in effect at the time warranty work is performed. The Parties shall promptly fulfill their respective warranty obligations as set forth in the Limited Warranty and DOG.
- 15.2 Dealer Obligations Upon Sale. At the time of any retail sale of Products pursuant to this Agreement, Dealer shall (a) deliver to and review with the Customer Case IH's Limited Warranty for such Products in force at the time of such sale, (b) have the Customer complete the operator's manual/warranty receipt verification section of the Limited Warranty, (c) obtain the Customer's signature on the Limited Warranty and (d) submit the signed Limited Warranty to Case IH within ten (10) days of the sales transaction. Case IH reserves the right not to reimburse Dealer for Warranty Service claims should Dealer fail to timely submit to Case IH the signed Limited Warranty.
- 15.3 No Other Warranty Provisions. Dealer is not authorized to assume or purport to assume for Case IH any additional obligations or liabilities in connection with the sale, lease, rental or service of Products covered by this Agreement, and Dealer shall not do so. Case IH shall not be liable nor shall it defend, indemnify or in any way be obligated to assist Dealer in defense of any notice, claim, or lawsuit alleging the existence of a warranty beyond the terms and conditions of Case IH's Limited Warranty for any Product.
- 15.4 Disclaimer of Other Warranties. Dealer agrees and acknowledges that, except for the warranty extended to Customers under Case IH's Limited Warranty, and to the extent allowed by law, Case IH makes no other representations or warranties, express or implied (including implied warranties of merchantability and fitness for a particular purpose) to Dealer or any Customer with respect to Products.
- 15.5 Non-Case IH Equipment and Service. If Dealer installs on or attaches to a Product any non-Case IH equipment, attachment, accessory or part, Dealer shall advise Customer in writing that the non-Case IH equipment, attachment, accessory or part is not covered by the Limited Warranty. If Dealer sells any service contract not provided by Case IH

or its Affiliates in conjunction with the sale of Equipment, Dealer will disclose to Customer the identity of the service contract provider and will further advise that Case IH has no responsibility to fulfill the obligations of such service contract.

- 15.6 Actions Voiding Limited Warranty. Dealer acknowledges and agrees that any breach of Sections 5.4 or 5.5 may result in Case IH voiding the Limited Warranty for Products in its sole discretion, and Dealer must so advise its Customer in writing to whom such Product has been sold. In such a case where Case IH elects to void the Limited Warranty, as between Dealer and Case IH, Dealer shall be solely responsible for an warranty service claims relating to such Product.
- 15.7 Use of Unauthorized Parts. In the event Dealer breaches Section 10.1(d), Case IH in its sole discretion may (a) refuse to reimburse Dealer for such Warranty Service and/or Other Required Service, (b) void Case IH's Limited Warranty for such Products, and/or (c) hold Dealer solely responsible for all Warranty Service relating to such Products.

#### **16. Records and Inspections**

- 16.1 Financial Statements. Dealer shall submit to Case IH, within ninety (90) days after the end of Dealer's fiscal year, audited (or where audited are not available then certified) balance sheets and financial statements for that year.
- 16.2 Supplemental Financial Records. Dealer shall submit monthly financial statements to Case IH in the manner directed by Case IH. Case IH reserves the right to request at any time personal financial statements from the Dealer Principal(s) or guarantor(s) of Dealer, and Dealer shall supply such statements within thirty (30) days.
- 16.3 Sales Reports. Dealer shall maintain and provide to Case IH upon request current reports of Equipment or Parts sales, owner registration inventory, service and warranty reports, as well as such other reports as may be requested by Case IH.
- 16.4 Inspections. Dealer shall permit Case IH or its authorized representatives during normal business hours to (a) enter and inspect all Dealer Locations, (b) examine Dealer's Product inventory, (c) test Equipment in Dealer's possession, custody or control, (d) examine and audit Dealer's books and records and all supporting data of Dealer's business, and (e) make copies of any such records or accounts.
- 16.5 Records Retention. Dealer shall maintain for at least two (2) years all original records and documents relating to Dealer Claims submitted to or paid by Case IH.
- 16.6 Chargeback for Improper or Unsubstantiated Claims. Dealer's submission of unsubstantiated Dealer Claims or Dealer Claims not in compliance with the requirements of the DOG will result in a chargeback to Dealer for such claims, including interest at the then current prime rate. If Dealer refuses to permit an audit, fails to maintain a substantial amount of the required records, or intentionally submits false or fraudulent Dealer Claims, the chargeback will include all amounts paid on Dealer Claims for the prior two (2) years, including any dealer settlement allowances, plus interest at the then current prime rate. This remedy is in addition to those available to Case IH for breach of this Agreement, including but not limited to termination of this Agreement.

#### **17. Computer Business System**

- 17.1 Dealer Management System Requirements. Dealer shall install and maintain in good working order at each Dealer Location: (a) a computerized dealer management system ("DMS") satisfactory to Case IH that maintains Case IH-to- DMS interfaces and functions to communicate and conduct business with Case IH's computer applications and systems (the "System"); (b) a Dealer-to-Case IH network connection that meets or exceeds Case IH specified Dealer-to-Case IH connectivity requirements; and (c) all necessary hardware and software to maintain compatibility with the System.
- 17.2 Case IH Applications. Dealer shall subscribe to, install and maintain required software applications as communicated to Dealer by Case IH or as set forth in the DOG, including (but not limited to) the Electronic Parts Catalog applications.
- 17.3 Operating Costs. Dealer shall pay all costs, including taxes, for the DMS, the Dealer-to-Case IH network connection, and any monthly access charges for use of the System.
- 17.4 Confidentiality. Dealer shall keep confidential any information and data contained in the System, and shall not use the System or any information or data derived from the System for purposes unrelated to Dealer's performance of its obligations under this Agreement.
- 17.5 Disclaimer of Liability. Case IH shall not be responsible or liable for any defects, problems or resulting damages incurred by Dealer from the operation and use of the DMS, the Dealer-to-Case IH network connection, or the System.

#### **18. Marketing & Promotional Support**

- 18.1 Marketing Assistance. To assist Dealer in its marketing and promotional efforts, Case IH will develop the following marketing and promotional materials: (a) training and videos of Product features, operations, demonstrations and competitive comparisons; (b) Product sales literature and brochures; (c) Product and promotional posters, banners and



- point of sale materials; (d) print and media copy for advertisements in newspapers, magazines, and trade publications; and (e) radio and television advertising scripts. Case IH may also make cooperative advertising funds available to Dealers, in its sole discretion.
- 18.2 Communications to Dealer. Dealer expressly consents to the receipt of unsolicited commercial faxes, emails, text messages, instant messages or other form of electronic communication, from Case IH, its Affiliates, or other Case IH- designated sender.
- 18.3 Products and Services Provided by Case IH. From time to time, Case IH will provide Dealer with certain products and services necessary for Dealer to market, sell and service Products. Dealer agrees that Case IH, in its discretion, may charge Dealer for any such products or services so provided.
- 18.4 Dealer Knowledge of SSM. Case IH expects Dealer to know and understand its market area and the promotional activities that would best be used to market Products within Dealer's SSM. As such, it is Dealer's responsibility to determine which marketing and promotional materials to use in its marketing efforts to meet its sales responsibilities under this Agreement.

#### **19. Orders, Delivery and Passage of Title**

- 19.1 Purchase Orders. Dealer may seek to purchase Products from Case IH under this Agreement by submitting purchase orders through Case IH's System in accordance with instructions provided by Case IH. Case IH may specify in writing the minimum quantity of a given Product that Dealer shall be obligated to order at one time as a condition for filling such order, provided that such minimum quantity requirements will be consistently imposed on Dealers.
- 19.2 Offer and Acceptance. Dealer's transmission of an order for Products through Case IH's System will be a binding offer by Dealer to purchase the Products ordered, unless Case IH rejects the order. Purchase orders submitted by Dealer shall not be binding upon Case IH unless and until accepted in writing or electronically by Case IH. All orders for Products may not be canceled by Dealer, and shall be subject to Case IH's then applicable conditions of sale.
- 19.3 Delivery Dates. Case IH shall endeavor to meet the delivery date specified in the System, but shall have no liability for failing to timely fill or deliver any order.
- 19.4 Product Allocation. Case IH shall have the right to allocate delivery of Dealer's Product orders based on their relative order or sales status as compared to other pending orders.
- 19.5 Product Shipment. Case IH shall arrange delivery of Products to Dealer and reserves the right to determine the method and routing for such delivery. Case IH shall not be responsible for guaranteeing shipping rates or for delays in shipment. Case IH, in its discretion, may permit Dealer to designate orders for Will Call delivery pursuant to the terms of the DOG.
- 19.6 Risk of Loss / Passage of Title. Case IH's release of Products to any carrier for transportation to Dealer shall constitute delivery to Dealer for purposes of passage of title, and Dealer shall bear all risk of loss or damage to Products thereafter. For Will Call orders, risk of loss and passage of title shall be as set forth in the DOG.
- 19.7 Equipment Transfer. The transfer of Equipment from Dealer to other authorized dealers of Products shall be in accordance with Case IH's transfer program described in the DOG. Case IH shall have no liability as a result of any such transfer.
- 19.8 Product Return Authorization. Dealer agrees that no Products delivered to it hereunder are to be returned to Case IH without prior written authorization. Dealer shall pay all transportation charges on any returned Products authorized by Case IH, and Dealer is responsible for payment of all restocking charges stated in the DOG.

#### **20. Product Pricing and Payment**

- 20.1 Prices. Unless otherwise authorized by Case IH, the price charged to Dealer for any Product shall be the price in effect at the time the Product is invoiced to Dealer.
- 20.2 Price Changes. Case IH reserves the right at any time to change its prices, terms, discounts and any other pricing provision for Products.
- 20.3 Payment. Dealer shall pay Case IH for all Products immediately upon invoicing of Products to Dealer. The terms and conditions of sale and payments for all Products invoiced to Dealer shall be subject to Case IH's applicable conditions of sale and prices as published and modified from time to time by Case IH. Failure to make payment in accordance with this provision may, in Case IH's sole discretion, result in Case IH revoking the sale and repossessing the Product without notice or formality. Case IH reserves the right, without liability, to refuse to sell or deliver Products to Dealer when in Case IH's opinion Dealer's financial condition does not warrant or support further sales or deliveries.
- 20.4 Equipment Relocation. Case IH may request Dealer to transfer new Equipment to another authorized dealer to accommodate such dealer's sale to another Customer. If Dealer refuses, Case IH, in its sole discretion, may decline to

pay, on Dealer's behalf, the wholesale finance interest charges associated with that specific Equipment, and may decline to make available to Dealer any retail sales programs for such Equipment.

- 20.5 Application of Money and Credits. Any money or credits due and payable or becoming due and payable from Case IH to Dealer may be applied in any order Case IH may determine for the satisfaction, in full or in part, of any debts, liabilities or obligations due and payable or becoming due and payable or owing from Dealer to Case IH or its Affiliates.

## **21. Negative Covenants and Compliance**

- 21.1 Domestic Sales Only. Without Case IH's prior written approval, Dealer shall not sell, lease or rent Products outside of the Domestic United States.
- 21.2 Retail Sales Only. Dealer shall sell Products only to retail Customers or to other authorized dealers of Products. As such, except for sales to authorized Case IH dealers, Dealer may not sell any Products at wholesale, including but not limited to sales to jobbers, jockeys, or other unauthorized dealers.
- 21.3 No Deceptive or Unethical Practices. Dealer shall conduct business in a manner that will reflect favorably at all times on Dealer, Case IH Products, Licensed Trademarks and other authorized dealers of Products. Dealer shall refrain from business practices, advertisements, promotion and conduct that are unethical, deceptive, misleading, fraudulent, confusing or would likely contravene any voluntary or involuntary advertising standard or any law. Dealer shall not make, directly or indirectly, any false or misleading statement or representation concerning any Product, its source, condition, capabilities, price, or charges for the Product's distribution, delivery, taxes or other items.
- 21.4 Announcements. Dealer shall not publish public relation announcements that in any way involve or mention Case IH without Case IH's prior written consent.
- 21.5 Compliance with Federal, State and Local Laws. Dealer shall comply with all applicable federal, state, and local laws and regulations governing Dealer's operations and its ordering, sales and service of Products, including without limitation those laws or regulations concerning safety, emissions control and customer service. Dealer shall obtain all governmental approvals, permits or licenses required to do business in its SSM.
- 21.6 Compliance With Export Laws. Certain Products purchased by Dealer from Case IH may be subject to United States export control laws Dealer agrees that it is responsible for knowing and complying with such laws. Diversion contrary to United States law is prohibited.
- 21.7 Compliance with Fraud and Anti-Corruption Laws.
- (a) Dealer and its Dealer Principals represent that they have not been convicted of, or pleaded guilty to, an offense involving fraud or corruption and that they are not now listed by any government agency as debarred, suspended, or proposed for suspension or debarment, or otherwise ineligible for any government bid or procurement programs. Dealer agrees to promptly inform Case IH of any change in this representation.
  - (b) Dealer shall become familiar with and strictly comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption, including but not limited to the United States Foreign Corrupt Practices Act and similar anti-corruption or anti-bribery laws. Dealer shall promptly report to Case IH any request or demand for any undue financial or other advantage of any kind received by Dealer in connection with the performance of this Agreement. Dealer warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this Agreement, and shall immediately notify Case IH in writing if a foreign public official becomes an officer or employee of Dealer or acquires a direct or indirect interest in Dealer.

## **22. Product Changes and Discontinuation**

- 22.1 Product Changes and Improvements. Case IH may make changes or improvements at any time in the specifications, construction, color and design of Products without incurring any obligation to Dealer or Dealer's Customers.
- 22.2 Product Discontinuation. Case IH reserves the right at any time, without liability to Dealer, to discontinue the manufacture of any and all model(s) Equipment, or Product Line(s) under the Licensed Trademarks covered by this Agreement. Products shall be considered discontinued notwithstanding the fact that similar or identical products continue to be manufactured or sold by CNH Industrial America LLC or its Affiliate under Trademarks other than the Licensed Trademarks or brands for which this Agreement grants Dealer certain Product distribution rights. For any models, Equipment or Product Line(s) so discontinued, Case IH shall not be required to offer Dealer the right to represent a similar model Equipment or Product Line(s), if any, marketed, manufactured or sold by CNH Industrial America LLC or its Affiliates under Trademarks other than the Licensed Trademarks or brand(s) listed on Schedule B.

### 23. Case IH Sales of Products

- 23.1 Direct Sales in Dealer's SSM. Within Dealer's SSM or elsewhere, Case IH reserves the unrestricted right, without liability to Dealer, to directly sell or lease Products to any Customer, person or entity, including both at wholesale or retail, and permit such Customer, person or entity to service Products, including but not limited to the following: (a) governmental entities, agencies, institutions or subdivisions thereof; (b) educational and charitable institutions; (c) rental companies; and (d) accounts classified by Case IH as Strategic Accounts or other similar designation.

### 24. Licensed Trademarks

- 24.1 Trademark License. Subject to and only in accordance with the terms and conditions of this Agreement, Case IH grants Dealer the right and Dealer accepts the obligation to make only Permitted Uses of the Licensed Trademarks set forth in Section 24.2 and to refrain from engaging in Prohibited Uses of the Licensed Trademarks set forth in Section 24.3. Dealer's right to use the Licensed Trademarks is limited to the Permitted Uses during the term of this Agreement. Any unauthorized use of the Licensed Trademarks (including any of the Prohibited Uses) shall constitute an infringement of Case IH's rights to the Licensed Trademarks in addition to a breach of this Agreement. In the event Dealer's use of Licensed Trademarks (even though a Permitted Use) is unacceptable to Case IH in its sole discretion, Dealer must immediately cease such use of the Licensed Trademark upon notice from Case IH.
- 24.2 Permitted Uses. Dealer shall and is permitted to: (a) use the Licensed Trademarks to identify and advertise its business at Dealer Locations in connection with the marketing, sale, distribution and service of Products under the Licensed Trademarks; (b) use the Licensed Trademarks only in connection with the marketing, sale, distribution and service of the Products for which Case IH has authorized them to be used; (c) identify itself (and not Case IH) as the owner of Dealer's business in conjunction with any use of the Licensed Trademarks, including the use thereof on leases, invoices, order forms, receipts, and business stationery, as well as at such other locations and in the manner as Case IH may designate in the DOG and (d) use the Licensed Trademarks to identify itself as an authorized dealer of Products.
- 24.3 Prohibited Uses. Dealer shall not: (a) use the Licensed Trademarks (or any other Trademarks owned or licensed by Case IH or its Affiliates) as part of its corporate or other legal name without the prior written consent of Case IH; (b) sublicense or assign its right to use the Licensed Trademarks to any other person or entity; (c) use the Licensed Trademarks to incur any obligation or indebtedness on behalf of Case IH; (d) manufacture or purchase objects bearing Licensed Trademarks or Trademarks from unlicensed sources or apply, or have applied, Licensed Trademarks or Trademarks to objects that will be offered for sale or provided as promotional items by Dealer or any third party, specifically including but not limited to any clothing item (such as shirts, hats or other apparel), giftware, toys or other sundry items; and (e) register, attempt to register, obtain any ownership in, or otherwise use any Internet Registration (defined as any website, domain name, URL, internet/World Wide Web presence or feature, social media account designations, or other electronic communications portal) whose domain name, URL or other electronic communications portal contains, incorporates, or consists of the Licensed Trademarks or Trademarks without Case IH's express written consent which may be withheld for any or no reason.
- 24.4 Unauthorized Internet Registrations. In the event that Dealer registers, attempts to register, obtains any ownership in, or otherwise uses any Internet Registration in violation of this Agreement, in addition to any rights Case IH may have under this Agreement, Dealer hereby acknowledge and agrees that any such Internet Registration, including any copyrights therein, shall be deemed to be the property of Case IH. Dealer will assign, transfer or assist in the perfection of any rights necessary to transfer said registration to Case IH with no compensation to Dealer and at no additional cost to Case IH. In the event that a court of competent jurisdiction determines that any ownership rights to any Internet Registration are not automatically transferred to Case IH pursuant to this Agreement, Dealer agrees to execute any documents deemed necessary by Case IH to give effect to this provision. Case IH may condition approval of Dealer's use of any such Internet Registration on the transfer to Case IH of all and all ownership rights therein, including any copyrights. In the event that this Agreement expires or is terminated, Dealer shall not use or register a domain name that includes, or in Case IH's sole discretion is confusingly similar to, a Licensed Trademark or any other Trademark.
- 24.5 Notice of Trademark Claims. Dealer shall promptly notify Case IH in writing of any suspected unauthorized or infringing use of the Licensed Trademarks, any challenge to the validity of the Licensed Trademarks, any challenge to Case IH's ownership of the Licensed Trademarks, any challenge to Case IH's right to use and license others to use such Licensed Trademarks, or any challenge to Dealer's right to use the Licensed Trademarks.
- 24.6 Validity of Licensed Trademarks. Dealer expressly understands and acknowledges that the Licensed Trademarks are valid and serve to identify Products and those authorized by Case IH to market, sell, distribute, and service Products. Dealer shall not directly or indirectly contest, attack, oppose, attempt to cancel or otherwise challenge in any manner or



in any forum, the validity of the Licensed Trademarks or Case IH's ownership of, or Case IH's right to use or license others to use, the Licensed Trademarks, either during or after the term of this Agreement.

- 24.7 Ownership of Licensed Trademarks and Goodwill. Dealer acknowledges the Licensed Trademarks are exclusively owned by Case IH. Dealer's use of the Licensed Trademarks pursuant to this Agreement does not give Dealer any ownership interest or other interest in or to the Licensed Trademarks. Dealer shall execute any documents deemed necessary or useful by Case IH to obtain protection for the Licensed Trademarks or to maintain their validity and enforceability. Any and all goodwill arising from Dealer's use of the Licensed Trademarks shall inure solely and exclusively to the benefit of Case IH. Upon expiration or termination of this Agreement, no monetary amount shall be attributable to any goodwill associated with Dealer's use of the Licensed Trademarks or the sale and service of Products.
- 24.8 Nonexclusive License. This Agreement grants Dealer only a nonexclusive right and license to use the Licensed Trademarks. Case IH has and retains the rights to use the Licensed Trademarks itself in connection with selling Products and services and to grant other licenses for the Licensed Trademarks and for Trademarks.
- 24.9 Discontinuation and Substitution of Licensed Trademarks. Case IH reserves the right in its sole discretion to discontinue any Licensed Trademark and to substitute or add different Licensed Trademarks for use in identifying Products or the dealers authorized to sell or service Products. Dealer shall implement promptly any such substitution or addition of new Licensed Trademarks.
- 24.10 Copyrights. Dealer shall not copy any aspect or portion of Case IH's website or other electronically stored information or printed documents or publications without the express prior written consent of Case IH.

## **25. Authorized Software**

- 25.1 Software License. Dealer acknowledges that certain Products contain imbedded computer software and related technology (collectively, "Authorized Software") in which Case IH owns or licenses copyrights and/or other intellectual property rights. During the term of this Agreement, Case IH grants Dealer a non-transferable, royalty-free license to use Authorized Software in object code form only ("Software License"). The Software License is limited to the sale and service of any Product containing Authorized Software only in the manner authorized by Case IH in writing. Except as expressly authorized by this Agreement, Dealer may not sublicense Authorized Software to any other entity nor assign its Software License. This Agreement does not grant Dealer any right, title, or interest in Authorized Software anywhere in the world except the Software License granted herein. Dealer acknowledges that the use of any Product containing Authorized Software may require a Software License from Case IH. Case IH reserves the right to require all users of Products containing Authorized Software to possess a valid license in the form prescribed by Case IH, and in such case Dealer shall not transfer or permit the transfer or use of any Product containing Authorized Software unless the transferee or user is subject to such valid license. This Software License shall continue until it is terminated in accordance with this Agreement, or for the useful life of the Product in which Authorized Software is imbedded or of which Authorized Software is an integral part, or for the useful life of Authorized Software, whichever is shorter.
- 25.2 Automatic Termination. The Software License shall automatically terminate upon the occurrence of any of the following:  
(a) removal of Authorized Software from the Product for which it was obtained or authorized, (b) service by any unauthorized person, (c) use of Authorized Software on any product other than that for which it was obtained or authorized, or (d) any breach of this Software License by Dealer.

## **26. Company Information and Case IH IP**

- 26.1 Company Information. Periodically, Case IH will provide Dealer with proprietary, confidential information, technical knowledge and/or assistance and other materials that derive value from not being generally known in the industry ("Company Information") that are reasonably necessary for the distribution, sale, promotion and service of Products. Case IH has sole discretion to determine what information it provides to Dealer is Company Information. Dealer agrees that Company Information remains the property of Case IH. Dealer must take commercially reasonable measures, but in any event no less strict than the measures Dealer uses with its own confidential information, to maintain the confidentiality of Company Information and to ensure that all Company Information is used only to sell and service Products in accordance with this Agreement. Dealer may disclose Company Information only to those of its employees who will need it and must take all necessary measures to ensure that those persons do not reveal Company Information to any third parties without the prior written authorization of Case IH. Dealer shall be responsible and liable to Case IH for any breach of this provision by its employees, agents or representatives.
- 26.2 Return of Company Information. Dealer acknowledges that Case IH provides Company Information to Dealer for use by Dealer pursuant to this Agreement. Therefore, upon expiration or termination of this Agreement for any reason, Dealer shall immediately return to Case IH all Company Information in any form.

- 26.3 No Reverse Engineering. Dealer shall not engage in, cause to be engaged in, or permit any reverse engineering of Authorized Software, Products or component parts thereof. "Reverse engineering" is defined as attempting through analysis of Products or component parts thereof to determine their functionality and thereby gain the ability to alter or reproduce that functionality.
- 26.4 Right to Use Case IH P. Dealer shall use Case IH IP only in accordance with the provisions of and for the purposes contemplated by this Agreement and in accordance with any procedures that Case IH may establish for use of Case IH IP.

## **27. Term and Termination**

- 27.1 Term of Agreement and Renewal. This Agreement shall commence on the Effective Date and continue to the Expiration Date ("Term"). The Expiration Date of this Agreement shall be extended for additional successive five (5) year periods unless, at least ninety (90) days prior to the Expiration Date or the expiration date of any subsequent extension period, either party notifies the other of its intention not to extend. Upon such notification not to extend, this Agreement shall expire on the Expiration Date or at the expiration date of any extension period.
- 27.2 Replacement Agreement. In the event Case IH offers to all authorized dealers in the state of Dealer's Primary Location a new dealer agreemer or an amendment to this Agreement ("Replacement Agreement"), Case IH may terminate this Agreement at any time by providing Dealer with a least one hundred eighty (180) days' prior written notice and shall furnish Dealer a copy of the Replacement Agreement with such notice. Dealer's return to Case IH of an executed Replacement Agreement shall not give rise to any repurchase rights and obligations provided for in Section 29.
- 27.3 Breach.
- (a) Except where termination of the Agreement due to Dealer's breach is allowed immediately pursuant to Section 27.4, and except as stated in Sections 27.3(b) and (c), in the event that either Dealer or Case IH fails to fulfill any of their responsibilities under this Agreement, the other party may terminate this Agreement by providing ninety (90) days' written notice listing the reasons for termination, within which period the other party will have sixty (60) days to rectify the identified breach and avoid termination.
  - (b) If Dealer breaches Section 7.2, Case IH may, in its sole discretion, terminate the Agreement upon ninety (90) days' advance written notice to Dealer. However, during this ninety (90)-day period, Dealer may cure its breach of Section 7.2 by providing Case IH, within sixty (60) days of Case IH's notice to Dealer, a written plan to return to compliance with Section 7.2 within twelve (12) months from the date of Case IH's notice. Thereafter, if Dealer fails to perform such submitted plan, Case IH may terminate the Agreement with thirty (30) days' written notice.
  - (c) If Dealer is in breach of Section 9.1(a), Case IH may terminate Dealer for such default only after providing Dealer with written notice and a twelve (12)-month period within which Dealer may cure such default to Case IH's sole satisfaction.
  - (d) A breach by Dealer of any other written agreements between Dealer and Case IH or its Affiliates that is due to fraud committed by Dealer, shall also be considered a breach under this Agreement allowing Case IH to immediately terminate the Agreement.
  - (e) As an additional or alternative remedy for any breach by Dealer of the Agreement, Case IH, in its sole discretion and after providing Dealer with an opportunity to cure said breach as provided in Sections 27.3(a),
    - (b) or (c), may amend Schedule D to remove authorization for the Dealer Location at which such breach occurred. In such event, Dealer shall cease all activities related to the display, stocking, sales and service of Products at such Dealer Location, including the use of Licensed Trademarks, and Case IH will repurchase new Parts and Signs located only at such Dealer Location as provided in Section 29.1(b) and (c).
- 27.4 Immediate Termination. Case IH may terminate this Agreement immediately upon the occurrence of any of the following events:
- (a) Dealer Financial Defaults: (i) Dealer's default in the payment when due of any obligations to Case IH or any of its Affiliates, including but not limited to CNH Industrial Capital America LLC ("CNH Capital"); (ii) Dealer's default under any chattel mortgage or other security agreement between Dealer and Case IH, any of its Affiliates or any other lender or financing entity; or (iii) the refusal or failure of Dealer upon demand to account to Case IH or any of its Affiliates for the proceeds of the sale of Products for which Dealer is indebted to Case IH or such Affiliates;
  - (b) Loss of Wholesale Credit Line: the termination (or suspension where such suspension continues for more than sixty (60) calendar days), of any of Dealer's significant wholesale lines of credit for the purchase of new Products;

- (c) Insolvency: (i) the filing of a voluntary or involuntary petition in bankruptcy by or against Dealer; (ii) the making of an assignment by Dealer for the benefit of creditors; (iii) a closeout or sale of a substantial part of Dealer's assets related to the business; (iv) the commencement of dissolution, receivership or liquidation proceedings by or against Dealer; (v) the insolvency of Dealer; or (vi) the levy of a writ of attachment or execution against Dealer;
  - (d) Change in Dealer Entity, Control, Ownership or Management without the prior written consent of Case IH: (i) any change in Dealer's legal form or entity; (ii) any change in Dealer's control, ownership or management (as defined in Section 4.3) listed in Schedule A; or (iii) any assignment or attempted assignment by Dealer of this Agreement;
  - (e) Death or Incapacity: if Dealer fails to provide Case IH with an acceptable ownership or management succession plan as set forth in Section 4.4 upon the death or incapacity of any Dealer Principal;
  - (f) Misrepresented or False Information: Dealer or anyone acting on its behalf has: (i) submitted false records, contracts, statements, reports or documents to Case IH or any of its Affiliates, including CNH Capital; (ii) submitted any false or fraudulent documents for Dealer Claims or in support thereof; (iii) knowingly accepted any payment from Case IH for any work not performed by Dealer in accordance with the provisions of this Agreement or the DOG; or (iv) submitted false information in applying for appointment as an authorized dealer of Products;
  - (g) Failure to Operate: failure to operate any Dealer Location in the normal course of business for seven (7) consecutive calendar days;
  - (h) Criminal and/or Tortious Conduct: Dealer or any Dealer Principal has pleaded guilty to or been convicted of a felony or any other violation of law that in Case IH's opinion affects adversely the operation or business of Dealer, or the good name, goodwill or reputation of Case IH, Products, Licensed Trademarks, Dealer, or other authorized dealers of Products;
  - (i) Dealer Closure/Loss of License (i) a permanent closure of any Dealer Location without the prior written consent of Case IH; or (ii) the revocation, suspension or other invalidation of any Dealer license, permit or authorization necessary to conduct business pursuant to this Agreement;
  - (j) Inspection/Audit Refusal: any failure by Dealer to permit Case IH to inspect or audit Dealer's inventory or business and financial records pursuant to Section 16.4;
  - (k) Detrimental Conduct: any conduct by Dealer or any Dealer Principal which in the sole discretion of Case IH:
    - (i) is injurious or detrimental to Dealer's Customers, the public welfare, other authorized dealers of Products, or the reputation of Case IH, Products and the Licensed Trademarks; (ii) is unbecoming of a reputable business person; (iii) is abusive or threatening to any Case IH employee; or (iv) evidences a disagreement between any Dealer Principals that in Case IH's opinion adversely affects the operation of Dealer or the good name, goodwill or reputation of Case IH, Products, Licensed Trademarks, or Dealer;
  - (l) Breach of Confidentiality: any misuse or unauthorized disclosure of Case IH IP, Company Information or Authorized Software;
  - (m) Revocation of Guaranty: the withdrawal or revocation of a guaranty of Dealer's indebtedness to Case IH or its Affiliates by one or more personal or corporate guarantors;
  - (n) Incurable Breach: any breach of the Agreement that is incapable of being remedied by an affirmative present action by the Dealer;
  - (o) Repetitive Breach: breach of the Agreement by Dealer for which it has received notice by Case IH of that same type of breach on at least two (2) prior separate and distinct occasions;
  - (p) Unauthorized Location: any breach of Section 12.2 of the Agreement.
- 27.5 Case IH's Exercise of Termination Rights. Case IH may exercise its termination rights under Sections 27.3 and 27.4 without regard to the performance of other authorized dealers or to the circumstances under which Case IH has terminated or refrained from terminating the sales and service agreements of other authorized dealers.
- 27.6 Termination At Will. This Agreement may be terminated at any time at will, without cause, upon sixty (60) days' written notice by Dealer to Case IH, or as mutually agreed upon in writing by both Parties.

## **28. Effect of Termination or Expiration**

- 28.1 Dealer's Obligations. Upon the termination or expiration of this Agreement, Dealer shall cease to operate or represent itself as an authorized dealer of Products under the Licensed Trademarks, and shall promptly: (a) cease using the Licensed Trademarks and remove from Dealer Locations and vehicles all signs or advertising displays that bear the Licensed Trademarks; (b) remove and discontinue the use of, and cause any third party to remove, any identification



and any promotion or advertising that associates Dealer with Products, the Licensed Trademarks, or Case IH; and (c) at Case IH's request provide to Case IH all sales records, mailing lists, customer lists, service history records, microfiche, catalogs, registrations and any other material of any kind relating to the promotion, marketing, sale, operation or servicing of Products covered by this Agreement. If Dealer fails to promptly comply with any of its obligations upon the termination or expiration of this Agreement, including but not limited to Dealer's obligations under this section, Case IH may take steps, as it deems necessary in its sole discretion, to effect Dealer's compliance with such obligations or the same result as would be realized by Dealer's compliance, and Dealer shall reimburse Case IH for all costs and expenses, including attorney's fees, incurred by Case IH in effecting or enforcing such compliance.

- 28.2 Pending Orders. Termination or expiration of this Agreement shall relieve Case IH of any obligation to make any further shipments of Products and Case IH may without liability cancel any of Dealer's unshipped orders for Products. For any Products which Case IH may ship after termination or notice thereof, Case IH may require payment prior to shipment.
- 28.3 Financial Obligations. Upon the termination or expiration of this Agreement, all indebtedness of Dealer shall become immediately due and payable to Case IH, and Dealer shall promptly pay Case IH all sums owed by Dealer. Final settlement of Dealer's account with Case IH shall not be made until Dealer complies with all requirements of this Agreement.
- 28.4 Continued Market Presence. In advance of the effective date of termination, the scheduled Expiration Date or the expiration of any extension period of this Agreement, Case IH may consummate arrangements to appoint a replacement authorized dealer for Dealer's SSM.
- 28.5 Post-Termination Transactions. Any business relations or transactions between the Parties after expiration or termination of this Agreement shall not constitute a waiver of the expiration or termination of this Agreement or in any manner reinstate the Parties' contractual relationship, or establish any new contractual relationship, and all such relations shall be governed by terms and conditions identical to the relevant provisions of this Agreement unless the Parties execute a new agreement superseding this Agreement.
- 28.6 Pre-Termination Warranty Service. Case IH will reimburse Dealer for all Warranty Service claims performed prior to the expiration or termination of this Agreement that meet the requirements of the DOG.

## **29. Inventory Repurchase and Return Obligations**

- 29.1 Items Subject to Repurchase. Within thirty (30) days after the termination or expiration of this Agreement, either Case IH or Dealer may request in writing the return for repurchase of all of the following items originally purchased from Case IH by Dealer, on the terms specified herein, and Dealer shall return such items to Case IH as follows:
- (a) Equipment.
- (i) Equipment Eligible for Repurchase. New, undamaged, salable, current, complete and unused Equipment, including attachments, purchased from Case IH and delivered to Dealer within twenty-four (24) months of the date this Agreement terminates or expires ("Repurchasable Equipment"). For purposes of this Section, "current" means the model or series of Equipment listed in Case IH's price book or price list at the date of termination or expiration of the Agreement. Case IH will only repurchase separate attachments that were not previously installed on Equipment and which were invoiced separately to Dealer.
- (ii) Equipment Repurchase Price. Repurchasable Equipment shall be repurchased at the price paid by Dealer (A) not including transportation costs actually paid or incurred by Dealer for initial delivery, (B) less any discounts which may have been allowed or paid thereon by Case IH, (C) adjusted where appropriate to account for any damage or weathering. Case IH shall not be obligated to reimburse Dealer's initial costs for unloading, set up, or preparation of Repurchasable Equipment.
- (b) Parts.
- (i) Parts Eligible for Repurchase. New, undamaged, salable, complete and unused Parts purchased from Case IH by Dealer, that are listed as of the date of termination or expiration of the Agreement in Case IH's then current Price List and not identified as discontinued in such Price List ("Repurchasable Parts"). Repurchasable Parts must be in original Case IH packaging with the original authorized Case IH identification label and must be properly identified prior to shipment to Case IH for repurchase. Case IH specifically excludes from repurchase Parts that: (A) have a limited shelf life or contain flammable or hazardous materials; (B) are direct shipped from a supplier other than Case IH; (C) have an altered or counterfeited identification label; (D) are in broken packaging; (E) are not in correct order multiples; (F) are coded non-returnable in the current parts Price List; or

- (G) are common service or 'maintenance' items, rather than repair parts, such as oil, filters, fluids, lubricants, tires, batteries, tracks, bucket edges and teeth.
- (ii) Parts Repurchase Price. Repurchasable Parts shall be repurchased at the then current dealer price (less discounts and freight), less a restocking charge as set forth in the Parts Return Policy.
  - (iii) Merchandise Items. 'Merchandise' items such as clothing, toys, binders, gloves, etc., are not eligible for repurchase.
- (c) Signs.
- (i) Signs Eligible for Repurchase. External flag mast, pole or monument sign purchased from a vendor authorized by Case IH that displays the Licensed Trademarks or any other Trademarks, excluding any building fascia ("Repurchasable Signs").
  - (ii) Sign Repurchase Price. Repurchasable Signs shall be repurchased at the amount paid by Dealer, less an annual depreciation of twenty-five percent (25%).
- 29.2 Return Procedures. Within sixty (60) days after the date of the written request made pursuant to Section 29.1, Dealer shall return to Case IH all items subject to repurchase or required to be returned pursuant to this Agreement. All items returned to Case IH shall be identified as required by Case IH, packed, boxed, crated and loaded by Dealer and shipped at Dealer's expense and risk of loss to the destination or destinations specified by Case IH. The procedure for the repurchase of Repurchasable Parts shall be further subject to the Parts Return Policy issued by Case IH and in effect on the date of termination or expiration of the Agreement. Upon receipt of returned items, Case IH shall inspect them and issue credit to Dealer for all such items returned that meet the requirements specified in this Agreement and the DOG, less any amounts owed to Case IH or its Affiliates by Dealer. Any items returned to Case IH facilities that are not properly returnable as prescribed by this Agreement, shall be, at Dealer's option, either destroyed or returned to Dealer at its cost. Dealer shall transfer all returned items by warranty bills of sale satisfactory to Case IH, if so requested.
- 29.3 Conditions Precedent to Payment Any costs incurred by Case IH in discharging all or any part of Dealer's obligations under this Agreement including but not limited to Dealer's obligations to cease all use of the Licensed Trademarks or to pack, load and ship Parts to Case IH, shall be deducted from any amount owed by Case IH to Dealer. Dealer shall not be entitled to payment or credit for returned items until Dealer has complied with all applicable laws, rules, regulations and other legal requirements governing the bulk transfer of inventory or similar protection of creditors. Case IH shall have the right to withhold from the price of any items repurchased pursuant to this section a sum sufficient to discharge any liens or encumbrances against such items and to discharge such liens or encumbrances. Dealer shall execute such documents and take any additional action requested by Case IH to transfer ownership of returned items, free and clear of any claims, liens or encumbrances.
- 29.4 Other Return Items. Upon expiration or termination of this Agreement, Dealer shall return to Case IH any materials (such as sales promotion advertising and training materials, tools and signs) provided without charge to Dealer by Case IH or any predecessor.

### **30. Limitation of Liability**

- 30.1 Dealer Responsibility for Operating Capital. This Agreement contemplates that Dealer, as an independent business, shall obtain on its own the capital investment necessary to operate its business. Nothing in this Agreement shall impose any liability on Case IH in connection with Dealer's operations under this Agreement or otherwise, or for any expenditure made or incurred by Dealer in preparation for performance or in performance of Dealer's responsibilities under this Agreement.
- 30.2 Disclaimer of Consequential Damages. The Parties both understand and agree that this Agreement is of a limited duration, and therefore, except as provided herein, neither party shall be liable to the other for any damages caused by the termination or expiration of this Agreement, whether based upon loss of anticipated sales or prospective profits, expenditures, investments, leases, property improvements or other matters related to the business of the Parties. The damages to which either party may be entitled for breach of this Agreement are limited to actual out-of-pocket expenses incurred as a direct result of the breach.
- 30.3 Waiver of Punitive Damages. The Parties hereby waive, to the fullest extent permitted by law, any right or claim for any punitive or exemplary damages against the other and agree that if there is a dispute with the other that each party shall be limited to the recovery of actual damages sustained by it.
- 30.4 No Group Litigation. The Parties agree that any and all dispute resolution proceedings between them, including litigation, arising from or related to this Agreement shall be conducted on an individual basis only. Neither Party shall commence any dispute resolution with a third-party against the other, or join with any third party in any dispute resolution involving

- Case IH and Dealer. Neither of the Parties shall attempt to consolidate or otherwise combine in any manner a dispute resolution proceeding involving Case IH or Dealer with another dispute resolution proceeding of any kind.
- 30.5 Limitations Period. All claims for any breach of this Agreement, and all claims arising out of the relationship between the Parties established by this Agreement, shall be made within two (2) years from the date such claim accrued.

### 31. Indemnification

#### 31.1 Indemnification By Case IH.

- (a) Licensed Trademarks. If Case IH reasonably determines that Dealer has used the Licensed Trademarks in accordance with this Agreement, Case IH shall defend, indemnify, and hold harmless Dealer from all loss, cost, liability, and expense arising out of any claim suit or demand regarding Dealer's use of the Licensed Trademarks. If Case IH, in its sole discretion, determines that Dealer has not used the Licensed Trademarks in accordance with this Agreement, Dealer shall bear the cost of such defense, judgment or settlement.
- (b) Authorized Software. Case IH shall defend, indemnify, and hold Dealer harmless from all loss, cost, liability, and expense arising out of any claim that Authorized Software used in accordance with its documentation infringes any valid patent, copyright, trade secret, or other enforceable proprietary right of any third party. Should any Authorized Software become (or in Case IH's opinion be likely to become) subject to such a claim, Dealer will permit Case IH, at Case IH's option and expense to (a) procure for Dealer or Dealer's Customers the right to continue to use Authorized Software or (b) modify the allegedly infringing Authorized Software so that it becomes non-infringing. Case IH's obligations under this Section will not apply if Authorized Software is modified without Case IH's consent.
- (c) Case IH IP. Except as otherwise provided in this Section with respect to Authorized Software and Licensed Trademarks, Case IH will indemnify, defend and hold harmless Dealer from all loss, cost, liability, and expense arising out of any claim based on an allegation that any Product infringes a valid patent, copyright, or trademark or misappropriates any protectable and enforceable trade secret. Case IH shall have no obligations under this provision for any Product that has been the subject of unauthorized modifications by Dealer or any third party or for infringement that results from the use of intellectual property other than Case IH IP in conjunction with Case IH IP that would otherwise not be infringing. If any Product becomes, or in Case IH's opinion is likely to become, subject to such a claim of infringement Case IH will, at its expense and at its option, either procure the right for Dealer and Dealer's Customers to continue using the infringing Product(s) or replace or modify the Case IH Product(s) so that they are no longer infringing. Upon failure of the foregoing provisions Case IH may, at its option, refund the purchase price for the infringing Product(s) less a reasonable allowance for use. This section states the entire liability of Case IH for infringement by any Product.
- (d) Dealer Cooperation. In the event of any litigation relating to Dealer's use of the Licensed Trademarks, Authorized Software, or Case IH IP, Dealer shall promptly notify Case IH of such litigation and shall execute any and all documents and undertake such acts as may, in the opinion of Case IH, be necessary or useful to carry out such defense or prosecution, including becoming a nominal party to any legal action. Except to the extent that such litigation is the result of Dealer's use of the Licensed Trademarks, Authorized Software, or Case IH IP in a manner inconsistent with the terms and conditions of this Agreement, Case IH agrees to reimburse Dealer for its out-of-pocket costs in undertaking such acts.
- (e) Control of Litigation. Dealer acknowledges that Case IH has the right to direct and control any administrative proceeding or litigation involving the Licensed Trademarks, Authorized Software, or Case IH IP, including any settlement thereof. Case IH agrees to consult with Dealer regarding any settlement in which Dealer would be required to financially participate and to obtain Dealer's consent to any such settlement, which consent will not be unreasonably withheld. Case IH has the right, but not the obligation, to take action against uses by others that may constitute infringement of the Licensed Trademarks, Authorized Software or Case IH IP. If Dealer fails to notify Case IH promptly of any litigation or refuses to give Case IH sole control of the defense and/or prosecution of such litigation and all settlement negotiations, Case IH will be relieved of its obligations under this Section.

- 31.2 Indemnification by Dealer. Dealer agrees to defend, hold harmless and indemnify Case IH, its Affiliates and their respective shareholders, directors, officers, agents, employees, successors and assigns from and against any and all claims, damages, demands, settlements, judgments, legal actions, liabilities, costs and expenses of any nature, including without limitation, attorney's fees and court costs, resulting from the acts and/or omissions of Dealer, including but not limited to: (i) Dealer's defrauding of or misrepresentations to customers; (ii) Dealer's actions in violation of Sections 5.3, 5.4, 5.5, 10.1(d), 11.1, 11.2, 11.3, 11.5, 14.2, 15.2, 15.3, 15.4, 15.5, 15.6, 21.3, 21.5, 21.6, and 21.7; or (iii) Dealer's

negligent or improper, or alleged negligent or improper, repair or servicing of Products, whether such actions occur during or after the Term of this Agreement.

### 32. General Provisions

- 32.1 Governing Law. This Agreement shall be governed by and interpreted according to the laws of the state of Dealer's Primary Location, without regard to such state's conflicts of laws rules and except to the extent governed by the United States Trademark Act of 1946 (Lanham Act), the Copyright Act, and the Patent Act.
- 32.2 Consent to Jurisdiction and Venue. Dealer irrevocably submits itself to the exclusive jurisdiction of the federal court of the Milwaukee Division of the Eastern District of Wisconsin for the purpose of any suit, action, or other proceeding arising out of or relating to this Agreement, or of any of the transactions contemplated thereby, and irrevocably agrees that all claims in respect of such suit, action or proceeding may be heard and determined in such federal court, provided that Case IH may apply to any court of competent jurisdiction for interim protection or equitable relief such as an interlocutory or interim injunction. If the federal court of the Eastern District of Wisconsin lacks jurisdiction for any reason to hear such claims Dealer irrevocably submits itself to the exclusive jurisdiction of the Circuit Court of Racine County, Wisconsin. By execution and delivery of this Agreement, Dealer irrevocably waives, to the fullest extent it may effectively do so, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action, or proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever. The Parties agree that a final judgment (as to which all appeals have been exhausted or the time within which such appeals may be made has expired) in any such suit, action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.
- 32.3 Compliance With Local Laws. The rights and obligations of the Parties to this Agreement may be subject to certain laws, orders, regulations, directions, restrictions, and limitations of governments and governmental agencies having jurisdiction over the Parties. If a change in any such law, order, regulation, direction, or restriction (including any limitation, appropriation, seizure, or interpretation thereof) shall, in the judgment of either party, substantially alter the relationship between the Parties, this Agreement, or the advantages derived from the Parties' relationship, either party may request the other party to modify this Agreement. If, within thirty (30) days after such a request has been made, the Parties are unable to agree upon a mutually satisfactory modification of this Agreement, then the adversely affected party may terminate this Agreement on fifteen (15) days' notice given to the other party.
- 32.4 Information Sharing. Case IH shall be allowed to share information regarding Dealer, including but not limited to Dealer's financial and ownership information, with any of Case IH's Affiliates.
- 32.5 Dealer Relationship to Case IH. The Parties are independent businesses and neither has any fiduciary obligation to the other, and Dealer is an independent retailer which purchases Products for resale for Dealer's principal benefit. Nothing in this Agreement shall be construed as constituting Dealer to be an employee, franchisee, agent or legal representative of Case IH for any purpose whatsoever. Dealer has no right or authority express or implied, to assume or create any obligation or responsibility on behalf of or in the name of Case IH, or to bind Case IH in any manner.
- 32.6 Entire Agreement. This Agreement, together with the DOG and any changes thereto issued by Case IH from time to time, is and shall be deemed to be the complete and final expression of the agreement between the Parties as to the matters herein contained and provided for and supersedes all previous agreements between the Parties pertaining to such matters. IT IS CLEARLY UNDERSTOOD THAT NO PROMISE REPRESENTATION NOT CONTAINED HEREIN WAS AN INDUCEMENT TO EITHER PARTY OR WAS RELIED UPON BY EITHER PARTY IN ENTERING INTO THIS AGREEMENT.
- 32.7 Execution and Modification. Except as expressly provided for herein, this Agreement may not be executed, amended or altered, or any of its provisions waived on behalf of Case IH, except in writing, signed by Case IH's Director of Network Development or other authorized director in similar capacity.
- 32.8 Severability. In the event any part of this Agreement is held to be invalid or unenforceable under the law, this Agreement shall be enforceable to the maximum extent permitted by such law, without invalidating the remainder of this Agreement, or invalidating the effect of such portion of this Agreement elsewhere.
- 32.9 Assignment.
- (a) By Dealer. In view of the personal nature of this Agreement, the rights, privileges and obligations conferred on Dealer under this Agreement are not transferable, assignable or salable by Dealer without the prior written consent of Case IH, and no property right or interest, direct or indirect, is sold, conveyed or transferred to Dealer under this Agreement. Any attempt by Dealer to assign its rights or obligations under this Agreement without Case IH's written consent shall be null and void.





- (b) By Case IH. Upon written notice to Dealer, Case IH may assign this Agreement and any rights and obligations thereunder to any Affiliate of Case IH or to any entity that succeeds to the interests of Case IH.
- 32.10 Waiver of Default. The waiver by Case IH of any default, or the failure of Case IH to exercise any of its rights, under this Agreement or otherwise shall not act as a waiver of such default or any subsequent default or a waiver of any of Case IH's rights hereunder.
- 32.11 Headings. The headings of sections and subsections in this Agreement are inserted for convenience of reference only and shall not in any way affect the construction, meaning or interpretation of any provision of this Agreement, and shall not be deemed or construed in any way to limit the meaning of such sections.
- 32.12 Interpretation. This Agreement is being entered into by and among competent and sophisticated parties who are experienced in business matters. Therefore, any language in this Agreement deemed to be ambiguous by a court of law will not be construed against any particular party as the drafter of the language.
- 32.13 Notice, Approval and Consent. Any notice, approval or consent required or allowed under this Agreement shall be given in writing and, without prejudice to other forms of actual service, shall be considered as served upon being mailed in a properly sealed envelope with first class, certified or registered postage prepaid. Notices to Case IH shall be addressed to the Case IH Regional Dealer Development Manager for Dealer's assigned region and shall be delivered or mailed to CNH Industrial America LLC, 621 State Street, Racine, Wisconsin 53402. Notices to Dealer shall be delivered or mailed to any person designated in Schedule A or to Dealer at Dealer's Primary Location.
- 32.14 Survival. The Parties' obligations in the following sections shall survive the expiration or termination of this Agreement: 5.5, 10.1(f), 16.6, 17.4, 24.4, 26.1, 26.2, 28.1, 28.3, 28.6, 29.1, 29.2, 29.3, 29.4, 30.2, 30.3, 30.4, 30.5, 31.1, 31.2, 32.1, 32.2, and 32.3.
- 32.15 Review by Counsel. Dealer acknowledges that it has had an adequate opportunity to review this Agreement and consult with legal counsel of its own choosing regarding the content and meaning of this Agreement.

IN WITNESS WHEREOF the Parties have duly executed this Agreement on the dates written below:

**Dealer**   Dealer Name

By  
  
Title (authorized owner, officer, partner, president)  
  
Date  
  
Signature of Other Partner(s) or Owner(s)

**Case IH**   CNH Industrial America LLC

By  
  
Director, Case IH Network Development Title  
  
Date



**SCHEDULE A**  
**Agricultural Equipment Sales and**  
**Service Agreement**

**CNH Industrial America LLC**

**DEALER LEGAL INFORMATION, OWNERSHIP AND MANAGEMENT**

**Legal Entity Name: Trade (DBA) Name: Primary Location**  
**Address:**

**(Street, City, State and Zip Code)**

**Business Structure Dealer Conducts Business Under: State of Organization:**

**Owners of Dealer** (individual(s) having a financial interest in Dealer):

<b>Name</b>	<b>Percent of Ownership</b>
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<b>Name</b>	<b>Title</b>
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**Management** (person(s) responsible for key aspects of day to day operations of Dealer):



**SCHEDULE B**  
**Agricultural**  
**Equipment**  
**Sales and**  
**Service**  
**Agreement**

**CNH Industrial America LLC**

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PRODUCTS & LICENSED TRADEMARKS

Legal Entity Name:    Trade (DBA) Name:    Primary Location Address:     
(Street, City, State and Zip Code)

AUTHORIZED PRODUCT LINE(S)

		TOTAL AG													SPS	SSL
		LT	AG	FW	GH	HF	DT	SF	FT	AS	PT	TF	SC	CT	TS	SL
Dealer City	Dealer State	60 HP & Under Plus Case IH Scouts	2WD Tractors above 60 HP	4WD	Combine	H&F	Yield Till	Strip Till	Pull Fert.	Air Seed	Pull Spray	Floater	Sugar-cane	Cotton	SP Spray	Skid Steer

Authorized Licensed Trademark(s): Case IH, Case Construction, CNH Industrial Parts

Director, Network  
Development

Date



**Legal Entity Name: Trade (DBA) Name:**  
**Primary Location Address:**

**SCHEDULE C**  
**Agricultural Equipment Sales and Service Agreement SALES**  
**AND SERVICE MARKET OF RESPONSIBILITY**

(Street, City, State and Zip Code)

**CNH Industrial America LLC**

*EX: If the Dealer is assigned 50% of the industry sales volume in county "X" in which 100 units of a given product line is sold, then the Dealer's SSM for that Product Line is 50% of the 100 units, or 50 units.*

**Director, Network Development**

The chart below identifies, by Product Line, the percentage portion of the market of industry unit sales within the geographic area for which the Dealer has sales and service responsibility.

**Date**

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## Product Lines and County SSM Assignment

[illegible]



SCHEDULE D  
Agricultural  
Equipment  
Sales and  
Service  
Agreement

CNH Industrial America LLC

DEALER LOCATIONS

Legal Entity Name:    Trade (DBA) Name:   

Type	Street Address	City	ST	Zip Code	Equipment, Parts & Service	Parts Only	Parts & Service Only	Set-up Facility	Corp Office	GSC	Dual Location
Primary											
Branch											
Branch											
Branch											
Branch											
Branch											
Branch											
Branch											
Branch											
Branch											
Branch											
Branch											
Branch											
Branch											
Branch											

Director, Network Development

Date

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## AMENDMENT TO CASE IH AGRICULTURAL EQUIPMENT SALES AND SERVICE AGREEMENT

**THIS IS AN AMENDMENT** to the CASE IH Agricultural Equipment Sales and Service Agreement between CNH Industrial America LLC, a Delaware limited liability company ("Case IH") and Titan Machinery Inc. at , a Delaware corporation ("Dealer") in effect as of the date this amendment signed below ("Agreement").

### RECITALS

WHEREAS, Case IH is engaged in the business of manufacturing construction and agricultural equipment and attachments; and

WHEREAS, Dealer is a publicly-traded entity and a dealer of Case IH agriculture equipment; and WHEREAS, Dealer currently operates numerous Case IH dealership locations in five (5) states; and

WHEREAS, the size and geographic diversity of Dealer's Case IH branded dealership operations, along with its publicly-traded status, make it unlike most of Case IH's other North American dealers; and

WHEREAS, the uniqueness of Dealer's public company status and the extent and geographic diversity of its Case IH locations warrant modifications to the Agreement;

**NOW THEREFORE** in consideration of the promises and mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged by the parties, Dealer and Case IH hereby agree as follows:

1. The above Recitals are accurate and hereby incorporated by reference.
2. Section 4.2 of the Agreement is deleted.
3. Section 4.3 of the Agreement is replaced in its entirety with the following:
  - 4.3 Changes in Dealer Form and Control Dealer shall provide Case IH with sixty (60) days' prior written notice of Dealer's intention to change its: (a) legal form or entity; or (b) control or management (a "Change of Control" as defined below); provided that, in the event that Dealer is not aware of such event, notice shall be furnished as soon as reasonably practical after Dealer acquires knowledge. Prior to consummating any such change described in this paragraph, or following such change if Dealer had no advance knowledge, Dealer must obtain Case IH's written consent.

A "Change of Control" shall mean one or more of the following events:

- (i) a merger, consolidation or reorganization approved by Dealer's stockholders, unless securities representing more than fifty percent (50%) of the total combined voting power of the outstanding voting securities of the successor corporation are immediately thereafter beneficially owned, directly or indirectly, by the persons who beneficially owned Dealer's outstanding voting securities immediately prior to such transaction;
- (ii) any sale of all or substantially all of Dealer's assets;
- (iii) any transaction or series of related transactions (other than from the sale of shares issued or sold in any registered offering of Dealer's securities) pursuant to which any person or any group of persons comprising a "group" within the meaning of Rule 13d-5(b) (1) under the Securities Exchange Act of 1934, as amended (other than Dealer or a person that, prior to such transaction or series of related transactions, directly or indirectly controls, is controlled by or is under common control with, Dealer) becomes directly or indirectly the beneficial owner (within the meaning of Rule 13d-3 of the Securities Exchange Act of 1934, as amended) of securities possessing (or convertible into or exercisable for securities possessing) (A) twenty (20%) percent or more of the total combined voting power of Dealer's securities (determined by the power to vote with respect to the elections of Board members) outstanding immediately after the consummation of such transaction or series of related transactions, if such group is a competitor of Company; or (B) thirty (30%) percent or more of the total combined voting power of Dealer's securities (determined by the power to vote with respect to the elections of Board members) outstanding immediately after the consummation of such transaction or series of related transactions;
- (iv) a change in the composition of the Board of Dealer over a period of eighteen (18) consecutive months or less such that a majority of the Board members ceases, by reason of one or more contested elections for Board membership, to be comprised of individuals who either (x) were Board members at the beginning of such period or (y) have been elected or nominated for election as Board members during such period by at least a majority of the Board members described in clause (x) who were still in office at the time the Board approved such election or nomination;
- (v) any attempt by Dealer's Chief Executive Officer and/or such person's direct reports (the "Executive Management Team") to sell or otherwise dispose of, in a single transaction or series of transactions over a period of time not to exceed twelve (12) months, an amount of Dealer's publicly-traded securities beneficially owned by the Executive Management Team member equal to ten (10%) percent or more of Dealer's then outstanding publicly-traded securities; or

(vi) a change in the identity of Dealer's management, defined as Dealer's Chief Executive Officer, as set forth on Schedule A.

Dealer shall inform Case IH in writing simultaneous with Dealer filing an initial registration statement with the Securities and Exchange Commission related to any future offering of Dealer's securities or in the event of any change in a Section 16 officer.

Dealer's Executive Management Team shall meet as requested with Case IH's brand leaders to develop plans for Dealer's proposed expansion, if any, to coincide with Case IH's market representation plans. Prior to Dealer engaging in substantive discussions (directly or indirectly) for a possible purchase of a CNH-branded dealership with such CNH dealer that would result in an expansion of Dealer's total Sales and Service Market for Case IH Products, Dealer shall provide Case IH written notice of intent to engage in such discussions and with whom. Case IH shall have the right to reject such a request or to withhold approval of Dealer's acquisitions of CNH-branded dealerships, in its sole discretion. Case IH shall maintain the confidentiality of all information disclosed respecting a proposed acquisition.

Should Case IH approve Dealer's acquisition of a CNH-branded dealership in the future,

Dealer agrees that it will abide by Case IH's requirements for the approval of Dealer's purchase of such dealership, including without limitation Case IH's requirements regarding inventory levels, facilities, service coverage, market share objectives, and the representation of competitive products at said dealership.

4. Section 4.4 of the Agreement is replaced in its entirety with the following:

4.4 Death or Incapacity of Dealer Principals In the event of the death or incapacity of any person listed in Schedule A ("Dealer Principal(s)"), Dealer shall provide Case IH within ninety (90) days of such occurrence, an ownership or management succession plan for the replacement of such deceased or incapacitated Dealer Principal(s), if Dealer proposes to continue operation under this Agreement. Case IH may approve or deny Dealer's proposed succession plan in its reasonable discretion.

5. Section 4.6 of the Agreement is replaced in its entirety with the following:

4.6 Ancillary Documents Dealer will execute such agreements or other documents as Case IH in its reasonable discretion may deem necessary to preserve Case IH's rights under this Agreement in response to (a) any change or proposed change in Dealer's legal form or entity, (b) any Change of Control of Dealer as defined above, or (c) death or incapacity of any Dealer Principal.

6. Section 9.1(a) of the Agreement is replaced in its entirety with the following:

9.1(a) Equipment Market Share Dealer shall aggressively promote and sell new Equipment to attain within Dealer's SSM for all Equipment designated on Schedule B, a Dealer Market Share that is equal to at least 90% of either, in Case IH's sole discretion, the Case IH State Market Share or the Case IH Regional Market Share. In evaluating Dealer's market share performance, Case IH, in its sole discretion, may (i) group Product Lines and/or (ii) evaluate Dealer's performance on a per Dealer Location basis. Should Dealer establish a new Case IH dealership or acquire a Case IH dealership, the requirement to attain either Case IH State Market Share or Case IH Regional Market Share shall not apply until after the end of the first thirty-six (36) months of Dealer's operations.

7. Section 9.2 of the Agreement is replaced in its entirety with the following:

9.2 Dealer Resource Commitment. The Parties mutually recognize that one of the purposes of this Agreement is to assure that Dealer focuses its resources and efforts on the sale of new Products and the performance of its obligations under this Agreement. Therefore, Dealer agrees that if Dealer undertakes or engages in another business activity at a Dealer Location(s) separate from its representation of new Products pursuant to this Agreement, which activity involves a considerable commitment of Dealer's effort and resources, Dealer agrees to make such separation of the personnel, facilities and other non-capital resources devoted to that business as is satisfactory to Case IH, provided that Case IH specifies in writing the separation of personnel, facilities and non-capital resources that are required. Case IH shall provide Dealer with two (2) years' prior written notice for Dealer to complete any required separation of facilities. Dealer shall provide Case IH with thirty (30) days' prior written notice of Dealer's intention, or the intention of any of its wholly or partially-owned affiliates or related entities (including Dealer's Chief Executive Officer, or any entities in which such person has at least a twenty-five (25%) percent ownership interest) to engage in or seek to acquire or invest in any other new business operations that are not directly

related to Dealer's Case IH equipment dealership operations under this Agreement; provided, that the above notice requirements shall not apply to passive investments of Dealer's Chief Executive Officer which do not involve day-to-day management functions of such person.

8. Section 13.1 of the Agreement is replaced in its entirety with the following:

13.1 Business Plan Requirements Annually, senior management of Dealer shall meet with Case IH representatives to review the following topics: (i) current year review of industry size, inventories, and market share performance by Dealer Location and by complex and by the respective parties; (ii) future forecasts of market demand by product category; (iii) pre-sale programs and other Case IH sponsored retail programs; (iv) estimate, by product line, of the next year's industry potential, market share targets by Dealer Location or complex, and market share objectives by Dealer Location, including action planning and resource allocation needed to achieve those objectives; (v) sound inventory turns; and (vi) Dealer's market coverage and expansion plans, including updates and resources required on a rolling five (5)-year basis. Within thirty (30) days thereafter, Dealer will submit and secure Case IH's approval of a comprehensive Business Plan (which includes goals and objectives for all Dealer

Locations) containing: (a) Equipment inventory stocking and sales objectives to maximize Dealer's Equipment sales in its SSM but at a minimum to obtain Dealer Market Share requirements stated in Section 9.1(a), including action plans for obtaining such objectives; (b) Parts inventory stocking plan and sales objectives to maximize Dealer's Parts sales; (c) training plans for Dealer sales and service personnel, including Case IH provided training; (d) advertising, promotional and marketing plans and budgets; (e) action plans for Dealer's possible expansion or upgrading of its current facilities, or for the proposed addition of new facilities; (f) any additional information required by Case IH as set forth in the DOG; (g) status of Dealer's Adjusted Debt to Tangible Net Worth Ratio (as well as any other metric criteria which Case IH may prescribe for dealers generally) for the plan year; and (h) such other elements or metrics as are set forth in Case IH's then-effective dealer standards program, or which Case IH may elect to require in dealer business plans generally. Dealer will substantially accomplish each material action plan contained in each year's Business Plan approved by Case IH.

On a semi-annual basis at Case IH's request, Dealer's Executive Management Team shall meet with Case IH representatives to review the following topics: (i) Dealer's progress against the market share objective plan, including updates to annual market share objectives based on industry actual units sales year-to-date; and (ii) inventory status and update to support retail sales plan and presell activity.

On a monthly basis at Case IH's request, Dealer's branch managers and sales managers shall meet with Case IH representatives to review the following topics: (i) by Dealer Location and by complex, sales against monthly market share objectives, and inventory and wholesale planning to support retail objectives; and (ii) market share gap analysis and corrective action planning.

If any of the above reviews reveal deficiencies in Dealer's operations, as determined in Case IH's sole discretion, Case IH may request that Dealer rectify the stated deficiencies.

9. Section 16.2 of the Agreement is hereby amended to delete the reference to "the Dealer Principals" from such section.

10. Section 16.6 of the Agreement is replaced in its entirety with the following:

**16.6 Chargeback for Improper or Unsubstantiated Claims.** Dealer's submission of unsubstantiated Dealer Claims or Dealer Claims not in compliance with the requirements of the DOG will result in a chargeback to Dealer for such claims, including interest at the then current prime rate. If Dealer refuses to permit an audit or fails to maintain a substantial amount of the required records, the chargeback will include, at the particular Dealer Location(s) involved, all amounts paid on Dealer Claims for the prior two (2) years including any dealer settlement allowances, plus interest at the then current prime rate. If Dealer intentionally submits false or fraudulent Dealer Claims, the chargeback will include, at the particular Dealer Location(s) involved, an amount equal to three (3) times the amount of the false or fraudulent claims submitted at the particular Dealer Location(s), plus interest at the then current prime rate. This remedy is in addition to those available to Case IH for breach of this Agreement, including but not limited to termination of this Agreement.

11. Section 20.4 of the Agreement is replaced in its entirety with the following:

**20.4 Equipment Relocation.** Case IH may request Dealer to transfer new Equipment to another authorized dealer to accommodate such dealer's sale to another Customer. Any Case IH request to transfer a unit must be made via email to the person(s) Dealer has designated to Case IH for this purpose. If Dealer refuses, Case IH, in its sole discretion, may decline to pay, on Dealer's behalf, the wholesale finance interest charges associated with that specific Equipment, and may decline to make available to Dealer any retail sales programs for such Equipment. Case IH's decision to remove retail sales programs for any such unit, and the details related thereto, must be documented by Case IH's Regional Sales Director ("RSD") via email to Dealer's Vice President North America Ag Store Operations, who must acknowledge receipt of the email to Case IH within twenty-four (24) hours. If Dealer's Vice President does not respond within that time period, the RSD will first attempt to contact such person via telephone call, and if the Vice President is not available by telephone, the RSD will then attempt to contact either Dealer's CFO or CEO by telephone.

12. Section 21.1 of the Agreement is replaced in its entirety with the following:

**21.1 Domestic Sales.** Dealer shall concentrate its sales, lease and rental of whole good Products to the Domestic United States. Further Dealer agrees to give Case IH notice of any of Dealer's occasional sales, lease or rental of whole good Products outside of the United States prior to shipment, and acknowledges that Case IH, in its sole discretion, may prohibit Dealer's sales, lease or rental of new whole good Products to a particular area outside of the United States upon written notice to Dealer.

13. Section 21.4 of the Agreement is replaced in its entirety with the following:

**21.4 Announcements.** Prior to the filing of any statement with the Securities and Exchange Commission that includes disclosure of any information regarding Case IH that Case IH has advised Dealer in writing is material nonpublic information regarding Case IH, Dealer agrees to provide advance notice thereof to Case IH and to not disclose the same if so requested by Case IH, provided however, that the foregoing shall not limit Dealer's rights and obligations to comply with applicable law.

14. The last sentence of Section 21.7(b) of the Agreement is replaced in its entirety with the following: "Dealer warrants that it has no foreign public officials as officers or employees at the date of this Agreement, and shall immediately notify Case IH in writing if a foreign public official becomes an officer or employee of Dealer."

15. Section 27.3(b) of the Agreement is replaced in its entirety with the following:

- (b) If Dealer breaches Section 7.2, Case IH may, in its sole discretion, terminate the Agreement upon ninety (90) days' advance written notice to Dealer. However, during this ninety (90)- day period, Dealer may cure its breach of Section 7.2 by providing Case IH, within sixty (60) days of Case IH's notice to Dealer, a written plan to return to compliance with Section 7.2 within twelve (12) months from the date of Case IH's notice. Without Case IH's prior consent, Dealer's material reduction of assets shall not be a means to achieve covenant compliance. Thereafter, if Dealer fails to perform such submitted plan, Case IH may terminate the Agreement with thirty (30) days' written notice.

16. Subparagraphs (a), (c), (g), (h), (k) and (o) of Section 27.4 of the Agreement are amended as follows:

a. Subparagraph (a) of Section 27.4 is replaced in its entirety with the following:

- (a) Dealer Financial Defaults (i) Dealer's default in the payment when due of any obligations to Case IH or any of its Affiliates, including but not limited to CNH Industrial Capital America LLC ("CNH Capital") after the expiration of a notice and cure periods in any applicable agreements with Case IH's Affiliates or CNH Capital; (ii) Dealer's default under any chattel mortgage or other security agreement between Dealer and Case IH, any of its Affiliates or any other lender or financing entity with whom Dealer has a material credit arrangement (i.e., a credit arrangement for which the relevant agreements must be publicly disclosed pursuant to federal securities laws), if such default results in an acceleration of the indebtedness owed under the credit facility; or (iii) the refusal or failure of Dealer, following written demand, to account to Case IH or any of its Affiliates for the proceeds of the sale of Products for which Dealer is indebted to Case IH or such Affiliates;

b. Subparagraph (c), clause (vi) of Section 27.4 is amended to add the language "that is not satisfied within ten (10) days" following the word Dealer;

c. Subparagraph (d) of Section 27.4 is replaced in its entirety with the following:

(d) Change in Dealer Entity, Control or Management: without the prior written consent of Case IH: (i) any change in Dealer's legal form or entity; (ii) any Change of Control (as defined in Section 4.3); (iii) any assignment or attempted assignment by Dealer of this Agreement; or (iv) a substantial ownership interest in Dealer is acquired by a competitor of Case IH.

d. Subparagraph (g) of Section 27.4 is replaced in its entirety with the following:\_\_\_

- (g) Failure to Operate: failure to operate any Dealer Location in the normal course of business for seven (7) consecutive calendar days other than due to a force majeure event, provided that within three (3) months from the seventh day of closure due to the force majeure event, Dealer shall submit a plan to Case IH detailing how Dealer shall return to operation at the affected Dealer Location, which plan must be

acceptable to Case IH in its reasonable discretion;

e. Subparagraph (h) is amended to delete "or any Dealer Principal" from such section.

f. Subparagraph (k) of Section 27.4 is replaced in its entirety with the following:

- (k) Detrimental Conduct any conduct by Dealer which in the sole discretion of Case IH: (i) is injurious or detrimental to Dealer's Customers, the public welfare, other authorized dealers of Products, or the good name, goodwill or reputation of Case IH, Products and the Licensed Trademarks; (ii) is unbecoming of a reputable business person; or (iii) is abusive or threatening to any Case IH employee;

g. Subparagraph (o) of Section 27.4 is replaced in its entirety with the following:

- (o) Repetitive Breach breach of the Agreement by Dealer (excluding breaches of Sections 7.2 or 9.1(a)) for which it has received notice by Case IH of that same type of breach on at least two (2) prior separate and distinct occasions within the preceding thirty-six (36) months;

17. Other than as expressly provided for herein, nothing contained in this Amendment shall be construed as a waiver or modification of any terms, conditions, or rights contained in any existing dealer agreement between Case IH and Dealer except to the extent such terms, conditions, or rights are in conflict with this Amendment, in which event this Amendment shall supersede the existing agreements, but only to the extent of the conflict.

18. Each party to this Amendment represents and warrants that it has taken all action required to authorize it to enter into this Amendment, and each party further represents that it has neither relied upon nor been induced by any representation, statement, or disclosure of the other party, but has relied upon its own knowledge and judgment in entering into the Amendment.

19. This Amendment cannot be modified, nor any party's rights hereunder waived, except in writing, and no waiver of any provision hereof shall preclude enforcement of any other provision hereof, or subsequent enforcement of the provision waived. This Amendment cannot be assigned without the prior written consent of the parties, which consent may be withheld with or without cause.

IN WITNESS WHEREOF, CNH Industrial America LLC and Titan Machinery Inc. have caused this Amendment to be executed by their respective, duly authorized officer or representatives, as of the \_\_\_ day of \_\_\_, 2017.

**TITAN MACHINERY INC.**

David J. Meyer, Chief Executive Officer Dated \_\_

**CNH INDUSTRIAL AMERICA LLC**

By:     Officer of CNH

Dated \_\_

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nh.jpg

**New Holland Equipment Sales and Service Agreement**

**Between**

**CNH Industrial America LLC And**

**(Doing Business As,**

**)**

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## NEW HOLLAND EQUIPMENT SALES & SERVICE AGREEMENT

This New Holland Equipment Sales and Service Agreement (the “Agreement”) is between CNH Industrial America LLC, a Delaware limited liability company with a principal place of business at 500 Diller Avenue, New Holland, Pennsylvania, 17557 (“New Holland”), and , a [corporation/limited liability company] with its address as listed on Schedule A (“Dealer”) (hereinafter “Parties” when referring to Dealer and New Holland jointly). The “Effective Date” of this Agreement is the date of acceptance by New Holland as indicated by its authorized signature. Unless sooner terminated in accordance with its provisions, this Agreement will expire on December 31, 2019 (“Expiration Date”).

### 1. Purpose Statement

- 1.1 The purpose of this Agreement is to describe the respective functions, obligations and responsibilities of the Parties, so that each fully understands the nature of their required commitments of time, effort and capital. This Agreement establishes Dealer as an independent contractor for the promotion, retail sale and after-sale service and support of Products to Customers in Dealer’s local market.

### 2. Definitions

- 2.1 Affiliate: as to New Holland, any entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with New Holland. For this definition, the term “control” means the power to direct the management and policies of an entity through the ownership of more than 50% of the voting securities, rights or other similar interests of that entity.
- 2.2 Branch Location(s): Dealer’s additional place(s) of business listed in Schedule D for the sale, rental, lease and service of Products, separate from Dealer’s Primary Location.
- 2.3 Customer(s): an end-user that purchases, leases or rents Products from an authorized dealer or New Holland for its own use and not for resale.
- 2.4 Dealer Claims: Dealer’s claims to New Holland for Warranty Service, Other Required Service, or any retail promotional or sales incentive including but not limited to refunds, credits, rebates, incentives, allowances, discounts, or payments under any New Holland program.
- 2.5 Dealer Location(s): Dealer’s Primary Location and Branch Locations, if any, authorized by New Holland for the sale, rental, lease and service of Equipment and/or Parts.
- 2.6 Dealer Market Share: a percentage figure for measuring Dealer’s sales performance calculated by taking the number of units of new Equipment, by Product Line or Product Line grouping, sold by Dealer to Customers located within Dealer’s Primary Market of Responsibility (“PMR”) during a given time period as determined by New Holland, divided by the total industry volume of all new units of equipment of that same Product Line or Product Line grouping (including New Holland and competitive units) sold within Dealer’s PMR during that same period, as determined and reported by the Association of Equipment Manufacturers (or other replacement organization selected by New Holland hereinafter “AEM”). For market share purposes, Dealer will only be measured against the industry sales in a given county of Dealer’s PMR to the extent of the percentage of that county assigned to Dealer.
- 2.7 Domestic: within the 50 states of the United States of America.
- 2.8 DPM: refers to both the Dealer Policy Manual and Parts Policy Manual or any equivalent or successor documents and amendments thereto issued by New Holland setting forth for all dealers the various policies, procedures and operating standards for doing business with New Holland.
- 2.9 Equipment: whole good machinery and any related attachments designated on Schedule B by Product Line and Licensed Trademark.
- 2.10 Licensed Trademarks: the Trademarks listed in Schedule B that New Holland authorizes Dealer to use for the sole purpose of performing its obligations hereunder with respect to Products.

- 2.11 Limited Warranty: the Warranty and Limitation of Liability agreement furnished by New Holland with respect to any Product sold to Customers.
- 2.12 New Holland IP: any and all intellectual property including but not limited to patents, Trademarks (including the Licensed Trademarks), designs, copyrights, trade secrets, computer software (whether imbedded in Products or otherwise) and other proprietary technology and information, whether technical or business related, including registrations for and applications to register any of the foregoing, which are incorporated or used in or with Products or which are owned or licensed by New Holland for use with Products.
- 2.13 New Holland Regional Market Share: a percentage figure calculated by taking the number of units of new New Holland brand Equipment for a given Product Line or Product Line grouping, sold in a regional sales area (a multi-state area determined by New Holland in its sole discretion during a designated time period determined by New Holland, divided by the total industry volume of all comparable new units of equipment (including New Holland and competitive units) sold in that same regional sales area during that same time period. Total industry volume of new equipment sales shall be as reported by AEM.
- 2.14 New Holland State Market Share: a percentage figure calculated by taking the number of units of new New Holland brand Equipment for a given Product Line or Product Line grouping, sold in a state, during a designated time period determined by New Holland, divided by the total industry volume of all comparable new units of equipment (including New Holland and competitive units) sold in that same state during that same time period. Total industry volume of new equipment shall be as reported by AEM.
- 2.15 Other Required Service: service that New Holland, in its sole discretion, has deemed necessary or desirable and in the best interests of Customers and the goodwill associated with the Licensed Trademarks, including but not limited to, policy service, campaign service, or field improvement program service.
- 2.16 Parts: proprietary replacement parts sold by New Holland for Equipment listed on Schedule B (specifically not including replacement parts for New Holland equipment not listed on Schedule B), together with all other common service or maintenance items (for example, including but not limited to filters, hoses, lubricants, etc.) and accessories which are offered for sale by New Holland to Dealer (either directly from New Holland or from an authorized source of supply), which New Holland has authorized to be identified with the Licensed Trademarks. Parts do not include 'merchandise' items such as clothing, toys, binders, gloves, etc.
- 2.17 Primary Location: the primary Dealer facility location specified in Schedule D.
- 2.18 Primary Market of Responsibility ("PMR"): a market comprised of the total industry sales of all new Equipment (as reported by AEM), including New Holland and competitive equipment, sold (including first rentals or leases) within the geographic area designated in Schedule C.
- 2.19 Product(s): Equipment and related Parts that Dealer is authorized to represent under this Agreement.
- 2.20 Product Line: the categories of Products set forth in Schedule B.
- 2.21 Strategic Accounts: customer accounts typically referred to as "national accounts," "corporate accounts," national or regional equipment rental companies, or any customer designated by New Holland as such an account.
- 2.22 Trademarks: all words, slogans, designs, pictures, logotypes or other symbols, including trademarks, service marks, trade dress, and trade names, regardless of whether registration has been sought or obtained therefor, used to (a) identify, distinguish or advertise the Products and services of New Holland or its Affiliates, (b) identify New Holland as the source or licensor of Products and services, or (c) identify the business of New Holland and its authorized dealers.
- 2.23 Warranty Service: service that is required for any Product (a) to ensure that New Holland is in compliance with New Holland's Limited Warranty obligations for such Product and (b) to comply with any extended service or maintenance plan purchased for that Product.
- 2.24 Will Call: a program whereby New Holland, in its sole discretion, may permit Dealer to take delivery and possession of Products directly from a Will Call Provider or New Holland, in lieu of such Products being transported to Dealer at Dealer Location(s). The procedures for the Will Call program will be as set forth in the DPM.
- 2.25 Will Call Provider: a third-party engaged by New Holland to facilitate Dealer's pick-up of Products at New Holland plant locations or port facilities under the terms of the Will Call program.



### 3. Appointment

- 3.1 Scope of Appointment. Pursuant to the provisions of this Agreement, New Holland hereby authorizes Dealer to market, promote, sell, lease or rent new Products and to provide Warranty Service for Products to Customers solely from the authorized Dealer Location(s) listed in Schedule D. The foregoing appointment is limited to Products identified with the Licensed Trademarks on Schedule B. Dealer accepts this appointment and agrees that the relationship between Dealer and New Holland shall be governed by the terms and conditions of this Agreement as well as the policies outlined in the DPM.
- 3.2 Incorporation of DPM. The DPM includes the standards of quality and performance that New Holland seeks to have associated with its Trademarks and is hereby incorporated by reference into this Agreement. It is expressly understood and agreed that New Holland reserves the right to modify the DPM unilaterally to reflect reasonable standards of quality and performance so long as such standards do not conflict with the terms of this Agreement.
- 3.3 Material Inducement. Section 3.2 is a material inducement upon which New Holland relied in entering into this Agreement with Dealer, the breach or unenforceability of which represents a failure of consideration entitling New Holland to void this Agreement in its entirety.

### 4. Owner and Management Requirements

- 4.1 Dealer Representations and Warranties. The appointment of Dealer is made in reliance on Dealer's representation and warranty that the information set forth in any dealer application provided to New Holland as well as in Schedule A regarding Dealer's legal name, ownership (if corporation, as listed in a Stock Ownership Certificate), management personnel, business structure, and state of residence or organization is accurate and complete. Dealer also represents and warrants that entering into this Agreement does not violate any other contract or agreement to which Dealer is a party and that any person signing this Agreement on behalf of Dealer has the authority to do so. Any breach of any of the foregoing representations and warranties represents a failure of consideration entitling New Holland to void this Agreement in its entirety.
- 4.2 Personal Services Nature of Agreement. Dealer ownership and management are important to the successful working relationship between the Parties. New Holland has chosen to contract with the present ownership and management of Dealer, and the Parties acknowledge that this Agreement represents a personal services relationship, and that any change to the ownership, management or business structure of Dealer could seriously and adversely impact such relationship. As such, New Holland may refuse to appoint as an authorized dealer any purchaser or prospective purchaser of any of the shares or assets of Dealer.
- 4.3 Changes in Dealer Form and Control. Except as otherwise stated in Section 4.4, Dealer shall provide New Holland with sixty (60) days' prior written notice of Dealer's intention to change its: (a) legal form or entity; or (b) control, ownership or management. Prior to consummating any such change, Dealer must obtain New Holland's written consent, which shall be in New Holland's sole discretion. A "change in control, ownership or management" shall mean one or more of the following events: (i) if Dealer is an individual proprietor, withdrawal of that individual proprietor from the operation or control of Dealer; (ii) if Dealer is a partnership or limited liability company, any addition to or subtraction from the partners or members involved; (iii) if Dealer is a corporation, any change in the beneficial ownership of any of Dealer's shares or the voting rights associated therewith; (iv) any sale of all or substantially all of Dealer's assets; (v) any change in the composition of Dealer's management as set forth on Schedule A; or (vi) any event, including entering into an agreement, that substantially affects, directly or indirectly, the operation or control of Dealer's business.
- 4.4 Death or Incapacity of Dealer Principals. In the event of the death or incapacity of any person listed in Schedule A or in the Stock Ownership Certificate ("Dealer Principal(s)"), Dealer shall provide New Holland: (a) notice of such occurrence within thirty (30) days; and (b) within ninety (90) days of such occurrence, an ownership or management succession plan for the replacement of such deceased or incapacitated Dealer Principal(s), if Dealer proposes to continue operation under this Agreement. New Holland retains sole discretion whether to approve Dealer's proposed succession plan or terminate the Agreement.
- 4.5 Succession Plan. Upon request, Dealer shall provide a succession plan to New Holland in the format approved by New Holland. The submission of such succession plan shall not imply that New Holland has automatically



accepted such plan. New Holland retains sole discretion whether to approve Dealer's proposed succession plan.

- 4.6 Ancillary Documents. Dealer will execute such agreements or other documents as New Holland in its sole discretion may deem necessary to preserve New Holland's rights under this Agreement in response to (a) any change or proposed change in Dealer's legal form or entity, (b) any change in Dealer's control, ownership, or management, or (c) death or incapacity of any Dealer Principal.

## 5. Products

- 5.1 Authorized Products. The Products which Dealer is authorized to purchase from New Holland for retail sale, lease or rental are those Product Lines listed on Schedule B that New Holland has authorized to be identified with the Licensed Trademarks listed on Schedule B. Upon sixty (60) days' written notice to Dealer, New Holland in its sole discretion may amend Schedule B to add to, subtract from, or otherwise modify the Products and Licensed Trademarks to which this Agreement pertains. In the event New Holland removes Products from Schedule B, Dealer will thereafter no longer be able to sell or perform Warranty Service for such Products, and New Holland will repurchase such new Equipment from Dealer as provided in Section 29.1(a). This Agreement does not give Dealer the right to, and under the terms of this Agreement Dealer may not, purchase, market, promote, sell, lease or rent any other new (i.e. not previously sold) CNH Industrial America LLC products that are not listed on Schedule B or are not authorized to be identified with the Licensed Trademarks listed on Schedule B.
- 5.2 Dealer Obligation to Support New Equipment Models. New Holland may introduce new models of Equipment for Product Lines that Dealer is authorized to sell on Schedule B. In order to provide service to Customers for such Equipment, Dealer shall support such new models by complying with New Holland-designated requirements for: (a) stocking all required Parts; (b) purchasing all required service tools; and (c) attending sales and service training for such new models. New Holland has no obligation to fill orders or ship such new models of Equipment to Dealer if Dealer fails to fulfill the foregoing Parts, tools and training requirements.
- 5.3 Product Packaging and Labels. Dealer shall not modify or remove any warning labels affixed to Products. Further, without New Holland's prior written consent, Dealer shall not modify any packaging or other labeling for Products.
- 5.4 Installation of Non-Standard Attachments or Accessories. Without prior written approval from New Holland, Dealer shall not install or attach non-standard, "self-designed", or "one-off" attachments or accessories to Equipment. Such non-standard, "self-designed," or "one-off" attachments or accessories are those that are not manufactured and sold by established equipment manufacturers for the application and purpose for which they are being used. Dealers that install standard attachments or accessories from established equipment manufacturers shall ensure that the Equipment can properly and safely operate with such attachment or accessory.
- 5.5 Prohibited Modifications to Product. Dealer shall not perform any of the following actions: (a) modify Equipment without New Holland's prior written consent; (b) install upon Equipment any attachment, accessory or equipment that is beyond the rated capacity of that Equipment as stated in the Operator's Manual furnished with the Equipment or as otherwise instructed by New Holland; or (c) perform any adjustment or assembly procedures to Equipment not recommended by or in contravention of the Operator's Manual, Service Manual or other New Holland instruction.

## 6. Primary Market of Responsibility

- 6.1 Assignment of PMR. The PMR assigned to Dealer is set forth in Schedule C. The Dealer's PMR may vary by Equipment or Product Line. New Holland's assignment to Dealer of a PMR is for the purpose of: (a) focusing Dealer's sales, marketing and product support efforts; (b) measuring Dealer Market Share performance; and (c) maximizing the goodwill associated with Products and Licensed Trademarks. Dealer Market Share shall be measured only within Dealer's PMR. New Holland, in its sole discretion and upon written notice to Dealer, may immediately amend Schedule C to add to, subtract from or otherwise modify Dealer's PMR.





- 6.2 No Obligation to Support Sales Outside PMR To the extent New Holland decides to offer marketing programs, retail sales incentives, or other promotions, it shall have no obligation to do so for Dealer's sales or marketing activities outside of Dealer's PMR.
- 6.3 PMR Non-Exclusive Dealer's PMR is non-exclusive. Without incurring any liability to Dealer, New Holland may determine the number and locations of authorized dealers necessary for adequate sales and service representation of Products within any geographic area, or within the designated PMR. Nothing in this Agreement shall be construed as requiring Dealer's consent to the establishment of new or additional dealer representation for Products in Dealer's PMR or elsewhere.

## **7. Dealer Financial Requirements**

- 7.1 Wholesale Line of Credit. Dealer shall establish and at all times maintain an unrestricted wholesale line of credit for the purchase and stocking of new Products in an amount acceptable to New Holland in order to meet Dealer's inventory and sales obligations hereunder. If within any six (6)-month period, Dealer's primary wholesale line of credit is cumulatively reduced by twenty percent (20%) or more and such reduction is not for valid business reasons, said line of credit shall be deemed unacceptable to New Holland. Further, if Dealer's primary wholesale line of credit is restricted, suspended or terminated, any new line of credit obtained by Dealer must be in the same amount as the prior line to be acceptable to New Holland.
- 7.2 Adjusted Debt to Tangible Net Worth Ratio. Dealer hereby covenants and agrees that it will maintain an Adjusted Debt to Tangible Net Worth Ratio of not more than four to one (4.0:1.0). Unless specifically approved in advance in writing by New Holland, Dealer will not make any acquisitions or initiate new business activities if Dealer's Adjusted Debt to Tangible Net Worth Ratio exceeds four to one (4.0:1.0) or if such ratio would increase beyond four to one (4.0:1.0) as a result of such actions. This ratio shall be calculated using the consolidated balance sheets and income statements of Dealer (and of Dealer's related entities and affiliates, if New Holland so elects). All such balance sheets and income statements must be prepared in accordance with Generally Accepted Accounting Principles ("GAAP"). For purposes of calculating this ratio the following definitions will apply:
- (a) "Adjusted Debt to Tangible Net Worth Ratio" means the ratio of Debt minus Subordinated Debt to Tangible Net Worth plus Subordinated Debt.
  - (b) "Debt" shall mean the aggregate amount of the Dealer's items properly shown as liabilities on its balance sheet, determined in accordance with GAAP;
  - (c) "Subordinated Debt" shall mean Debt that is expressly subordinated to CNH Industrial Capital America LLC in writing acceptable to CNH Industrial Capital America LLC;
  - (d) "Net Worth" shall mean the aggregate amount of the items properly shown as assets on Dealer's balance sheet minus the aggregate amount of the items properly shown as liabilities on Dealer's balance sheet, determined in accordance with GAAP;
  - (e) "Tangible Net Worth" shall mean Net Worth plus an amount equal to seventy percent (70%) of the amount reflected on Dealer's balance sheet as a LIFO reserve minus the aggregate amount of the items properly shown as the following types of assets on Dealer's balance sheet determined in accordance with GAAP:
    - (i) goodwill, patents, non-competes, copyrights, mailing lists, trade names, trademarks, servicing rights, organizational costs, and other like assets properly classified as intangibles; and
    - (ii) receivables, loans and other amount due from any shareholder, director or officer of the Dealer, and receivables, loans and other amounts due from any other related or affiliated party of the Dealer.
- 7.3 Working Capital Requirements. Dealer shall maintain net working capital in amounts necessary for Dealer to comply with its obligations under this Agreement.

## 8. Dealer Inventory and Display Responsibilities

- 8.1 Equipment Stocking Requirements Dealer shall order, maintain in inventory and prominently display, at all Dealer Locations unless otherwise excepted in writing by New Holland, representative models of each type of new Equipment Dealer is authorized to sell as set forth in Schedule B, at the level deemed necessary by New Holland to meet Dealer's Equipment sales obligations.
- 8.2 Parts Stocking Requirements. For the purpose of providing prompt Customer support, Dealer agrees to order and maintain in inventory all Parts at the level deemed necessary by New Holland to meet Dealer's Parts sales obligations. Dealer must provide a retail display area for Part acceptable to New Holland.
- 8.3 Licensed Trademark Use. At any Dealer Location and in all advertising for such Dealer Locations, Dealer shall not use or display the Licensee's Trademarks in any way that might cause confusion with, or dilute the distinctive quality of, the Licensed Trademarks, or in any way that violates any New Holland trademark guidelines. In furtherance of this provision, if Dealer represents non-New Holland products, Dealer shall at any such location: (a) maintain internal and external display areas for new Products separate from non-New Holland products; (b) display new Products in the most visible and desirable position and in an area of greater size or space than the area used to display non-New Holland products.

## 9. Dealer Sales Responsibilities

- 9.1 Sales Responsibilities Dealer is solely responsible for developing its own plan for marketing and selling Products, and shall fulfill its sales obligations in several ways, including but not limited to the following:
- (a) Equipment Market Share Dealer shall aggressively promote and sell new Equipment to attain within Dealer's PMR for all Equipment designated on Schedule B, a Dealer Market Share that is equal to at least 90% of either, in New Holland's sole discretion, the New Holland State Market Share or the New Holland Regional Market Share. In evaluating Dealer's market share performance, New Holland, in its sole discretion, may (i) group Product Lines and/or (ii) evaluate Dealer's performance on a per Dealer Location basis.
  - (b) Parts Sales Objectives. Dealer shall aggressively promote and sell all Parts offered by New Holland.
  - (c) Advertising and Promotion. Dealer shall conduct aggressive advertising and sales promotion activities, including but not limited to open houses, field days, product demonstrations, radio and/or television advertising, print advertising, trade shows and community events. Dealer shall appropriately display and distribute current Product sales literature, brochures and advertisements at its Dealer Location and shall also maintain a dealer website that prominently displays new Products. Dealer's use of Licensed Trademarks and its display of Products on Dealer's website shall be subject to New Holland's approval. Upon New Holland's request, Dealer shall participate in national or regional sales promotion and advertising programs as New Holland may periodically conduct.
  - (d) Sales Staff Dealer shall employ a sufficient number of properly trained Product-dedicated sales personnel based on the industry potential in Dealer's PMR and as required by New Holland to call on all potential customers within the PMR. Such sales personnel shall attend New Holland's sales training sessions as required in the DPM.
  - (e) Extended Service Plans. Dealer shall promote and sell extended service and maintenance plans.
  - (f) Customer Surveys New Holland from time to time may conduct surveys (by use of questionnaires or otherwise) of Dealer's Customers to determine the satisfaction of those Customers with the sales, leasing, rental and service efforts of Dealer. New Holland may use the results of these surveys in assessing Dealer's performance under this Agreement.
  - (g) Other Performance Standards Dealer shall meet such other sales performance standards or best business practices as may be established by New Holland in the DPM.
- 9.2 Dealer Resource Commitment The Parties mutually recognize that one of the purposes of this Agreement is to assure that Dealer focuses its resources and efforts on the sale of new Products and the performance of its obligations under this Agreement. Therefore, Dealer agrees that it shall not undertake or engage in another business activity at a Dealer Location(s) separate from its representation of new Products pursuant

to this Agreement, which activity involves a considerable commitment of Dealer's effort and resources, Dealer agrees to make such separation of the personnel, facilities and other non-capital resources devoted to that business as is satisfactory to New Holland, provided that New Holland specifies in writing the separation of personnel, facilities and non-capital resources that are required. New Holland shall provide Dealer with two

(2) years' prior written notice for Dealer to complete any required separation of facilities.

- 9.3 Sales Reporting Dealer shall report all new Equipment retail sales to New Holland, and shall provide true and accurate information on such sales as required by New Holland, including but not limited to registering the location of such Equipment sales and the end use designation in compliance with New Holland guidelines.

## **10. Dealer Service Responsibilities**

- 10.1 Warranty Service and Other Required Service Dealer shall provide Warranty Service for any Product, regardless of whether Dealer sold that specific Product; provided, however, Dealer may not provide Warranty Service for any New Holland (or other CNH Industrial America LLC) products not listed on Schedule B. Dealer also shall provide Other Required Service as directed by New Holland in its sole discretion. Dealer shall provide Warranty Service and Other Required Service in a prompt, professional and courteous manner, and shall fulfill these responsibilities in several ways, including but not limited to the following:
- (a) Service Technicians. Dealer shall employ at all times a sufficient number of trained and fully certified service technicians based on industry sales in Dealer's PMR. Dealer must have service technicians at each Dealer Location who are trained and fully certified to service each type of Equipment listed on Schedule B, and Dealer's service technicians must attend New Holland service training sessions as required by New Holland in the DPM.
  - (b) Service Tools and Manuals. Dealer shall maintain, or have access to, at each Dealer Location all special service tools, electronic diagnostic tools or websites, electronic parts catalogs, service manuals, parts manuals and operator's manuals required by New Holland to service the Equipment listed in Schedule B. Dealer may comply with the service tool requirements by subscribing to any New Holland rental tool program.
  - (c) Service Standards. Dealer shall perform Warranty Service and/or Other Required Service in a timely manner and in strict compliance with the DPM and any service bulletins or other instructions issued by New Holland. Dealer shall give priority to performing such Warranty Service or Other Required Service before general maintenance if a Customer's Product is not operable.
  - (d) Use of New Holland-Sourced Parts Except as otherwise instructed by New Holland in writing, Dealer shall use only Parts obtained from New Holland or New Holland's authorized sources of supply in performing Warranty Service or Other Required Service.
  - (e) Certification Standards. Dealer shall meet or exceed New Holland's service certification standards including pre-delivery, delivery and after-delivery requirements for all Products, as defined by New Holland in the DPM.
  - (f) Compliance with Service Policies Dealer shall abide by all New Holland policies and procedures contained in the DPM when performing Warranty Service and Other Required Service or when submitting Dealer Claims, including creating and retaining all supporting documentation for such claims.
- 10.2 Strategic Account Service Dealer shall provide Warranty Service and/or Other Required Service for any Product sold by New Holland to Strategic Accounts, as well as for any Product sold or donated as charitable, educational or governmental entities.

## **11. Dealer Pre-Delivery and Post-Delivery Responsibilities**

- 11.1 Product Setup To ensure the proper operation of Products, before delivery of Products to a Customer Dealer shall perform the inspections, adjustments, conditioning, installations or servicing of such Products in accordance with instructions and procedures provided by New Holland.

- 11.2 Product Literature. Dealer shall deliver to each Customer of a Product the appropriate current publications and forms for owners covering operation, maintenance, warranty and other matters as determined by New Holland.
- 11.3 Customer Instruction. At the time of delivery, Dealer shall instruct each Customer of a Product in the safe use, proper operation and required maintenance of that Product. Such instruction shall include, at a minimum:
- (a) reference to the operators manual and decals identifying hazards and how to avoid them, (b) identification of the safety features and functions of the Equipment, and (c) demonstration of such features and functions.
- 11.4 Accident Reporting. Dealer shall promptly notify New Holland, pursuant to guidelines contained in the DPM, of any reports of accidents or injuries involving Products of which Dealer becomes aware, as well as any information concerning the existence of any significant Product failure or malfunction.
- 11.5 Post-Delivery Services. Dealer shall perform all required post-delivery inspections and adjustments to Products as prescribed by instructions and procedures provided by New Holland from time to time or as stated in the DPM.

## **12. Facility Requirements and Dealer Locations**

- 12.1 Facility Requirements. Dealer shall establish and maintain at each authorized Dealer Location listed on Schedule D a facility to sell, service display and store Products in accordance with facility standards contained in the DPM.
- 12.2 Unauthorized Locations. Without New Holland's prior written consent, Dealer shall not at any location other than those listed in Schedule D directly or indirectly: (a) advertise or represent itself as an authorized dealer of New Holland Products; (b) use the Licensed Trademarks or any other Trademarks; (c) store, stock or display Products; (d) sell, advertise or market any Products; or (e) provide Warranty Service and/or Other Required Service.
- 12.3 Closure and Relocation. Without New Holland's prior written consent, Dealer may not close or relocate any Dealer Location listed on Schedule D. Dealer shall seek New Holland's consent for the closure or relocation of a Dealer Location at least sixty (60) days prior to the proposed closure or relocation. Should New Holland give its consent, New Holland, in its sole discretion, may modify or reassign the PMR associate with the relocated or closed Dealer Location. Dealer acknowledges and agrees that any consent granted by New Holland for the closure of a Dealer Location shall not initiate the inventory repurchase obligations set forth in Section 29.
- 12.4 Brand Identification. Dealer shall: (a) display a primary identification sign (flag mast or monument) and comply with dealer identity standards as specified in the DPM for each Dealer Location listed on Schedule D; and (b) comply with New Holland's vehicle identity standards as set forth in the DPM.
- 12.5 Trademark Display. Dealer's use of Trademarks or Licensed Trademarks at any Dealer Location, including but not limited to signs, banners or displays, shall be subject to New Holland approval. Any such use not approved by New Holland must be removed immediately by Dealer.

## **13. Business Plan**

- 13.1 Business Plan Requirements. Annually, or as otherwise requested by New Holland, Dealer shall complete and make available for review by New Holland a written plan for the subsequent fiscal year (or additional years if requested by New Holland) that shall contain the information and objectives required by New Holland for a business plan ("Business Plan"), which may include but not be limited to the following:
- (a) Equipment inventory stocking and sales objectives to maximize Dealer's Equipment sales in its PMR, but at a minimum to obtain Dealer Market Share requirements stated in Section 9.1(a), including action plans for obtaining such objectives;
  - (b) Parts inventory stocking plan and sales objectives to maximize Dealer's Parts sales;
  - (c) training plans for Dealer sales and service personnel, including New Holland provided training;
  - (d) advertising, promotional and marketing plans and budgets;
  - (e) action plans for Dealer's possible expansion or upgrading of its current facilities, or for the proposed addition of new facilities; and



- (f) any additional information required by New Holland as set forth in the DPM.
- 13.2 Business Plan Acceptance. Dealer agrees that providing a Business Plan reasonably acceptable to New Holland is a requirement for Dealer to effectively promote and sell Products under this Agreement. New Holland may conduct periodic reviews of Dealer's performance against its approved Business Plan, and during such reviews Dealer agrees to make available all Dealer's records and employees which would contribute to the overall value of these reviews.

#### 14. Insurance and Taxes

- 14.1 Insurance Coverage. Dealer shall maintain an occurrence-based policy of Comprehensive General Liability insurance (including Products and Property Damage Liability) with a maximum per occurrence deductible of \$50,000; a minimum liability limit of \$5,000,000 per occurrence for personal injury claims; and a minimum liability limit of \$500,000 per occurrence for property damage claims. If Dealer is self-insured, the per occurrence deductible maximum is not applicable. New Holland may modify the deductible and policy limit amounts as set forth in the DPM. Any annual aggregate liability limits under such policies shall not be less than \$5,000,000. Upon request, Dealer shall furnish to New Holland certificates of such insurance, which shall provide for at least thirty (30) days' prior written notice to New Holland of an increase in deductible amounts or the cancellation, lapse, or expiration of said policy.
- 14.2 Payment of Taxes. Dealer shall pay all license fees, sales, use, personal property, and excise taxes, duties, and any other fees, assessments or taxes which may be assessed or levied by any governmental authority against any Products which are shipped to, or are in the possession of, Dealer.
- 14.3 Dealer Tax Representations. By submitting an order to New Holland for the purchase of any Product, Dealer represents and warrants that (a) such Products are being purchased for resale, lease or rent to Customers in the ordinary course of Dealer's business, and (b) Dealer has complied and will comply with all requirements for collection and payment of applicable sales, use and similar taxes. Upon request, Dealer shall provide evidence satisfactory to New Holland of Dealer's compliance with the foregoing representations and warranties.

#### 15. Warranty

- 15.1 Warranty Obligations. New Holland's warranties covering Products are as set forth in the Limited Warranty furnished by New Holland with respect to such Products. The performance and administration of the warranties so extended, and the reimbursement to Dealer for Warranty Service performed on Products, are as set forth herein and in the DPM in effect at the time warranty work is performed. The Parties shall promptly fulfill their respective warranty obligations as set forth in the Limited Warranty and DPM.
- 15.2 Dealer Obligations Upon Sale. At the time of any retail sale of Products pursuant to this Agreement, Dealer shall (a) deliver to and review with the Customer New Holland's Limited Warranty for such Products in force at the time of such sale, (b) have the Customer complete the operator's manual/warranty receipt verification section of the Limited Warranty, (c) obtain the Customer's signature on the Limited Warranty and (d) submit the signed Limited Warranty to New Holland within ten (10) days of the sales transaction. New Holland reserves the right not to reimburse Dealer for Warranty Service claims should Dealer fail to timely submit to New Holland the signed Limited Warranty.
- 15.3 No Other Warranty Provisions. Dealer is not authorized to assume or purport to assume for New Holland any additional obligations or liabilities in connection with the sale, lease, rental or service of Products covered by this Agreement, and Dealer shall not do so. New Holland shall not be liable nor shall it defend, indemnify or in any way be obligated to assist Dealer in defense of any notice, claim, or lawsuit alleging the existence of a warranty beyond the terms and conditions of New Holland's Limited Warranty for any Product.
- 15.4 Disclaimer of Other Warranties. Dealer agrees and acknowledges that, except for the warranty extended to Customers under New Holland's Limited Warranty, and to the extent allowed by law, New Holland makes no other representations or warranties, express or implied (including implied warranties of merchantability and fitness for a particular purpose) to Dealer or any Customer with respect to Products.

- 15.5 Non-New Holland Equipment and Service If Dealer installs on or attaches to a Product any non-New Holland equipment, attachment accessory or part, Dealer shall advise Customer in writing that the non-New Holland equipment, attachment, accessory or part is not covered by the Limited Warranty. If Dealer sells any service contract not provided by New Holland or its Affiliates in conjunction with the sale of Equipment, Dealer will disclose to Customer the identity of the service contract provider and will further advise that New Holland has no responsibility to fulfill the obligations of such service contract.
- 15.6 Actions Voiding Limited Warranty. Dealer acknowledges and agrees that any breach of Sections 5.4 or 5.5 may result in New Holland voiding the Limited Warranty for Products in its sole discretion, and Dealer must so advise its Customer in writing to whom such Product has been sold. In such a case where New Holland elects to void the Limited Warranty, as between Dealer and New Holland, Dealer shall be solely responsible for any warranty service claims relating to such Product.
- 15.7 Use of Unauthorized Parts. In the event Dealer breaches Section 10.1(d), New Holland in its sole discretion may (a) refuse to reimburse Dealer for such Warranty Service and/or Other Required Service, (b) void New Holland's Limited Warranty for such Products, and/or (c) hold Dealer solely responsible for all Warranty Service relating to such Products.

## **16. Records and Inspections**

- 16.1 Financial Statements. Dealer shall submit to New Holland, within ninety (90) days after the end of Dealer's fiscal year, audited (or where audited are not available then certified) balance sheets and financial statements for that year.
- 16.2 Supplemental Financial Records. Dealer shall submit monthly financial statements to New Holland in the manner directed by New Holland. New Holland reserves the right to request at any time personal financial statements from the Dealer Principal(s) or guarantor(s) of Dealer, and Dealer shall supply such statements within thirty (30) days.
- 16.3 Sales Reports. Dealer shall maintain and provide to New Holland upon request current reports of Equipment or Parts sales, owner registration inventory, service and warranty reports, as well as such other reports as may be requested by New Holland.
- 16.4 Inspections. Dealer shall permit New Holland or its authorized representatives during normal business hours to (a) enter and inspect all Dealer Locations, (b) examine Dealer's Product inventory, (c) test Equipment in Dealer's possession, custody or control, (d) examine and audit Dealer's books and records and all supporting data of Dealer's business, and (e) make copies of any such records or accounts.
- 16.5 Records Retention. Dealer shall maintain for at least two (2) years all original records and documents relating to Dealer Claims submitted to or paid by New Holland.
- 16.6 Chargeback for Improper or Unsubstantiated Claims. Dealer's submission of unsubstantiated Dealer Claims or Dealer Claims not in compliance with the requirements of the DPM will result in a chargeback to Dealer for such claims, including interest at the then current prime rate. If Dealer refuses to permit an audit, fails to maintain a substantial amount of the required records, or intentionally submits false or fraudulent Dealer Claims, the chargeback will include all amounts paid on Dealer Claims for the prior two (2) years, including any dealer settlement allowances plus interest at the then current prime rate. This remedy is in addition to those available to New Holland for breach of this Agreement, including but not limited to termination of this Agreement.

## **17. Computer Business System**

- 17.1 Dealer Management System Requirements Dealer shall install and maintain in good working order at each Dealer Location: (a) a computerized dealer management system ("DMS") satisfactory to New Holland that maintains New Holland-to-DMS interfaces and functions to communicate and conduct business with New Holland's computer applications and systems (the "System"); (b) a Dealer-to-New Holland network connection that meets or exceeds New Holland specified Dealer-to-New Holland connectivity requirements; and (c) all necessary hardware and software to maintain compatibility with the System.

- 17.2 New Holland Applications. Dealer shall subscribe to, install and maintain required software applications as communicated to Dealer by New Holland or as set forth in the DPM, including (but not limited to) the Electronic Parts Catalog applications.
- 17.3 Operating Costs. Dealer shall pay all costs, including taxes, for the DMS, the Dealer-to-New Holland network connection, and any month access charges for use of the System.
- 17.4 Confidentiality. Dealer shall keep confidential any information and data contained in the System, and shall not use the System or any information or data derived from the System for purposes unrelated to Dealer's performance of its obligations under this Agreement.
- 17.5 Disclaimer of Liability. New Holland shall not be responsible or liable for any defects, problems or resulting damages incurred by Dealer from the operation and use of the DMS, the Dealer-to-New Holland network connection, or the System.

### **18. Marketing & Promotional Support**

- 18.1 Marketing Assistance. To assist Dealer in its marketing and promotional efforts, New Holland will develop the following marketing and promotional materials: (a) training and videos of Product features, operations, demonstrations and competitive comparisons; (b) Product sales literature and brochures; (c) Product and promotional posters, banners and point of sale materials; (d) print and media copy for advertisements in newspapers, magazines, and trade publications; and (e) radio and television advertising scripts. New Holland may also make cooperative advertising funds available to Dealers, in its sole discretion.
- 18.2 Communications to Dealer. Dealer expressly consents to the receipt of unsolicited commercial faxes, emails, text messages, instant messages or other form of electronic communication, from New Holland, its Affiliates, or other New Holland-designated sender.
- 18.3 Products and Services Provided by New Holland. From time to time, New Holland will provide Dealer with certain products and services necessary for Dealer to market, sell and service Products. Dealer agrees that New Holland, in its discretion, may charge Dealer for any such products or services so provided.
- 18.4 Dealer Knowledge of PMR. New Holland expects Dealer to know and understand its market area and the promotional activities that would best be used to market Products within Dealer's PMR. As such, it is Dealer's responsibility to determine which marketing and promotional materials to use in its marketing efforts to meet its sales responsibilities under this Agreement.

### **19. Orders, Delivery and Passage of Title**

- 19.1 Purchase Orders. Dealer may seek to purchase Products from New Holland under this Agreement by submitting purchase orders through New Holland's System in accordance with instructions provided by New Holland. New Holland may specify in writing the minimum quantity of a given Product that Dealer shall be obligated to order at one time as a condition for filling such order, provided that such minimum quantity requirements will be consistently imposed on Dealers.
- 19.2 Offer and Acceptance. Dealer's transmission of an order for Products through New Holland's System will be a binding offer by Dealer to purchase the Products ordered, unless New Holland rejects the order. Purchase orders submitted by Dealer shall not be binding upon New Holland unless and until accepted in writing or electronically by New Holland. All orders for Products may not be canceled by Dealer, and shall be subject to New Holland's then applicable conditions of sale.
- 19.3 Delivery Dates. New Holland shall endeavor to meet the delivery date specified in the System, but shall have no liability for failing to timely fill or deliver any order.
- 19.4 Product Allocation. New Holland shall have the right to allocate delivery of Dealer's Product orders based on their relative order or sales status as compared to other pending orders.
- 19.5 Product Shipment. New Holland shall arrange delivery of Products to Dealer and reserves the right to determine the method and routing for such delivery. New Holland shall not be responsible for guaranteeing shipping rates or for delays in shipment. New Holland, in its discretion may permit Dealer to designate orders for Will Call delivery pursuant to the terms of the DPM.



- 19.6 Risk of Loss / Passage of Title New Holland's release of Products to any carrier for transportation to Dealer shall constitute delivery to Dealer for purposes of passage of title, and Dealer shall bear all risk of loss or damage to Products thereafter. For Will Call orders, risk of loss and passage of title shall be as set forth in the DPM.
- 19.7 Equipment Transfer. The transfer of Equipment from Dealer to other authorized dealers of Products shall be in accordance with New Holland's transfer program described in the DPM. New Holland shall have no liability as a result of any such transfer.
- 19.8 Product Return Authorization. Dealer agrees that no Products delivered to it hereunder are to be returned to New Holland without prior written authorization. Dealer shall pay all transportation charges on any returned Products authorized by New Holland, and Dealer is responsible for payment of all restocking charges stated in the DPM.

## **20. Product Pricing and Payment**

- 20.1 Prices. Unless otherwise authorized by New Holland, the price charged to Dealer for any Product shall be the price in effect at the time the Product is invoiced to Dealer.
- 20.2 Price Changes. New Holland reserves the right at any time to change its prices, terms, discounts and any other pricing provision for Products.
- 20.3 Payment. Dealer shall pay New Holland for all Products immediately upon invoicing of Products to Dealer. The terms and conditions of sale and payments for all Products invoiced to Dealer shall be subject to New Holland's applicable conditions of sale and prices as published and modified from time to time by New Holland. Failure to make payment in accordance with this provision may, in New Holland's sole discretion result in New Holland revoking the sale and repossessing the Product without notice or formality. New Holland reserves the right, without liability, to refuse to sell or deliver Products to Dealer when in New Holland's opinion Dealer's financial condition does not warrant or support further sales or deliveries.
- 20.4 Equipment Relocation. New Holland may request Dealer to transfer new Equipment to another authorized dealer to accommodate such dealer's sale to another Customer. If Dealer refuses, New Holland, in its sole discretion, may decline to pay, on Dealer's behalf, the wholesale finance interest charges associated with that specific Equipment and may decline to make available to Dealer any retail sales programs for such Equipment.
- 20.5 Application of Money and Credits Any money or credits due and payable or becoming due and payable from New Holland to Dealer may be applied in any order New Holland may determine for the satisfaction, in full or in part, of any debts, liabilities or obligations due and payable or becoming due and payable or owing from Dealer to New Holland or its Affiliates.

## **21. Negative Covenants and Compliance**

- 21.1 Domestic Sales Only Without New Holland's prior written approval, Dealer shall not sell, lease or rent Products outside of the Domestic United States.
- 21.2 Retail Sales Only Dealer shall sell Products only to retail Customers or to other authorized dealers of Products. As such, except for sales to authorized New Holland dealers, Dealer may not sell any Products at wholesale, including but not limited to sales to jobbers, jockeys, or other unauthorized dealers.
- 21.3 No Deceptive or Unethical Practices Dealer shall conduct business in a manner that will reflect favorably at all times on Dealer, New Holland Products, Licensed Trademarks and other authorized dealers of Products. Dealer shall refrain from business practices, advertisements, promotions and conduct that are unethical, deceptive, misleading, fraudulent, confusing or would likely contravene any voluntary or involuntary advertising standard or any law. Dealer shall not make, directly or indirectly, any false or misleading statement or representation concerning any Product, its source, condition, capabilities, price, or charges for the Product's distribution, delivery, taxes or other items.
- 21.4 No Internet Sales. Dealer may not consummate sales of new Products on or through an Internet website, including but not limited to an auction-type website, except as otherwise authorized by New Holland.
- 21.5 Announcements. Dealer shall not publish public relation announcements that in any way involve or mention New Holland without New Holland's prior written consent.



- 21.6 Compliance with Federal, State and Local Laws Dealer shall comply with all applicable federal, state, and local laws and regulations governing Dealer's operations and its ordering, sales and service of Products, including without limitation those laws or regulations concerning safety, emissions control and customer service. Dealer shall obtain all governmental approvals, permits or licenses required to do business in its PMR.
- 21.7 Compliance With Export Laws. Certain Products purchased by Dealer from New Holland may be subject to United States export control laws. Dealer agrees that it is responsible for knowing and complying with such laws. Diversion contrary to United States law is prohibited.
- 21.8 Compliance with Fraud and Anti-Corruption Laws.
- (a) Dealer and its Dealer Principals represent that they have not been convicted of, or pleaded guilty to, an offense involving fraud or corruption and that they are not now listed by any government agency as debarred, suspended, or proposed for suspension or debarment, or otherwise ineligible for any government bid or procurement programs. Dealer agrees to promptly inform New Holland of any change in this representation.
  - (b) Dealer shall become familiar with and strictly comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption, including but not limited to the United States Foreign Corrupt Practices Act and similar anti-corruption or anti-bribery laws. Dealer shall promptly report to New Holland any request or demand for any undue financial or other advantage of any kind received by Dealer in connection with the performance of this Agreement. Dealer warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this Agreement, and shall immediately notify New Holland in writing if a foreign public official becomes an officer or employee of Dealer or acquires a direct or indirect interest in Dealer.

## **22. Product Changes and Discontinuation**

- 22.1 Product Changes and Improvements New Holland may make changes or improvements at any time in the specifications, construction, color and design of Products without incurring any obligation to Dealer or Dealer's Customers.
- 22.2 Product Discontinuation New Holland reserves the right at any time, without liability to Dealer, to discontinue the manufacture of any and all model(s), Equipment, or Product Line(s) under the Licensed Trademarks covered by this Agreement. Products shall be considered discontinued notwithstanding the fact that similar or identical products continue to be manufactured or sold by CNH Industrial America LLC or its Affiliate under Trademarks other than the Licensed Trademarks or brands for which this Agreement grants Dealer certain Product distribution rights. For any models, Equipment or Product Line(s) so discontinued, New Holland shall not be required to offer Dealer the right to represent a similar model, Equipment or Product Line(s), if any, marketed, manufactured or sold by CNH Industrial America LLC or its Affiliates under Trademarks other than the Licensed Trademarks or brand(s) listed on Schedule B.

## **23. New Holland Sales of Products**

- 23.1 Direct Sales in Dealer's PMR Within Dealer's PMR or elsewhere, New Holland reserves the unrestricted right, without liability to Dealer, to directly sell, rent or lease Products to any Customer, person or entity, including both at wholesale or retail, and permit such Customer, person or entity to service Products, including but not limited to the following: (a) governmental entities, agencies, institutions or subdivisions thereof; (b) educational and charitable institutions; (c) rental companies; and (d) accounts classified by New Holland as Strategic Accounts or other similar designation.

## **24. Licensed Trademarks**

- 24.1 Trademark License. Subject to and only in accordance with the terms and conditions of this Agreement, New Holland grants Dealer the right and Dealer accepts the obligation to make only Permitted Uses of the Licensed Trademarks set forth in Section 24.2 and to refrain from engaging in Prohibited Uses of the Licensed Trademarks set forth in Section 24.3. Dealer's right to use the Licensed Trademarks is limited to the Permitted

Uses during the term of this Agreement. Any unauthorized use of the Licensed Trademarks (including any of the Prohibited Uses) shall constitute an infringement of New Holland's rights to the Licensed Trademarks in addition to a breach of this Agreement. In the event Dealer's use of Licensed Trademarks (even though a Permitted Use) is unacceptable to New Holland in its sole discretion, Dealer must immediately cease such use of the Licensed Trademark upon notice from New Holland.

- 24.2 Permitted Uses. Dealer shall and is permitted to: (a) use the Licensed Trademarks to identify and advertise its business at Dealer Locations in connection with the marketing, sale, distribution and service of Products under the Licensed Trademarks; (b) use the Licensed Trademarks only in connection with the marketing, sale, distribution and service of the Products for which New Holland has authorized them to be used; (c) identify itself (and not New Holland) as the owner of Dealer's business in conjunction with any use of the Licensed Trademarks, including the use thereof on leases, invoices, order forms, receipts, and business stationery, as well as at such other locations and in the manner as New Holland may designate in the DPM; and (d) use the Licensed Trademarks to identify itself as an authorized dealer of Products.
- 24.3 Prohibited Uses. Dealer shall not: (a) use the Licensed Trademarks (or any other Trademarks owned or licensed by New Holland or its Affiliates) as part of its corporate or other legal name without the prior written consent of New Holland; (b) sublicense or assign its right to use the Licensed Trademarks to any other person or entity; (c) use the Licensed Trademarks to incur any obligation or indebtedness on behalf of New Holland; (d) manufacture or purchase objects bearing Licensed Trademarks or Trademarks from unlicensed sources or apply, or have applied, Licensed Trademarks or Trademarks to objects that will be offered for sale or provided as promotional items by Dealer or any third party, specifically including but not limited to any clothing item (such as shirts, hats or other apparel), giftware, toys or other sundry items; and (e) register, attempt to register, obtain any ownership in, or otherwise use any Internet Registration (defined as any website, domain name, URL, internet/World Wide Web presence or feature, social media account designations, or other electronic communications portal) whose domain name, URL or other electronic communications portal contains, incorporates, or consists of the Licensed Trademarks or Trademarks without New Holland's express written consent, which may be withheld for any or no reason.
- 24.4 Unauthorized Internet Registrations. In the event that Dealer registers, attempts to register, obtains any ownership in, or otherwise uses any Internet Registration in violation of this Agreement, in addition to any rights New Holland may have under this Agreement, Dealer hereby acknowledges and agrees that any such Internet Registration, including any copyrights therein, shall be deemed to be the property of New Holland. Dealer will assign, transfer or assist in the perfection of any rights necessary to transfer said registration to New Holland with no compensation to Dealer and at no additional cost to New Holland. In the event that a court of competent jurisdiction determines that any ownership rights to any Internet Registration are not automatically transferred to New Holland pursuant to this Agreement, Dealer agrees to execute any documents deemed necessary by New Holland to give effect to this provision. New Holland may condition approval of Dealer's use of any such Internet Registration on the transfer to New Holland of any and all ownership rights therein, including any copyrights. In the event that this Agreement expires or is terminated, Dealer shall not use or register a domain name that includes, or in New Holland's sole discretion is confusingly similar to, a Licensed Trademark or any other Trademark.
- 24.5 Notice of Trademark Claims. Dealer shall promptly notify New Holland in writing of any suspected unauthorized or infringing use of the Licensed Trademarks, any challenge to the validity of the Licensed Trademarks, any challenge to New Holland's ownership of the Licensed Trademarks, any challenge to New Holland's right to use and license others to use such Licensed Trademarks, or any challenge to Dealer's right to use the Licensed Trademarks.
- 24.6 Validity of Licensed Trademarks. Dealer expressly understands and acknowledges that the Licensed Trademarks are valid and serve to identify Products and those authorized by New Holland to market, sell, distribute, and service Products. Dealer shall not directly or indirectly contest, attack, oppose, attempt to cancel or otherwise challenge in any manner or in any forum, the validity of the Licensed Trademarks or New Holland's ownership of, or New Holland's right to use or license others to use, the Licensed Trademarks, either during or after the term of this Agreement.

- 24.7 Ownership of Licensed Trademarks and Goodwill Dealer acknowledges the Licensed Trademarks are exclusively owned by New Holland Dealer's use of the Licensed Trademarks pursuant to this Agreement does not give Dealer any ownership interest or other interest in or to the Licensed Trademarks. Dealer shall execute any documents deemed necessary or useful by New Holland to obtain protection for the Licensed Trademarks or to maintain their validity and enforceability. Any and all goodwill arising from Dealer's use of the Licensed Trademarks shall inure solely and exclusively to the benefit of New Holland. Upon expiration or termination of this Agreement, no monetary amount shall be attributable to any goodwill associated with Dealer's use of the Licensed Trademarks or the sale and service of Products.
- 24.8 Nonexclusive License. This Agreement grants Dealer only a nonexclusive right and license to use the Licensed Trademarks. New Holland has and retains the rights to use the Licensed Trademarks itself in connection with selling Products and services and to grant other licenses for the Licensed Trademarks and for Trademarks.
- 24.9 Discontinuation and Substitution of Licensed Trademarks New Holland reserves the right in its sole discretion to discontinue any Licensed Trademark and to substitute or add different Licensed Trademarks for use in identifying Products or the dealers authorized to sell or service Products. Dealer shall implement promptly any such substitution or addition of new Licensed Trademarks.
- 24.10 Copyrights. Dealer shall not copy any aspect or portion of New Holland's website or other electronically stored information or printed documents or publications without the express prior written consent of New Holland.

## **25. Authorized Software**

- 25.1 Software License Dealer acknowledges that certain Products contain imbedded computer software and related technology (collectively, "Authorized Software") in which New Holland owns or licenses copyrights and/or other intellectual property rights. During the term of this Agreement, New Holland grants Dealer a non-transferable, royalty-free license to use Authorized Software in object code form only ("Software License"). The Software License is limited to the sale and service of any Product containing Authorized Software only in the manner authorized by New Holland in writing. Except as expressly authorized by this Agreement, Dealer may not sublicense Authorized Software to any other entity nor assign its Software License. This Agreement does not grant Dealer any right, title, or interest in Authorized Software anywhere in the world except the Software License granted herein. Dealer acknowledges that the use of any Product containing Authorized Software may require a Software License from New Holland. New Holland reserves the right to require all users of Products containing Authorized Software to possess a valid license in the form prescribed by New Holland, and in such case Dealer shall not transfer or permit the transfer or use of any Product containing Authorized Software unless the transferee or user is subject to such valid license. This Software License shall continue until it is terminated in accordance with this Agreement, or for the useful life of the Product in which Authorized Software is imbedded or of which Authorized Software is an integral part, or for the useful life of Authorized Software, whichever is shorter.
- 25.2 Automatic Termination. The Software License shall automatically terminate upon the occurrence of any of the following: (a) removal of Authorized Software from the Product for which it was obtained or authorized, (b) service by any unauthorized person, (c) use of Authorized Software on any product other than that for which it was obtained or authorized, or (d) any breach of this Software License by Dealer.

## **26. Company Information and New Holland IP**

- 26.1 Company Information Periodically, New Holland will provide Dealer with proprietary, confidential information, technical knowledge and/or assistance, and other materials that derive value from not being generally known in the industry ("Company Information") that are reasonably necessary for the distribution, sale, promotion and service of Products. New Holland has sole discretion to determine what information it provides to Dealer is Company Information. Dealer agrees that Company Information remains the property of New Holland. Dealer must take commercially reasonable measures, but in any event no less strict than the measures Dealer uses with its own confidential information, to maintain the confidentiality of Company Information and to ensure

that all Company Information is used only to sell and service Products in accordance with this Agreement. Dealer may disclose Company Information only to those of its employees who will need it and must take all necessary measures to ensure that those persons do not reveal Company Information to any third parties without the prior written authorization of New Holland. Dealer shall be responsible and liable to New Holland for any breach of this provision by its employees, agents or representatives.

- 26.2 Return of Company Information Dealer acknowledges that New Holland provides Company Information to Dealer for use by Dealer pursuant to this Agreement. Therefore, upon expiration or termination of this Agreement for any reason, Dealer shall immediately return to New Holland all Company Information in any form.
- 26.3 No Reverse Engineering Dealer shall not engage in, cause to be engaged in, or permit any reverse engineering of Authorized Software, Products, or component parts thereof. "Reverse engineering" is defined as attempting through analysis of Products or component parts thereof to determine their functionality and thereby gain the ability to alter or reproduce that functionality.
- 26.4 Right to Use New Holland IP. Dealer shall use New Holland IP only in accordance with the provisions of and for the purposes contemplated by this Agreement and in accordance with any procedures that New Holland may establish for use of New Holland IP.

## **27. Term and Termination**

- 27.1 Term of Agreement and Renewal. This Agreement shall commence on the Effective Date and continue to the Expiration Date ("Term"). The Expiration Date of this Agreement shall be extended for additional successive one year periods unless, at least ninety (90) days prior to the Expiration Date or the expiration date of any subsequent extension period, either party notifies the other of its intention not to extend. Upon such notification not to extend, this Agreement shall expire on the Expiration Date or at the expiration date of any extension period.
- 27.2 Replacement Agreement. In the event New Holland offers to all authorized dealers in the state of Dealer's Primary Location a new dealer agreement or an amendment to this Agreement ("Replacement Agreement"), New Holland shall provide Dealer with at least ninety (90) days prior written notice of such Replacement Agreement and shall furnish Dealer a copy of the Replacement Agreement with such notice. Failure by Dealer to return an executed copy of the Replacement Agreement to New Holland within such ninety (90) day period shall be deemed "good cause" for New Holland to terminate this Agreement effective upon the end of the ninety (90) day period. Dealer's return to New Holland of an executed Replacement Agreement shall not give rise to any repurchase rights and obligations provided for in Section 29.
- 27.3 Breach.
- (a) Except where termination of the Agreement due to Dealer's breach is allowed immediately pursuant to Section 27.4, and except as stated in Sections 27.3(b) and (c), in the event that either Dealer or New Holland fails to fulfill any of their responsibilities under this Agreement, the other party may terminate this Agreement by providing ninety (90) days' written notice listing the reasons for termination, within which period the other party will have sixty (60) days to rectify the identified breach and avoid termination.
  - (b) If Dealer breaches Section 7.2, New Holland may, in its sole discretion, terminate the Agreement upon ninety (90) days' advance written notice to Dealer. However, during this ninety (90) day period, Dealer may cure its breach of Section 7.2 by providing New Holland, within sixty (60) days of New Holland's notice to Dealer, a written plan to return to compliance with Section 7.2 within twelve (12) months from the date of New Holland's notice. Thereafter, if Dealer fails to perform such submitted plan, New Holland may terminate the Agreement with thirty (30) days' written notice.
  - (c) If Dealer is in breach of Section 9.1(a), New Holland may terminate Dealer for such default only after providing Dealer with written notice and a six (6)-month period within which Dealer may cure such default to New Holland's sole satisfaction.

- (d) A breach by Dealer of any other written agreements between Dealer and New Holland or its Affiliates that is due to fraud committed by Dealer, shall also be considered a breach under this Agreement allowing New Holland to immediately terminate the Agreement.
- (e) As an additional or alternative remedy for any breach by Dealer of the Agreement, New Holland, in its sole discretion and after providing Dealer with an opportunity to cure said breach as provided in Sections 27.3(a), (b) or (c), may amend Schedule D to remove authorization for the Dealer Location at which such breach occurred. In such event, Dealer shall cease all activities related to the display, stocking, sales and service of Products at such Dealer Location, including the use of Licensed Trademarks and New Holland will repurchase new Parts located only at such Dealer Location as provided in Section 29.1(b).

27.4 Immediate Termination. New Holland may terminate this Agreement immediately upon the occurrence of any of the following events:

- (a) Dealer Financial Defaults (i) Dealer's default in the payment when due of any obligations to New Holland or any of its Affiliates including but not limited to CNH Industrial Capital America LLC ("CNH Capital"); (ii) Dealer's default under any chattel mortgage or other security agreement between Dealer and New Holland, any of its Affiliates or any other lender or financing entity; or (iii) the refusal or failure of Dealer upon demand to account to New Holland or any of its Affiliates for the proceeds of the sale of Products for which Dealer is indebted to New Holland or such Affiliates;
- (b) Loss of Wholesale Credit Line: the termination (or suspension, where such suspension continues for more than sixty (60) calendar days), of any of Dealer's significant wholesale lines of credit for the purchase of new Products;
- (c) Insolvency: (i) the filing of a voluntary or involuntary petition in bankruptcy by or against Dealer; (ii) the making of an assignment by Dealer for the benefit of creditors; (iii) a closeout or sale of a substantial part of Dealer's assets related to the business; (iv) the commencement of dissolution, receivership or liquidation proceedings by or against Dealer; (v) the insolvency of Dealer; or (vi) the levy of a writ of attachment or execution against Dealer;
- (d) Change in Dealer Entity, Control, Ownership or Management without the prior written consent of New Holland: (i) any change in Dealer's legal form or entity; (ii) any change in Dealer's control, ownership or management (as defined in Section 4.3) listed in Schedule A; or (iii) any assignment or attempted assignment by Dealer of this Agreement;
- (e) Death or Incapacity: if Dealer fails to provide New Holland with an acceptable ownership or management succession plan as set forth in Section 4.4 upon the death or incapacity of any Dealer Principal;
- (f) Misrepresented or False Information: Dealer or anyone acting on its behalf has: (i) submitted false records, contracts, statements, reports or documents to New Holland or any of its Affiliates, including CNH Capital; (ii) submitted any false or fraudulent documents for Dealer Claims or in support thereof;
  - (i) knowingly accepted any payment from New Holland for any work not performed by Dealer in accordance with the provisions of this Agreement or the DPM; or (iv) submitted false information in applying for appointment as an authorized dealer of Products;
- (g) Failure to Operate: failure to operate any Dealer Location in the normal course of business for seven (7) consecutive calendar days;
- (h) Criminal and/or Tortious Conduct: Dealer or any Dealer Principal has pleaded guilty to or been convicted of a felony or any other violation of law that in New Holland's opinion affects adversely the operation or business of Dealer, or the good name, goodwill or reputation of New Holland, Products, Licensed Trademarks, Dealer, or other authorized dealers of Products;
- (i) Dealer Closure/Loss of License: (i) a permanent closure of any Dealer Location without the prior written consent of New Holland; or (ii) the revocation, suspension or other invalidation of any Dealer license, permit or authorization necessary to conduct business pursuant to this Agreement;
- (j) Inspection/Audit Refusal: any failure by Dealer to permit New Holland to inspect or audit Dealer's inventory or business and financial records pursuant to Section 16.4;





- (k) Detrimental Conduct: any conduct by Dealer or any Dealer Principal which in the sole discretion of New Holland: (i) is injurious or detrimental to Dealer's Customers, the public welfare, other authorized dealers of Products, or the reputation of New Holland Products and the Licensed Trademarks; (ii) is unbecoming of a reputable business person; (iii) is abusive or threatening to any New Holland employee; or (iv) evidences a disagreement between any Dealer Principals that in New Holland's opinion adversely affects the operation of Dealer or the good name, goodwill or reputation of New Holland, Products, Licensed Trademarks, or Dealer;
  - (l) Breach of Confidentiality: any misuse or unauthorized disclosure of New Holland IP, Company Information or Authorized Software;
  - (m) Revocation of Guaranty: the withdrawal or revocation of a guaranty of Dealer's indebtedness to New Holland or its Affiliates by one or more personal or corporate guarantors;
  - (n) Incurable Breach: any breach of the Agreement that is incapable of being remedied by an affirmative present action by the Dealer;
  - (o) Repetitive Breach: breach of the Agreement by Dealer for which it has received notice by New Holland of that same type of breach or at least two (2) prior separate and distinct occasions;
  - (p) Unauthorized Location: any breach of Section 12.2 of the Agreement.
- 27.5 New Holland's Exercise of Termination Rights. New Holland may exercise its termination rights under Sections 27.3 and 27.4 without regard to the performance of other authorized dealers or to the circumstances under which New Holland has terminated or refrained from terminating the sales and service agreements of other authorized dealers.
- 27.6 Termination At Will. This Agreement may be terminated at any time at will, without cause, upon sixty (60) days' written notice by Dealer to New Holland, or as mutually agreed upon in writing by both Parties.

## **28. Effect of Termination or Expiration**

- 28.1 Dealer's Obligations. Upon the termination or expiration of this Agreement, Dealer shall cease to operate or represent itself as an authorized dealer of Products under the Licensed Trademarks, and shall promptly: (a) cease using the Licensed Trademarks and remove from Dealer Locations and vehicles all signs or advertising displays that bear the Licensed Trademarks; (b) remove and discontinue the use of, and cause any third party to remove, any identification and any promotion or advertising that associates Dealer with Products, the Licensed Trademarks, or New Holland; and (c) at New Holland's request, provide to New Holland all sales records, mailing lists, customer lists, service history records microfiche, catalogs, registrations and any other material of any kind relating to the promotion, marketing, sale, operation or servicing of Products covered by this Agreement. If Dealer fails to promptly comply with any of its obligations upon the termination or expiration of this Agreement, including but not limited to Dealer's obligations under this section, New Holland may take steps, as it deems necessary in its sole discretion, to effect Dealer's compliance with such obligations or the same result as would be realized by Dealer's compliance, and Dealer shall reimburse New Holland for all costs and expenses, including attorney's fees, incurred by New Holland in effecting or enforcing such compliance.
- 28.2 Pending Orders. Termination or expiration of this Agreement shall relieve New Holland of any obligation to make any further shipments of Products, and New Holland may without liability cancel any of Dealer's unshipped orders for Products. For any Products which New Holland may ship after termination or notice thereof, New Holland may require payment prior to shipment.
- 28.3 Financial Obligations. Upon the termination or expiration of this Agreement, all indebtedness of Dealer shall become immediately due and payable to New Holland, and Dealer shall promptly pay New Holland all sums owed by Dealer. Final settlement of Dealer's account with New Holland shall not be made until Dealer complies with all requirements of this Agreement.
- 28.4 Continued Market Presence. In advance of the effective date of termination, the scheduled Expiration Date or the expiration of any extension period of this Agreement, New Holland may consummate arrangements to appoint a replacement authorized dealer for Dealer's PMR.

- 28.5 Post-Termination Transactions. Any business relations or transactions between the Parties after expiration or termination of this Agreement shall not constitute a waiver of the expiration or termination of this Agreement or in any manner reinstate the Parties' contractual relationship, or establish any new contractual relationship, and all such relations shall be governed by terms and conditions identical to the relevant provisions of this Agreement unless the Parties execute a new agreement superseding this Agreement.
- 28.6 Pre-Termination Warranty Service. New Holland will reimburse Dealer for all Warranty Service claims performed prior to the expiration or termination of this Agreement that meet the requirements of the DPM.

## **29. Inventory Repurchase and Return Obligations**

- 29.1 Items Subject to Repurchase Within thirty (30) days after the termination or expiration of this Agreement, either New Holland or Dealer may request in writing the return for repurchase of all of the following items originally purchased from New Holland by Dealer, on the terms specified herein, and Dealer shall return such items to New Holland as follows:
- (a) Equipment.
    - (i) Equipment Eligible for Repurchase New, undamaged, salable, current, complete and unused Equipment, including attachments, purchased from New Holland and delivered to Dealer within twenty-four (24) months of the date this Agreement terminates or expires ("Repurchasable Equipment"). For purposes of this Section, "current" means the model or series of Equipment listed in New Holland's price book or price list at the date of termination or expiration of the Agreement. New Holland will only repurchase separate attachments that were not previously installed on Equipment and which were invoiced separately to Dealer.
    - (ii) Equipment Repurchase Price Repurchasable Equipment shall be repurchased at the price paid by Dealer (A) not including transportation costs actually paid or incurred by Dealer for initial delivery, (B) less any discounts which may have been allowed or paid thereon by New Holland, (C) adjusted where appropriate to account for any damage or weathering. New Holland shall not be obligated to reimburse Dealer's initial costs for unloading, set up, or preparation of Repurchasable Equipment.
  - (b) Parts.
    - (i) Parts Eligible for Repurchase. New, undamaged, salable, complete and unused Parts purchased from New Holland by Dealer that are listed as of the date of termination or expiration of the Agreement in New Holland's then current Price List and not identified as discontinued in such Price List ("Repurchasable Parts"). Repurchasable Parts must be in original New Holland packaging with their original authorized New Holland identification label and must be properly identified prior to shipment to New Holland for repurchase. New Holland specifically excludes from repurchase Parts that: (A) have a limited shelf life or contain flammable or hazardous materials; (B) are direct shipped from a supplier other than New Holland; (C) have an altered or counterfeited identification label; (D) are in broken packaging; (E) are not in correct order multiples; (F) are coded non-returnable in the current parts Price List; or (G) are common service or 'maintenance' items, rather than repair parts, such as oil, filters, fluids, lubricants, tires, batteries, tracks, bucket edges and teeth.
    - (ii) Parts Repurchase Price. Repurchasable Parts shall be repurchased at the then current dealer price (less discounts and freight), less a restocking charge as set forth in the Parts Return Policy.
    - (iii) Merchandise Items. 'Merchandise' items such as clothing, toys, binders, gloves, etc., are not eligible for repurchase.
- 29.2 Return Procedures Within sixty (60) days after the date of the written request made pursuant to Section 29.1, Dealer shall return to New Holland all items subject to repurchase or required to be returned pursuant to this Agreement. All items returned to New Holland shall be identified as required by New Holland, packed, boxed,

crated and loaded by Dealer and shipped at Dealer's expense and risk of loss to the destination or destinations specified by New Holland. The procedure for the repurchase of Repurchasable Parts shall be further subject to the Parts Return Policy issued by New Holland and in effect on the date of termination or expiration of the Agreement. Upon receipt of returned items, New Holland shall inspect them and issue credit to Dealer for all such items returned that meet the requirements specified in this Agreement and the DPM, less any amounts owed to New Holland or its Affiliates by Dealer. Any items returned to New Holland facilities that are not properly returnable as prescribed by this Agreement, shall be, at Dealer's option, either destroyed or returned to Dealer at its cost. Dealer shall transfer all returned items by warranty bills of sale satisfactory to New Holland, if so requested.

- 29.3 Conditions Precedent to Payment Any costs incurred by New Holland in discharging all or any part of Dealer's obligations under this Agreement, including but not limited to Dealer's obligations to cease all use of the Licensed Trademarks or to pack, load and ship Parts to New Holland, shall be deducted from any amount owed by New Holland to Dealer. Dealer shall not be entitled to payment or credit for returned items until Dealer has complied with all applicable laws, rules, regulations and other legal requirements governing the bulk transfer of inventory or similar protection of creditors. New Holland shall have the right to withhold from the price of any items repurchased pursuant to this section a sum sufficient to discharge any liens or encumbrances against such items and to discharge such liens or encumbrances. Dealer shall execute such documents and take any additional action requested by New Holland to transfer ownership of returned items, free and clear of any claims, liens or encumbrances.
- 29.4 Other Return Items Upon expiration or termination of this Agreement, Dealer shall return to New Holland any materials (such as sales promotion, advertising and training materials, tools and signs) provided without charge to Dealer by New Holland or any predecessor.

### **30. Limitation of Liability**

- 30.1 Dealer Responsibility for Operating Capital This Agreement contemplates that Dealer, as an independent business, shall obtain on its own the capital investment necessary to operate its business. Nothing in this Agreement shall impose any liability on New Holland in connection with Dealer's operations under this Agreement or otherwise, or for any expenditure made or incurred by Dealer in preparation for performance or in performance of Dealer's responsibilities under this Agreement.
- 30.2 Disclaimer of Consequential Damages. The Parties both understand and agree that this Agreement is of a limited duration, and therefore, except as provided herein, neither party shall be liable to the other for any damages caused by the termination or expiration of this Agreement, whether based upon loss of anticipated sales or prospective profits, expenditures, investments, leases, property improvements or other matters related to the business of the Parties. The damages to which either party may be entitled for breach of this Agreement are limited to actual out-of-pocket expenses incurred as a direct result of the breach.
- 30.3 Waiver of Punitive Damages. The Parties hereby waive, to the fullest extent permitted by law, any right or claim for any punitive or exemplary damages against the other and agree that if there is a dispute with the other that each party shall be limited to the recovery of actual damages sustained by it.
- 30.4 No Group Litigation. The Parties agree that any and all dispute resolution proceedings between them, including litigation, arising from or related to this Agreement shall be conducted on an individual basis only. Neither Party shall commence any dispute resolution with a third-party against the other, or join with any third party in any dispute resolution involving New Holland and Dealer. Neither of the Parties shall attempt to consolidate or otherwise combine in any manner a dispute resolution proceeding involving New Holland or Dealer with another dispute resolution proceeding of any kind.
- 30.5 Limitations Period. All claims for any breach of this Agreement, and all claims arising out of the relationship between the Parties established by this Agreement, shall be made within two (2) years from the date such claim accrued.

### **31. Indemnification**

- 31.1 Indemnification By New Holland.

- (a) Licensed Trademarks. If New Holland reasonably determines that Dealer has used the Licensed Trademarks in accordance with this Agreement, New Holland shall defend, indemnify, and hold harmless Dealer from all loss, cost, liability, and expense arising out of any claim, suit or demand regarding Dealer's use of the Licensed Trademarks. If New Holland, in its sole discretion, determines that Dealer has not used the Licensed Trademarks in accordance with this Agreement, Dealer shall bear the cost of such defense, judgment or settlement.
  - (b) Authorized Software. New Holland shall defend, indemnify, and hold Dealer harmless from all loss, cost, liability, and expense arising out of any claim that Authorized Software used in accordance with its documentation infringes any valid patent, copyright, trade secret, or other enforceable proprietary right of any third party. Should any Authorized Software become (or in New Holland's opinion be likely to become) subject to such a claim, Dealer will permit New Holland, at New Holland's option and expense to (a) procure for Dealer or Dealer's Customers the right to continue to use Authorized Software or (b) modify the allegedly infringing Authorized Software so that it becomes non-infringing. New Holland's obligations under this Section will not apply if Authorized Software is modified without New Holland's consent.
  - (c) New Holland IP. Except as otherwise provided in this Section with respect to Authorized Software and Licensed Trademarks, New Holland will indemnify, defend and hold harmless Dealer from all loss, cost, liability, and expense arising out of any claim based on an allegation that any Product infringes a valid patent, copyright, or trademark or misappropriates any protectable and enforceable trade secret. New Holland shall have no obligations under this provision for any Product that has been the subject of unauthorized modifications by Dealer or any third party or for infringement that results from the use of intellectual property other than New Holland IP in conjunction with New Holland IP that would otherwise not be infringing. If any Product becomes, or in New Holland's opinion is likely to become, subject to such a claim of infringement, New Holland will, at its expense and at its option, either procure the right for Dealer and Dealer's Customers to continue using the infringing Product(s) or replace or modify the New Holland Product(s) so that they are no longer infringing. Upon failure of the foregoing provisions, New Holland may, at its option, refund the purchase price for the infringing Product(s) less a reasonable allowance for use. This section states the entire liability of New Holland for infringement by any Product.
  - (d) Dealer Cooperation. In the event of any litigation relating to Dealer's use of the Licensed Trademarks, Authorized Software, or New Holland IP, Dealer shall promptly notify New Holland of such litigation and shall execute any and all documents and undertake such acts as may, in the opinion of New Holland, be necessary or useful to carry out such defense or prosecution, including becoming a nominal party to any legal action. Except to the extent that such litigation is the result of Dealer's use of the Licensed Trademarks, Authorized Software, or New Holland IP in a manner inconsistent with the terms and conditions of this Agreement, New Holland agrees to reimburse Dealer for its out-of-pocket costs in undertaking such acts.
  - (e) Control of Litigation. Dealer acknowledges that New Holland has the right to direct and control any administrative proceeding or litigation involving the Licensed Trademarks, Authorized Software, or New Holland IP, including any settlement thereof. New Holland agrees to consult with Dealer regarding any settlement in which Dealer would be required to financially participate and to obtain Dealer's consent to any such settlement, which consent will not be unreasonably withheld. New Holland has the right, but not the obligation, to take action against uses by others that may constitute infringement of the Licensed Trademarks, Authorized Software or New Holland IP. If Dealer fails to notify New Holland promptly of any litigation or refuses to give New Holland sole control of the defense and/or prosecution of such litigation and all settlement negotiations, New Holland will be relieved of its obligations under this Section.
- 31.2 Indemnification by Dealer. Dealer agrees to defend, hold harmless and indemnify New Holland, its Affiliates and their respective shareholders, directors, officers, agents, employees, successors and assigns from and against any and all claims, damages, demands, settlements, judgments, legal actions, liabilities, costs and expenses of any nature, including without limitation, attorney's fees and court costs, resulting from the acts

and/or omissions of Dealer, including but not limited to: (i) Dealer's defrauding of or misrepresentations to customers; (ii) Dealer's actions in violation of Sections 5.3, 5.4, 5.5, 10.1(d), 11.1, 11.2, 11.3, 11.5, 14.2, 15.2, 15.3, 15.4, 15.5, 15.6, 21.3, 21.6, 21.7 and 21.8; or (iii) Dealer's negligent or improper, or alleged negligent or improper, repair or servicing of Products, whether such actions occur during or after the Term of this Agreement.

### 32. General Provisions

- 32.1 Governing Law. This Agreement shall be governed by and interpreted according to the laws of the state of Dealer's Primary Location, without regard to such state's conflicts of laws rules and except to the extent governed by the United States Trademark Act of 1946 (Lanham Act), the Copyright Act, and the Patent Act.
- 32.2 Consent to Jurisdiction and Venue. Dealer irrevocably submits itself to the exclusive jurisdiction of the federal courts for the Middle District of Pennsylvania for the purpose of any suit, action, or other proceeding arising out of or relating to this Agreement, or of any of the transactions contemplated thereby, and irrevocably agrees that all claims in respect of such suit, action or proceeding may be heard and determined in such federal court, provided that New Holland may apply to any court of competent jurisdiction for interim protection or equitable relief such as an interlocutory or interim injunction. If the federal court for the Middle District of Pennsylvania lacks jurisdiction for any reason to hear such claims, Dealer irrevocably submits itself to the exclusive jurisdiction of the Court of Common Pleas of Lancaster County, Pennsylvania. By execution and delivery of this Agreement, Dealer irrevocably waives, to the fullest extent it may effectively do so, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action, or proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever. The Parties agree that a final judgment (as to which all appeals have been exhausted or the time within which such appeals may be made has expired) in any such suit, action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.
- 32.3 Compliance With Local Laws. The rights and obligations of the Parties to this Agreement may be subject to certain laws, orders, regulations, directions, restrictions, and limitations of governments and governmental agencies having jurisdiction over the Parties. If a change in any such law, order, regulation, direction, or restriction (including any limitation, appropriation, seizure, or interpretation thereof) shall, in the judgment of either party, substantially alter the relationship between the Parties, this Agreement, or the advantages derived from the Parties' relationship, either party may request the other party to modify this Agreement. If, within thirty (30) days after such a request has been made, the Parties are unable to agree upon a mutually satisfactory modification of this Agreement, then the adversely affected party may terminate this Agreement on fifteen (15) days' notice given to the other party.
- 32.4 Information Sharing. New Holland shall be allowed to share information regarding Dealer, including but not limited to Dealer's financial and ownership information, with any of New Holland's Affiliates.
- 32.5 Dealer Relationship to New Holland. The Parties are independent businesses and neither has any fiduciary obligation to the other, and Dealer is an independent retailer which purchases Products for resale for Dealer's principal benefit. Nothing in this Agreement shall be construed as constituting Dealer to be an employee, franchisee, agent or legal representative of New Holland for any purpose whatsoever. Dealer has no right or authority, express or implied, to assume or create any obligation or responsibility on behalf of or in the name of New Holland, or to bind New Holland in any manner.
- 32.6 Entire Agreement. This Agreement, together with the DPM and any changes thereto issued by New Holland from time to time, is and shall be deemed to be the complete and final expression of the agreement between the Parties as to the matters herein contained and provided for and supersedes all previous agreements between the Parties pertaining to such matters. IT IS CLEARLY UNDERSTOOD THAT NO PROMISE OR REPRESENTATION NOT CONTAINED HEREIN WAS AN INDUCEMENT TO EITHER PARTY OR WAS RELIED UPON BY EITHER PARTY IN ENTERING INTO THIS AGREEMENT.
- 32.7 Execution and Modification. Except as expressly provided for herein, this Agreement may not be executed, amended or altered, or any of its provisions waived on behalf of New Holland, except in writing, signed by New Holland's Director of Network Development or other authorized director in a similar capacity.

- 32.8 Severability. In the event any part of this Agreement is held to be invalid or unenforceable under the law, this Agreement shall be enforceable to the maximum extent permitted by such law, without invalidating the remainder of this Agreement, or invalidating the effect of such portion of this Agreement elsewhere.
- 32.9 Assignment.
- (a) By Dealer. In view of the personal nature of this Agreement, the rights, privileges and obligations conferred on Dealer under this Agreement are not transferable, assignable or salable by Dealer without the prior written consent of New Holland, and no property right or interest, direct or indirect, is sold, conveyed or transferred to Dealer under this Agreement. Any attempt by Dealer to assign its rights or obligations under this Agreement without New Holland's written consent shall be null and void.
- (b) By New Holland. Upon written notice to Dealer, New Holland may assign this Agreement and any rights and obligations thereunder to any Affiliate of New Holland or to any entity that succeeds to the interests of New Holland.
- 32.10 Waiver of Default. The waiver by New Holland of any default, or the failure of New Holland to exercise any of its rights, under this Agreement or otherwise shall not act as a waiver of such default or any subsequent default or a waiver of any of New Holland's rights hereunder.
- 32.11 Headings. The headings of sections and subsections in this Agreement are inserted for convenience of reference only and shall not in any way affect the construction, meaning or interpretation of any provision of this Agreement, and shall not be deemed or construed in any way to limit the meaning of such sections.
- 32.12 Interpretation. This Agreement is being entered into by and among competent and sophisticated parties who are experienced in business matters. Therefore, any language in this Agreement deemed to be ambiguous by a court of law will not be construed against any particular party as the drafter of the language.
- 32.13 Notice, Approval and Consent. Any notice, approval or consent required or allowed under this Agreement shall be given in writing and, without prejudice to other forms of actual service, shall be considered as served upon being mailed in a properly sealed envelope with first class, certified or registered postage prepaid. Notices to New Holland shall be addressed to the New Holland Regional Dealer Development Manager for Dealer's assigned region and shall be delivered or mailed to CNH Industrial America LLC, 500 Diller Avenue, New Holland, Pennsylvania 17557. Notices to Dealer shall be delivered or mailed to any person designated in Schedule A or to Dealer at Dealer's Primary Location.
- 32.14 Survival. The Parties' obligations in the following sections shall survive the expiration or termination of this Agreement: 5.5, 10.1(f), 16.6, 17.4, 24.4, 26.1, 26.2, 28.1, 28.3, 28.6, 29.1, 29.2, 29.3, 29.4, 30.2, 30.3, 30.4, 30.5, 31.1, 31.2, 32.1, 32.2, and 32.3.
- 32.15 Review by Counsel. Dealer acknowledges that it has had an adequate opportunity to review this Agreement and consult with legal counsel of its own choosing regarding the content and meaning of this Agreement.

IN WITNESS WHEREOF the Parties have duly executed this Agreement on the dates written below:

**New Holland**

CNH Industrial America LLC

**DEALER**

(Dealer Legal Entity Name)

By: \_\_\_\_\_  
(Signature)

Title: \_\_\_\_\_  
Region Sales Director

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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**New Holland Equipment Sales and Service Agreement- Schedule A DEALER LEGAL INFORMATION,  
OWNERSHIP AND MANAGEMENT**

**Legal Entity Name: Trade (DBA) Name: Primary Location  
Address:**

**(Street, City, State and Zip Code)**

**Business Structure Dealer Conducts Business Under: State of Organization:**

**Owners of Dealer** (individual(s) having a financial interest in Dealer):

<u>Name</u>	<u>Percent of Ownership</u>
-------------	-----------------------------

<u>Name</u>	<u>Title</u>
-------------	--------------

**Management** (person(s) responsible for key aspects of day to day operations of Dealer):

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**New Holland Equipment Sales and Service Agreement- Schedule B PRODUCTS & LICENSED TRADEMARKS**

**Legal Entity Name:** \_\_\_\_ **Trade (DBA) Name:** \_\_\_\_ **Primary Location Address:** \_\_\_\_  
(Street, City, State and Zip Code)

**BRAND OF EQUIPMENT: NEW HOLLAND**

**AUTHORIZED PRODUCT LINE(S)**

[illegible]

**Authorized Licensed Trademark(s)** New Holland, New Holland Construction, Kongskilde, Howard, Overum and CNH Parts

Regional Sales Director    Date



**Legal Entity Name: Trade (DBA) Name: Primary Location  
Address:**

**New Holland Equipment Sales and Service  
Agreement- Schedule C PRIMARY MARKET OF  
RESPONSIBILITY**

(Street, City, State and Zip Code)

**CNH Industrial America LLC**

*EXAMPLE: If Dealer is assigned 50% of the industry sales volume in county "X" in which 100 units of a given PRODUCT LINE is sold, then Dealer's PMR for that PRODUCT LINE is 50% of the 100 units, or 50 units. Thus, if Dealer sold 10 units of the given PRODUCT LINE in county "X", Dealer's market share would be 20% (10 divided by 50).*

**The chart below identifies, by Product Line, the percentage portion of the market of industry unit sales within the geographic area for which the Dealer has sales and service responsibility. The PMR will be reviewed periodically by New Holland, and Dealer will be advised of any changes.**

[illegible]

Regional Sales Director      Date



New Holland Equipment Sales and Service Agreement- Schedule D DEALER LOCATIONS

Legal Entity Name: \_\_\_\_  
Trade (DBA) Name: \_\_\_\_

Type	Street Address	City	ST	Zip Code
Primary				
Branch				
Branch				
Branch				
Branch				
Branch				
Branch				
Branch				
Branch				
Branch				
Branch				
Branch				
Branch				
Branch				

Regional Sales Director    Date

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## AMENDMENT TO NEW HOLLAND EQUIPMENT SALES AND SERVICE AGREEMENT

**THIS IS AN AMENDMENT** to the New Holland Equipment Sales and Service Agreement between CNH Industrial America LLC, Delaware limited liability company ("New Holland") and Titan Machinery Inc. at \_\_\_\_\_, a Delaware corporation ("Dealer") in effect as of the date this amendment is signed below ("Agreement").

### RECITALS

WHEREAS, New Holland is engaged in the business of manufacturing construction and agricultural equipment and attachments; and

WHEREAS, Dealer is a publicly-traded entity and a dealer of New Holland equipment; and

WHEREAS, Dealer currently operates numerous New Holland dealership locations in five (5) states; and WHEREAS, the size and geographic diversity of Dealer's New Holland branded dealership operations, along with its publicly-traded status, make it unlike most of New Holland's other North American dealers; and

WHEREAS, the uniqueness of Dealer's public company status and the extent and geographic diversity of its New Holland locations warrant modifications to the Agreement;

**NOW THEREFORE** in consideration of the promises and mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged by the parties, Dealer and New Holland hereby agree as follows:

1. The above Recitals are accurate and hereby incorporated by reference.
2. Section 4.2 of the Agreement is deleted.
3. Section 4.3 of the Agreement is replaced in its entirety with the following:
  - 4.3 Changes in Dealer Form and Control Dealer shall provide New Holland with sixty (60) days' prior written notice of Dealer's intention to change its: (a) legal form or entity; or (b) control or management (a "Change of Control" as defined below); provided that, in the event that Dealer is not aware of such event, notice shall be furnished as soon as reasonably practical after Dealer acquires knowledge. Prior to consummating any such change described in this paragraph, or following such change if Dealer had no advance knowledge, Dealer must obtain New Holland's written consent.

A "Change of Control" shall mean one or more of the following events:

- (i) a merger, consolidation or reorganization approved by Dealer's stockholders, unless securities representing more than fifty percent (50%) of the total combined voting power of the outstanding voting securities of the successor corporation are immediately thereafter beneficially owned, directly or indirectly, by the persons who beneficially owned Dealer's outstanding voting securities immediately prior to such transaction;
  - (ii) any sale of all or substantially all of Dealer's assets;
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(iii) any transaction or series of related transactions (other than from the sale of shares issued or sold in any registered offering of Dealer's securities) pursuant to which any person or any group of persons comprising a "group" within the meaning of Rule 13d-5(b)(1) under the Securities Exchange Act of 1934, as amended (other than Dealer or a person that, prior to such transaction or series of related transactions, directly or indirectly controls, is controlled by or is under common control with, Dealer) becomes directly or indirectly the beneficial owner (within the meaning of Rule 13d-3 of the Securities Exchange Act of 1934, as amended) of securities possessing (or convertible into or exercisable for securities possessing) (A) twenty (20%) percent or more of the total combined voting power of Dealer's securities (determined by the power to vote with respect to the elections of Board members) outstanding immediately after the consummation of such transaction or series of related transactions, if such group is a competitor of Company; or (B) thirty (30%) percent or more of the total combined voting power of Dealer's securities (determined by the power to vote with respect to the elections of Board members) outstanding immediately after the consummation of such transaction or series of related transactions;

(iv) a change in the composition of the Board of Dealer over a period of eighteen (18) consecutive months or less such that a majority of the Board members ceases, by reason of one or more contested elections for Board membership, to be comprised of individuals who either (x) were Board members at the beginning of such period or (y) have been elected or nominated for election as Board members during such period by at least a majority of the Board members described in clause (x) who were still in office at the time the Board approved such election or nomination;

(v) any attempt by Dealer's Chief Executive Officer and/or such person's direct reports (the "Executive Management Team") to sell or otherwise dispose of, in a single transaction or series of transactions over a period of time not to exceed twelve (12) months, an amount of Dealer's publicly-traded securities beneficially owned by the Executive Management Team member equal to ten (10%) percent or more of Dealer's then outstanding publicly-traded securities; or

(vi) a change in the identity of Dealer's management, defined as Dealer's Chief Executive Officer, as set forth on Schedule A.

Dealer shall inform New Holland in writing simultaneous with Dealer filing an initial registration statement with the Securities and Exchange Commission related to any future offering of Dealer's securities or in the event of any change in a Section 16 officer.

Dealer's Executive Management Team shall meet as requested with New Holland's brand leaders to develop plans for Dealer's proposed expansion, if any, to coincide with New Holland's market representation plans. Prior to Dealer engaging in substantive discussions (directly or indirectly) for a possible purchase of a CNH-branded dealership with such CNH dealer that would result in an expansion of Dealer's total Primary Market of Responsibility for New Holland Products, Dealer shall provide New Holland written notice of its intent to engage in such discussions and with whom. New Holland shall have the right to reject such a request or to withhold approval of Dealer's acquisitions of CNH-branded dealerships, in its sole discretion. New Holland shall maintain the confidentiality of all information disclosed respecting a proposed acquisition.

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Should New Holland approve Dealer's acquisition of a CNH-branded dealership in the future, Dealer agrees that it will abide by New Holland's requirements for the approval of Dealer's purchase of such dealership, including without limitation New Holland's requirements regarding inventory levels, facilities, service coverage, market share objectives, and the representation of competitive products at said dealership.

4. Section 4.4 of the Agreement is replaced in its entirety with the following:

4.4 Death or Incapacity of Dealer Principals In the event of the death or incapacity of any person listed in Schedule A ("Dealer Principal(s)"), Dealer shall provide New Holland within ninety (90) days of such occurrence, an ownership or management succession plan for the replacement of such deceased or incapacitated Dealer Principal(s), if Dealer proposes to continue operation under this Agreement. New Holland may approve or deny Dealer's proposed succession plan in its reasonable discretion.

5. Section 4.6 of the Agreement is replaced in its entirety with the following:

4.6 Ancillary Documents Dealer will execute such agreements or other documents as New Holland in its reasonable discretion may deem necessary to preserve New Holland's rights under this Agreement in response to (a) any change or proposed change in Dealer's legal form or entity, (b) any Change of Control of Dealer as defined above, or (c) death or incapacity of any Dealer Principal.

6. Section 9.1(a) of the Agreement is replaced in its entirety with the following:

9.1(a) Equipment Market Share Dealer shall aggressively promote and sell new Equipment to attain within Dealer's PMR for all Equipment designated on Schedule B, a Dealer Market Share that is equal to at least 90% of either, in New Holland's sole discretion, the New Holland State Market Share or the New Holland Regional Market Share. In evaluating Dealer's market share performance, New Holland, in its sole discretion, may (i) group Product Lines and/or (ii) evaluate Dealer's performance on a per Dealer Location basis. Should Dealer establish a new New Holland dealership or acquire a New Holland dealership, the requirement to attain either New Holland State Market Share or New Holland Regional Market Share shall not apply until after the end of the first thirty-six (36) months of Dealer's operations.

7. Section 9.2 of the Agreement is replaced in its entirety with the following:

9.2 Dealer Resource Commitment. The Parties mutually recognize that one of the purposes of this Agreement is to assure that Dealer focuses its resources and efforts on the sale of new Products and the performance of its obligations under this Agreement. Therefore, Dealer agrees that if Dealer undertakes or engages in another business activity at a Dealer Location(s) separate from its representation of new Products pursuant to this Agreement, which activity involves a considerable commitment of Dealer's effort and resources, Dealer agrees to make such separation of the personnel, facilities and other non-capital resources devoted to that business as is satisfactory to New Holland, provided that New Holland specifies in writing the separation of personnel, facilities and non-capital resources that are required. New Holland shall provide Dealer with two (2) years' prior written notice for Dealer to complete any required separation of facilities. Dealer shall provide New Holland with thirty (30) days' prior written notice of Dealer's intention, or the intention of any of its wholly or partially-owned affiliates or related entities (including Dealer's Chief Executive Officer, or

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any entities in which such person has at least a twenty-five (25%) percent ownership interest) to engage in or seek to acquire or invest in any other new business operations that are not directly related to Dealer's New Holland equipment dealership operations under this Agreement; provided, that the above notice requirement shall not apply to passive investments of Dealer's Chief Executive Officer which do not involve day-to-day management functions of such person.

8. Section 13.1 of the Agreement is replaced in its entirety with the following:

13.1 Business Plan Requirements Annually, senior management of Dealer shall meet with New Holland representatives to review the following topics: (i) current year review of industry size, inventories, and market share performance by Dealer Location and by complex and by the respective parties; (ii) future forecasts of market demand by product category; (iii) pre-sale programs and other New Holland sponsored retail programs; (iv) estimate, by product line, of the next year's industry potential, market share targets by Dealer Location or complex, and market share objectives by Dealer Location, including action planning and resource allocation needed to achieve those objectives; (v) sound inventory turns; and (vi) Dealer's market coverage and expansion plans, including updates and resources required on a rolling five (5)-year basis. Within thirty (30) days thereafter, Dealer will submit and secure New Holland's approval of a comprehensive Business Plan (which includes goals and objectives for all Dealer Locations) containing: (a) Equipment inventory stocking and sales objectives to maximize Dealer's Equipment sales in its PMR, but at a minimum to obtain Dealer Market Share requirements stated in Section 9.1(a), including action plans for obtaining such objectives; (b) Parts inventory stocking plan and sales objectives to maximize Dealer's Parts sales; (c) training plans for Dealer sales and service personnel including New Holland provided training; (d) advertising, promotional and marketing plans and budgets; (e) action plans for Dealer's possible expansion or upgrading of its current facilities, or for the proposed addition of new facilities; (f) any additional information required by New Holland as set forth in the DPM; (g) status of Dealer's Adjusted Debt to Tangible Net Worth Ratio (as well as any other metric criteria which New Holland may prescribe for dealers generally) for the plan year; and (h) such other elements or metrics as are set forth in New Holland's then-effective dealer standards program, or which New Holland may elect to require in dealer business plans generally. Dealer will substantially accomplish each material action plan contained in each year's Business Plan approved by New Holland.

On a semi-annual basis at New Holland's request, Dealer's Executive Management Team shall meet with New Holland representatives to review the following topics: (i) Dealer's progress against the market share objective plan, including updates to annual market share objectives based on industry actual units sales year-to-date; and (ii) inventory status and update to support retail sales plan and presell activity.

On a monthly basis at New Holland's request, Dealer's branch managers and sales managers shall meet with New Holland representatives to review the following topics: (i) by Dealer Location and by complex, sales against monthly market share objectives, and inventory and wholesale planning to support retail objectives; and (ii) market share gap analysis and corrective action planning.

If any of the above reviews reveal deficiencies in Dealer's operations, as determined in New Holland's sole discretion, New Holland may request that Dealer rectify the stated deficiencies.

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9. Section 16.2 of the Agreement is hereby amended to delete the reference to “the Dealer Principals” from such section.
10. Section 16.6 of the Agreement is replaced in its entirety with the following:
- 16.6 Chargeback for Improper or Unsubstantiated Claims Dealer’s submission of unsubstantiated Dealer Claims or Dealer Claims not in compliance with the requirements of the DPM will result in a chargeback to Dealer for such claims, including interest at the then current prime rate. If Dealer refuses to permit an audit or fails to maintain a substantial amount of the required records, the chargeback will include, at the particular Dealer Location(s) involved, all amounts paid on Dealer Claims for the prior two (2) years, including any dealer settlement allowances, plus interest at the then current prime rate. If Dealer intentionally submits false or fraudulent Dealer Claims, the chargeback will include, at the particular Dealer Location(s) involved, an amount equal to three (3) times the amount of the false or fraudulent claims submitted at the particular Dealer Location(s), plus interest at the then current prime rate. This remedy is in addition to those available to New Holland for breach of this Agreement, including but not limited to termination of this Agreement.
11. Section 20.4 of the Agreement is replaced in its entirety with the following:
- 20.4 Equipment Relocation. New Holland may request Dealer to transfer new Equipment to another authorized dealer to accommodate such dealer’s sale to another Customer. Any New Holland request to transfer a unit must be made via email to the person(s) Dealer has designated to New Holland for this purpose. If Dealer refuses, New Holland, in its sole discretion, may decline to pay, on Dealer’s behalf, the wholesale finance interest charges associated with that specific Equipment, and may decline to make available to Dealer any retail sales programs for such Equipment. New Holland’s decision to remove retail sales program for any such unit, and the details related thereto, must be documented by New Holland’s Regional Sales Director (“RSD”) via email to Dealer’s Vice President North America Ag Store Operations, who must acknowledge receipt of the email to New Holland within twenty-four (24) hours. If Dealer’s Vice President does not respond within that time period, the RSD will first attempt to contact such person via telephone call, and if the Vice President is not available by telephone, the RSD will then attempt to contact either Dealer’s CFO or CEO by telephone.
12. Section 21.1 of the Agreement is replaced in its entirety with the following:
- 21.1 Domestic Sales. Dealer shall concentrate its sales, lease and rental of whole good Products to the Domestic United States. Further Dealer agrees to give New Holland notice of any of Dealer’s occasional sales, lease or rental of whole good Products outside of the United States prior to shipment, and acknowledges that New Holland, in its sole discretion, may prohibit Dealer’s sales lease or rental of new whole good Products to a particular area outside of the United States upon written notice to Dealer.
13. Section 21.5 of the Agreement is replaced in its entirety with the following:
- 21.5 Announcements. Prior to the filing of any statement with the Securities and Exchange Commission that includes disclosure of any information regarding New Holland that New Holland has advised Dealer in writing is material nonpublic information regarding New Holland, Dealer agrees to provide advance notice thereof to New Holland and to not
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disclose the same if so requested by New Holland, provided, however, that the foregoing shall not limit Dealer's rights and obligations to comply with applicable law.

14. The last sentence of Section 21.8(b) of the Agreement is replaced in its entirety with the following: "Dealer warrants that it has no foreign public officials as officers or employees at the date of this Agreement, and shall immediately notify New Holland in writing if a foreign public official becomes an officer or employee of Dealer."

15. Section 27.3(b) of the Agreement is replaced in its entirety with the following:

(b) If Dealer breaches Section 7.2, New Holland may, in its sole discretion, terminate the Agreement upon ninety (90) days' advance written notice to Dealer. However, during this ninety (90)-day period, Dealer may cure its breach of Section 7.2 by providing New Holland, within sixty (60) days of New Holland's notice to Dealer, a written plan to return to compliance with Section 7.2 within twelve (12) months from the date of New Holland's notice. Without New Holland's prior consent, Dealer's material reduction of assets shall not be a means to achieve covenant compliance. Thereafter, if Dealer fails to perform such submitted plan, New Holland may terminate the Agreement with thirty (30) days' written notice.

16. Subparagraphs (a), (c), (g), (h), (k) and (o) of Section 27.4 of the Agreement are amended as follows:

a. Subparagraph (a) of Section 27.4 is replaced in its entirety with the following:

(a) Dealer Financial Defaults: (i) Dealer's default in the payment when due of any obligations to New Holland or any of its Affiliates, including but not limited to CNH Industrial Capital America LLC ("CNH Capital") after the expiration of a notice and cure periods in any applicable agreements with New Holland's Affiliates or CNH Capital; (ii) Dealer's default under any chattel mortgage or other security agreement between Dealer and New Holland, any of its Affiliates or any other lender or financing entity with whom Dealer has a material credit arrangement (i.e., a credit arrangement for which the relevant agreements must be publicly disclosed pursuant to federal securities laws), if such default results in an acceleration of the indebtedness owed under the credit facility; or (iii) the refusal or failure of Dealer, following written demand, to account to New Holland or any of its Affiliates for the proceeds of the sale of Products for which Dealer is indebted to New Holland or such Affiliates;

b. Subparagraph (c), clause (vi) of Section 27.4 is amended to add the language "that is not satisfied within ten (10) days" following the word Dealer;

c. Subparagraph (d) of Section 27.4 is replaced in its entirety with the following:

(d) Change in Dealer Entity, Control or Management: without the prior written consent of New Holland: (i) any change in Dealer's legal form or entity; (ii) any Change of Control (as defined in Section 4.3); (iii) any assignment or attempted assignment by Dealer of this Agreement; or (iv) a substantial ownership interest in Dealer is acquired by a competitor of New Holland.

d. Subparagraph (g) of Section 27.4 is replaced in its entirety with the following:

(g) Failure to Operate: failure to operate any Dealer Location in the normal course of

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business for seven (7) consecutive calendar days other than due to a force majeure event, provided that within three (3) months from the seventh day of closure due to the force majeure event, Dealer shall submit a plan to New Holland detailing how Dealer shall return to operation at the affected Dealer Location, which plan must be acceptable to New Holland in its reasonable discretion;

e. Subparagraph (h) is amended to delete “or any Dealer Principal” from such section.

f. Subparagraph (k) of Section 27.4 is replaced in its entirety with the following:

(k) Detrimental Conduct: any conduct by Dealer which in the sole discretion of New Holland: (i) is injurious or detrimental to Dealer’s Customers, the public welfare, other authorized dealers of Products, or the good name, goodwill or reputation of New Holland, Products and the Licensed Trademarks; (ii) is unbecoming of a reputable business person; or (iii) is abusive or threatening to any New Holland employee;

g. Subparagraph (o) of Section 27.4 is replaced in its entirety with the following:

(o) Repetitive Breach breach of the Agreement by Dealer (excluding breaches of Sections 7.2 or 9.1(a)) for which it has received notice by New Holland of that same type of breach on at least two (2) prior separate and distinct occasions within the preceding thirty-six (36) months;

17. Other than as expressly provided for herein, nothing contained in this Amendment shall be construed as a waiver or modification of any terms, conditions, or rights contained in any existing dealer agreement between New Holland and Dealer except to the extent such terms, conditions or rights are in conflict with this Amendment, in which event this Amendment shall supersede the existing agreements, but only to the extent of the conflict.

18. Each party to this Amendment represents and warrants that it has taken all action required to authorize it to enter into this Amendment, and each party further represents that it has neither relied upon nor been induced by any representation, statement, or disclosure of the other party, but has relied upon its own knowledge and judgment in entering into the Amendment.

19. This Amendment cannot be modified, nor any party’s rights hereunder waived, except in writing, and no waiver of any provision hereof shall preclude enforcement of any other provision hereof, or subsequent enforcement of the provision waived. This Amendment cannot be assigned without the prior written consent of the parties, which consent may be withheld with or without cause.

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IN WITNESS WHEREOF, CNH Industrial America LLC and Titan Machinery Inc. have caused this Amendment to be executed by their respective, duly authorized officer or representatives, as of the\_\_day of \_\_, 2017.

**TITAN MACHINERY INC.**

David J. Meyer, Chief Executive Officer Dated \_\_

**CNH INDUSTRIAL AMERICA LLC**

By:     Officer of CNH

Dated \_\_

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**CERTIFICATION  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT**

I, David J. Meyer, certify that:

1. I have reviewed this Quarterly report on Form 10-Q of Titan Machinery Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: June 2, 2017

/s/ David J. Meyer

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David J. Meyer

*Board Chair and Chief Executive Officer*

**CERTIFICATION  
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT**

I, Mark Kalvoda, certify that:

1. I have reviewed this Quarterly report on Form 10-Q of Titan Machinery Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: June 2, 2017

/s/ Mark Kalvoda

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Mark Kalvoda

*Chief Financial Officer*



**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Titan Machinery Inc. (the “Company”) on Form 10-Q for the quarter ended April 30, 2017 as filed with the Securities and Exchange Commission (the “Report”), I, David J. Meyer, Board Chair and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that:

The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: June 2, 2017

/s/ David J. Meyer

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David J. Meyer

*Board Chair and Chief Executive Officer*

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Titan Machinery Inc. (the “Company”) on Form 10-Q for the quarter ended April 30, 2017 as filed with the Securities and Exchange Commission (the “Report”), I, Mark Kalvoda, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: June 2, 2017

/s/ Mark Kalvoda

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Mark Kalvoda

*Chief Financial Officer*