

Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

(c) Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean the repayment in Dollars in full in cash or immediately available funds (and in the case of any other contingent Obligations, providing cash collateral or other collateral as may be requested by the Lender) of all of the Obligations other than unasserted contingent indemnification Obligations.

(d) All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP as in effect from time to time, and applied on a consistent basis in a manner consistent with that used in preparing the Borrower’s audited financial statements, except as otherwise specifically prescribed herein.

## **ARTICLE II**

### **THE COMMITMENTS AND LOANS**

#### **Section 2.01 Term Loan Commitment.**

Subject to the terms and conditions hereof and in reliance upon the warranties of the Borrower herein, the Lender agrees:

(a) To make a loan (the “**Term Loan A**”) in the amount of the Term Loan A Commitment to the Borrower at the Lender’s principal office in Edina, Minnesota in immediately available funds on the Closing Date.

Amounts borrowed under this Section 2.01 and repaid or prepaid may not be reborrowed.

#### **Section 2.02 Procedure for Term Loan Borrowing.**

Unless the Lender determines that any applicable condition specified in Article IV has not been satisfied (in which case the Lender will promptly notify the Borrower in writing of such determination), the Lender will make the amount of Term Loan A available to the

Borrower at the Lender's principal office in Edina, Minnesota in immediately available funds on the Closing Date.

**Section 2.03 Revolving Credit Commitment.**

(a) Subject to the terms and conditions of this Agreement, the Lender agrees to make Revolving Credit Loans to the Borrower and to issue Letters of Credit for the account of the Borrower from time to time during the Revolving Credit Commitment Period in an aggregate principal amount at any one time outstanding not exceeding the *lesser* of (i) the amount of the Revolving Credit Commitment or (ii) the Borrowing Base. During the Revolving Credit Commitment Period the Borrower may use the Revolving Credit Commitment by borrowing, prepaying the Revolving Credit Loans in whole or in part, and re-borrowing, and requesting the issuance of Letters of Credit all in accordance with the terms and conditions hereof.

(b) The Borrower shall repay all outstanding Revolving Credit Loans on the Revolving Credit Termination Date.

**Section 2.04 Procedures for Revolving Credit Borrowing.** The Borrower shall either (a) submit a draw request to the Lender in writing or telephonically; or (b) use the Lender's electronic banking systems to request each proposed borrowing in accordance with the requirements of such systems as may be in effect from time to time. Each such notice shall be effective upon receipt by the Lender, shall be irrevocable, and shall specify the date and amount of borrowing requested. At the request of the Lender, a telephonic request must be confirmed in writing by the Borrower within three (3) Business Days after such request. So long as (a) all conditions precedent set forth in Article IV with respect to such borrowing have been satisfied, and (b) with respect to a request for a Revolving Credit Loan, the Total Usage at such time does not exceed the *lesser* of (i) the amount of the Revolving Credit Commitment or (ii) the Borrowing Base, in each case after giving effect to such Revolving Credit Loan, the Lender shall provide immediately available funds to the Borrower in the amount of such requested borrowing on the requested borrowing date by depositing such funds into depository account number 9161005393, maintained by the Borrower with the Lender. Each borrowing shall be on a Business Day.

**Section 2.05 Termination or Reduction of Revolving Credit Commitment.**

(a) Upon not less than three Business Days' notice to the Lender, the Borrower shall have the right to terminate the Revolving Credit Commitment or, from time to time, to reduce the aggregate amount of the Revolving Credit Commitment; *provided, that* no such termination or reduction of Revolving Credit Commitment shall be permitted if, after giving effect thereto and to any prepayments of the Revolving Credit Loans made on the effective date thereof, the aggregate principal amount then outstanding of all Revolving Credit Loans would exceed the Revolving Credit

Commitment. Any such partial reduction shall be in an amount equal to \$50,000, or a whole multiple thereof, and shall reduce permanently the Revolving Credit Commitment then in effect.

### **Section 2.06 Repayment of Loans; Evidence of Debt.**

(a) **Revolving Note.** The Revolving Credit Loans made by the Lender shall be evidenced by a Revolving Credit Note in the initial amount of the Revolving Credit Commitment. The Revolving Credit Loans and the Revolving Credit Note shall mature and be payable at the Maturity Date of the Revolving Credit Loans. The Lender shall enter in its records the amount of each of its Revolving Credit Loans, the rate of interest borne on such Revolving Credit Loans, and the payments of the Revolving Credit Loans received by the Lender, and such records shall be conclusive evidence of the subject matter thereof, absent manifest error.

(b) **Term Note A.** The Term Loan A made by the Bank shall be evidenced by the Term Note A in the amount of Term Loan A when made. Term Loan A shall mature and be payable in accordance with the provisions of Term Note A. The Bank shall enter in its records the amount of Term Loan A, the rate of interest borne on Term Loan A and the payments of Term Loan A received by the Lender, and such records shall be conclusive evidence of the subject matter thereof, absent manifest error.

(c) The Borrower hereby unconditionally promises to pay to the Lender in full in cash, to the extent not previously paid, then-unpaid principal amount of each Loan on its Maturity Date.

(d) The Lender shall maintain in accordance with its usual practice an account or accounts evidencing indebtedness of the Borrower to the Lender resulting from each Loan, including the amounts of principal and interest payable and paid to the Lender from time to time under this Agreement.

### **Section 2.07 Optional Prepayments.**

(a) **Voluntary.**

(i) **Revolving Credit Loans.** The Borrower shall have the right, by giving written notice to the Lender by not later than 3:00 p.m. (Minneapolis time) on the Business Day of such payment, to voluntarily prepay the Revolving Credit Loans in whole or in part at any time without premium or penalty.

(ii) **Term Loans.** The Borrower shall have the right, by giving written notice to the Lender by not later than 3:00 p.m. (Minneapolis time) on the Business Day of such payment, to voluntarily prepay each Term Loan in whole or in part at any time, subject to the contemporaneous payment of any premium or fees set forth in the Term Note evidencing such Term Loan.

### **Section 2.08 Mandatory Prepayments.**

(a) Revolving Credit Loans. If, at any time, the aggregate principal amount then outstanding of all Revolving Credit Loans would exceed the *lesser* of the Revolving Credit Commitment or the Borrowing Base, then the Borrower, upon demand, shall prepay the amount of such excess together with interest on the amount prepaid.

### **Section 2.09 Application of Prepayments.**

(a) Any partial prepayment of a Term Loan shall be applied to installments due on such Term Loan in the inverse order of their maturities.

### **Section 2.10 Interest.**

(a) Term Loans. The Borrower agrees to pay interest on the outstanding principal amount of each Term Loan from the date of such Term Loan until such Term Loan is paid at the rates and at the times specified in the Term Note evidencing such Term Loan.

(b) Revolving Credit Loans. The Borrower agrees to pay interest on the outstanding principal amount of the Revolving Credit Loans at the rates and at the times specified in the Revolving Credit Note.

### **Section 2.11 Intentionally left blank**

### **Section 2.12 Letters of Credit.**

(a) **Letter of Credit Commitment.** Subject to the terms and conditions hereinafter set forth, the Lender agrees to issue stand-by letters of credit (the “Letters of Credit”) from time to time on terms reasonably acceptable to the Lender on any Business Day during the period from the date hereof and ending on the Revolving Credit Termination Date; provided, however, that the Lender shall not be required to issue any Letter of Credit if, after giving effect to such issuance: (i) the Total Usage would exceed the lesser of: (A) the Revolving Credit Commitment or (B) the Borrowing Base; or (ii) the Letter of Credit Obligations would exceed the Letter of Credit Commitment.

(b) **Termination.** The obligation of the Lender to issue any Letter of Credit shall terminate (i) immediately and without further action upon the occurrence of an Event of Default of the nature referred to in Section 8.01(f); or immediately when any Event of Default (other than of the nature specified in Section 8.01(f)) shall have occurred and be continuing and the Lender either shall have demanded payment of the Revolving Note or shall so elect by giving notice to the Borrower for purposes of this Section.

(c) **Manner of Issuance of Letters of Credit.** Letters of Credit shall be issued for the account of the Borrower, or at the written request of the Borrower, for the

account of a Loan Party other than the Borrower, within two Business Days after receipt of notice from the Borrower to the Lender specifying the date of the requested issuance, the face amount of the requested Letter of Credit, and the expiry date of the requested Letter of Credit; provided that such notice and the required accompanying documentation is received before 12:00 noon (Minneapolis time); any notice received after 12:00 noon (Minneapolis time) on any Business Day shall be deemed to have been received on the immediately following Business Day. In no event shall any Letter of Credit have an expiry date later than the scheduled Revolving Credit Termination Date or a maturity of greater than one year. Each request for a Letter of Credit shall be accompanied by an appropriately completed and duly executed application for a Letter of Credit in form acceptable to the Lender (a “Letter of Credit Application”).

(d) **Reimbursement on Demand.** The Borrower agrees to pay to the Lender on demand at the Lender’s address shown on the signature page hereof: (i) the amount of each draft or other request for payment drawn under any Letter of Credit (whether drawn before or on its stated expiry date), and (ii) interest on all amounts referred to in clause (i) above from the date of such draw until payment in full at a fluctuating rate per annum at all times equal to the Default Rate; provided, however, that so long as the conditions precedent set forth in Section 2.04 and Article IV are satisfied as of the date of any draw under the Letter of Credit, the Lender will make a Revolving Credit Loan in accordance with Section 2.04 to pay any draw under a Letter of Credit.

(e) **Letter of Credit Fees.**

(i) The Borrower agrees to pay to the Lender a commission (the “Letter of Credit Commission”) upon the undrawn face amount of the Letters of Credit outstanding from time to time. The Letter of Credit Commission shall be computed at a per annum rate equal to one percent (1.0%). The Letter of Credit Commission with respect to each Letter of Credit is payable in advance on the date of issuance of such Letter of Credit and at the time of renewal of any such Letter of Credit.

(ii) The Borrower agrees to pay to the Lender all reasonable and customary charges, fees and expenses which the Lender may assess in connection with the issuance, extension, amendment or payment of any Letter of Credit in accordance with the schedule therefor then in effect, and any and all reasonable out-of-pocket expenses which the Lender may pay or incur in connection therewith.

(f) **Obligations Absolute.** The Obligations of the Borrower under this Section 2.12 shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including, without limitation, the following circumstances: (i) any lack of validity or enforceability of any Letter of Credit or any other agreement or instrument relating thereto (collectively, the “Related Documents”); (ii) any amendment or waiver of, or any consent to departure from, all or any of the Related Documents; (iii) the existence of any claim, set-off, defense or other right that the Borrower may have at any time against any beneficiary or any transferee of any Letter of Credit (or any Persons for whom any such beneficiary or

any such transferee may be acting), the Lender or any other Person, whether in connection with any Related Document, the transactions contemplated therein, or any unrelated transaction, except as set forth in clause (v) below; (iv) any draft, statement or any other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect, except as set forth in clause (v) below; (v) payment by the Lender under any Letter of Credit against presentation of a draft or certificate which does not comply with the terms of such Letter of Credit, except in the case of payment resulting from the gross negligence or willful misconduct of the Lender; or (vi) any other circumstance or event whatsoever, whether or not similar to any of the foregoing, except in the case of payment resulting from the gross negligence or willful misconduct of the Lender.

(g) **Conflicts.** The rights of the Lender against the Borrower hereunder shall be in addition to all rights under (and shall control over any conflict under) any Letter of Credit Application.

### **ARTICLE III**

#### **TAXES, ETC.**

#### **Section 3.01 Taxes.**

(a) Any and all payments by or on account of any obligation of the Borrower hereunder or under any other Loan Document shall be made free and clear of and without deduction or withholding for any Taxes except as required by applicable law. If the Borrower is required by applicable law to deduct or withhold any Taxes from such payments, then:

(i) if such Tax is an Indemnified Tax, the amount payable by the Borrower shall be increased so that after all such required deductions or withholdings are made (including deductions or withholdings applicable to additional amounts payable under this Section), the Lender receives an amount equal to the amount it would have received had no such deduction or withholding been made, and

(ii) the Borrower shall make such deductions or withholdings and timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law.

(b) Without limiting the provisions of Section 3.01(a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) The Borrower shall indemnify the Lender, within ten days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed on or attributable to amounts payable under this Section) paid or payable by the Lender, on or with respect to an amount payable by the Borrower under or in respect of this Agreement or under any other Loan Document, together with any reasonable expenses arising in connection therewith and with respect thereto, whether or not such

Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate from the Lender as to the amount of such payment or liability delivered to the Borrower shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section 3.01, the Borrower shall deliver to the Lender the original or certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the relevant return reporting such payment or other evidence of such payment reasonably satisfactory to the Lender.

(e) If the Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section, it shall pay over such refund (or the amount of any credit in lieu of refund) to the Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section with respect to the Taxes giving rise to such refund or credit in lieu of refund), net of all out-of-pocket expenses of the Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund or credit in lieu of refund); *provided that*, the Borrower, upon the request of the Lender, agrees to repay the amount paid over to the Borrower (plus any interest, penalties or other charges imposed by the relevant Governmental Authority) to the Lender in the event the Lender is required to repay such refund or credit in lieu of refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will the Lender be required to pay any amount to the Borrower pursuant to this paragraph if the payment of such amount would place the Lender in a less favorable net after-Tax position than it would have been in if the Tax subject to indemnification had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. Nothing in this paragraph (e) shall be construed to require the Lender to make available its tax returns or any other information relating to its taxes that it deems confidential to the Borrower or any other Person.

### **Section 3.02 Increased Costs; Capital Adequacy Requirements.**

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, the Lender;

(ii) subject the Lender to any Taxes (other than Indemnified Taxes) on its loans, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on the Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Eurodollar Rate Loans made by the Lender;

and the result of any of the foregoing shall be to increase the cost to the Lender of making, converting to, continuing or maintaining any Eurodollar Rate Loan or of maintaining its obligation to make any such Loan, or to reduce the amount of any sum received or receivable by the Lender hereunder (whether of principal, interest or any other amount) then, upon request of the Lender, the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender for such additional costs incurred or reduction suffered.

(b) If the Lender determines that any Change in Law affecting the Lender, or Heartland (if any), regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on the Lender's capital or on the capital of Heartland, if any, as a consequence of this Agreement, the Revolving Credit Commitment, the Term Loan Commitment or the Loans, to a level below that which the Lender or Heartland could have achieved but for such Change in Law (taking into consideration the Lender's policies and the policies of Heartland with respect to capital adequacy), then from time to time the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender or Heartland for any such reduction suffered.

(c) A certificate from the Lender setting forth the amount or amounts necessary to compensate it or its holding company, as specified in paragraph (a) or (b) of this Section and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay the Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of the Lender to demand compensation pursuant to this Section shall not constitute a waiver of the Lender's right to demand such compensation; *provided that*, the Borrower shall not be required to compensate the Lender pursuant to this Section for any increased costs incurred or reductions suffered more than 270 days prior to the date that the Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of the Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270 day period referred to above shall be extended to include the period of such retroactive effect).

## ARTICLE IV

### CONDITIONS PRECEDENT

**Section 4.01 Conditions Precedent to Initial Loans.** The obligation of the Lender to make Term Loan A and the initial Revolving Credit Loans or of the Lender to issue any Letter of Credit requested to be made by it hereunder is subject to the satisfaction or the waiver by the Lender of the following conditions precedent:



- (a) The Lender shall have received:
- (i) this Agreement, duly executed and delivered by an authorized officer of the Borrower;
  - (ii) Term Note A, the Revolving Credit Note, the Control Agreement, the Security Agreement, and the Guaranty, in each case executed and delivered by the Loan Parties party thereto;
  - (iii) results of a recent lien search in the records of (a) each of the jurisdictions where the Loan Parties are organized and the assets of the Loan Parties are located, and (b) the U.S. Patent and Trademark Office, and such searches reveal no Liens on any of the assets of the Loan Parties, except for Liens permitted under this Agreement or discharged on or prior to the Closing Date pursuant to documentation satisfactory to the Lender;
  - (iv) an Officer's Certificate, duly executed by a responsible officer of each Loan Party, in the form provided by Lender;
  - (v) one or more payoff letters, each in form and substance acceptable to the Lender in its sole and absolute discretion, executed by the Borrower and by Farmers & Merchants Bank; and
  - (vi) payment, in immediately available funds of a non-refundable origination fee in the amount of \$60,000, together with reimbursement for all expenses for which invoices have been presented (including the fees and expenses of Lender's legal counsel), on or before the Closing Date.
- (b) There shall have occurred no Material Adverse Effect since June 30, 2018.
- (c) The Lender shall have received, in form and substance satisfactory to it, a certificate of each Loan Party, certified by a secretary or assistant secretary of such Loan Party, dated the Closing Date, including:
- (i) a certificate of incorporation, of each Loan Party that is a corporation, certified by the Secretary of State of the state of its incorporation;
  - (ii) a copy of the by-laws for each Loan Party that is a corporation as in effect on the date on which the resolutions referred to below were adopted;
  - (iii) a certification of formation, of each Loan Party that is a limited liability company, certified by the Secretary of State of the state of its organization;
  - (iv) a copy of the limited liability agreement for each Loan Party that is a limited liability company as in effect on the date on which the resolutions referred to below were adopted;
  - (v) resolutions of the board of directors of each Loan Party approving the transaction and each Loan Document to which it is or is to be a party;

(vi) a certification that the names and signatures of the officers of each Loan Party authorized to sign each Loan Document to which it is or is to be a party and other documents to be delivered hereunder and thereunder are true and correct;

(vii) evidence of good standing for each Loan Party from the State of its organization and each other state where it is qualified to do business.

(d) The Lender shall have received satisfactory evidence that each document (including any Uniform Commercial Code financing statement and appropriate filings with the United States Patent and Trademark Office or United States Copyright Office) required by the Loan Documents or any Requirement of Law or reasonably requested by the Lender to be filed, registered or recorded in order to create in favor of the Lender a perfected first priority Lien on the Collateral described therein, prior and superior in right to any other Person shall have been properly filed (or provided to the Lender) or executed and delivered in each jurisdiction.

(e) The Lender or its agent shall have completed its survey of the business, operations and assets of the Borrower, and such survey shall provide the Lender with results and information which, in the Lender's determination, are satisfactory to the Lender.

(f) The Lender shall have received a Borrowing Base Certificate as of a date satisfactory to the Lender certified by a Responsible Officer of the Borrower.

(g) The Lender shall have received evidence of insurance coverage in form, scope and substance satisfactory to the Lender and otherwise in compliance with the terms of Section 5.10 and Section 6.06 of this Agreement.

**Section 4.02 Conditions Precedent to Each Loan.** The obligation of the Lender to make each Loan or to issue each Letter of Credit requested to be made by it hereunder (including, without limitation, its initial extension of credit), is subject to the satisfaction or the waiver by the Lender of the following conditions precedent:

(a) Each of the representations and warranties made by any Loan Party in or pursuant to the Loan Documents shall be true and correct on and as of such date as if made on and as of such date.

(b) No Default or Event of Default shall have occurred and be continuing on such date or after giving effect to the Loans requested to be made on such date.

Each borrowing by the Borrower hereunder shall constitute a representation and warranty by the Borrower, as of the date such Loan is made, that the conditions contained in Article IV have been satisfied.