UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): July 31, 2019 (July 29, 2019)

The Scotts Miracle-Gro Company

(Exact name of registrant as specified in its charter)

Ohio	**001-11593**	**31-1414921**
(State or other jurisdiction of incorporation or organization)	(Commission File Number)	(IRS Employer Identification No.)
14111 Scottslawn Road, Marysville, Ohio		**43041**
(Address of principal executive offices)		(Zip Code)

Registrant's telephone number, including area code: (937) 644-0011
Not applicable
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

£ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

£ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

£ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

£ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Shares	SMG	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b–2 of the Securities Exchange Act of 1934 (§240.12b of this chapter). Emerging growth company ☐

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 Section13(a) of the Exchange Act. ☐

Item 1.01. Entry into a Material Definitive Agreement.

On July 29, 2019, The Scotts Company LLC (the "Company"), a wholly-owned subsidiary of The Scotts Miracle-Gro Company ("Scotts Miracle-Gro"), and Monsanto Company ("Monsanto") entered into the following agreements:

1. Third Amended and Restated Exclusive Agency and Marketing Agreement (the "Agency Agreement");

2. Brand Extension Agreement Asset Purchase Agreement (the "BEA Asset Purchase Agreement");

3. Termination Agreement regarding the Amended and Restated Lawn and Garden Brand Extension Agreement - Americas between Monsanto and the Company (the "BEA Termination Agreement"); and

4. Termination Agreement regarding the Commercialization and Technology Agreement between Monsanto and the Company (the "Commercialization and Technology Termination Agreement").

Agency Agreement

The Agency Agreement, effective as of August 1, 2019, amends, restates and supersedes in its entirety the Second Amended and Restated Exclusive Agency and Marketing Agreement effective as of August 31, 2017 (such agreement, as it has been further amended from time to time, the "Original Agency Agreement"), which amended and restated the Amended and Restated Exclusive Agency and Marketing Agreement effective as of November 11, 1998, which amended and restated the Exclusive Agency and Market Agreement effective as of September 30, 1998, pursuant to which the Company has served since the 1999 fiscal year as Monsanto's exclusive agent for the marketing and distribution of consumer RoundUp® herbicide products (with additional rights to new products containing glyphosate or other similar non-selective herbicides) in the consumer lawn and garden market in a number of countries. Capitalized terms used in this discussion of the Agency Agreement that are not defined in this Current Report on Form 8-K will have the meaning given to those terms in the Agency Agreement.

Among other things, the Agency Agreement amends the Original Agency Agreement in the following significant respects:

Commissions. The Agency Agreement increases the amount of the commission to which the Company is entitled under the Agency Agreement for Program Years 2020 and thereafter from 50% of Program EBIT in excess of $40 million to 50% of Program EBIT. The Agency Agreement further provides that beginning in Program Year 2020 the Company will no longer be entitled to receive the special commission payable with respect to Roundup Max Control 365.

Contribution. The Agency Agreement now provides that if the Program EBIT for any Program Year is not at least $36 million the Contribution Payment to be paid by the Company for such Program Year will be reduced by an amount equal to 50% of the difference between $36 million and the Program EBIT for such Program Year. In the event that such difference between $36 million and the Program EBIT is a negative number, no Contribution Payment Adjustment shall be payable by the Company with respect to such Program Year.

Scope of Noncompetition Covenant. The Agency Agreement now provides that the Noncompetition Period will terminate after a two-year period following the Agency Agreement's termination, except that the Noncompetition Period will terminate upon (1) the effective date of termination of the Agency Agreement (i) if the Company terminates the Agency Agreement for convenience or as a result of a material breach, material fraud or material willful misconduct by Monsanto or the insolvency or bankruptcy of Monsanto; or (ii) if Monsanto terminates the Agency Agreement upon a Roundup Sale, a Change of Control of Monsanto or a Brand Decommissioning Event (except with respect to the Company as addressed below); or (2) the delivery of written notice of a Program EBIT Decline Event to the other party if the Company or Monsanto terminates the Agency Agreement as a result of a Program EBIT Decline Event. The Agency Agreement now further provides that if Monsanto terminates the Agency Agreement upon a Brand Decommissioning Event, the noncompetition obligations of the Company under the Agency Agreement will no longer apply following delivery of the notice of termination by Monsanto so long as the Company continues to support the Roundup L&G Business.

BEA Products. The Agency Agreement expands the definition of Roundup Products for which the Company is providing services under the Agency Agreement to also include any BEA Products with respect to which the Company agrees to serve as agent. The Agency Agreement now also permits the Company to terminate such services by delivery of written notice of termination to Monsanto and permits Monsanto to terminate such services if (1) the BEA Program EBIT falls below $10 million in any Program Year, (2) net sales of Rejected BEA Products during any full Program Year exceed the aggregate amount of net sales for all BEA Products included within the Roundup Products for said Program Year, or (3) the Company fails to exercise commercially reasonable efforts to promote, market and sell each BEA Product. The Agency Agreement further clarifies that the Company's noncompetition obligations do not apply to products that compete, directly or indirectly, with the BEA Products, including when the Company is providing BEA Services, so long as such products do not otherwise directly compete with non-selective herbicide Roundup Products.

Termination. The Agency Agreement expands the Company's termination rights by authorizing the Company to terminate the Agency Agreement (1) for any reason effective as of September 30, 2022 by delivering written notice of termination to Monsanto on January 15, 2021 or (2) upon the insolvency or bankruptcy of Monsanto. The Agency Agreement also replaces the Company's Brand Decline Event termination right with a Program EBIT Decline Event termination right pursuant to which either Monsanto or the Company may terminate the Agency Agreement if Program EBIT is less than $50 million in any Program Year. No termination fee would be payable if either the Company or Monsanto terminates the Agency Agreement as a result of a Program EBIT Decline Event. Monsanto may also terminate the Agency Agreement if it decommissions the use of all or substantially all of the Industrial Property and Roundup Regulatory Property in the Lawn and Garden Market (a "Brand Decommissioning Event"). The Company's right to receive commissions and its obligation to make an annual contribution payment to Monsanto would automatically terminate upon the occurrence of a Brand Decommissioning Event.

Termination Fee. The Agency Agreement restates the termination fee structure to provide for the following termination fees, only one of which will be payable in connection with the termination of the Agency Agreement: (1) if the Company terminates the Agency Agreement for any reason effective as of September 30, 2022 by delivering written notice of termination to Monsanto on January 15, 2021, Monsanto will pay the Company $175 million; (2) upon a Brand Decommissioning Event, Monsanto will pay the Company $375 million; and (3) if Monsanto or its successor terminates the Agency Agreement as a result of a Roundup Sale or a Change of Control of Monsanto or if the Company terminates the Agency Agreement as a result of a material breach, material fraud or material willful misconduct by Monsanto, Monsanto will pay the Company the greater of (a) $175 million or (b) four times an amount equal to (i) the average of the Program EBIT for the three Program Years before the year of termination, minus (ii) $186.4 million.

Assignment. The Agency Agreement only authorizes the Company to assign the Agency Agreement to a non-affiliate if Monsanto determines in its reasonable commercial opinion that the assignee has sufficient experience in the consumer products industry or products sold for the lawn and garden uses industry and sufficient capitalization to satisfy the Company's obligations under the Agency Agreement.

The foregoing description of the Agency Agreement does not purport to be complete and is subject to and qualified in its entirety by reference to the full text of the Agency Agreement, which is attached hereto as Exhibit 10.2 and incorporated herein by reference.

BEA Asset Purchase Agreement

The BEA Asset Purchase Agreement provides for the sale by the Company to Monsanto of specified assets related to the business (the "Business") of the development, manufacture, production, advertising, marketing, promotion, distribution, importation, exportation, offer for sale and sale of specified products, including the Roundup for Lawns Bug Destroyer, Roundup for Lawns Crabgrass Destroyer, Roundup for Lawns Weed Preventer, Roundup for Lawns RTU Northern, Roundup for Lawns - Concentrate Northern, Roundup for Lawns - RTU Southern and Roundup for Lawns - Concentrate Southern (the "Brand Extension Products"). The purchased assets include certain intellectual property, inventory, books and records, specified contracts and advertising, marketing, promotional and sales materials relating to the Brand Extension Products. The BEA Asset Purchase Agreement also provides for the termination of the licenses granted pursuant to the Amended and Restated Lawn and Garden Brand Extension Agreement - Americas, dated August 31, 2017, between Monsanto and the Company (the "Brand Extension Agreement") and the assumption by Monsanto of the rights of the Company under the Brand Extension Agreement, each in accordance with the terms and conditions of the BEA Termination Agreement.

The consideration to be paid by Monsanto is equal to the sum of $112 million plus the value of the finished goods inventory included in the purchased assets. In addition, Monsanto agreed to assume certain obligations of the Company related to the Brand Extension Products with respect to periods subsequent to the Closing. The Company will remain liable for all liabilities and obligations related to the Business and the Brand Extension Products that are not expressly assumed by Monsanto under the BEA Asset Purchase Agreement.

The BEA Asset Purchase Agreement contains customary representations, warranties, covenants and indemnities. The closing of the transactions contemplated by the BEA Asset Purchase Agreement is subject to the (1) execution and delivery of specified ancillary agreements, documents and instruments and (2) the absence of any order, decree or ruling permanently restraining, enjoining or otherwise prohibiting such transactions or any pending governmental proceeding against either party to enjoin or prevent such transactions. Subject to satisfaction of these conditions, the transactions under the BEA Asset Purchase Agreement are expected to close on August 1, 2019.

The foregoing description of the BEA Asset Purchase Agreement does not purport to be complete and is subject to and qualified in its entirety by reference to the full text of the BEA Asset Purchase Agreement, which is attached hereto as Exhibit 10.4 and incorporated herein by reference.

Item 1.02. Termination of a Material Definitive Agreement.

BEA Termination Agreement

In connection with the entry into the BEA Asset Purchase Agreement and the transactions contemplated therein, the Company and Monsanto entered into the BEA Termination Agreement, which terminates, effective as of August 1, 2019, the Brand Extension Agreement. The Brand Extension Agreement provides the Company a worldwide, exclusive license to use the RoundUp® brand on additional products offered by the Company within the residential lawn and garden field.

The foregoing description of the BEA Termination Agreement does not purport to be complete and is subject to and qualified in its entirety by reference to the full text of the BEA Termination Agreement, which is attached hereto as Exhibit 10.5 and incorporated herein by reference.

Commercialization and Technology Termination Agreement

The Commercialization and Technology Termination Agreement terminates, effective as of August 1, 2019, the Commercialization and Technology Agreement, dated May 15, 2015, between the Company and Monsanto. The Commercialization and Technology Agreement provides for a cooperative effort between the Company and Monsanto to further develop and commercialize new products and new technology developed at Monsanto, intended for introduction into the residential lawn and garden field.

The foregoing description of the Commercialization and Technology Termination Agreement does not purport to be complete and is subject to and qualified in its entirety by reference to the full text of the Commercialization and Technology Termination Agreement, which is attached hereto as Exhibit 10.7 and incorporated herein by reference.

Item 2.02. Results of Operations and Financial Condition.

On July 31, 2019, Scotts Miracle-Gro issued a news release reporting information regarding its financial results for the three and nine months ended June 29, 2019 and its financial condition as of June 29, 2019. The news release is furnished herewith as Exhibit 99.1 to this Current Report on Form 8-K and incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(a) Financial statements of businesses acquired:

Not applicable.

(b) Pro forma financial information:

Not applicable.

(c) Shell company transactions:

Not applicable.

(d) Exhibits:

Exhibit No.	Description
10.1	Second Amended and Restated Exclusive Agency and Marketing Agreement, dated as of August 31, 2017, by and between the Company and Monsanto (incorporated herein by reference to Scotts Miracle-Gro's Annual Report on Form 10-K for the fiscal year ended September 30, 2017 [Exhibit 10.14(a)]).
10.2	Third Amended and Restated Exclusive Agency and Marketing Agreement, entered into on July 29, 2019 and effective as of August 1, 2019, by and between the Company and Monsanto.
10.3	Amended and Restated Lawn and Garden Brand Extension Agreement - Americas, dated as of August 31, 2017, by and between the Company and Monsanto (incorporated herein by reference to Scotts Miracle-Gro's Annual Report on Form 10-K for the fiscal year ended September 30, 2017 [Exhibit 10.14(b)]).
10.4	Brand Extension Agreement Asset Purchase Agreement, entered into on July 29, 2019 and effective as of August 1, 2019, by and between the Company and Monsanto.
10.5	Termination Agreement regarding the Amended and Restated Lawn and Garden Brand Extension Agreement - Americas, entered into on July 29, 2019 and effective as of August 1, 2019, by and between the Company and Monsanto.
10.6	Commercialization and Technology Agreement, dated as of May 5, 2015, by and between the Company and Monsanto (incorporated herein by reference to Scotts Miracle-Gro's Current Report on Form 8-K/A filed on May 20, 2015 [Exhibit 10.4]).
10.7	Termination Agreement regarding the Commercialization and Technology Agreement, entered into on July 29, 2019 and effective as of August 1, 2019, by and between the Company and Monsanto.
99.1	News release issued by The Scotts Miracle-Gro Company on July 31, 2019

SIGNATURE

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 hereunto duly authorized.

THE SCOTTS MIRACLE-GRO COMPANY

Dated: July 31, 2019

By: /s/ THOMAS RANDAL COLEMAN

Printed Name: Thomas Randal Coleman

Title: Executive Vice President and Chief Financial Officer

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Current Report on Form 8-K
Dated July 31, 2019
The Scotts Miracle-Gro Company

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EXHIBIT 10.2

EXECUTION VERSION

THIRD AMENDED AND RESTATED EXCLUSIVE AGENCY AND MARKETING AGREEMENT

by and between

MONSANTO COMPANY

and

THE SCOTTS COMPANY LLC

Effective as of September 30, 1998
Last Amended and Restated as of August 1, 2019

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LIST OF SCHEDULES

THIRD AMENDED AND RESTATED
EXCLUSIVE AGENCY AND
MARKETING AGREEMENT

This THIRD AMENDED AND RESTATED EXCLUSIVE AGENCY AND MARKETING AGREEMENT (this "Agreement") is entered into by and between Monsanto Company, a Delaware corporation ("Monsanto"), and The Scotts Company LLC, an Ohio limited liability company (f/k/a The Scotts Company, an Ohio corporation) (the "Agent"), to be effective on August 1, 2019 (the "Third Amendment Date") to amend, restate and supersede in its entirety the Second Amended and Restated Exclusive Agency Marketing Agreement, dated August 31, 2017, and all other agreements addressed by or incorporated into this Agreement, dated as of September 30, 1998, as amended and restated as of November 11, 1998, and as amended and/or restated from time to time (collectively, the "Original Agreement"), with respect to the countries and territories described in this Agreement. Monsanto and the Agent are sometimes referred to herein as the "parties."

WITNESSETH:

WHEREAS, Monsanto is engaged in the research, development, and commercialization of certain agricultural products;

WHEREAS, Monsanto has developed and sells Roundup Products (as defined below) and is the exclusive owner of all rights, patents, licenses, and trademarks associated therewith, and possesses the knowledge, know-how, technical information, and expertise regarding the process and manufacture of Roundup Products;

WHEREAS, the Agent has certain expertise in the promotion, distribution, marketing, and sale of home and garden products;

WHEREAS, Monsanto does not currently possess, nor desire to establish, a distribution system for Roundup Products;

WHEREAS, the Agent's distribution system is well-suited for the promotion, distribution, marketing, and sale of Roundup Products; and

WHEREAS, Monsanto desires that the Agent serve as Monsanto's exclusive agent for the marketing and distribution of Roundup Products, and the Agent desires to so serve, all on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the terms and provisions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1 - DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.1 ***Definitions.*** As used herein, the following terms shall have the meanings ascribed to them below:

"365 Gross Profits" shall mean the aggregate amount of all invoice sales of Roundup 365 less reasonable amounts for product returns and credits, trade allowances, Cost of Goods Sold applicable to Roundup 365 and 365 Distribution Costs of Roundup 365.

"365 Distribution Costs" shall mean the aggregate costs for freight in, freight out, warehousing and distribution administration of Roundup 365.

"Activated Included Markets" means those Included Markets that are currently being serviced by the Agent, which are listed on Schedule 1.1(a); provided, that the Activated Included Markets may be modified from time to time pursuant to Section 2.5.

"Additional Roundup Products" shall have the meaning set forth in Section 6.11(a).

"Additional Roundup Products Formulation Data" shall have the meaning set forth in Section 6.11(a).

"Additional Roundup Products Trade Dress" shall have the meaning set forth in Section 6.11(l).

"Additional Roundup Products Trademarks" shall have the meaning set forth in Section 6.11(f).

"Additional Roundup Products Trademarks License" shall have the meaning set forth in Section 6.11(g).

"Affiliate" of a person or entity shall mean: (i) any other person or entity directly, or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person or entity, (ii) any officer, director, partner, member, or direct or indirect beneficial owner of any 10% or greater of the equity or voting interests of such person or entity, or (iii) any other person or entity for which a person or entity described in clause (ii) acts in such capacity.

"Ag Competitor" means any company developing, manufacturing, selling, marketing and/or distributing agricultural herbicides with net sales of agricultural herbicides in excess of Three Billion Dollars ($3,000,000,000) including, without limitation, Syngenta AG, BASF SE and Corteva, Inc. (or any Affiliate of any of such entities and its and their successors and assigns).

"Ag Market" means professionals (which, for the avoidance of doubt, includes farmers) who purchase and use Roundup Ag Products for agricultural, professional and industrial uses.

"Agent" shall have the meaning set forth in the preamble to this Agreement.

"Agent Elected BEA Agent Termination Date" shall have the meaning set forth in Section 6.20(d).

"Agent Proposed Product" shall have the meaning set forth in Section 6.10(b).

"Annual Business Plan" shall have the meaning set forth in Section 2.2(a)(12) hereof.

"Approved Expense" shall have the meaning set forth in Section 3.3(a) hereof.

"Allocated" means allocated pursuant to the Allocation Rules set forth in Schedule 3.3(c) hereof.

"Allocated Expense" shall have the meaning set forth in Section 3.3(c).

"BEA Agent Services" shall have the meaning set forth in Section 6.20(a).

"BEA Products" shall have the meaning set forth in Section 6.20(a).

"BEA Program EBIT" shall have the meaning set forth in Section 6.20(e).

"Brand Decommissioning Event" shall have the meaning set forth in Section 10.9.

"Brand Decommissioning Termination Fee" shall have the meaning set forth in Section 10.4(c)(2).

"Budget" shall have the meaning set forth in Section 3.3(a) hereof.

"Business Units" shall have the meaning set forth in Section 4.3(a).

"Change of Control" means, with respect to a Person, (i) the acquisition after the date hereof by any individual (or group of individuals acting in concert), corporation, company, association, joint venture or other entity, of beneficial ownership of 50% or more of the voting securities of such Person; (ii) the consummation by such Person of a reorganization, merger or consolidation, or exchange of shares or sale or other disposition of all or substantially all of the assets of such Person, if immediately after giving effect to such transaction the individuals or entities who beneficially own voting securities immediately prior to such transaction beneficially own in the aggregate less than 50% of such voting securities immediately following such transaction; or (iii) the consummation by such Person of the sale or other disposition of all or substantially all of the assets of such Person other than to an Affiliate of such Person; provided, that with respect to Monsanto, in the case of clauses (i) and (ii), Bayer AG is not the ultimate beneficial owner of at least 50% of the voting securities of such Person following such transaction.

"Commission" shall have the meaning set forth in Section 3.6(a) hereof.

"Commission Statement" means, for any given Program Year, the statement prepared by the Agent on behalf of Monsanto pursuant to Section 3.6(c) detailing Program EBIT and the amount of the Commission for such Program Year.

"Contribution Payment" shall have the meaning set forth in Section 3.5 hereof.

"Contribution Payment Adjustment" shall have the meaning set forth in Section 3.5 hereof.

"Convenience Termination Fee" shall have the meaning set forth in Section 10.4(c)(1).

"Convenience Termination Notice" shall have the meaning set forth in Section 10.5(c).

"Cost of Goods Sold" means, for any given Program Year, the aggregate cost, as determined in accordance with GAAP applied on a consistent basis, of Roundup Products sold for such Program Year; provided, however, in computing this amount, the cost of Glyphosate, which is a component of this Cost of Goods Sold, shall equal the amount set forth in the Transfer Price, for such Program Year.

"Customers" means, with respect to the Activated Included Markets, any Lawn and Garden Channel purchaser of Roundup Products for resale to the Lawn and Garden Market.

"EDI" means electronic data interchange.

"Effective Date" means September 30, 1998.

"Event of Default" shall have the meaning set forth in Section 10.4(b) hereof.

"Excluded Markets" means (i) any country subject to a comprehensive U.S. trade embargo; (ii) countries subject to other relevant embargos and trade restrictions to the extent that such relevant embargos and trade restrictions would materially adversely impact either party's ability to fulfill such party's duties and obligations under this Agreement; (iii) each other country expressly excluded from Included Markets and (iv) the Excluded Specified Markets. The Excluded Markets may be modified from time to time pursuant to Section 2.5.

"Excluded Specified Markets" means every country, other than Israel and China, throughout the continents of Europe, Africa, Asia, Australia and Antarctica.

"Exclusive Mexican Businesses" shall have the meaning set forth in the definition of "Lawn and Garden Channels."

"Expense(s)" shall mean any expense or cost, direct or Allocated, incurred by either party in connection with the Roundup L&G Business, including (i) general, marketing, administrative and technical costs or expenses which shall include (a) the Allocated portion of the salary and bonus of the members of the Global Support Team to the extent such members are working on matters related to the Roundup L&G Business and (b) the Allocated portion of the salary and bonus of the employees of Agent's Business Units to the extent such employees are working on matters related to the Roundup L&G Business, (ii) service costs directly related to the Roundup L&G Business and (iii) any capital expenses approved by the Steering Committee.

"FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C.A. §135, et seq., as amended.

"Formulation Agreement" means that certain Amended and Restated Formulation Agreement, dated as of February 24, 2012, by and between Monsanto and the Agent, as may be amended and/or restated from time to time, for the manufacture and packaging by the Agent of Roundup Products solely for North America.

"GAAP" means generally accepted accounting principles as applied as of the Effective Date, as referred to in paragraphs 10 and 11 of the American Institute of Certified Public Accountants Statement on Auditing Standards No. 69.

"Global Support Team" shall have the meaning set forth in Section 4.4(a) hereof.

"Glyphosate" means N-phosphonomethylglycine in any form, including, but not limited to its acids, esters, and salts.

"Included Markets" means every country throughout the North American continent, South American continent, the Caribbean, Israel and China, other than the Excluded Markets; provided, that the Included Markets may be modified from time to time pursuant to Section 2.5.

"Income Taxes" means federal, state, local, or foreign taxes imposed on net income or profits; provided, however, such term shall not include any "sales or use" or "ad valorem" taxes (as such terms are customarily used) imposed on or resulting from the sale of Roundup Products.

"Industrial Property" shall have the meaning set forth in Section 6.14(a) hereof.

"Insolvency" of a Person means (a) that such Person (i) is generally not paying its debts as they become due, or admits in writing its inability to pay its debts generally, or makes a general assignment for the benefit of creditors or institutes any proceeding or voluntary case seeking to adjudicate it as bankrupt or insolvent or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief or protection of debtors, or seeks the entry of any order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property, or (ii) takes any action to authorize any of the actions described in the foregoing clause (i); (b) that any proceeding is instituted against such Person seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief or protection of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property, and, as to any such proceeding, if being contested by such Person in good faith, such proceedings remain undismissed or unstayed for a period of sixty (60) days; or (c) the consummation by such Person of a plan of complete liquidation or dissolution of such Person.

"Lawn and Garden Channels" include: (i) retail outlets primarily serving the Lawn and Garden Market; (ii) independent nurseries and hardware co-ops; (iii) home centers (like Home Depot or Lowes); (iv) mass merchants (like Wal-Mart or K-Mart); (v) membership/warehouse clubs serving the Lawn and Garden Market; (vi) other current or future channels of trade generally accepted and practiced as Lawn and Garden channels in the industry as may be determined from time to time by the Steering Committee; and (vii) in Mexico, the following sales channels are deemed to be exclusively within the Lawn and Garden Channels: Wal-Mart, Grupo Chedraui, COSTCO, City Club, Soriana, HEB, Home Depot and Lowes (the entities described in this clause (vii), the "Exclusive Mexican Businesses").

"Lawn and Garden Market" means non-professionals who purchase and use Roundup Products for Lawn and Garden Uses.

"Lawn and Garden Use" means (a) Residential Use as defined in 40 C.F.R. 152.3(u), and (b) any use for which a pesticide can be registered for use under FIFRA or other statutes, rules and regulations throughout the Included Markets in connection with vegetation control in, on or around homes, residential lawns, and residential gardens.

"Laws" shall mean, with respect to any country, such country's statutes, regulations, rules, ordinances, or all other applicable laws.

"Legacy Termination Fee" shall have the meaning set forth in Section 10.4(c)(3).

"MM" means after each number million in U.S. Dollars.

"Material Breach" shall mean:

(a) as to the Agent, a breach of this Agreement, which, as initially determined by Monsanto, with the written agreement of the Agent, or as determined by the Arbitrators pursuant to Section 10.4(g) of this Agreement: (i) is material; (ii) has not been cured within ninety (90) days after written notice thereof has been provided to Agent in accordance with Section 11.9 hereof; and (iii) is not remediable either by the payment of damages by Agent to Monsanto or by a decree of specific performance issued against Agent.

(b) as to Monsanto, a breach of this Agreement, which, as initially determined by Agent, with the written agreement of Monsanto, or as determined by the Arbitrators pursuant to Section 10.4(g) of this Agreement: (i) is material; (ii) has not been cured within ninety (90) days after written notice thereof has been provided to Monsanto in accordance with Section 11.9 hereof; and (iii) is not remediable either by the payment of damages by Monsanto to Agent or by a decree of specific performance issued against Monsanto.

"Material Fraud" shall mean:

(a) as to Agent, one or more fraudulent acts or omissions committed by Agent or its officers or employees, which, as initially determined by Monsanto, with the written agreement of the Agent, or as determined by the Arbitrators pursuant to Section 10.4(g) of this Agreement: (i) is material; (ii) was engaged in with the intent to deceive Monsanto; and (iii) either a) has not been cured within ninety (90) days after written notice thereof has been provided to Agent in accordance with Section 11.9 hereof, or b) cannot be cured in the commercially reasonable opinion of Monsanto, and, if applicable, the Arbitrators.

(b) as to Monsanto, one or more fraudulent acts or omissions committed by Monsanto or its officers or employees, which, as initially determined by Agent, with the written agreement of Monsanto, or as determined by the Arbitrators pursuant to Section 10.4(g) of this Agreement: (i) is material; (ii) was engaged in with the intent to deceive Agent; and (iii) either a) has not been cured within ninety (90) days after written notice thereof has been provided to Monsanto

in accordance with Section 11.9 hereof, or b) cannot be cured in the commercially reasonable opinion of Agent, and, if applicable, the Arbitrators.

"Material Willful Misconduct" shall mean:

(a) as to Agent, one or more acts or omissions committed by Agent or its officers or employees, which, as initially determined by Monsanto, with the written agreement of the Agent, or as determined by the Arbitrators pursuant to Section 10.4(g) of this Agreement: (i) is material; (ii) constitutes willful misconduct; and (iii) either a) has not been cured within ninety (90) days after written notice thereof has been provided to Agent in accordance with Section 11.9 hereof, or b) cannot be cured in the commercially reasonable opinion of Monsanto, and, if applicable, the Arbitrators.

(b) as to Monsanto, one or more acts or omissions committed by Monsanto or its officers or employees, which, as initially determined by Agent, with the written agreement of Monsanto, or as determined by the Arbitrators pursuant to Section 10.4(g) of this Agreement: (i) is material; (ii) constitutes willful misconduct; and (iii) either a) has not been cured within ninety (90) days after written notice thereof has been provided to Monsanto in accordance with Section 11.9 hereof, or b) cannot be cured in the commercially reasonable opinion of Agent, and, if applicable, the Arbitrators.

"Mexican Roundup Ag Products" shall mean Roundup Ag Products in the Ag Market in Mexico marketed under the brand names "Faena," "Faena Fuerte 360," "Rival" and "Roundup" (or any variation thereof) as well as any new Roundup Ag Products of any SKU size that are not labeled for the Lawn and Garden Market and are not ready-to-use products that Monsanto may, in its sole discretion, introduce into the Ag Market in Mexico.

"Monsanto" means Monsanto Company, a Delaware corporation.

"Monsanto CRC" shall have the meaning set forth in Section 5.1(c).

"Monsanto Elected BEA Agent Termination Date" shall have the meaning set forth in Section 6.20(e).

"Monsanto Products" shall have the meaning set forth in Section 9.1(a)(2).

"Netbacks" means the expenses related to the Roundup L&G Business specified as such in Schedule 3.3(c).

"New Product" shall have the meaning set forth in Section 6.10(a) hereof.

"North America" means the United States of America, Puerto Rico, Canada and Mexico.

"North America Territories" means the United States of America, Puerto Rico, Canada, Mexico and the Caribbean countries.

"Other Included Markets" means any Included Market other than the North America Territories.

"Person" means an individual, partnership, limited liability company, joint venture, association, corporation, trust, or any other legal entity.

"Prime Rate" means, on any given date, the prime rate as published in the Wall Street Journal, for such date or, if not published therein, in another publication having national distribution.

"Product Information and Rights" shall mean the registration, required registration data, information regarding formulation and/or manufacturing and/or any rights to applicable intellectual property, including but not limited to any such intellectual property used in or necessary for the manufacture, use, sale, offer for sale, importation, or other exploitation of such products.

"Product Offer" shall have the meaning set forth in Section 6.10(a) hereof.

"Program EBIT" means, for any given Program Year, the amount of Program Sales Revenues for such Program year, *less* the amount of Program Expenses for such Program Year.

"Program Expenses" means, for any given Program Year, applied on a consistent basis and in accordance with GAAP and the terms of this Agreement, the *sum* (without duplication) of (i) the aggregate Approved Expenses for such Program Year and (ii) the Cost of Goods Sold for such Program Year.

"Program Sales Revenue" means, for any given Program Year, applied on a consistent basis and in accordance with GAAP, all revenues received or accrued by any party hereto from the sale of Roundup Products, less reasonable amounts for returns and credits, consistent with past practice.

"Program Year" means the period of time beginning on October 1st of a specific calendar year and ending on September 30th of the immediately following calendar year, or such shorter period if a particular Program Year starts or ends in the middle of such Program Year.

"Quarter" means any consecutive three-month period of a calendar year.

"Restricted Party" shall have the meaning as set forth in Section 2.7(f) hereof.

"Roundup 365" means non-selective residual weed and grass killer to be sold under the name Roundup Max Control 365.

"Roundup L&G Business" means the marketing, sale, and distribution of Roundup Products through Lawn and Garden Channels to the Lawn and Garden Market for Lawn and Garden Uses.

"Roundup Offering Materials" means any and all written descriptions of, solicitations or proposals with respect to or any information delivered in connection with, in each case, a potential Roundup Sale that are provided by Monsanto to any third party, or finalized for provision to a third party, for their evaluation of participation in a potential Roundup Sale, including, without limitation,

relevant historical financial information and projections, along with a written summary of any additional information supplied orally by Monsanto to such third parties.

"Roundup P&L" shall have the meaning set forth in Section 3.1(a).

"Roundup Products" means (i) for each of the specific countries part of the Activated Included Markets the products registered for sale solely for Lawn and Garden Uses under a primary or alternate brand now containing the Roundup trademarks as listed on Schedule 1.1(b) attached hereto in the specific container sizes and formulations described thereon, it being understood that any change of container size or formulation in any given country part of the Activated Included Markets shall require the approval of the Steering Committee, (ii) such products as may be added from time to time by mutual agreement of the parties in accordance with the terms of this Agreement and (iii) any Additional Roundup Products, to the extent provided for by Section 6.11.

"Roundup Quiet Period" shall have the meaning set forth in Section 10.6(a)(iii)(A).

"Roundup Records" shall have the meaning as set forth in Section 3.1(a).

"Roundup Regulatory Property" shall have the meaning set forth in Section 11.4.

"Roundup Sale" means (i) any sale, transfer, assignment or other disposition of all or substantially all of the assets or capital stock of the Roundup L&G Business or (ii) the license of all or substantially all of the Industrial Property, in each case, to the extent related to the Included Markets, to a Person other than Bayer AG or any Affiliate of Bayer AG.

"Roundup Sale Notice" shall have the meaning set forth in Section 10.6(a)(i).

"Roundup Sale Notice Trigger" shall have the meaning set forth in Section 10.6(a)(i).

"Roundup Superior Offer" means a bona fide written offer with respect to a Roundup Sale, which the board of directors of Monsanto (or its authorized delegates) determines (i) is more favorable, taking into account all relevant legal, financial and regulatory aspects, to Monsanto's stockholders than the transactions contemplated by the most recent proposal made by the Agent with respect to a Roundup Sale, taking into account the contents of all information and documentation delivered in connection with such proposal; provided, that, in determining whether the price terms of such bona fide written offer are more favorable, the board of directors of Monsanto (or its authorized delegates) may not discount the Agent's most recent proposal as a result of the fact that the Legacy Termination Fee is an offset or credit against the total purchase price; (ii) the failure of the board of directors of Monsanto (or its authorized delegates) to approve or recommend such offer would be inconsistent with its fiduciary duties under applicable law; (iii) the financing for which is fully committed or reasonably likely to be obtained; and (iv) is reasonably expected to be consummated on a timely basis.

"Scotts Miracle-Gro" means The Scotts Miracle-Gro Company, an Ohio corporation and the parent of the Agent.

"Scotts Miracle-Gro Sale" means (a) any Change of Control of (i) Scotts Miracle-Gro, (ii) the Agent, or (iii) any entity directly or indirectly controlling the Agent or any other Affiliate of the Agent to whom this Agreement may be transferred pursuant to Section 11.8 of this Agreement (Scotts Miracle-Gro or any such other entity, the "SMG Target"), or (b) the assignment of this Agreement pursuant to Section 11.8(b)(4) of this Agreement.

"Significant Deviation" shall have the meaning set forth in Section 4.3(b)(v).

"SMG Target" shall have the meaning set forth in the definition of Scotts Miracle-Gro Sale.

"Specified Agreements" means the agreements, documents and instruments entered into contemporaneously with the execution of this Agreement on the Third Amendment Date, including, without limitation (i) that certain Termination Agreement (regarding the Brand Extension Agreement) by and between the Agent and Monsanto; (ii) that certain Termination Agreement (regarding the Commercialization and Technology Termination Agreement) by and between the Agent and Monsanto; (iii) that certain BEA Asset Purchase Agreement by and between the Agent and Monsanto; and (iv) all other agreements, documents and instruments contemplated by each of the foregoing.

"Steering Committee" shall have the meaning set forth in Section 4.2(a).

"Termination Fee" shall have the meaning set forth in Section 10.4(c).

"Third Amendment Date" shall have the meaning set forth in the recitals to this Agreement.

"Third-Party Indemnity" shall have the meaning set forth in Section 9.1(a)(4).

"Transfer Price" equals, for any given Program Year, $6.28 per kg ($2.85 per pound) of Glyphosate based on a 100% Glyphosate acid equivalent basis (which equals $1.31 per pound of 62% Glyphosate active ingredient (in the form of its isopropylamine salt)). Either party may initiate a review of the Transfer Price and upon such initiation, the parties will negotiate in good faith to reach a mutually agreeable adjusted Transfer Price (the "Adjusted Transfer Price"). The Adjusted Transfer Price shall be the Transfer Price for the three full Program Years following the date that the Adjusted Transfer Price is determined (the "Fixed Period") and the Transfer Price shall not be subject to review or adjustment during the Fixed Period. In the course of negotiations to determine the Adjusted Transfer Price, the parties will factor in, without limitation, the acquisition of Glyphosate acid sourced from China, the related ocean freight, export and import costs (including, without limitation, clearing costs, port fees, duties and taxes), inland freight costs and insurance, amination costs, broker fees, administration expenses and premium reflecting Monsanto's quality, reliability and MUP regulatory support, etc.

"Unactivated Included Markets" shall have the meaning set forth in Section 2.5(b).

"USEPA" means the United States Environmental Protection Agency.

Section 1.2 ***Rules of Construction and Interpretation.***

(a) *Section References*. When a reference is made in this Agreement to an Article, Section, Paragraph, Exhibit or Schedule such reference shall be to an Article, Section or Paragraph of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated. Unless otherwise indicated, the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole, and not to any particular Article, Section, Paragraph or clause in this Agreement.

(b) *Construction*. Unless the context of this Agreement clearly requires otherwise: (i) references to the plural include the singular and *vice versa*, (ii) "including" is not limiting and (iii) "or" has the inclusive meaning represented by the phrase "and/or."

(c) *Headings*. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(d) *No Interpretation against Author*. For purposes of contract interpretation the parties to this Agreement agree they are joint authors and draftspersons of this Agreement.

(e) *Conflicts with related Documents*. The parties contemplate that various forms, including forms for submitting purchase orders, acceptance of orders, shipping and transportation, will be used in carrying out this Agreement. In the event of conflict between any such forms or other documents of like import and this Agreement, the provisions of this Agreement shall be controlling.

ARTICLE 2 - EXCLUSIVE AGENCY AND DISTRIBUTORSHIP

Section 2.1 ***Appointment of the Exclusive Agent.*** Subject to the terms and conditions hereof, Monsanto hereby appoints and agrees to use the Agent, and the Agent hereby agrees to serve, as Monsanto's exclusive agent in the Lawn and Garden Market, commencing on the Effective Date, to provide certain services in connection with Monsanto's marketing, sales, and distribution of Roundup Products to Customers. Except as otherwise provided in this Agreement, commencing on the Effective Date, Monsanto shall exclusively use the Agent for the performance of all of the services contemplated by this Agreement.

Section 2.2 ***The Agent's Obligations and Standards.***

(a) *Services to be Performed by the Agent*. The Agent shall perform some or all of the following duties and obligations within the parameters and to the extent required to implement the Annual Business Plan approved by the Steering Committee:

(1) **Sales**. Pursuant to the Annual Business Plan, the Agent shall perform selling, sales management, and other services related to the sale of Roundup Products.

(2) **Merchandising and In-Facility Services**. The Agent shall perform in-store merchandising, store set-up, and other services related to the in-store promotion of Roundup Products.

(3) **Warehousing and Inventory**.

(i) Warehousing. The Agent shall arrange for warehouse services for all Roundup Products until such time as the products are delivered to proper carriers. The Agent agrees to comply with all applicable environmental rules and regulations in owning or operating any warehouse.

(ii) Inventory. The Agent shall be responsible for:

- coordinating and staffing annual physical inventory for all Roundup Products (including raw materials, packaging- when the Agent shall formulate under the Formulation Agreement- and finished goods). Physical inventories shall be conducted by September 30 of every calendar year and Monsanto shall have the right to request physical counts on specific product at any time upon reasonable request (which shall be at Monsanto's cost if there are more than two such counts in any Program Year) and to observe or conduct physical counts with Monsanto's representatives;

- reconciling the physical inventory to perpetual records;

- physically moving the Roundup Products out of the warehouse by following a First In, First Out ("FIFO") policy; and

- arranging for warehousing of adequate inventory levels of Roundup Products in sufficient quantities to satisfy the criteria set forth in the Annual Business Plan.

(4) **Order and General Administration**. The Agent shall have the authority and shall so perform all order taking, order processing, invoicing, collection, reconciliation, general administration, and other related services necessary for the marketing, sales, and distribution of Roundup Products, all of which shall be subject to the Annual Business Plan and the terms of this Agreement. Pursuant to the terms of this Agreement, the Agent shall be responsible for the following obligations:

(i) The Agent shall offer to the Customers Roundup Products at such price and under such terms as set forth in the Annual Business Plan or as otherwise established by the Steering Committee.

(ii) The Agent shall accept orders for the sale of Roundup Products; provided, however, the Agent shall accept all such orders subject to the availability of Roundup Products on the requested delivery dates.

(iii) The Agent shall administer all claims and adjustments for Roundup Products which are damaged during shipment or warehousing.

(iv) Subject to Section 5.1, the Agent shall (A) maintain or contract for adequate facilities and technologies to manage consumer information and complaint calls or written correspondence and (B) be responsible for all reports relating thereto, including (without limitation) reports to any regulatory or governmental authority pursuant to any applicable Law.

(5) **Returns of Roundup Products**. The Agent shall manage requests by Customers that Roundup Products, previously sold or shipped, should be returned for credit, either because such Roundup Products are defective or for some other reason. The Agent shall receive any such returned Roundup Products into its warehouses and prepare the appropriate credit memos, subject to the joint approval of the Business Unit and the Global Support Team for any return exceeding $500,000.

(6) **Information on Roundup Products and Consumer Inquiries**. The Agent shall provide Customers or potential customers with detailed information concerning the characteristics, uses and availability of Roundup Products as shall be supplied by the Global Support Team.

(7) **Promotion of Roundup Products**. Continuously throughout the term of this Agreement, the Agent shall promote the sale of Roundup Products in a commercially reasonable manner generally consistent with other products or product lines, of similar volume or having similar margins (as compared to the overall Roundup P&L margins), of the Agent.

(8) **Advertising and Promotional Programs to Customers**. The Agent shall provide Customers with detailed information concerning the advertising and promotional programs of Roundup Products and facilitate the use by its Customers of such programs to the fullest extent possible (as set forth in the Annual Business Plan).

(9) **Roundup Brand Image and Stewardship**. The Agent, in consultation with the Global Support Team, shall promote, in accordance with the Annual Business Plan or as directed by the Steering Committee, the sales and consumer acceptance of Roundup Products using messages and vehicles that are not inconsistent with the brand image established by Monsanto's Ag division in support of its Roundup branded products and seeds, including but not limited to:

(i) Advertising in local and national media, subject to the approval of Monsanto;

(ii) Providing suitable training of the Agent's representatives or employees in the areas of product knowledge, product stewardship, sales training, display techniques, promotion and advertising;

(iii) Determining the description of consumer and trade communication programs to Customers regarding the sales and distribution of Roundup Products; and

(iv) The handling of product complaints with the intent of achieving consumer satisfaction and shall provide prompt notification to Monsanto of any significant complaints or significant number of similar complaints.

(10) **Retail Relationships**. The Agent shall maintain retail relationships between the Agent and the Customers, including relationships at headquarters and regional stores.

(11) **Merchandising and Display Techniques**. The Agent shall provide Customers with full information concerning the merchandising and display techniques as set forth in the Annual Business Plan. The Agent shall use, fully support and recommend, that Customers fully utilize all such merchandising and display techniques.

(12) **Annual Business Plan**. The Business Units, jointly and in cooperation with the Global Roundup Support Team, shall, prepare and deliver to the Steering Committee (i) a preliminary draft for the annual business plan no later than June 15 of each Program Year and (ii) a definitive version thereof no later than September 15 of each Program Year (the "Annual Business Plan"), which establishes the general marketing, distribution, sales information, and specifications of Roundup Products for such Program Year (or shorter period, if applicable) including the Agent's short and long-term sales goals with respect to Roundup Products for such Program Year, an example template of which is described on Schedule 2.2(a), or as the parties may agree from time to time. Upon approval by the Steering Committee, the Annual Business Plan shall serve as the Agent's parameters for implementing the day-to-day operation of the Roundup Business; any Significant Deviations from such Annual Business Plan shall require the prior approval of the Steering Committee unless already approved by the Global Support Team and the Business Unit pursuant to Section 4.2(c).

(13) **Consumer Call Center**. The Agent shall be responsible for maintaining a consumer call center relating to Roundup Products; provided, however, that if there is a medical response call (including human and animal health-related calls) and related FIFRA 6(a)(2) issues, the Agent shall immediately transfer such call to the Monsanto CRC and will immediately report such information to Monsanto.

(14) **Additional Actions**. The Agent shall perform such additional actions, consistent with this Agreement, as directed by the Steering Committee, to implement any Significant Deviations from the Annual Business Plans.

(b) *Employee Performance Standards*. The Annual Business Plan shall set forth the employee performance standards required in the parties' opinion to promote the achievement of the income targets for the Roundup L&G Business in each given Program Year. The Annual Business Plan shall also specify the impact which the failure to meet such performance standards may have on the incentive schemes and bonus plans of the individual members of the Global Support

Team and those employees who are part of the Business Units in charge of the Roundup L&G Business.

Section 2.3 ***Appointment of Sub-Agents and Sub-Distributors.*** The Agent shall have the right to delegate part of its obligations under this Article 2 to sub-agents and sub-distributors; provided, however, the Agent shall remain primarily liable for all of its obligations hereunder and shall be primarily liable for any act or omission of any such sub-agent or sub-distributor. To the extent this Agreement creates any obligations on the Agent, such obligations shall apply with respect to any sub-agents or sub-distributors, as the case may be. In connection with the foregoing, any reports or other information to be given to Monsanto shall be given by the Agent and shall include any information applicable to sub-agents or sub-distributors, as the case may be.

Section 2.4 ***Limitations on Agent.*** Notwithstanding anything in this Agreement to the contrary, the Agent shall not, without the written consent of the Steering Committee, take (or initiate) any of the following actions:

(a) Sell Roundup Products at a price or under terms not permitted under the Annual Business Plan;

(b) Possess or use any property of Monsanto, except to the extent necessary for Agent to perform its duties and obligations hereunder (e.g., in-store displays);

(c) Hold itself out as authorized to make on behalf of Monsanto any oral or written warranty or representation regarding Roundup Products other than what is stated on the applicable Roundup Products label or in other written material furnished to the Agent by Monsanto; or

(d) Intentionally dilute, contaminate, adulterate, or substitute any Roundup Products.

Section 2.5 ***Changes to Markets.***

(a) Subject to the terms of this Section 2.5, the Included Markets, the Activated Included Markets or the Excluded Markets may be amended from time to time as more particularly set forth below.

(b) Monsanto agrees that it will not promote, distribute or sell Roundup Products in any Excluded Market (other than the Excluded Specified Markets) without first complying with the provisions of this Section 2.5(b) and Section 2.5(c). Either Monsanto or the Agent may propose to the Steering Committee moving an Excluded Market (other than the Excluded Specified Markets) to the list of Included Markets or commencing distribution of Roundup Products in an Included Market that is not currently being serviced by the Agent and adding such Included Market to Schedule 1.1(a) as an Activated Included Market (any Included Market that is not being serviced by the Agent are "Unactivated Included Markets") by providing a proposal (the "Included Markets Proposal") to the Steering Committee including the proposed (i) term (i.e., duration of amendment or transition period), (ii) adjustment to the calculation for the Commission, and (iii) adjustment to

the Commission Thresholds. The parties agree to negotiate in good faith with respect to the terms of any such Included Markets Proposal with the goal of benefitting the Roundup P&L.

(c) If the Agent affirmatively rejects an Included Markets Proposal made by Monsanto by delivering a written notice to Monsanto within sixty (60) days after the delivery of the Included Markets Proposal, then such proposed Included Market shall be considered an Excluded Market; and in all Excluded Markets Monsanto shall have the exclusive right to promote, distribute and sell Roundup Products in any such country or countries and otherwise expand Monsanto's Roundup L&G Business; provided, that if, after the Agent rejects an Included Markets Proposal, Monsanto materially changes the economic terms of such Included Markets Proposal in a manner that would have made the Included Markets Proposal more attractive to the Roundup P&L to offer it to another agent or distributor, such revised proposal shall be treated as a new Included Markets Proposal for purposes of this Section 2.5 except that the Agent shall have a thirty (30) day period in lieu of the sixty (60) day period set forth above.

(d) The Steering Committee may either accept or reject any Included Markets Proposal made to the Steering Committee pursuant to Section 2.5(b) in its sole and reasonable discretion; provided, that the Steering Committee shall not reject any Included Markets Proposal unless it is reasonably demonstrable that the acceptance of such Included Markets Proposal would have an adverse effect on Monsanto balanced against the potential benefit to the Roundup P&L; provided, further, that, without the prior written consent of the Agent, the Steering Committee may not accept any proposal to remove an Included Market, unless Monsanto can reasonably demonstrate that the continued inclusion of such Included Market would have a significant adverse effect on Monsanto balanced against the benefits to the Roundup P&L. The parties agree that any disputes arising under this Section 2.5(d) will be resolved in the manner set forth in Section 10.4(g).

(e) Subject to Section 2.5(d), if the Steering Committee accepts the proposal for modification, then the modifications to the Included Markets or Excluded Markets shall, without further action or amendment, be included within the definition of Included Markets or Excluded Markets, as the case may be, and subject to the terms and conditions of this Agreement unless the parties otherwise expressly agree in writing, and if such accepted proposal is to activate an Included Market, then such Included Market shall be added to Schedule 1.1(a).

(f) Notwithstanding the foregoing, neither party shall have any obligation with respect to any Unactivated Included Market unless and until the Steering Committee approves commencement of distribution of Roundup Products in such market for purposes of this Agreement.

Section 2.6 ***Scotts Miracle-Gro Sale Procedures.***

(a) *Private or Public Sale Process*. If, at any time or from time to time, Scotts Miracle-Gro initiates a public or private sale process involving the solicitation of two or more indications of interest in connection with a contemplated Scotts Miracle-Gro Sale, Scotts Miracle-Gro agrees to provide Monsanto timely notice of such process and to offer to include Monsanto in such process on the same basis as other participants therein.

(b) *Potential Sale to Ag Competitors*. If Scotts Miracle-Gro (A) receives an unsolicited proposal with respect to a potential Scotts Miracle-Gro Sale with any Ag Competitor or (B) solicits or makes a formal determination to solicit or make any proposal with respect to a potential Scotts Miracle-Gro Sale or enters into an agreement relating to the provision of information with respect to a potential Scotts Miracle-Gro Sale with any Ag Competitor, Scotts Miracle-Gro agrees to provide Monsanto with timely notice of such proposal and to provide Monsanto with, in the case of (A) above, at least five (5) Business Days after the date of receipt of such notice to respond to such proposal or, in the case of (B) above, at least ten (10) Business Days after the date of receipt of such notice to respond to such proposal, prior to entering into a definitive agreement, letter of intent, memorandum of understanding or similar document with any such entity; and provided further, that during such five (5) or ten (10) Business Day period, Scotts Miracle-Gro and Monsanto shall conduct non-exclusive negotiations with respect to any potential Scotts Miracle-Gro Sale to Monsanto.

Section 2.7 ***Compliance.***

(a) *Anti-Corruption Compliance.* Agent represents and warrants that it will take no action in relation to this Agreement that would be in violation of, or would subject Monsanto to any liability for, or penalty under, the applicable anti-corruption laws and regulations of any Included Market.

(b) *Compliance with Monsanto's Code of Conduct*. Agent represents that it has received a copy of Monsanto's Supplier Code of Business Conduct (posted at http://www.monsanto.com/whoweare/pages/supplier-code-of-conduct.aspx), Anti-Corruption / FCPA Policy (http://www.monsanto.com/sitecollection documents/anti-corruption-policy.pdf) and the Monsanto Human Rights Policy (posted at http://www.monsanto.com /whoweare/pages/human-rights.aspx) and Agent warrants that its employees working in the Roundup L&G Business have read and will comply with the terms included in the Supplier Code of Business Conduct, Anti-Corruption/FCPA Policy and Human Rights Policy.

(c) *No Improper Payments*. Agent represents that no payments of money or anything of value will be offered, promised or paid, directly or indirectly, to any Officials to influence the acts of such Officials (as defined below) to induce them to use their influence with a government or an instrumentality thereof, or to obtain an improper advantage in connection with any business venture or contract in which Monsanto is a participant.

(d) *Subcontractors and Agents*. Agent agrees that it will alert any subsidiaries, sub-contractors, representatives, or agents that are retained in connection with this Agreement of their obligation to abide by any applicable anti-corruption laws.

(e) *Definition of "Official"*. For purposes of this Section 2.7, an "Official" shall include all employees of a government department or agency, whether in the executive, legislative or judicial branches of government and whether at the national, state/provincial or local level (or their equivalents). The term covers part-time workers, unpaid workers, any person "acting in an official capacity," and members of a royal family. Also included under the term "Official" are political parties, party officials, and candidates for political office. Moreover, Officials include

employees of public international organizations (list posted at www.gpo.gov/fdsys) such as the United Nations ("U.N."), Food and Agriculture Organization of the U.N. ("FAO"), the International Cotton Institute, the International Monetary Fund, the International Wheat Advisory Committee, the Organization of Economic Cooperation and Development ("OECD"), the Organization of American States, the World Intellectual Property Organization, the World Trade Organization, the International Cotton Advisory Committee ("ICAC") and the International Food Policy Research Institute. Finally, the term "Official" covers officers and employees of public academic institutions and companies under government ownership or control, even if the companies or institutions (such as universities) are operated like privately owned entities.

(f) *Export Controls*. The Agent acknowledges and agrees that the products, materials, software, technology and/or information provided under this Agreement are subject to the import, export control, and economic sanctions laws and regulations of the United States, potentially including but not limited to any requirements arising under the laws and regulations administered by U.S. Customs and Border Protection ("CBP"), the Export Administration Regulations ("EAR") administered by the U.S. Commerce Department's Bureau of Industry and Security ("BIS"), the International Traffic in Arms Regulations ("ITAR") administered by the U.S. State Department's Directorate of Defense Trade Controls ("DDTC"), and the various economic sanctions laws and regulations administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"). The Agent agrees to comply with any applicable laws and/or regulations mentioned in the immediately-preceding sentence. The Agent shall not, without proper U.S. government authorization, export, reexport, or transfer products, materials, software, technology and/or information, either directly or indirectly, to any Restricted Party. For the purposes of this Agreement, "Restricted Party" means any country or any resident or national of any country subject to a comprehensive U.S. trade embargo or other sanction (including but not limited to Cuba, Iran, North Korea, Sudan, Syria, and the Crimea Region of the Ukraine), any person or entity designated on the list of "Specifically Designated Nationals and Blocked Persons," the "Entity List," or the "Denied Persons List."

(g) In addition, products, materials, software, technology and/or information may not be exported, re-exported, or transferred to any end-user engaged in activities related to weapons of mass destruction. Such activities include but are not necessarily limited to activities related to: (1) the design, development, production, or use of nuclear materials, nuclear facilities, or nuclear weapons; (2) the design, development, production, or use of missiles or support of missiles projects; and (3) the design, development, production, or use of chemical or biological weapons. By accepting this Agreement, each Party certifies (1) they are eligible to receive the products, materials, software, technology and/or information provided by the other Party without first obtaining an export license from either BIS or OFAC, and (2) they are not a Restricted Party. The Parties shall not (1) participate in any economic boycott not sanctioned by the United States Government or (2) provide information that could be construed to support any such unsanctioned boycott. The Parties further agree that the assurances contained in this clause shall survive and remain in effect even after termination of this Agreement.

ARTICLE 3 - ACCOUNTING AND CASH FLOW FOR THE ROUNDUP L&G BUSINESS

Section 3.1 ***Bookkeeping and Financial Reporting.***

(a) *Bookkeeping*. The Agent shall, on behalf of Monsanto, be responsible for all the bookkeeping for the Roundup L&G Business, which shall include, but not be limited to, (i) setting up a separate set of accounting records reflecting all the items of income, profit, gain, loss and deduction with respect to the Roundup L&G Business, including a profit and loss statement ("Roundup P&L") and all other records relating to the Roundup L&G Business including sales invoices and customer data (the "Roundup Records") in accordance with the written set of accounting policies (including the currency exchange methodology used by Monsanto) as shall be provided by Monsanto; provided, that if any change in Monsanto's accounting policies would adversely affect the Agent's Commission (other than in a *de minimis* amount), the parties shall negotiate in good faith to change the thresholds and/or the Commission, as appropriate, to eliminate such adverse effect; (ii) collecting, recording and safeguarding receipts of all receivables and payables, costs or expenses either directly incurred by the Roundup L&G Business or Allocated thereto by either party pursuant to the terms of Section 3.3 hereof. At all times, the Agent shall make available via computer and/or original documentation, to the members of the Global Support Team continuous access to the Roundup Records as appropriate on a need-to-know basis, such access shall include, but not be limited to, daily sales updates and additional financial reporting with such detail as Monsanto may reasonably request from time to time.

(b) *Financial Reporting*. The Agent shall provide Monsanto no later than the date that is the earlier of (i) four (4) business days after the last day of each of the Agent's fiscal months and (ii) the first business day of each calendar month (which corresponds to the first work day of Monsanto's closing period) a full, detailed report by country of the Roundup SKU's being sold during the past month, including but not limited to Monsanto SKU identifier, quantity sold, quantity of samples provided free of charge, total sales value by SKU (in local currency). The Agent shall provide to Monsanto monthly financial statements, including (i) the full Roundup P&L (from Gross Sales to EBIT), balance sheet and cash flow statements, (ii) the Netback expense detail (accruals and actuals), (iii) all other Expense detail (accruals and actuals), and (iv) Cost of Goods Sold detail. Such monthly financial statements shall be provided (i) in their preliminary form (due to the closing schedule, the parties acknowledge that these results may be preliminary or final and a subsequent true-up may occur in the following month) no later than the date that is the earlier of (i) four (4) business days after the last day of each of the Agent's fiscal months and (ii) the first business day of each calendar month (which corresponds to the first work day of Monsanto's closing period), and (ii) in their final form no later than ten (10) business days following the end of each calendar month.

(c) *Audit*. Monsanto shall have the right to periodically audit or have an independent accountant audit, on Monsanto's behalf, all the Roundup Records. The audit shall be at the cost of Monsanto unless any material error has been committed by the Agent, in which case the Agent shall bear the cost of the audit. Upon exercise of its right of audit, and discovery of any

disputed item, Monsanto shall provide written notice of dispute to the Agent. The parties shall resolve such dispute in the manner set forth in Section 3.4 hereof.

Section 3.2 ***Ordering, Invoicing and Cash Flow Cycle.***

(a) *Ordering and Invoicing*. The Agent shall perform, on behalf of Monsanto, all order taking, order processing and invoicing for the Roundup Products, it being understood that orders filled for Roundup Products shall be invoiced on the invoices used by the Agent for its other non-Roundup Products provided such invoices or their EDI version shall (i) identify the Agent as an agent for Monsanto for the sale of all Roundup Products and Monsanto as the actual transferor of title to Roundup Products; (ii) direct payment of such invoice to be made directly to the account designated by the Agent; and (iii) include all taxes (other than Income Taxes), duties, and other charges imposed by governmental authorities based on the production or sale of Roundup Products or their ownership or transportation to the place and time of sale. Notwithstanding the foregoing, where the Agent utilizes a third-party distributor, in circumstances as the Agent and Monsanto may agree, Monsanto may perform order taking, order processing and/or invoicing for the Roundup Products as the Agent and Monsanto may mutually agree.

(b) *Customer Remittances*. Customers of Roundup Products shall be directed, as per the invoices, to remit directly the invoiced amounts for all Roundup Products to the Agent's designated bank account. Notwithstanding the foregoing, with respect to customers that are invoiced by Monsanto in accordance with Section 3.2(a), such customers of Roundup Products shall be invoiced directly by Monsanto and shall remit payment directly to Monsanto the invoiced amounts for all Roundup Products to an account designated by Monsanto.

(c) *Cash Settlement*. At the end of each week, the Agent shall verify the actual amount of the Customers' remittances for the Roundup Products received and Expenses paid over the past week and shall send to Monsanto a weekly reconciliation statement (the "Reconciliation Statement") setting forth such information in the form attached hereto as Schedule 3.2(c). Within three business days (or such other time period agreed to by the Agent and Monsanto) of the receipt by Monsanto of the Reconciliation Statement, Monsanto shall review and approve such Reconciliation Statement; provided, that (i) if Monsanto disputes the contents of the Reconciliation Statement, the Agent and Monsanto shall work in good faith to resolve any such disputes and (ii) any such dispute shall be reconciled and addressed by way of an adjustment to the cash settlement in the current month or a subsequent month, as mutually agreed to by the Agent and Monsanto. Upon the approval of the Reconciliation Statement (subject to any agreed to revisions), Monsanto or the Agent, as applicable, shall pay by wire transfer of immediately available funds the net amount due to the Agent or to Monsanto, as applicable. For the purpose of this Section 3.2(c), customer remittances shall be allocated by the Agent to Roundup Products in proportion to the amount payable by such customer to the Agent in relation Roundup Products to the total amount payable by such customer to the Agent.

(d) *Recognition.* The parties acknowledge and agree that all sales by the Agent will be recognized for accounting purposes at the time when the product to be accounted for as sold has been shipped to the applicable account and its receipt confirmed. With respect to all buy/sell sales and all other direct account sales, whether by the Agent's sub-distributors or sub-agents, such

sales will be recognized for accounting purposes at the time when the product to be accounted for as sold has been shipped to the applicable sub-distributor or sub-agent and its receipt confirmed. Any payments received by the Agent as Monsanto's agent for sales made in accordance with this Agreement will be remitted to Monsanto in accordance with the procedures set forth in this Agreement as modified by the course of performance of the parties.

(e) *Budget.* The budget for the Roundup L&G Business shall include both buy/sell sales and direct account sales.

Section 3.3 ***Expenses and Allocation Rules.***

(a) *Expenses*. Each and every Expense, either as a direct expense or an allocated one, shall only be charged to the Roundup L&G Business and consequently taken into account in the Program EBIT statements set forth in Section 3.6(c) hereto if part of a category of Expenses specifically authorized by the terms of the Annual Business Plan and within the aggregate amount prescribed in the Annual Business Plan for such category of Expense ("Budget") ("Approved Expense"). Any Expense which shall exceed its prescribed Budget shall solely be the responsibility of the party incurring it unless such expense is required to implement an approved Significant Deviation from the Annual Business Plan or is necessary to support sales orders above budgeted sales pursuant to sales programs contemplated by the Annual Business Plan. Expenses shall be classified into (i) direct expenses of the Roundup L&G Business payable to vendors, or (ii) as Allocated Expenses agreed upon during the Annual Business Plan. Payment of any direct expenses incurred by either party on behalf of the Roundup L&G business shall be made as they become due in accordance with the applicable commercial terms agreed upon with each vendor.

(b) *Expense Verification*. Each party shall have the right to verify whether any particular Expense is an Approved Expense by sending a written inquiry to that effect to the Agent's nominee. The party incurring an Expense shall endeavor to promptly provide upon request of the Agent's nominee the appropriate documentary evidence supporting such Expense. Upon failure by the said party to provide the appropriate documentary evidence, the inquiring party shall have the right to send a written notice of dispute to the other party and the parties shall resolve such dispute in the manner set forth in Section 3.4 hereof. Upon determination by such Independent Accountant (as defined below) that the Expense was not an Approved Expense, such Expense shall be deducted from the Program Expenses and the Agent and Monsanto shall include an appropriate adjustment in accordance with the procedures set forth in Section 3.2(c). Allocated Expenses shall be paid no more than three weeks after months' end in accordance with the procedures set forth in Section 3.2(c).

(c) *Allocation Rules*. In the performance of their obligations under this Agreement, each party shall incur Allocated Expenses directly related to the Roundup L&G Business. Each allocated Approved Expense, regardless of the party incurring it, shall be reimbursed provided such expense shall be commercially reasonable, consistent with past practices and allocated in accordance with the Allocation Rules set forth for each category of cost and service per country or region, as the case may be, in Schedule 3.3(c) attached hereto ("Allocated Expense").

Section 3.4 ***Resolution of Disputes Arising under Article 3.*** Unless otherwise agreed by the parties, each party shall have the right, within twenty (20) days of receipt of the quarterly or annual financial statements to send a written notice of dispute to the other party. Upon receipt of such notices of dispute, the parties shall undertake the following steps:

(a) First, for a period of fifteen (15) days, the parties shall negotiate in good faith for the purposes of attempting to mutually agree upon the item in dispute;

(b) Second, if the parties are unable to mutually agree upon the item in dispute, then to the extent that the disputed item pertains solely to an accounting matter under Article 3 of this Agreement, within seven (7) business days following the expiration of such fifteen (15) day period, the parties shall agree in writing upon the selection of a nationally recognized independent accounting firm (the "Independent Accountant") to resolve such dispute. If the parties cannot agree upon such Independent Accountant within such time frame, then the Independent Accountant shall thereupon be selected by the American Arbitration Association (the "AAA"), with preference being given by the AAA in making such selection to any one of the "Big Four" accounting firms (except for any firm which performs accounting services for either party) willing to perform the services required hereunder. The Independent Accountant shall be instructed to act within thirty (30) days to resolve the dispute, and its decisions with respect to the dispute shall be final and binding upon the parties. The fees and expenses of the Independent Accountant with respect to the settlement of the dispute shall be borne equally by the parties. To the extent that a disputed item pertains to a matter outside the scope of the first sentence of this Section 3.4(b), such disputed item shall be governed by the terms of Section 11.12(b) hereof.

Section 3.5 ***Fixed Contribution to Expenses.*** Except as specified in Section 10.9(b), each Program Year the Agent shall make a fixed contribution to the overall Expenses of the Roundup L&G Business in an amount equal to eighteen million U.S. Dollars ($18,000,000) ("Contribution Payment"); provided, that if Program EBIT for a full Program Year is not at least $36,000,000, the Contribution Payment for such full Program Year shall be reduced by an amount (the "Contribution Payment Adjustment") equal to (a) fifty (50%) percent of (b) $36,000,000 minus the Program EBIT for such full Program Year; provided, that if the difference described by clause (b) is a negative number, the Contribution Payment Adjustment shall be deemed to be $0. For any full Program Year for which the Contribution Payment Adjustment is greater than $0, the Agent and Monsanto will credit such Contribution Payment Adjustment to the Agent. Such Contribution Payment shall be payable by the Agent to Monsanto in twelve equal monthly installments which shall be due on the first day of each month and shall not be subject to any "set-off".

Section 3.6 ***Commission.***

(a) *Amount of Commission*. In consideration to the Agent for performance of its duties and obligations hereunder, the Agent shall be entitled to a Commission ("Commission"). Such Commission shall represent a percentage of the Program EBIT realized by the Roundup L&G Business which percentage shall be (i) for Program Year 2019, 50% of the Program EBIT in excess of the Commission Threshold and (ii) for Program Years 2020 and thereafter, 50% of the Program EBIT. For Program Year 2019, the "Commission Threshold" shall be $40MM and for the avoidance of doubt, for Program Years 2020 and thereafter, the Commission Threshold shall be $0.

(b) *Payment of Commission*. Within thirty (30) days following the end of each month, the Agent, on behalf of Monsanto shall determine whether a Commission becomes payable, i.e., whether the cumulative Program EBIT for the Program Year up to the preceding month equals an amount in excess of the Commission Threshold. If so, the Agent, on behalf of Monsanto shall by check or wire transfer, to the Agent's designated account for the payment of the applicable Commission pursuant to the formula set forth in Section 3.6(a) subject to any adjustments pursuant to Section 3.6(c).

(c) *Final Determination*. Within fifteen (15) days following the end of each Program Year, the Agent shall deliver to Monsanto a Commission Statement which shall contain the final determination of the Commission due at the expiry of the Program Year and shall set forth any eventual adjustments, to the amounts paid up to the Agent under Section 3.6(b) during the preceding Program Year. If within fifteen (15) days following the receipt of such Commission Statement by the Agent, Monsanto does not provide the Agent written notice of objection to the Commission Statement, the amount of the Commission for such Program Year shall be as provided thereon. If within such fifteen (15) days following receipt of such Commission Statement by Monsanto, Monsanto does provide the Agent written notice of objection to the Commission Statement, the parties shall resolve such dispute in the manner set forth in Section 3.4 hereof.

Section 3.7 ***[Intentionally omitted.]***

Section 3.8 ***Additional Commission.***

(a) The parties acknowledge that Monsanto currently sells Glyphosate-based products under the Roundup trademark, directly or indirectly, to professional, industrial and agricultural users ("Roundup Ag Products"). Monsanto acknowledges that one of such Roundup Ag Products, the 2.5 gallon SKU containing 41% concentration of Glyphosate with the Brand name Roundup Pro (the "Roundup Pro SKU"), is currently being sold through Lawn and Garden Channels in the United States and may be purchased by consumers in the Lawn and Garden Market. Monsanto also acknowledges its obligations pursuant to Section 6.13(b) hereof.

(b) The Agent is exclusively distributing and managing the sale of the Roundup Pro SKU in Lawn and Garden Channels in the United States. The parties acknowledge that the Agent purchases the Roundup Pro SKU from Monsanto (or a successor entity which holds the rights to manufacture, sell or commercialize the Roundup Pro SKU) for the Agent's own account in its capacity as a distributor and not as a marketing agent, and the sales resulting from such Roundup Pro SKU shall not be included in the Program Sales Revenues hereunder. In the event that the Agent is terminated as an exclusive distributor of the Roundup Pro SKU by Monsanto (or by a successor entity which holds the rights to manufacture, sell or commercialize the Roundup Pro SKU), any subsequent sales of the Roundup Pro SKU by parties other than Agent in the Lawn and Garden Channels in the United States will be subject to the provisions of Section 3.8(c) below.

(c) Except to the extent provided in Section 3.8(b) above, on and after the Effective Date, Monsanto shall use its reasonable efforts to ensure that Roundup Ag Products are not sold, directly or indirectly, through Lawn and Garden Channels to consumers in the Lawn and Garden Market in the Included Markets. In the event that in the normal course of business the

Agent determines based on satisfactory evidence that a material amount of additional Roundup Ag Products, above Program Year 2016 sales levels (such amount, the "Historical Threshold"), are being sold directly by Monsanto (or directly by any successor entity which holds the rights to manufacture, sell or commercialize the Roundup Pro SKU) through Lawn and Garden Channels in the Included Markets, the parties shall negotiate in good faith to include, subject to the principles set forth in Section 3.8(d), an appropriate percentage of such incremental sales that exceed the Historical Threshold to reflect such Lawn and Garden Use within the definition of Program Sales Revenues so that the Agent receives credit therefor for purposes of calculating the Agent's Commission, or such other compensation as required to fully compensate the Agent for lost Commission as a result of such sales of Roundup Ag Products above the Historical Threshold as the Parties may agree (collectively, the "Additional Amount").

(d) In implementing the foregoing, the parties shall follow the following principles: (i) that Monsanto's sales of Roundup Ag Products are not intended for Lawn and Garden Use and that Monsanto shall not sell Roundup Ag Products directly or promote the indirect sale thereof, through Lawn and Garden Channels to consumers for Lawn and Garden Use in the Included Markets and (ii) that there shall be no transfer of historical or future sales of Roundup Ag Products in the Ag Market into Program Sales Revenues. Furthermore, the parties acknowledge that Roundup Ag Products having a formulation consisting of 41% or more Glyphosate and in container sizes over 2.5 gallons in the United States or over one liter in the other Included Markets shall be presumed to have no Lawn and Garden Use and therefor that sales of such Roundup Ag Products shall not be deemed to compete with Roundup Products in a manner that would justify adjustment of the calculation of Program Sales Revenues; provided that if the Agent is able to demonstrate to the Steering Committee that a material change in the amount of such Roundup Ag Products above the Historical Threshold are being sold through Lawn and Garden Channels to consumers for Lawn and Garden Use in the Included Markets, the parties shall negotiate in good faith pursuant to Section 3.8(c) to adjust the calculation of Program Sales Revenues.

(e) During the 2014 Program Year and for each subsequent Program Year through Program Year 2019, in consideration for the Agent's marketing, distribution and sales of Roundup 365, for the 2014 Program Year, and for each subsequent Program Year through Program Year 2019, if 365 Gross Profits exceed USD $10MM in a Program Year, the Agent shall be paid an amount equal to 7% of the 365 Gross Profits for such Program Year (including, for the avoidance of doubt, the first USD $10MM of the 365 Gross Profits). The amount that becomes payable under this Section 3.8(e) with respect to a Program Year shall be included as a separate line item in the Commission Statements delivered by Agent to Monsanto and the payment of such amount shall be in addition to the Commission otherwise payable under Section 3.6(b) and shall be subject to all other terms and conditions of this Agreement except as otherwise expressly stated in this Section 3.8(e). For the avoidance of doubt, beginning with the commencement of Program Year 2020, the Agent shall not be entitled to receive the special Commission that was payable with respect to Program Years 2014 through 2019 for the Agent's marketing, distribution and sales of Roundup 365 or in connection with 365 Gross Profits.

ARTICLE 4 - ROUNDUP L&G BUSINESS MANAGEMENT STRUCTURE

Section 4.1 ***Underlying principles for the Roundup L&G Business Management Structure.***

(a) The Roundup L&G Business management structure, as described in this Article, has been created for the purposes of fostering and promoting the following interests of the parties:

(i) Common Interests:

(A) achieve the maximum volume and profit levels for the Roundup Business;

(B) continue to strengthen the Roundup brand; and

(C) leverage the strengths of both parties while working together in a constructive and harmonious way.

(ii) Monsanto's Interests:

(A) retain ability to resume full management of the Roundup Business upon termination of this Agreement;

(B) retain control over key business decisions; and

(C) provide global stewardship of the Roundup brand.

(iii) The Agent's Interests:

(A) manage the Roundup Business within the parameters of approved Annual Business Plans.

(b) The parties understand that such structure may be amended from time to time by mutual agreement of the parties provided any such change shall take into account the respective interests of each party as described hereunder.

Section 4.2 ***Steering Committee.***

(a) *Appointment*. Monsanto and the Agent shall each appoint by April 1 of each year two (2) executives to a steering committee (the "Steering Committee") provided, however, any vacancy shall be filled in such a manner that the parties shall maintain their respective proportionate representation on the Steering Committee and that upon failure by either party to appoint said two (2) executives by such time, the two (2) executives previously appointed by such party shall be deemed appointed for another Program Year. Notwithstanding the foregoing, the members of the Steering Committee for the Program Year 2017 shall be the individuals whose names are set forth as Schedule 4.2(a) attached hereto. Either party may also invite a reasonable

number of additional members from their respective organizations to attend meetings of the Steering Committee as they deem appropriate; provided, that, except to the extent provided under this Agreement, such additional members in attendance shall not have any voting rights.

(b) *Meetings, Quorum and Voting Requirements*.

(1) *Meetings*. The Steering Committee shall meet at least once a year for purposes of approving the Annual Business Plan no later than September 15 of every calendar year. Any member of the Steering Committee shall have the right to call a special meeting of the Steering Committee provided a prior written notice of at least fifteen (15) days shall be given to each member together with an agenda for such meeting.

(2) *Quorum and Voting Requirements*. The quorum for any meeting of the Steering Committee shall require the participation of all four (4) members except that any member shall be deemed present when participating via phone or video conference. Any decisions by the Steering Committee may be taken by the affirmative vote of a majority of three of the members of the Steering Committee. In the event of a deadlock, when a particular vote is divided equally between the four members, the matter shall be submitted to Monsanto's senior executive responsible for the oversight of the Roundup L&G Business (as determined by Monsanto) (the "Monsanto Senior Executive"), who shall have the exclusive discretion to resolve the matter and such decision shall bind the Steering Committee to such action or inaction. Notwithstanding any future assignment of this Agreement to a third party by reason of a Roundup Sale, the Monsanto Senior Executive shall retain its right of veto in case of deadlock of the Steering Committee.

For every meeting of the Steering Committee, minutes shall be kept and circulated for approval to all four members. Every decision of the Monsanto Senior Executive shall also be recorded in writing and distributed to the members of the Steering Committee.

(c) *Authority*. The Steering Committee shall:

(i) approve all Annual Business Plans, and any Significant Deviations (as described in Section 4.3(b)) therefrom not previously approved jointly by the Business Units and the Global Support Team;

(ii) approve any and all strategic plans;

(iii) review monthly reports submitted by the Business Units for the purposes of monitoring achievement and redirecting the Business Units by issuing a formal amendment to the Annual Business Plan then in effect;

(iv) monitor and redirect, if need be, the performance of the Global Support Team;

(v) approve any decisions relating to key personnel assigned to the Roundup Business within the Business Units, including Monsanto's and the Agent's employees;

(vi) resolve any disagreement occurring between a Business Unit and the Global Support Team; and

(vii) decide any other matter mutually agreed upon by Monsanto and the Agent.

Section 4.3 ***Business Units.***

(a) *Role and Reporting*. The Roundup L&G Business shall be managed, on behalf of the Agent, by its respective pesticide business units for each of the Included Markets ("Business Units") provided that, for the management of the Roundup L&G Business, the head of each of the Business Units shall report directly to the Steering Committee.

(b) *Duties*. The Business Units shall be responsible for:

(i) taking any and all necessary actions to implement the approved Annual Business Plan and strategic plans, as may be amended from time to time, either by mutual agreement of the Business Unit and the Global Support Team or by the Steering Committee as described in Section 4.2(c);

(ii) managing the day-to-day Roundup L&G Business;

(iii) developing and submitting, in cooperation with the Global Support Team all strategic and Annual Business Plans;

(iv) communicating, in writing or via meetings, on a regular basis, with the Global Support Team on all significant issues affecting the Roundup L&G Business; and

(v) notifying the Global Support Team of any deviation to the Annual Business Plan, which, in their view, is reasonably likely to have a financial impact on the Program EBIT of at least $500,000 or constitutes a significant deviation from a non-financial item approved in the Annual Business Plan ("Significant Deviation").

Section 4.4 ***Global Support Team.***

(a) *Appointment*. Monsanto shall maintain a team of up to 10 employees, or such number as the Agent and Monsanto may agree to from time to time, to support the Roundup L&G Business on a full-time basis as well as other employees who will support the Roundup L&G Business on a part-time basis (the "Global Support Team"). Monsanto may from time to time substitute any individual serving on the Global Support Team, with the written approval of the Agent, by providing a prior written notice to the Agent to such effect.

(b) Duties. The Global Support Team shall be responsible to:

(i) participate actively in the development of all strategic and Annual Business Plans;

(ii) act as a liaison between any of Monsanto's functions or departments providing a support service to the Roundup Business (such as R&D, regulatory, etc.) and monitor the quality of services rendered;

(iii) provide stewardship for the Roundup brand image worldwide;

(iv) prepare internal assessments of the performance of the Roundup L&G Business for Monsanto management;

(v) participate in planned key customer interactions and program presentations, either by participation in meetings or in preparatory sessions therefor;

(vi) review and approve any material change or deviation in consumer communication, mass media, packaging design or any other marketing tactic that directly impacts the consumer perception and interface with the brand which may occur from time to time; and

(vii) review and approve any Significant Deviation from the Annual Business Plan; and upon failure to agree with the Business Unit, prepare a recommendation to submit to the Steering Committee for resolution, provided that the Business Unit may similarly prepare a recommendation to submit to the Steering Committee.

ARTICLE 5 - DUTIES AND OBLIGATIONS OF MONSANTO

Section 5.1 ***Monsanto's Obligations and Rights.*** Subject to Article 3, unless and until expressly directed otherwise by the Business Units, with the prior written approval of the Steering Committee Monsanto shall continue to support the Roundup L&G Business by performing necessary services. Notwithstanding the foregoing, at all times during the term of this Agreement, Monsanto shall be solely responsible for the following functions:

(a) *Research and Development*. Monsanto shall (i) in its sole discretion, continue to develop new Glyphosate-based non-selective herbicide formulations and (ii) exercise commercially reasonable efforts and cooperate in good faith with the Agent to develop other non-selective herbicide formulations, in each case, as more particularly as described in Section 6.10 hereof;

(b) *Regulatory Compliance*. Monsanto shall be responsible for ensuring that all Roundup Products and the labels for such products comply with the USEPA and applicable Laws of each state and country within the applicable Activated Included Markets, including obtaining and maintaining all applicable governmental registrations, registration applications, temporary registrations, all data pertaining to such registrations as submitted to governmental agencies, experimental use permits, applications and emergency use exemptions, all with respect to the Roundup Products; and

(c) *Medical Response*. Monsanto shall be responsible for maintaining a customer response center relating to Roundup Products, which will solely manage the medical response calls (including human and animal health-related calls) and related FIFRA 6(a)(2) issues (the "Monsanto CRC"). Monsanto shall be responsible for all reports related thereto, including (without limitation) reports to any regulatory or government authority pursuant to any applicable Law.

(d) *Sales Promotion*. Monsanto shall, in accordance with the Annual Business Plan, promote the sales and consumer acceptance of Roundup Products by:

(i) providing suitable training to the Agent's representatives or employees in the areas of product knowledge and product stewardship; and

(ii) providing the Agent and Customers with technical and product information, manuals, promotional bulletins, presentation kits and other sales aid materials.

Section 5.2 ***Warranties.*** For Roundup Products with which Monsanto offers a "written warranty," whether within the meaning of the Magnuson-Moss Warranty--Federal Trade Commission Improvement Act, 15 United States Code Annotated, Section 2301, or otherwise, Monsanto shall honor those warranties in accordance with such terms.

ARTICLE 6 - REPORTS AND ADDITIONAL OBLIGATIONS OF THE PARTIES

Section 6.1 ***Cooperation.*** The Agent and Monsanto shall cooperate with each other so as to facilitate the objectives set forth in this Agreement and shall act in good faith and in a commercially reasonable manner in performing their respective duties hereunder.

Section 6.2 ***Use of EDI.*** Monsanto, the Agent, the Steering Committee, and the Global Support Team will exchange a broad range of operating data on a periodic basis. The method of exchange will be approved by the Steering Committee and will include file transfer, e-mail and EDI protocol.

Section 6.3 ***The Agent's Systems and Reporting Obligation.*** The Agent shall establish and maintain all such systems and procedures (financial, logistical, or otherwise) as reasonably requested by Monsanto or the Steering Committee in connection with the Agent's performance under this Agreement. For all reports, the data will include current period and current YTD, forecasts and budgets; and comparisons with same period and YTD and forecasts and budgets for the year previous. Specifically, the Agent shall provide the following reports:

(a) *Weekly Reports*. On the second business day of each week, the Agent shall provide to the Global Support Team update reports for the prior week, showing: (i) dollar and case shipments by the top 25 Customers and by SKU (stock keeping unit), (ii) inventory levels by SKU for North America, (iii) collection activities by the top 25 Customers, (iv) agency fill rate for the top 10 Customers (Roundup Products ordered by Customers and shipped by the Agent by line item, unit and dollar amount), and (v) POS sell-through by SKU by the top 7 Customers that provide such information.

(b) *Monthly Reports*. On the sixth business day of each Month, the Agent shall provide to the Steering Committee and Monsanto (i) the type of data contained in the weekly reports (as set forth in Section 6.3(a)) for the prior calendar month and the current year-to-date, (ii) full P&L, balance sheets and cash flow statements, (iii) Netback expense detail (accruals and actuals), (iv) Expense detail (accruals and actuals), (v) Cost of Goods Sold detail, in each case comparing such information against budget, and against the previous year.

(c) *Quarterly Reports*. The Agent shall provide to the Steering Committee and Monsanto, on a Quarterly basis and on a form provided by the Steering Committee (i) a summary of purchases of Roundup Products, in total cases or units, made by each Customer which is designated by the Steering Committee, (ii) inventory level by SKU by Customer and (iii) updated full year forecast.

(d) *Annual Reports*. The Agent shall provide to the Steering Committee and Monsanto, on an Annual basis and on a form provided by the Steering Committee (i) bridge and tracking capability from Program Year to calendar year, (ii) a budget and (iii) a long range plan.

(e) *Other Reports*. In addition, the Agent shall provide Monsanto or the Steering Committee with such other reports as may be reasonably requested within a period not to exceed thirty (30) days from such request.

Section 6.4 ***Employee Incentives.*** Recognizing that, as Monsanto's exclusive agent for sale and distribution of Roundup Products, the Agent is to promote the sale of Roundup Products in the manner described in Section 2.2(a)(7), the Agent shall cause its appropriate officers and other management to devote an appropriate portion of their personal efforts to the sale and distribution of Roundup Products covered by this Agreement. Further, the Agent shall ensure that the appropriate personnel are compensated in a manner reasonably intended to encourage them to promote the sale of Roundup Products in a commercially reasonable manner generally consistent with other products or product lines, of similar volume or having similar margins (as compared to the overall Roundup P&L margins), of the Agent.

Section 6.5 ***Insurance.*** The Agent, shall, during the term of this Agreement, maintain full insurance against the risk of loss or damages to the Roundup Products for any Agents' warehouse where Roundup Products are under the custody of the Agent and, upon request, shall furnish Monsanto with satisfactory evidence of the maintenance of said insurance. Further, each party shall make all contributions and pay all payroll taxes required under federal social security laws and state unemployment compensation laws or other payments under any laws of a similar character as to its own personnel involved in the Roundup L&G Business (including any purported "independent contractors" subsequently classified by any authority under any Law, as an employee) in connection with the performance of this Agreement.

Section 6.6 ***Liens.*** Subject to the provisions of any existing intercreditor agreement to which Monsanto is currently a party (as the same may be amended, modified or terminated) and except as may otherwise be agreed to by Monsanto, which agreement shall not be unreasonably withheld in the case of similar arrangements with existing or future institutional lenders, the Agent agrees not to allow any liens or encumbrances of any nature to attach to Roundup Products. At

Monsanto's request, the Agent, sub-agent, or sub-distributor shall execute such financing statements, security agreements and other documents as Monsanto may reasonably request to create, perfect, and continue in effect its security interests hereunder.

Section 6.7 ***Promoting Safe Use-Practices.*** Roundup Products may be or become hazardous unless used in strict accordance with Monsanto's product labels. The Agent shall use commercially reasonable methods to inform and familiarize its employees, agents, Customers, contractors (including warehousemen and transporters) and others who may handle or use Roundup Products of the potential hazards pertaining thereto (including accidental breakage or fire), and shall stress the safe use and application of Roundup Products in strict accordance with Monsanto's product labels. In addition, the Agent shall provide HM126F training to its personnel as required by the United States Department of Transportation (and such other training as may be required by other countries within the Included Markets). The Agent shall have the responsibility to dispose of waste materials in accordance with all applicable Laws.

Section 6.8 ***Monsanto Inspection Rights.*** From time to time, as Monsanto or the Steering Committee may request, the Agent shall permit, upon reasonable request and during normal business hours, representatives of Monsanto or the Steering Committee to inspect, with regard to Roundup Products, the Agent's inventories, warehousing, and shipping procedures.

Section 6.9 ***Recalls.*** The Agent shall cooperate with Monsanto, and promptly take such actions as requested by Monsanto, with respect to any defective product including any "stop-sales" or recalls for Roundup Products.

Section 6.10 ***New Roundup Products.***

(a) During the term of this Agreement, Monsanto covenants and agrees to first offer to the Agent (the "Product Offer"), with respect to the Included Markets, the exclusive agency and distribution rights to any newly created non-selective herbicide product, which is not marketed for Lawn and Garden Use as of the Third Amendment Date, and which Monsanto in its exclusive, reasonable discretion, determines to be suitable for sale as a new product for Lawn and Garden Use (the "New Product"); provided, however, that for the Lawn and Garden Market, that any new product containing Glyphosate or another non-selective herbicide shall be considered to be a New Product. The Product Offer shall be in writing, shall be in sufficient detail describing such New Product, and shall be made within sixty (60) days of the date of commercialization of such New Product for uses other than Lawn and Garden Use. In no event shall Monsanto, directly or indirectly, commercialize any New Product for Lawn and Garden Use in the Included Markets without first offering such New Product to the Agent pursuant to the terms of this Section 6.10. If the Agent agrees in writing within ninety (90) days of receipt of the Product Offer to accept the New Product, then such New Product shall be, without further action or amendment, included within the definition of Roundup Products and be subject to the terms and conditions of this Agreement. In such event, the parties shall adjust the Commission Thresholds to reflect this additional source of revenue unless the New Product is a Glyphosate-based product or an improvement of any existing Roundup Products in which case the Commission Thresholds shall remain the same. If the Agent fails to agree in writing to accept the Product Offer within such ninety (90) days of receipt, then Monsanto shall have the

exclusive right to manufacture, package, promote, distribute, and sell such New Product in the Included Markets, regardless of any actual or potential conflict with the terms of Agreement.

(b) During the term of this Agreement, the Agent may, from time to time, propose that Monsanto utilize a different formulation of non-selective herbicide product for Lawn and Garden Use in the Included Markets that may or may not contain Glyphosate (an "Agent Proposed Product") and offer the Agent the exclusive agency and distribution rights to such Agent Proposed Product under this Agreement. Any Agent Proposed Product proposal shall contain supporting detail describing the Agent Proposed Product. The Agent shall supply Monsanto with any information Monsanto reasonably requests as part of its evaluation. Monsanto shall not unreasonably delay its evaluation of an Agent Proposed Product following receipt of any such information. Monsanto shall give good faith consideration to all Agent Proposed Products, and provided that Monsanto shall have the sole discretion in branding any Agent Proposed Product, Monsanto shall not unreasonably refuse to submit to the Agent a Product Offer for an Agent Proposed Product under Section 6.10(a) that is, in Monsanto's reasonable discretion, commercially attractive, taking into account all relevant legal, financial, regulatory and other material aspects, including, without limitation, any possible effect of such Agent Proposed Product on Monsanto's overall business and business prospects.

(c) The Agent hereby grants Monsanto an exclusive (even with respect to the Agent and its Affiliates), non-transferrable, royalty-free license and right to use the trademarks *EcoSense* and *Path Clear* (Trademark Application No. 1430287) in Canada (such trademarks, the "Canada Marks"), only in connection with Natural Products (as defined below) in the natural non-selective weedkiller category for Lawn & Garden Use during the term of this Agreement. Monsanto agrees to use the Canada Marks in a manner consistent with the form and style of such trademarks as used by the Agent, or as otherwise agreed in writing with the Agent. For the avoidance of doubt, the Agent currently uses and/or may in the future use the Canada Marks on products in categories other than non-selective weedkillers for Lawn & Garden Use, and the license granted to Monsanto herein shall not affect or restrict the Agent's rights in such other categories. Such license shall terminate automatically upon any expiration or termination of the term of this Agreement applicable to Canada. Notwithstanding the foregoing, nothing herein shall be interpreted as granting Monsanto a license to the Canada Marks outside of Canada or outside the category specified in this Section 6.10(c). The Agent represents and warrants that it is a licensee with the right to sublicense the Canada Marks, and that Monsanto's use of the Canada Marks, as described herein, shall not infringe upon the rights of any third party. The Agent agrees to hold harmless, indemnify, and defend Monsanto from any and all claims, demands, damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees) arising from a breach of this warranty by the Agent. The Agent agrees to carry out at its expense, all procedures necessary to register and maintain the Canada Marks in full force and effect and Monsanto agrees to cooperate with the Agent in providing any product sample or other required information to assist in the maintenance and renewal of the Canada Marks. Monsanto acknowledges OMS Investments, Inc.'s exclusive ownership of all right, title and interest in and to the Canada Marks and agrees that Monsanto's use of the Canada Marks shall inure to the benefit of OMS Investments, Inc. Monsanto further agrees that it will in no way dispute, impugn or attack the validity of said Canada Marks or OMS Investments, Inc.'s or the Agent's rights thereto.

(d) The Agent hereby grants to Monsanto exclusive access to the registrations for an acetic acid/citric acid nonselective weedkiller formulation in Canada. The parties will agree on the mutually acceptable details and mechanics of access and appropriate registration/labeling rights, the cost of which will be included in the Roundup P&L. Access to the then-current registrations shall continue in perpetuity, on a nonexclusive basis, following any future termination or expiration of this Agreement, enabling Monsanto or its successors to market and sell such formulations following such termination under trademarks that are different from the trademarks licensed to Monsanto pursuant to Section 6.10(c).

(e) Together, the respective trademark licenses and registration access provided pursuant to this Section 6.10 result in the following product: an acetic acid/citric acid nonselective weedkiller formulation under the EcoSense brand in Canada and an acetic acid nonselective weed killer formulation under the Path Clear brand in Canada (collectively, the "Natural Products"). Any Natural Product marketed and/or sold under a different brand name in Canada shall be deemed to be a Natural Product and subject to the terms of this Agreement. The Natural Products will be included in the Roundup P&L and shall be subject to the same terms, rights and obligations set forth in this Agreement as are the Roundup Products, except as modified by this Section 6.10. In the event that the Agent develops, or obtains access to, any improvements to the existing Natural Products formulations in Canada during the respective term of this Agreement, the Agent will grant Monsanto access to such improvements and the improved products will be included in the Roundup P&L on the same terms as agreed for the current formulations of the Natural Products. In the event that the Agent develops, or obtains access to, any new natural nonselective weedkiller products (including, without limitation, any herbicidally active substances which are plant extracts, including those derived from oleic acid or which are derived from plant extracts by processing including active substances) in Canada during the respective term of this Agreement, the Agent will grant Monsanto a right of first refusal to include such new products in the Roundup P&L on the same terms as agreed for the current Natural Products, and if accepted, such new products will become Natural Products. In the event that the Agent offers in writing a product to Monsanto pursuant to the terms of this Section 6.10(e) and Monsanto does not accept such product in writing within ninety (90) days of the Agent's offer, the Agent may market such product at its own discretion utilizing an alternative trademark from those licensed to Monsanto pursuant to Section 6.10(c) (which alternative trademark is not identical or materially similar to the Canada Trademarks).

(f) The marketing, sale and distribution of each of the Natural Products in Canada shall be governed in all respects by the terms and conditions of this Agreement, including without limitation, the calculation of the Commission pursuant to Section 3.6 hereof. Following the inclusion of the Natural Products in the Roundup L&G Business in Canada, and fully consistent with the performance standards and requirements of Section 2.2(b) of this Agreement, the performance of the Roundup L&G Business will be evaluated based on the total results of the business, including from current Roundup Products, the added Natural Products, and any future products added to the Roundup L&G Business. Subject to the provisions of the applicable Annual Business Plan, the Agent shall continue to promote Roundup Products in the manner described in Section 2.2(a)(7). The parties will ensure that marketing, promotional and selling plans promote the sale of the Natural Products in a manner that is consistent with this Agreement and complementary to Roundup Products, and does not directly or indirectly disparage or advertise

against Roundup Products, as set forth in this Agreement. Furthermore, in addition to marketing and selling the Natural Products in such a manner to existing Customers, the Agent will use its best efforts to target retailers and customers who do not currently purchase Roundup Products. Without limiting the foregoing, the Agent hereby agrees that matters relating to the Naturals Products shall be included in the Annual Business Plan.

(g) Notwithstanding anything in this Agreement to the contrary, the letter agreement dated February 26, 2010 between the Agent and Monsanto shall survive in full force and effect in its entirety.

(h) No provision of this Section 6.10 should be understood, explicitly or implicitly, as an amendment of the noncompetition provisions of this Agreement, or a relinquishment by either party of their rights or waiver of their obligations except as expressly set forth in this Section 6.10.

Section 6.11 ***Additional Roundup Products.***

(a) Each product listed in Schedule 6.11(a) (an "Additional Roundup Product") shall be included in the definition of "Roundup Products" for the purposes of this Agreement; provided, that, such Additional Roundup Products shall only be considered "Roundup Products" with respect to those countries set forth in the column titled "Included Markets" opposite such Additional Roundup Product in Schedule 6.11(a).

(b) For purposes hereof, "Additional Roundup Products Formulation Data" shall mean the formula for the Additional Roundup Products, the raw material specifications, analytical methods, and other information as provided in the Quality Assurance Manual (as defined in the Formulation Agreement), the instructions and know how associated with formulating the Additional Roundup Products and any and all data related to the Additional Roundup Products required to make, sell, offer for sale, register with federal, state, or territorial government authorities (as may be required by law), and support and defend marketing claims for, the Additional Roundup Products in the United States and its territories. Such data may include, but is not limited to, validations of field efficacy, stability testing data, and toxicology studies. The Agent shall make all Additional Roundup Products Formulation Data available to Monsanto. For the avoidance of doubt, Additional Roundup Products Formulation Data shall not include any data which originated with Monsanto.

(c) The Agent hereby grants to Monsanto, during the term of this Agreement, a non-exclusive, royalty-free, non-transferable and non-assignable license (without the right to sublicense, except as specifically set forth in Section 6.11(h)) to use the Additional Roundup Products Formulation Data for the purpose of and to the limited extent necessary to register each of the Additional Roundup Products with federal, state, or territorial government authorities (as may be required by law) in the United States and its territories. To the Agent's knowledge, the Additional Roundup Products Formulation Data does not infringe or otherwise conflict with any trademarks, registrations, or other intellectual property or proprietary rights of any third party and none of the Additional Roundup Products Formulation Data is being infringed upon by a third party.

(d) Upon the termination of this Agreement, the license granted in Section 6.11(c) above shall convert to a perpetual, non-exclusive, royalty-free, non-transferable and non-assignable license (without the right to sublicense, except as specifically set forth in Section 6.11(h) below) to use the Additional Roundup Products Formulation Data to make, sell and offer for sale, in the Included Markets for each such Additional Roundup Product, products comparable to such Additional Roundup Products, and to the limited extent necessary, to register such products with federal, state or territorial government authorities (as may be required by law) in the United States and its territories.

(e) Notwithstanding anything in this Agreement to the contrary, the Agent at all times shall own and retain all rights, title and interest in and to the Additional Roundup Products Formulation Data.

(f) The Agent hereby represents and warrants that it is a licensee, with the right to sublicense, the trademarks used in connection with the Additional Roundup Products as set forth on Schedule 6.11(f) in the column titled "Additional Roundup Products Trademarks" set forth opposite each Additional Roundup Product in Schedule 6.11(f) (the "Additional Roundup Products Trademarks") and that it has the right to sublicense each of the Additional Roundup Products Trademarks for the term of the Additional Roundup Trademarks Licenses and for the purposes set forth therein without reservation. To the Agent's knowledge, Monsanto's use of the Additional Roundup Products Trademarks in accordance with the terms and conditions of the Additional Roundup Trademarks Licenses shall not, and the Additional Roundup Products Trademarks do not, infringe any trademarks, registrations, or other intellectual property or proprietary rights of any third party and none of the Additional Roundup Products Trademarks are currently being infringed upon by a third party. The Agent agrees to hold harmless, indemnify, and defend Monsanto from any and all claims, demands, damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees) arising from (i) a breach of this warranty by the Agent and (ii) a claim of infringement of the Additional Roundup Products Trademarks as used by Monsanto pursuant to the Additional Roundup Trademarks Licenses, provided that such use is in accordance with the terms and conditions of the Additional Roundup Trademarks Licenses.

(g) Agent hereby grants to Monsanto, during the term of this Agreement, a non-exclusive, royalty-free, non-transferable and non-assignable license (without the right to sublicense, except as specifically set forth in Section 6.11(h)) to use the Additional Roundup Products Trademarks for the purpose of and to the limited extent necessary to register the Additional Roundup Products with federal, state, or territorial government authorities (as may be required by law) in the United States and its territories (the "Additional Roundup Products Trademarks License"). Upon the expiration or termination of this Agreement, Monsanto shall have no right to use the Additional Roundup Products Trademarks. Upon such expiration or termination, the Agent will purchase any remaining inventory of the Additional Roundup Products, including any components thereof, at cost.

(h) Notwithstanding the foregoing, Monsanto, or a subsequent successor, may assign the license for the Additional Roundup Products Formulation Data upon a Change of Control with respect to Monsanto or a Roundup Sale. In addition, notwithstanding the foregoing, Monsanto,

or a subsequent successor, may assign the licenses for the Additional Roundup Products Trademarks upon a Change of Control with respect to Monsanto or a Roundup Sale, provided that Monsanto has provided the Agent with prior written notice of, and has obtained the Agent's prior written consent to, such assignment, which consent shall not be unreasonably withheld.

(i) The Agent agrees to carry out at its expense, or to ensure the completion of at its expense, all procedures necessary to register and maintain the Additional Roundup Products Trademarks in full force and effect, and Monsanto agrees to cooperate with the Agent in providing any required information to assist in the maintenance and renewal of the Additional Roundup Products Trademarks.

(j) Monsanto will use the Additional Roundup Products Trademarks in a manner consistent with the form and style of other products sold by the Agent under the Additional Roundup Products Trademarks, or as otherwise agreed to in writing between the parties.

(k) Monsanto acknowledges each of the Additional Roundup Products Trademarks owners' exclusive ownership of all right, title and interest in and to the Additional Roundup Products Trademarks and agrees that Monsanto's use of the Additional Roundup Products Trademarks shall inure to the benefit of each such owner. Monsanto further agrees that it will in no way dispute, impugn or attack the validity of the Additional Roundup Products Trademarks or the respective owner's rights thereto.

(l) Monsanto further acknowledges that the designs, graphics, packaging designs and other intellectual property, including trade dress and copyright, in the labels and packaging for the Additional Roundup Products or in association with the Additional Roundup Products Trademarks (the "Additional Roundup Products Trade Dress") are the exclusive property of the respective trade dress owners and that Monsanto has no right, title or interest in or to the Additional Roundup Products Trade Dress.

(m) To the extent feasible, the Agent shall notify Monsanto in advance of any meetings with regulatory authorities relating to regulatory, scientific or safety issues concerning the Additional Roundup Products and shall provide Monsanto with the opportunity to participate in such meetings. To the extent such advance notice is not feasible, the Agent shall provide Monsanto with notice of any such meeting within a reasonable period following the conclusion of the meeting.

(n) To the extent feasible, Monsanto shall notify the Agent in advance of any meetings with regulatory authorities relating to regulatory, scientific or safety issues concerning the Additional Roundup Products and shall provide the Agent with the opportunity to participate in such meetings. To the extent such advance notice is not feasible, Monsanto shall provide the Agent with notice of any such meeting within a reasonable period following the conclusion of the meeting. The parties agree that the provisions of this Section 6.11(n) will not apply to routine day-to-day regulatory activities.

(o) The Agent shall not modify the formula of the Additional Roundup Products in any manner without Monsanto's written consent, which will not be unreasonably withheld.

Section 6.12 ***Confidentiality.*** Except as necessary for its performance under this Agreement, except as may be required by the federal securities laws or other applicable laws and except to the extent required under certain existing agreements to which Monsanto is a party (i.e., AHP Merger Agreement), neither party shall at any time or in any manner, either directly or indirectly, and neither party shall permit its employees to use, divulge, disclose or communicate to any person or entity any "confidential information" of the other party. For purposes of this Section 6.12, "confidential information" includes any information of any kind, nature, or description that is proprietary, treated as confidential by, owned by, used by, or concerning any matters affecting or relating to the business of a party or the subject matter of this Agreement, including but not limited to, the names, business patterns and practices of any of its customers, its marketing methods and related data, the names of any of its vendors and suppliers, the prices it obtains or has obtained or at which it sells or has sold products or services, lists, other written records, and information relating to its manner of operation. Notwithstanding the foregoing, "confidential information" shall not include any information which (i) is or becomes public knowledge through no fault or wrongful act of the party disclosing such information or its employees, (ii) was known by such party prior to any agency or distributor relationship with the other party or any predecessor, (iii) is received by such party pursuant to the Formulation Agreement and which is not otherwise confidential information, or (iv) is received from a third party who is not obligated to keep such information confidential. All "confidential information" in any form (electronic or otherwise) shall be and remain the sole property of the party possessing such information and shall be returned to such party upon the termination of this Agreement upon such party's reasonable request.

Section 6.13 ***Noncompetition.***

(a) *Noncompetition Period*. The "Noncompetition Period" shall be the term of this Agreement, and for the two-year period following the termination, cancellation or non-renewal of this Agreement; provided, however, that in the event (i) Monsanto terminates this Agreement pursuant to Section 10.4(a)(2) (Roundup Sale or Change of Control) or Section 10.4(a)(3) (Brand Decommissioning Event), or (ii) the Agent terminates this Agreement pursuant to Section 10.5(a) (Material Breach, Material Fraud and Material Willful Misconduct), Section 10.5(c) (Termination for Convenience), or Section 10.5(d) (Insolvency), in each such case, the Noncompetition Period shall be deemed to terminate simultaneously upon the effective date of the termination of this Agreement; provided, further, that in the event that either Monsanto terminates this Agreement pursuant to Section 10.4(a)(4) (Program EBIT Decline Event) or the Agent terminates this Agreement pursuant to Section 10.5(f) (Program EBIT Decline Event), the Noncompetition Period applicable to the Agent and Monsanto shall be deemed to terminate simultaneously upon delivery of written notice of the Program EBIT Decline Event to the other party. Notwithstanding the foregoing, in the event Monsanto provides notice to the Agent to terminate this Agreement pursuant to Section 10.4(a)(3) (Brand Decommissioning Event), the obligations of the Agent under this Section 6.13 shall not apply following the delivery of such notice to the Agent; provided, however, that the Agent continues to support the Roundup L&G Business in a manner consistent, in all material respects, with the standards set forth in this Agreement and the Wind-Down Plan; provided, further, that (i) Monsanto shall provide notice to the Agent in accordance with Section 11.9 hereof describing with particularity any alleged failure of the Agent to support the Roundup L&G Business; and (ii)

the Agent shall be provided an opportunity to cure such failure for a period of thirty (30) days after written notice thereof has been provided to the Agent.

(b) *Monsanto Covenant*. Except as provided for in Section 3.8, Monsanto covenants and agrees that for the Noncompetition Period, Monsanto will not, nor will it permit any Affiliate to, directly or indirectly, own, manage, operate or control, or participate in the ownership, management, operation or control of, or be connected with or have any interest in, as a shareholder, partner, creditor or otherwise, any "Competitive Business." A Competitive Business shall be any business which, anywhere within the Included Markets, (x) manufactures, sells, markets or distributes any non-selective weed control product, whether residual or non-residual, for Lawn and Garden Use or (y) competes with the Roundup L&G Business; provided, however, this Section 6.13(b) shall not apply to those actions of Monsanto or any Affiliate (i) to the extent such actions are expressly contemplated by this Agreement, for the duration of this Agreement, (ii) to the extent that immediately upon termination of this Agreement for whatever reason Monsanto or any Affiliates or successor to the Roundup L&G Business shall continue to operate the Roundup L&G Business without infringing this covenant, (iii) to the extent that such actions involve formulation development, regulatory registrations, packaging and delivery systems development, advertising and promotional material development or other product development activities, or (iv) to the extent that Monsanto's interest in a Competitive Business, as a shareholder, partner, creditor or otherwise, is equal to or less than 5%. Notwithstanding anything in this Agreement to the contrary, Monsanto shall be permitted to begin negotiating and entering into agreements to prepare for the marketing, production, sales and distribution of competing products that would be manufactured and sold only after the expiration of the Noncompetition Period, if applicable. Notwithstanding the foregoing, Monsanto shall continue to support the Roundup L&G Business in a manner consistent with the standards set forth in this Agreement.

(1) In the event any Exclusive Mexican Business makes a material change in its business model to target sales to consumers outside of the Lawn and Garden Market, Monsanto will notify the Agent in writing that it wishes to begin selling Mexican Roundup Ag Products to such identified business. The Agent will have thirty (30) days to provide any written objection to Monsanto's request. If the Agent does not object to the request, such identified Exclusive Mexican Business will no longer remain exclusive to the Agent. If the Agent objects to Monsanto's request, Monsanto shall have the ability to raise its request to the Steering Committee for final determination. Monsanto shall continue to maintain the right to sell Mexican Roundup Ag Products, labeled for the Ag Market, regardless of size, to any business that markets and makes sales to the Ag Market in Mexico, regardless of whether that business also markets and makes sales to consumers for use in, on or around residential homes, residential lawns and residential gardens, and such sales shall not constitute a violation of Section 6.13(b) of this Agreement. Monsanto's Mexican Roundup Ag Products shall not be included in the Program Sales Revenue, regardless of SKU size.

(c) *Agent's Covenant*. The Agent covenants and agrees that during the Noncompetition Period, the Agent will not, nor will it permit any Affiliate to, directly or indirectly, own, manage, operate or control, or participate in the ownership, management, operation or control of, or be connected with or have any interest in, as a shareholder, partner, creditor or otherwise, any Competitive Business; provided, however, this Section 6.13(c) shall not apply to those actions of

the Agent or any Affiliate (i) to the extent such actions are expressly contemplated by this Agreement, for such term of this Agreement; (ii) to the extent such actions relate to the products listed on Exhibit D hereto in the countries listed therein, the products that the Agent either owns, has contracted to purchase or entered into a letter of intent with respect to as of the Effective Date and such additional products as the parties may from time to time agree (the "Permitted Products"); (iii) to the extent that the Agent's interest in a Competitive Business, as a shareholder, partner, creditor or otherwise, is equal to or less than 5%; (iv) to the extent that such actions involve formulation development, regulatory registrations, packaging and delivery systems development, advertising and promotional material development or other product development activities; or (v) to any separate agreement with Monsanto with respect to transgenic technology sharing. Notwithstanding the foregoing provisions of this Section 6.13(c), the Agent shall have the right to market and make sales of Roundup Products labeled for Lawn and Garden Use to any business that markets and makes sales to Lawn and Garden Channels in Mexico regardless of whether that business also makes sales to the Ag Market in Mexico, and such sales shall not constitute a violation of this Section 6.13(c). Notwithstanding anything in this Agreement to the contrary, the Agent shall be permitted to begin negotiating and entering into agreements to prepare for the marketing, production, sales and distribution of competing products that would be manufactured and sold only after the expiration of the Noncompetition Period, if applicable. Notwithstanding the foregoing, the Agent shall continue to support the Roundup L&G Business in a manner consistent with the standards set forth in this Agreement. For the avoidance of doubt, the parties acknowledge and agree that (A) the Agent's noncompetition covenants in this Section 6.13(c) do not apply to products that compete, directly or indirectly, with the BEA Products (or any evolution of such products) so long as such products do not otherwise directly compete with non-selective herbicide Roundup Products; (B) the Agent may freely offer or introduce (or continue to offer or introduce) products that compete with the BEA Products (or any evolution of such products) at any time and regardless of the termination or expiration of any agreements between the parties with respect to the BEA Products so long as such products do not otherwise directly compete with non-selective herbicide Roundup Products; and (C) the Agent's operation of a business that competes with the BEA Products, including during any period of time when Agent is providing the BEA Agent Services or the BEA Products are included as "Roundup Products" for purposes of Program EBIT and the Roundup P&L, will not be deemed to constitute a breach of this Agreement so long as such products do not otherwise directly compete with non-selective herbicide Roundup Products.

(d) *Non-Solicitation by Monsanto*. Monsanto agrees that for the duration of the Noncompetition Period and for the two years thereafter, without the prior written consent of the Agent, it will not, nor will it permit any of its Affiliates to (i) solicit for employment any person then employed by the Agent or any of its Affiliates or (ii) knowingly employ any employee of the Agent or any of its Affiliates who voluntarily terminates such employment with the Agent (or such Affiliate) after the Effective Date, until three months have passed following termination of such employment.

(e) *Non-Solicitation by the Agent*. The Agent agrees that for the duration of the Noncompetition Period, without the prior written consent of Monsanto, it will not, nor will it permit any of its Affiliates to (i) solicit for employment any person then employed who works primarily with Roundup Products or with other products with Lawn & Garden Uses ("Lawn & Garden

Employee") by Monsanto or any of its Affiliates or (ii) knowingly employ any Lawn & Garden Employee of Monsanto or any of its Affiliates who voluntarily terminates such employment with Monsanto (or such Affiliate) after the Effective Date, until three months have passed following termination of such employment.

(f) *Consideration*. The consideration for the agreements contained in this Section 6.13 are the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

(g) *Modification*. In the event a court (or other authority) refuses to enforce the covenants and agreements contained in this Section 6.13, either because of the scope of the geographical area specified in this Section 6.13, the duration of the restrictions, or otherwise, the parties hereto expressly confirm their intention that the geographical areas covered hereby, the time period of the restrictions, or such other provision, be deemed automatically reduced to the minimum extent necessary to permit enforcement.

(h) *Injunctive Relief*. The parties acknowledge and agree that the extent of damages to one party (the "non-breaching party") in the event of an actual or threatened breach of this Section 6.13 by the other party (the "breaching party") may be impossible to ascertain and there may be available to the non-breaching party no adequate remedy at law to compensate the non-breaching party in the event of such an actual or threatened breach by the breaching party. Consequently, the parties agree that, in the event that either party breaches or threatens to breach any such covenant or agreement, the non-breaching party shall be entitled, in addition to any other remedy or relief to which it may be entitled, including without limitation, money damages, to seek to enforce any or all of such agreements or covenants against the breaching party by injunctive or other equitable relief ordered by any court of competent jurisdiction, subject to Section 11.12(b) hereof.

Section 6.14 ***Industrial Property.***

(a) Monsanto represents and warrants that Monsanto or Affiliates are the exclusive owners of the trademarks, trade names, packages, copyrights and designs used in the sale of Roundup Products (the "Industrial Property"). To Monsanto's knowledge, the conduct of the Roundup L&G Business as now being conducted and the use of the Industrial Property in the conduct of the Roundup L&G Business, do not infringe or otherwise conflict with any trademarks, registrations, or other intellectual property or proprietary rights of others, nor has any claim been made that the conduct of the Roundup L&G Business as now being conducted infringes or otherwise is covered by the intellectual property of a third party, except for any conflict or infringement which would not have a material adverse effect. To the knowledge of Monsanto, none of the Industrial Property is currently being infringed upon by a third party.

(b) The Agent acknowledges the validity of the trademarks which designate and identify Roundup Products. The Agent further acknowledges that Monsanto is the exclusive owner of the Industrial Property.

(c) The Agent agrees that, to the extent it uses Industrial Property, such Industrial Property shall be used in its standard form and style as it appears upon Roundup Products or as instructed in writing by Monsanto. No other letter(s), word(s), design(s), symbol(s) or other matter of any kind shall be superimposed upon, associated with or shown in such proximity to the Industrial Property so as to tend to alter or dilute such Industrial Property, and the Agent further agrees not to combine or associate any of such Industrial Property with any other industrial property. The generic or common name of the type of product (e.g., "non-selective herbicide") must always follow Roundup Products' trademarks.

(d) In all advertisements, sales and promotional or other printed matter in which any Industrial Property appears, the Agent shall identify itself by full name and address and state its relationship to Monsanto. In all such material, the Roundup trademark shall be identified as a trademark owned by Monsanto Company. In the case of a registered trademark, a ® shall be placed adjacent to the trademark with the ® referring to a footnote reading "® Registered trademark of Monsanto Company." In the case of unregistered trademarks, a "TM" shall be placed adjacent to the trademark with the "TM" referring to a footnote reading "TM Trademark of Monsanto Company."

(e) On its letterheads, business cards, invoices, statements, etc., the Agent may identify itself as a distributor for the Industrial Property.

(f) The Agent agrees that it will never use any Industrial Property or any simulation of such Industrial Property as part of the Agent's corporate or other trading name or designation of any kind.

(g) Upon expiration or in the event of any termination of this Agreement, the Agent shall promptly discontinue every use of the Industrial Property and any language stating or suggesting the Agent is a distributor for Roundup Products. All advertising and promotional materials which use Industrial Property shall be destroyed.

(h) The Agent shall not use or facilitate the use of promotional materials which disparage Roundup Products or Industrial Property. If the Agent should become aware of any suspected counterfeiting of Roundup Products or Industrial Property, the Agent shall promptly notify Monsanto of such suspected counterfeiting. The Agent shall cooperate in any investigation or legal proceedings that Monsanto deems desirable to protect its rights in the Industrial Property. The Agent shall not promote the sale of products using trademarks, packages or designs which are in Monsanto's opinion deceptively similar to Industrial Property.

Section 6.15 ***Conflicts of Interest.*** Conflicts of interest relating to this Agreement are strictly prohibited. Except as otherwise expressly provided herein, neither party nor any of its directors, employees or agents, or its subcontractors or vendors shall give to or receive from any director, employee or agent of the other party any gift, entertainment or other favor of significant value, or any commission, fee or rebate. Likewise, neither party nor its directors, employees or agents or its subcontractors or vendors shall, without prior written notification thereof to the other party, enter into any business relationship with any director, employee, or agent of the other party or any of its Affiliates unless such person is acting for and on behalf of such party. Each party shall

promptly notify the other of any violation of this Section 6.15 and any consideration received as a result of such violation shall be paid over or credited to the other party.

Section 6.16 ***Records Retention.*** The Agent and Monsanto shall each maintain true and complete records in connection with this Agreement and shall retain all such records for at least forty-eight (48) months following the termination or expiration of this Agreement. This obligation shall survive the termination or expiration of this Agreement.

Section 6.17 ***Additional Covenant of the Agent.*** The Agent shall not take any action or fail to take any action that materially adversely impacts the Roundup brand or the Ag Market; provided, however, that the Agent shall have no liability for any event resulting primarily by an act or omission of Monsanto or its Affiliates.

Section 6.18 ***Roundup Telephone Number.*** The parties acknowledge and agree that the Agent currently is the party of record for the toll-free service number 1-888-768-6387 (1-888-ROUNDUP). The Agent hereby acknowledges and agrees that it will transfer the right to use such telephone number back to Monsanto within thirty (30) days of Monsanto providing notice to the Agent of Monsanto's decision to become the party of record for such telephone number.

Section 6.19 ***Additional Obligations.*** Unless expressly agreed by the parties in writing on a country-by-country basis, Monsanto shall not sell, or promote the indirect sale of, the 1.67 Gallon Roundup Pro Max SKU through Lawn and Garden Channels in the Included Markets; provided, that the foregoing shall not be deemed an acknowledgement by Monsanto that a 1.67 Gallon package product or any other package size cannot have agricultural uses.

Section 6.20 ***BEA Products.***

(a) Following the Third Amendment Date and thereafter, the products set forth on Schedule 6.20 attached hereto and any other New BEA Proposed Products with respect to which the Agent accepts the BEA Product Offer (collectively, the "BEA Products") shall be included in the definition of "Roundup Products" for the purposes of this Agreement. The obligations of the Agent under Section 2.2 of this Agreement with respect to the BEA Products shall be referred to herein as the "BEA Agent Services". Monsanto may, from time to time, offer (a "BEA Product Offer") to the Agent, with respect to the Included Markets, agency and distribution rights to new products (other than non-selective herbicide products, which are addressed in Section 6.10) (each such proposed product, a "New BEA Proposed Product"). The BEA Product Offer shall be in writing and include sufficient detail describing such New BEA Proposed Product.

(b) *Acceptance.* If the Agent agrees in writing within forty-five (45) days of receipt of the BEA Product Offer to accept the BEA Product Offer, then such New BEA Proposed Product shall be, without further action or amendment, included within the definition of BEA Products, and also, pursuant to Section 6.20(a), Roundup Products, and be subject to the terms and conditions of this Agreement.

(c) *Rejection.* If the Agent fails to accept, or otherwise rejects, in writing the BEA Product Offer within forty-five (45) days of receipt of the BEA Product Offer, then (i) Roundup

Products shall not include the New BEA Proposed Product and (ii) for the avoidance of doubt, the provisions of Section 6.13(b) of this Agreement shall not apply with respect to Monsanto's rights (A) to directly or indirectly manufacture, package, promote, distribute, and sell such New BEA Proposed Product in the Included Markets, (B) to retain any sales and marketing agent with respect to such New BEA Proposed Products, (C) to directly launch such New BEA Proposed Products without any sales and marketing agent or (D) to license the sales and distribution rights with respect to such New BEA Proposed Products to any third party, in each case, regardless of any actual or potential conflict with the terms of this Agreement. In the event that the Agent has not timely accepted, or has otherwise rejected, one or more BEA Product Offers with respect to any New BEA Proposed Products (collectively, the "Rejected BEA Products") and following the direct or indirect commercialization by Monsanto of any one or more Rejected BEA Products, the aggregate Net Sales of all such Rejected BEA Products during any full Program Year exceed the aggregate amount of Net Sales for all BEA Products included within the Roundup Products for said Program Year (a "BEA Product Rejection Event"), Monsanto shall be permitted to terminate the Agent as the provider of the BEA Agent Services pursuant to the procedures set forth in Section 6.20(e). For the purposes of the foregoing, "Net Sales" shall mean sales revenue less (i) all bona fide trade, quantity and cash discounts and rebates given or made in connection with such sales and (ii) credits or allowances given or made for rejection or return of previously sold products in connection with such sales.

(d) *Agent BEA Agent Services Termination.* If the Agent no longer desires to provide the BEA Agent Services under this Agreement, the Agent shall be permitted to terminate its obligation to provide the BEA Agent Services by delivering notice to terminate the BEA Agent Services, such termination to be effective upon the date that is eighteen (18) months following the date on which such notice is delivered (an "Agent Elected BEA Agent Termination Date").

(e) *Monsanto BEA Agent Services Termination.* In the event that (i) the BEA Program EBIT falls below $10,000,000 for any full Program Year, (ii) there is a BEA Product Rejection Event or (iii) the Agent fails to exercise commercially reasonable efforts to promote, market and sell each BEA Product (without consideration for the fact that the Agent may, or may in the future, have products that may be competitive with such New BEA Proposed Products), Monsanto shall be permitted to terminate the Agent as the provider of the BEA Agent Services by delivering notice to terminate the BEA Agent Services no later than ninety (90) days following the end of a Program Year, such termination to be effective upon the later of (i) the end of the Program Year in which such notice was delivered or (ii) the end of six (6) months following the date on which such notice was delivered (a "Monsanto Elected BEA Agent Termination Date"). Solely for the purposes of determining whether Monsanto may terminate the Agent's provision of BEA Agent Services in the prior sentence (and not for the purposes of calculating the Commission payable under this Agreement), the term "BEA Program EBIT" shall mean all Program EBIT attributable to the BEA Products; provided, that Program Expenses for such calculation shall not include any working media expenses.

(f) *Termination.* Following an Agent Elected BEA Agent Termination Date or a Monsanto Elected BEA Agent Termination Date, (i) Roundup Products shall not include the BEA Products, (ii) Program EBIT shall not include any revenue or expenses related to the BEA Products, and (iii) for the avoidance of doubt, the provisions of Section 6.13(b) of this Agreement shall not

apply with respect to Monsanto's rights (A) to directly or indirectly manufacture, package, promote, distribute, and sell any of the BEA Products in the Included Markets, (B) to retain any sales and marketing agent with respect to the BEA Products, (C) to directly launch the BEA Products without any sales and marketing agent or (D) to license the sales and distribution rights with respect to the BEA Products to any third party, in each case, regardless of any actual or potential conflict with the terms of this Agreement (including, in each case, any evolution of such products) and, for the avoidance of doubt, Monsanto shall be permitted to engage in such actions without obligation to the Agent.

Section 6.21 ***Technology Sharing.*** Monsanto agrees that it will provide access to its pelargonic acid technology and the Agent agrees that it will provide access its ammonium nonanoate technology, including, but not limited to, access to formulations, know-how and registrations for use within GroundClear and Roundup branded products. If the Agent does not deliver a Convenience Termination Notice on January 15, 2021, the parties will enter into a broader technology sharing agreement on terms to be mutually agreed by the parties.

ARTICLE 7 - [Intentionally omitted.]

ARTICLE 8 - REPRESENTATIONS, WARRANTIES, AND COVENANTS

Section 8.1 ***The Agent's Representations and Warranties.*** The Agent hereby represents and warrants that all of the following are true:

(a) The Agent is a limited liability company duly organized, validly existing and in full force and effect under the laws of Ohio and has all requisite limited liability company power and authority to carry on and conduct its business as it is now being conducted, to own or lease its assets and properties and is duly qualified and in good standing in every jurisdiction in which the conduct of its business or ownership of its assets requires it to be so qualified.

(b) (i) The Agent has the full authority and legal right to carry out the terms of this Agreement; (ii) the terms of this Agreement will not violate the terms of any other material agreement, contract or other instrument to which it is a party, and no consent or authorization of any other person, firm, or corporation is a condition precedent to the Agent's execution of this Agreement; (iii) it has taken all action necessary to authorize the execution and delivery of this Agreement; and (iv) this Agreement is a legal, valid, and binding obligation of the Agent, enforceable in accordance with its terms.

(c) The Agent is in compliance in all material respects with all applicable Laws relating to its business.

(d) There is no material suit, investigation, action or other proceeding pending or threatened before any court, arbitration tribunal, or judicial, governmental or administrative agency, against the Agent which would have a material adverse effect on the ability of the Agent to perform its obligations hereunder or which seeks to prevent the consummation of the transactions contemplated herein.

(e) There are no material disputes with underwriters under the Agent's insurance policies; each such policy is valid and enforceable in accordance with its terms and is in full force and effect; there exists no default by the Agent under any such policy, and there has been no material misrepresentation or inaccuracy in any application therefor, which default, misrepresentation or inaccuracy would give the insurer the right to terminate such policy, binder, or fidelity bond or to refuse to pay a claim thereunder; and the Agent has not received notice of cancellation or non-renewal of any such policy.

Section 8.2 ***Monsanto's Representations and Warranties.*** Monsanto hereby represents and warrants that all of the following are true:

(a) Monsanto is a corporation duly incorporated, validly existing and in good standing under the laws of Delaware and has all requisite corporate power and authority to carry on and conduct its business as it is now being conducted, to own or lease its assets and properties and is duly qualified and in good standing in every jurisdiction in which the conduct of its business or ownership of its assets requires it to be so qualified.

(b) (i) Monsanto has the full authority and legal right to carry out the terms of this Agreement; (ii) the terms of this Agreement will not violate the terms of any other material agreement, contract or other instrument to which it is a party, and no consent or authorization of any other person, firm, or corporation is a condition precedent to this Agreement; (iii) it has taken all action necessary to authorize the execution and delivery of this Agreement; and (iv) this Agreement is a legal, valid, and binding obligation of Monsanto, enforceable in accordance with its terms.

(c) Monsanto is in compliance, in all material respects, with all applicable Laws relating to its business.

(d) There is no material suit, investigation, action or other proceeding pending or threatened before any court, arbitration tribunal, or judicial, governmental or administrative agency, against Monsanto which would have a material adverse effect on the ability of Monsanto to perform its obligations hereunder or which seeks to prevent the consummation of the transactions contemplated herein.

ARTICLE 9 - INDEMNIFICATION

Section 9.1 ***Indemnification and Claims Procedure.***

(a) Indemnification.

(1) Each party hereto agrees to indemnify, defend and hold harmless the other party and its employees, officers, directors, agents and assigns from and against any and all loss (including reasonable attorneys' fees), damage, injury or liability, whether incurred as a party or non-party to any action or proceeding, that may arise out of any actual or threatened claim asserted or action brought by or on behalf of a third party for injury to or death of a person or for loss of or damage to property, including employees and property of the indemnified party ("Loss"), to the

extent resulting directly or indirectly from the indemnifying party's actual or alleged (i) breach of a duty, representation, or obligation of this Agreement, or (ii) negligence or willful misconduct in the performance of its obligations under this Agreement, except to the extent that such indemnification is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement.

(2) Monsanto's obligations set forth in Section 9.1(a)(1) shall apply with respect to (A) all products sold under a registration that is held by Monsanto and for which sales are, or have been, included in Program EBIT or the Roundup P&L (e.g., the Total Kill Home Depot private label Glyphosate product, the Ace Hardware private label Glyphosate product, etc.), which products Monsanto acknowledges are Roundup Products for purposes of this Agreement, and (B) the Roundup Pro SKU referenced in Section 3.8 (collectively, "Monsanto Products").

(3) Monsanto shall have no obligations as set forth in Section 9.1(a)(1) with respect to any products that are not Monsanto Products as set forth in Section 9.1(a)(2)). Monsanto and the Agent may agree, however, on the terms and conditions for any new products to be treated as Roundup Products under this Agreement, in connection with a Product Offer or otherwise (which terms and conditions, for clarity, may provide for exceptions to provisions generally applicable to Roundup Products) and whether and under what circumstances Monsanto will have any obligations as set forth in Section 9.1(a)(1) in respect of such new products; for clarity, however, in no event shall Monsanto have any obligations with respect to such products until all Product Information and Rights with respect to such products are first transferred, or, with respect to any such Product Information and Rights that are used by the Agent in other aspects of its business or that are not owned by the Agent or one of its Affiliates, licensed or sublicensed to Monsanto under terms that permit Monsanto to use and exercise such Product Information and Rights to the same extent the Agent or its Affiliates has the right to use such Product Information and Rights.

(4) Monsanto and the Agent acknowledge that Roundup Products are sold by Monsanto directly to retailers and agree that any product indemnity for Roundup Products provided by the Agent in its capacity as "Agent" under this Agreement to retailers (a "Third-Party Indemnity") is an indemnity obligation of Monsanto and, as such, shall be provided directly by Monsanto to such retailer. From the Third Amendment Date forward, the Agent shall have no right to offer or provide indemnification to any third party that is outside the scope of the standard indemnity provisions in retailers' vendor agreements, vendor supplier guides or vendor standard terms and conditions, unless expressly agreed to in writing by Monsanto or otherwise agreed to by the parties. Monsanto's foregoing acknowledgement and agreement is subject to the reservation by Monsanto of all rights against the Agent under this Agreement.

(5) Monsanto and the Agent acknowledge and agree that their respective obligations to indemnify, defend and hold harmless the other party under Article 9, including without limitation the duty to cooperate set forth in Section 9.1(b)(2), shall survive any expiration or termination of this Agreement or any other agreement between the parties, unless such Article 9 obligations are expressly terminated by way of a separate mutual agreement of the parties in writing directed to such obligation.

(b) *Claims Procedure*. Promptly after receipt by either party hereto (the "Indemnitee") of any notice of any demand, claim or circumstances which, with the lapse of time, would or might give rise to a claim or the commencement (or threatened commencement) of any action, proceeding or investigation (an "Asserted Liability") that may result in a Loss, the Indemnitee shall give notice thereof (the "Claims Notice") to the party obligated to provide indemnification pursuant to Section 9.1(a). The Claims Notice shall describe the Asserted Liability in reasonable detail, and shall indicate the amount (estimated, if necessary to the extent feasible) of the Loss that has been or may be suffered by the Indemnitee. Thereafter, the following procedures shall apply:

(1) Subject to Section 9.1(b)(2), Section 9.1(b)(3), Section 9.1(b)(4) and Section 9.1(b)(5), the indemnifying party may elect to compromise or defend, at its own expense by its own counsel, and shall control any such compromise or defense;

(2) If the indemnifying party elects to compromise or defend such Asserted Liability it shall (i) within thirty (30) days after confirmed receipt of the Claims Notice notify the Indemnitee of its intent to do so, and the Indemnitee shall cooperate, at the expense of the indemnifying party, in the compromise of, or defense against, such Asserted Liability, and shall promptly make available to the indemnifying party any books, records or other documents within its control and its employees that are necessary or appropriate for such defense recognizing that certain of such requests will be time-sensitive in light of applicable deadlines and court requirements; provided, that the foregoing shall not require the Indemnitee to provide documents or information requested solely by the third party bringing the claim, (ii) select counsel and, if applicable, consultants and contractors, reasonably acceptable to Indemnitee in connection with conducting the defense of such Asserted Liability, and (iii) defend or settle such Asserted Liability in consultation with Indemnitee, including, without limitation, consulting Indemnitee on litigation strategy and keeping Indemnitee reasonably informed of all proceedings and settlement demands and negotiations. Nothing herein shall modify the Indemnitee's applicable common law duties to the indemnifying party with respect to contractual obligations under this Agreement, including the duty to mitigate damages and the duty of good faith and fair dealing. Notwithstanding the foregoing, the Agent and Monsanto acknowledge and agree that, in the context of certain Asserted Liabilities, it may serve the interests of the Agent and Monsanto for the Agent to be separately represented, and Monsanto will give due consideration to a request by the Agent that it should be separately represented with respect to any such Asserted Liability;

(3) The indemnifying party shall not consent to a settlement of any such Asserted Liability without the prior written consent of Indemnitee, which consent shall not be unreasonably withheld; provided, that the indemnifying party may enter into a settlement without the consent of Indemnitee after providing at least thirty (30) days' prior written notice to Indemnitee if the terms of such settlement (x) include only money damages as a remedy and such money damages are paid in full by the indemnifying party, (y) do not impose material obligations or restrictions on Indemnitee's business and (z) do not include any admission of wrongdoing by Indemnitee;

(4) If the indemnifying party elects not to compromise or defend the Asserted Liability, fails to notify the Indemnitee of its election as herein provided, or contests its

obligation to indemnify under this Agreement, the Indemnitee may pay, compromise or defend such Asserted Liability, with a reservation of all rights to seek indemnification hereunder against the indemnifying party; provided, that Indemnitee may enter into a settlement without the consent of the indemnifying party after providing at least thirty (30) days' prior written notice to the indemnifying party, if the terms of such settlement (i) include only money damages as a remedy, (ii) do not impose material obligations or restrictions on the indemnifying party's business and (iii) do not include any admission of wrongdoing by the indemnifying party;

(5) Notwithstanding the foregoing, and unless the indemnifying party and the Indemnitee otherwise agree, the Indemnitee's right to participate at its own expense, in the defense of any Asserted Liability, is limited solely to circumstances involving (a) responding to depositions and/or other discovery requests directed to the Indemnitee and/or (b) in connection with other testimony of a current or former director, officer, or executive employee of the Indemnitee, in each case, subject to the prior consultation with counsel for the indemnifying party and to the extent such participation is consistent with the indemnifying party's defense strategy; and

(6) If an indemnifying party requests assistance in connection with any Asserted Liability for which the indemnifying party has an obligation to defend and indemnify or any third party discovery is sought from an Indemnitee in connection with such litigation, the indemnifying party will reimburse the Indemnitee for its reasonable costs and attorneys' fees incurred by it, including any costs and attorneys' fees incurred by the Indemnitee's counsel. The Indemnitee shall promptly and expeditiously respond to such requests for assistance, recognizing that certain of such requests will be time-sensitive in light of applicable deadlines and court requirements. The indemnifying party will reimburse the Indemnitee for any reasonable costs and attorney's fees incurred by the Indemnitee and costs and fees subject to any indemnity obligations within 90 days after the costs or fees are submitted to the indemnifying party provided that such attorney's fees reasonably meet the indemnifying party's outside counsel guidelines. For the avoidance of doubt, if Monsanto requests assistance from the Agent in connection with defending Roundup litigation in which Monsanto is a defendant or third party discovery is sought from the Agent in connection with such Roundup litigation, the preceding sentences of this Section 9.1(b)(6) shall apply to the Agent (as if the Agent was an Indemnitee) and the Agent shall be entitled to the rights and subject to the obligations set forth in the preceding sentences of this Section 9.1(b)(6) (as if the Agent was an Indemnitee).

ARTICLE 10 - TERMS, TERMINATION, AND FORCE MAJEURE

Section 10.1 ***Terms.*** This Agreement shall commence as of the Effective Date and shall continue unless and until terminated as provided herein.

Section 10.2 ***[Intentionally omitted.].***

Section 10.3 ***[Intentionally omitted.].***

Section 10.4 ***Termination by Monsanto.***

(a) *Termination Rights*. Except as set forth in Section 10.5(c), Monsanto may terminate this Agreement by giving the Agent a termination notice specified for each termination event only upon the occurrence and continuance of one of the following:

(1) An Event of Default occurring at any time;

(2) A Roundup Sale or a Change of Control with respect to Monsanto, by giving the Agent a notice of termination within six (6) months following the consummation of such Change of Control or Roundup Sale and the commencement of the functional integration of the Roundup L&G Business into the organizational structure of the acquiring entity in a Roundup Sale or Change of Control, which, for the avoidance of doubt, shall be deemed to not occur until all applicable legal restrictions on the functional integration of and/or control over the Roundup L&G Business have expired, such termination to be effective at the end of the fifth (5th) full Program Year after such notice is provided;

(3) A Brand Decommissioning Event; or

(4) Program EBIT with respect to a completed Program Year falls below $50MM (a "Program EBIT Decline Event"), by providing written notice thereof within ninety (90) days following the end of such Program Year, such termination to be effective upon the date that is eighteen (18) months following the date on which such notice is delivered; provided, that following the delivery of such notice (A) both Monsanto and the Agent shall continue to fulfill their respective obligations under this Agreement and (B) no Termination Fee shall be payable (except to the extent payable under this Agreement after Agent has provided a Convenience Termination Notice prior to a Party providing written notice of a Program EBIT Decline Event as set forth in this sentence).

(5) Notwithstanding the foregoing, Monsanto may not terminate this Agreement for any reason on or before January 16, 2021, except with respect to Monsanto's termination of this Agreement pursuant to Section 10.4(a)(1) (Event of Default), Section 10.4(a)(2) (Roundup Sale or Change of Control) or Section 10.4(a)(3) (Brand Decommissioning Event).

(b) *Event of Default*. An "Event of Default" shall mean any of the following occurrences:

(1) a Material Breach committed by the Agent and established in accordance with the provisions of Section 10.4(g) of this Agreement;

(2) a Material Fraud committed by the Agent and established in accordance with the provisions of Section 10.4(g) of this Agreement;

(3) Material Willful Misconduct committed by the Agent and established in accordance with the provisions of Section 10.4(g) of this Agreement;

(4) [Intentionally omitted.];

(5) [Intentionally omitted.];

(6) the Insolvency of Agent;

(7) the occurrence of a Change of Control of an SMG Target without the prior written consent of Monsanto, unless the Agent has determined in its reasonable commercial opinion that such acquirer can and will fully perform the duties and obligations of the Agent under this Agreement; or

(8) [Intentionally omitted.];

(9) except to the extent permitted herein, (i) the assignment of all, or substantially all, of the Agent's rights, or (ii) the delegation of all, or substantially all, of the Agent's obligations hereunder, in either instance without the prior written consent of Monsanto.

As to any Event of Default defined in Sections 10.4(b)(1)-(3), such termination shall take effect on the later of the first business day following the thirtieth (30th) day after the sending of a termination notice to the Agent in accordance with the provisions of Section 11.9, or the date designated by Monsanto in said termination notice. As to any Event of Default defined in Section 10.4(b)(6), (7) and (9), such termination shall take effect on the later of the first business day following the seventh (7th) day after the sending of a termination notice to Agent, or the date designated by Monsanto in said notice of termination.

(c) *Amount and Payment of Termination Fee*. In connection with the termination of this Agreement, one, and only one, of (i) the Convenience Termination Fee, (ii) the Brand Decommissioning Termination Fee, or (iii) the Legacy Termination Fee (each, a "Termination Fee") shall become payable by Monsanto to the Agent subject to the following terms and conditions:

(1) Following the delivery of a Convenience Termination Notice, Monsanto shall pay to the Agent a total of $175,000,000 (the "Convenience Termination Fee"). Such Convenience Termination Fee shall, as of the date of the Convenience Termination Notice, become immediately deemed to be due and payable to the Agent (except as set forth in Section 10.4(e)); provided, however, that Monsanto may pay the Convenience Termination Fee as follows: (A) $50,000,000 payable on April 15, 2021, (B) $50,000,000 payable on January 15, 2022 and (C) $75,000,000 payable on September 30, 2022; or

(2) Following a Brand Decommissioning Event, Monsanto shall pay to the Agent a total of $375,000,000 (the "Brand Decommissioning Termination Fee"). Such Brand Decommissioning Termination Fee shall, as of the date of the Brand Decommissioning Event, become immediately deemed to be due and payable to the Agent; provided, however, that Monsanto may pay the Brand Decommissioning Termination Fee as follows: (A) $175,000,000 payable within ninety (90) days of the Brand Decommissioning Event, (B) $50,000,000 payable within twelve (12) months of the Brand Decommissioning Event, (C) $50,000,000 payable within eighteen (18) months of the Brand Decommissioning Event, (D) $50,000,000 payable within twenty-four (24) months of the Brand Decommissioning Event, and (E) $50,000,000 payable within thirty-six (36) months of the Brand Decommissioning Event; or

(3) If this Agreement is terminated by Monsanto or its successor under Section 10.4(a)(2), Monsanto shall pay the "Legacy Termination Fee" (as specified in this Section 10.4(c)(3)) to the Agent on the effective date of such termination; provided, that if this Agreement is terminated pursuant to Section 10.4(a)(2) as a result of a Roundup Sale and the Agent will become the successor to the Roundup Business, the Legacy Termination Fee shall not be paid but shall be credited against the purchase price as described in Section 10.6(b).

The Legacy Termination Fee payable pursuant to this Section 10.4(c)(3) shall vary in accordance with the Table hereunder:

Program Year	Legacy Termination Fee
2015 Program Year and thereafter	The greater of (i) $175MM or (ii) four (4) times an amount equal to (A) the average of the Program EBIT for the three (3) trailing Program Years prior to the year of termination, minus (B) the 2015 Program EBIT (excluding Europe and Australia) of $186.4MM. For example, if the Roundup Sale occurs in 2033 (all expressed in $MM): 2015 2030 2031 2032 3 year Avg. Legacy Termination Fee $186.4 $310 $309 $314 $311 $498.4

(d) *Termination Fee as Liquidated Damages*. Monsanto and the Agent stipulate and agree that the injury which will be caused to the Agent by the termination of this Agreement under the circumstances which shall give rise to the payment of the relevant Termination Fee are difficult or impossible of accurate estimation; that by establishing such Termination Fee they intend to provide for the payment of damages and not a penalty; and that the sum stipulated for such Termination Fee is a reasonable pre-estimate of the probable loss which will be suffered by the Agent in the event of such termination.

(e) *Remedies for Monsanto*. Subject to Section 10.4(g), in case of termination by Monsanto upon any of the Events of Default by the Agent specified in Section 10.4(b)(1)-(3), Monsanto shall be entitled to exercise all remedies available to it, either at law or in equity. In the case of termination by Monsanto upon any of the Events of Default specified in Section 10.4(b)(6), (7) and (b)(9), the remedies of Monsanto shall be limited to (i) termination of this Agreement and (ii) the recovery of reasonable and customary out-of-pocket expenses incurred by Monsanto in transferring the Agent's duties hereunder to a new agent; provided that in no case shall the amount of expenses recoverable under this provision exceed $20MM. In the case of termination by Monsanto upon any of the Events of Default by the Agent specified in Section 10.4(b)(1)-(3) (an "Agent Default") following delivery of a Convenience Termination Notice, the Convenience Termination Fee shall continue to be due and payable in accordance with the payment schedule set forth in Section 10.4(c)(1) (the "CTF Payment Schedule"), subject to the following provisions. Monsanto shall have the right to offset any amount that is finally determined in accordance with Section 10.4(g) in connection with an Agent Default to be owed to Monsanto against any portion

of the Convenience Termination Fee that remains unpaid in accordance with the CTF Payment Schedule. If, at any time prior to full payment of the Convenience Termination Fee in accordance with the CTF Payment Schedule, Monsanto makes a good faith claim for damages arising out of an Agent Default ("Estimated Damages") and provides reasonable supporting documentation with respect to the asserted Agent Default and the associated Estimated Damages to the Agent, pending resolution of such claim in accordance with Section 10.4(g), the Estimated Damages may be withheld by Monsanto from any Convenience Termination Fee then payable (the "Remaining Termination Fee") and an amount equal to the lesser of the Estimated Damages and the Remaining Termination Fee (the "Escrowed Damages") shall promptly be placed by Monsanto in an escrow account established pursuant to a mutually agreeable escrow agreement. The Escrowed Damages shall be held in such escrow account pending final resolution of the claim in accordance with Section 10.4(g) or pursuant to joint written instructions authorizing release. Upon final resolution of the claim in accordance with Section 10.4(g) or the mutual agreement of the parties with respect to the actual damages resulting from the Agent Default (the "Agent Default Offset Amount"), Monsanto and the Agent shall issue joint instructions to the escrow agent to promptly release (i) the Agent Default Offset Amount to Monsanto, or, if the Agent Default Offset Amount Exceeds the amount of the Escrowed Damages, the Escrowed Damages to Monsanto, and (ii) an amount equal to the (a) Escrowed Damages less the (b) Agent Default Offset Amount to the Agent.

(f) *Exclusive Remedy*. The payment of the relevant Termination Fee to the Agent under Section 10.4(c) shall be deemed to constitute the exclusive remedy for any damages resulting out of the termination of this Agreement by Monsanto or the successor to the Roundup Business pursuant to Section 10.4(c), and the Agent shall waive its right to exercise any other remedies otherwise available at law or in equity.

(g) *Arbitration*. In the event either party (the "Claimant") believes that a Material Breach, a Material Fraud, or Material Willful Misconduct has been committed by the other party (the "Breaching Party"), or this Agreement otherwise explicitly provides that the provisions of this Section 10.4(g) apply, the parties shall resolve such matters in accordance with the dispute resolution procedures set forth in Section 11.12(b). In the event that such matter is resolved by Arbitration (as defined in Section 11.12(b)), the Arbitrators (as defined in Section 11.12(b)) shall, in addition to complying with the dispute resolution procedures set forth in Section 11.12(b), conduct the Arbitration in accordance with the following:

(1) The Arbitrators shall make the following determinations:

(i) a determination as to whether the act(s) or omission(s) set forth by the Claimant have occurred;

(ii) a determination as to whether those act(s) or omissions(s) determined to have occurred constitute a breach of this Agreement, fraudulent conduct in connection with this Agreement, or willful misconduct in connection with this Agreement, as the case may be;

(iii) a determination as to whether those act(s) or omissions(s) determined to have occurred constitute a Material Breach, a Material Fraud, or Material Willful Misconduct, as the case may be;

(iv) a determination as to the amount of monetary damages, if any, suffered by the Claimant, as a result of those act(s) or omissions(s) determined to have occurred which constitute a breach of this Agreement, fraudulent conduct in connection with this Agreement, or willful misconduct in connection with this Agreement, as the case may be, regardless of whether such act(s) or omission(s) rise to the level of Material Breach, Material Fraud, or Material Willful Misconduct, as the case may be;

(v) a determination, to the extent applicable, of the specific performance which could and should be decreed to correct any breach, fraud or material misconduct which the Arbitrators determine can be cured by the issuance of such decree;

(vi) a determination as to which party, if any, is the prevailing party in the Arbitration, and the amount of such party's costs and fees. "Costs and fees" means all reasonable pre-award expenses of the arbitration, including the Arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees; and

(vii) a determination as to such matters as the Arbitrators deem necessary and appropriate to carry out their duties in connection with the Arbitration.

(2) The Arbitrators' award shall, as applicable, include the following:

(i) to the extent that the Arbitrators determine that the Claimant has suffered monetary damages as a result of those act(s) or omissions(s) determined to have occurred which constitute a breach of this Agreement, fraudulent conduct in connection with this Agreement, or willful misconduct in connection with this Agreement, as the case may be, a monetary award in the amount of those damages;

(ii) to the extent that the Arbitrators determine that the harm resulting from those act(s) or omissions(s) determined to have occurred can be cured, in whole or in part by a decree of specific performance, such a decree of specific performance implementing such determination as can be submitted to and made the order of a court of competent jurisdiction;

(iii) to the extent that the Arbitrators determine that those act(s) or omissions(s) determined to have occurred constitute a Material Breach, a Material Fraud, or Material Willful Misconduct, as the case may be, an award authorizing the Claimant to immediately terminate this Agreement, together with damages or specific performance, if determined by the Arbitrators to be appropriate;

(iv) to the extent that the Arbitrators determine that there is a prevailing party, and that said prevailing party should receive an award of its Costs and Fees, such award to the prevailing party; and

(v) such other matters as the Arbitrators deem necessary and appropriate to implement their determinations made in the Arbitration.

Section 10.5 ***Termination by the Agent.*** The Agent may terminate this Agreement by giving Monsanto a termination notice only as set forth in this Section 10.5.

(a) *Material Breach, Material Fraud and Material Willful Misconduct*. The Agent may terminate this Agreement in accordance with the provisions of Section 10.4(g) upon:

(1) a Material Breach committed by Monsanto and established in accordance with the provisions of Section 10.4(g) of this Agreement;

(2) a Material Fraud committed by Monsanto and established in accordance with the provisions of Section 10.4(g) of this Agreement;

(3) Material Willful Misconduct committed by Monsanto and established in accordance with the provisions of Section 10.4(g) of this Agreement. Such termination shall take effect on the later of the first business day following the thirtieth (30th) day after the sending of a termination notice to Monsanto in accordance with the provisions of Section 11.9, or the date designated by the Agent in said termination notice.

(b) *Roundup Sale*. The Agent may terminate this Agreement by written notice thereof to Monsanto upon receipt of notice of a Roundup Sale as described in Section 10.6.

(c) *Termination for Convenience*. The Agent may terminate this Agreement, for any reason, effective as of September 30, 2022 by delivering written notice to Monsanto thereof on January 15, 2021 (and for the avoidance of doubt, such written notice of termination, if any, shall be delivered no earlier than January 15, 2021) (a "Convenience Termination Notice"). Following the delivery of a Convenience Termination Notice:

(1) Monsanto shall waive, until September 30, 2022, its right to terminate this Agreement pursuant to (i) Section 10.4(a)(2) as a result of the occurrence of a Roundup Sale; or (ii) Section 10.9;

(2) Until September 30, 2022, both Monsanto and the Agent shall continue to fulfill their respective obligations under this Agreement; and

(3) Monsanto shall pay to the Agent the Convenience Termination Fee in accordance with Section 10.4(c)(1).

(d) *Insolvency*. The Agent may terminate this Agreement by written notice thereof to Monsanto upon the Insolvency of Monsanto at any time, which termination shall be effective on the later of the first business day following the thirtieth (30th) day after the sending of a termination notice to Monsanto in accordance with the provisions of Section 11.9, or the date designated by the Agent in such termination notice.

(e) *Legacy Termination Fee*. Upon termination of this Agreement by the Agent pursuant to Section 10.5(a), Monsanto shall pay to the Agent the Legacy Termination Fee applicable pursuant to the Table set forth in Section 10.4(c)(3).

(f) *Program EBIT Decline Event*. In the event a Program EBIT Decline Event occurs, the Agent may terminate this Agreement by written notice thereof within ninety (90) days following the end of such Program Year, such termination to be effective upon the date that is eighteen (18) months following the date on which such notice is delivered; provided, that following the delivery of such notice (i) both Monsanto and the Agent shall continue to fulfill their respective obligations under this Agreement and (ii) no Termination Fee shall be payable.

Section 10.6 ***Roundup Sale.***

(a) Roundup Sale Procedures.

(i) *Right of First Offer*. If Monsanto (A) receives an unsolicited proposal with respect to a potential Roundup Sale and responds in any manner, other than rejecting such proposal, (B) solicits or makes a formal determination to solicit or make any proposal with respect to a potential Roundup Sale or (C) enters into an agreement relating to the provision of information with respect to a potential Roundup Sale (each a "Roundup Sale Notice Trigger"), the Agent shall have the rights as set forth in this Section 10.6 with respect to any such Roundup Sale and Monsanto shall promptly provide written notice to the Agent of such Roundup Sale as set forth in Section 10.6(a)(ii) (a "Roundup Sale Notice"). For the avoidance of doubt, the provisions of this Section 10.6(a) shall apply to any and all potential Roundup Sales.

(ii) *Roundup Sale Notice*. Upon the occurrence of a Roundup Sale Notice Trigger, Monsanto shall promptly provide a Roundup Sale Notice to the Agent along with all Roundup Offering Materials (subject to Monsanto entering into a confidentiality agreement on commercially reasonable terms with the Agent with respect to such Roundup Offering Materials). After the occurrence of a Roundup Sale Notice Trigger, if Monsanto delivers any Roundup Offering Materials to a third party that contain material deviations from the Roundup Offering Materials previously provided to the Agent, Monsanto shall provide copies of such Roundup Offering Materials to the Agent promptly after such delivery.

(iii) *Exclusivity*.

(A) For a period of sixty (60) days from the last date of receipt by the Agent of the Roundup Sale Notice and any related Roundup Offering Materials as set forth in Section 10.6(a)(ii) (the "Exclusive Roundup Sale Period"), Monsanto agrees to negotiate in good faith with the Agent on an exclusive basis with respect to any potential Roundup Sale. If and only if Monsanto has complied with the provisions of the preceding sentence and no definitive agreement has been entered into with the Agent or one of its Affiliates with respect to a Roundup Sale, then following the Exclusive Roundup Sale Period, Monsanto may then make solicitations to, or otherwise negotiate with, a third party or parties with respect to a Roundup Sale and may provide the Roundup Offering Materials previously provided to the Agent to any such third party or parties in connection with a process to pursue a Roundup Sale. In the event that Monsanto engages in a process in which it seeks bids or proposals from more than one third party in connection with a contemplated Roundup Sale, the Agent shall be entitled to a fifteen (15) day exclusive negotiation period following the receipt and review by Monsanto of all bids or proposals (the "Roundup Quiet Period"); provided that, in determining the value of the price terms of the Agent's

bid, Monsanto shall not discount the Agent's bid as a result of the fact that the Legacy Termination Fee is an offset or credit against the total purchase price, and that, during the Roundup Quiet Period, the Agent shall have the right to revise its original bid but shall not have the right to review the terms of any other bids or proposals. Monsanto may consummate a Roundup Sale with any third party only if such Roundup Sale is made pursuant to the acceptance by Monsanto of a Roundup Superior Offer.

(B) During the Exclusive Roundup Sale Period, neither Monsanto nor any of its Affiliates shall, directly or indirectly through its or their agents, employees or representatives or otherwise, solicit, or cause the solicitation of, or in any way encourage the making of, any offer, proposal or indication of interest involving a Roundup Sale or negotiate with, respond to any inquiry from (except for "no comment" or another statement agreed to by the Agent), cooperate with or furnish or cause or authorize to be furnished any information to, any third party or its agents, employees or representatives with respect thereto, or disclose to any third party that a Roundup Sale Notice has been provided to the Agent. Monsanto will immediately advise the Agent of any offer, proposal or indication of interest received by Monsanto or its Affiliates with respect to a Roundup Sale during the Exclusive Roundup Sale Period.

(b) *Credit of Legacy Termination Fee*. In the event that the Agent or any of its Affiliates acquires the Roundup Business in a Roundup Sale, the Legacy Termination Fee that would have been payable to the Agent upon a termination pursuant to Section 10.4(a)(2) shall be credited against the purchase price to be paid by the Agent or such Affiliate in the Roundup Sale.

(c) *Agent's Election*. In the event that Monsanto determines to consummate a Roundup Sale with a party other than the Agent, Monsanto shall deliver the Agent notice thereof and of the identity of such other party. Within thirty (30) days of receipt of such notice, the Agent shall deliver written notice to Monsanto stating either that:

(1) The Agent intends to terminate this Agreement pursuant to Section 10.5(b), in which case such notice shall constitute a termination notice for purposes of this Agreement; provided that the termination shall be effective at the end of the Third Program Year following the Program Year in which the Agent delivers its Notice of Termination pursuant to this provision; or

(2) The Agent will not terminate this Agreement pursuant to Section 10.5(b) and agrees to continue the performance of its obligations under the Agreement unless and until the Agent receives a termination notice delivered in accordance with the terms of this Agreement by the successor to the Roundup Business.

(d) *Successor*. Upon consummation of a Roundup Sale to a party other than the Agent, Monsanto's successor to the Roundup L&G Business shall assume all rights and responsibilities of Monsanto under this Agreement.

(e) *Noncompetition Upon Termination*. In the event of a termination of this Agreement by Monsanto pursuant to Section 10.4(a)(2) hereof, or by the Agent pursuant to Section 10.6(c)(1) hereof, then notwithstanding the provisions of Section 6.13 hereof, either party

may, no earlier than three (3) years prior to the expiration of the Noncompetition Period, commence non-commercial activities for the sole purpose of such party's preparation to launch any competing product upon expiration of the Noncompetition Period; and provided, that either party may, no earlier than twelve (12) months prior to the expiration of the Noncompetition Period, engage with retail customers for the sole purpose of selling-in competing products (provided that no product may be shipped to a retail customer or distributor prior to the end of the Noncompetition Period).

Section 10.7 ***Effect of Termination.***

(a) *Reserved*.

(b) *Prior Obligations and Shipments*. Termination shall not affect obligations of Monsanto or of the Agent which have arisen prior to the effective date of termination.

(c) *Representations and Materials*. Upon termination of this Agreement for any reason, the Agent shall not continue to represent itself as Monsanto's authorized agent to deal in Roundup Products, and shall remove, so far as practical, any printed material relating to such products from its salesperson's manuals and shall discontinue the use of any display material on or about the Agent's premises containing any reference to Roundup Products.

(d) *Return of Books, Records, and other Property*. To the extent not otherwise provided herein, upon termination of this Agreement, the Agent shall immediately deliver to Monsanto all records, books, and other property of Monsanto.

Section 10.8 ***Force Majeure.*** If either party is prevented or delayed in the performance of any of its obligations by force majeure and if such party gives written notice thereof to the other party within twenty (20) days of the first day of such event specifying the matters constituting force majeure, together with such evidence as it reasonably can give, then the party so prevented or delayed will be excused from the performance or punctual performance, as the case may be, as from the date of such notice for so long as such cause of prevention or delay continues. For the purpose of this Agreement, the term "force majeure" will be deemed to include an act of God, war, hostilities, riot, fire, explosion, accident, flood or sabotage; lack of adequate fuel, power, raw materials, containers or transportation for reasons beyond such party's reasonable control; labor trouble, strike, lockout or injunction (provided that neither party shall be required to settle a labor dispute against its own best judgment); compliance with governmental laws, regulations or orders; breakage or failure of machinery or apparatus; or any other cause whether or not of the class or kind enumerated above, including, but not limited to, a severe economic decline or recession, which prevents or materially delays the performance of this Agreement in any material respect arising from or attributable to acts, events, non-happenings, omissions, or accidents beyond the reasonable control of the party affected.

Section 10.9 ***Brand Decommissioning Event.***

(a) *Brand Decommissioning Event.* If Monsanto decides to decommission the use of all or substantially all of the Industrial Property and the Roundup Regulatory Property in the Lawn and Garden Market, Monsanto shall provide notice to the Agent of such decision (a "Brand

Decommissioning Event") and this Agreement shall terminate on a date to be determined by Monsanto, but no later than the three (3) year anniversary of such Brand Decommissioning Event (such period from the Brand Decommissioning Event to the termination of this Agreement, the "Wind-Down Period").

(b) *Wind-Down Plan*. Following a Brand Decommissioning Event, Monsanto and the Agent shall in good faith develop and agree upon a wind-down plan for the Roundup L&G Business (the "Wind-Down Plan"), and during the Wind-Down Period, the Agent (i) shall continue to serve as the Agent under this Agreement consistent with the Wind-Down Plan, (ii) shall assist Monsanto in winding down the Roundup L&G Business consistent with the Wind-Down Plan, and (iii) shall not receive any Commission, or be required to make any Contribution Payment, with respect to the Wind-Down Period.

(c) *Agent's Covenant*. During the Wind-Down Period, except as otherwise set forth in the Wind-Down Plan, the Agent shall continue to perform its duties and obligations as Agent (consistent with the Wind-Down Plan) under this Agreement at the same level at which such duties and obligations were performed prior to the Brand Decommissioning Event, and the Agent shall cooperate in good faith with Monsanto in executing the Wind-Down Plan as set forth in Section 10.9(b).

ARTICLE 11 - MISCELLANEOUS

Section 11.1 ***Relationship of the Parties.*** Notwithstanding anything herein to the contrary, the parties' status with respect to each other shall be, at all times during the term of this Agreement, that of independent contractors retaining complete control over and complete responsibility for their respective operations and employees. Except as expressly provided herein, this Agreement shall not confer, nor shall be construed to confer, on either party any right, power or authority (express or implied) to act or make representations for, or on behalf of, or to assume or create any obligation on behalf of, or in the name of the other party. Nothing in this Agreement shall confer, or shall be construed to: (i) confer on the Agent any mutual proprietary interest in, or subject the Agent to any liability for, the business, assets, profits, losses, or obligations associated with Monsanto's manufacture, marketing, distribution and sales of Roundup Products; (ii) otherwise make either party a partner, member, or joint venturer of the other party (A) for purposes of the tax laws of the United States or any other country, or (B) for any other purposes under any other Laws; or (iii) create a franchise relationship between the parties. The parties expressly agree that at no time during the term of this Agreement, shall either party through its officers, directors, agents, employees, independent contractors or other representatives or through their respective representatives on the Steering Committee or Global Roundup Team take any action inconsistent with the foregoing expression of the nature of their relationship, except as required pursuant to applicable governmental authority under applicable Law or with the express written consent of the other party. Accordingly, the parties expressly agree to cooperate and communicate with the Steering Committee and the Global Roundup Support Team from time to time and in all events, annually, to ensure that both parties' actions are in compliance with this Section 11.1.

Section 11.2 ***Interpretation in accordance with GAAP.*** The parties acknowledge that several terms and concepts (such as various financial and accounting terms and concepts) used or

referred to herein are intended to have specific meanings and are intended to be applied in specific ways, but they are not so expressly and fully defined and explained in this Agreement. In order to supplement definitions and other provisions contained in this Agreement and to provide a means for interpreting undefined terms and applying certain concepts, the parties agree that, except as expressly provided herein, when costs are to be determined or other financial calculations are to be made, GAAP as well as the party's past accounting practices shall be used to interpret and determine such terms and to apply such concepts. For example, when actual costs and expenses are referred to herein, they are not intended to contain any margin or profit for the party incurring such costs or expenses.

Section 11.3 ***Currency.*** All amounts payable and calculations under this Agreement shall be in United States dollars. As applicable, Program Sales Revenue, Program Expenses, Cost of Goods Sold, Service Costs, and Program EBIT shall be translated into United States dollars at the rate of exchange at which United States dollars are listed in International Financial Statistics (publisher, International Monetary Fund) or if it is not available, The Wall Street Journal for the currency of the country in which the sales were made or the transactions occurred at the average rate of exchange for the Quarter in which such sales were made or transactions occurred.

Section 11.4 ***Monsanto Obligations.*** All permits, licenses, and registrations needed for the sale of Roundup Products (the "Roundup Regulatory Property") shall be obtained by Monsanto. Monsanto shall assume the cost of all federal and state registration fees related to the sale of Roundup Products, with such costs being included within Program Expenses.

Section 11.5 ***Expenses.*** Except as otherwise specifically provided in this Agreement, the Agent and Monsanto will each pay all costs and expenses incurred by each of them, or on their behalf respectively, in connection with this Agreement and the transactions contemplated hereby, including fees and expenses of their own financial consultants, accountants and counsel.

Section 11.6 ***Entire Agreement.*** Subject to Section 6.10(g) of this Agreement, this Agreement, together with all respective exhibits and schedules hereto, constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all representations, warranties, understandings, terms or conditions on such subjects that are not set forth herein or therein. Agreements on other subjects, such as security and other credit agreements or arrangements, shall remain in effect according to their terms. The parties recognize that, from time to time, purchase orders, bills of lading, delivery instructions, invoices and similar documentation will be transmitted by each party to the other to facilitate the implementation of this Agreement. Any terms and conditions contained in any of those documents which are inconsistent with the terms of this Agreement shall be null, void and not enforceable. This Agreement is for the benefit of the parties hereto and is not intended to confer upon any other person any rights or remedies hereunder. The provisions of this Agreement shall apply to each division or subsidiary of the Agent and Monsanto and either the Agent or Monsanto may seek enforcement of the provisions of this Agreement on behalf of or with respect to a particular subsidiary or division without changing the rights and obligations of the parties under this Agreement as to other aspects of the Agent's or Monsanto's business.

Notwithstanding the preceding paragraph, the parties acknowledge and agree that this Agreement together with the Specified Agreements constitute an indivisible, integrated agreement with (a) a single nature and purpose and (b) interrelated obligations. The parties acknowledge and agree that the consideration for this Agreement is adequate, that the consideration for each of the Specified Agreements is adequate, and that subsequent defaults or terminations of any of the Specified Agreements will not render this Agreement unenforceable due to lack of consideration. The parties further acknowledge and agree that, subject to the foregoing sentence, the consideration for each of the Specified Agreements is intended as interdependent consideration for all Specified Agreements and is not separate, distinct or capable of apportionment, such that a rejection in any proceeding pursuant to any applicable bankruptcy or insolvency Laws of any terms of this Agreement or any of the Specified Agreements would constitute a rejection of all such agreements. The parties acknowledge and agree that they would not have entered into this Agreement or any Specified Agreement without entering into all such agreements. Notwithstanding the foregoing, the parties acknowledge and agree that no breach of this Agreement shall be deemed to be a breach of any Specified Agreement and that no breach of any Specified Agreement shall be deemed to be a breach of this Agreement; provided, that the foregoing shall not be deemed to negate an actual breach of this Agreement or the Specified Agreements, as applicable.

Section 11.7 ***Modification and Waiver.*** No conditions, usage of trade, course of dealing, or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms or conditions of the Agreement and no amendment to or modification of this Agreement, and no waiver of any provision hereof, shall be effective unless it is in writing and signed by each party hereto. No waiver by either Monsanto or the Agent, with respect to any default or breach or of any right or remedy, and no course of dealing shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing signed by the party to be bound.

(a) The parties may, from time to time, enter into Commissionaire and Distributorship Agreements ("Commissionaire Agreements") in order to implement this Agreement on a local basis and/or to comply with local legal requirements and, unless a contrary intent is expressly set forth in the Commissionaire Agreements, the terms of the Commissionaire Agreements shall in no way modify, amend, replace or supersede any terms of this Agreement. The parties agree that Section 11.12(b) (but not Section 11.12(a)) of this Agreement shall apply to any dispute arising out of any such Commissionaire Agreements.

Section 11.8 ***Assignment.***

(a) This Agreement and the various rights and obligations arising hereunder shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, legal representatives, successors, and permitted assigns. Except as set forth in this Section 11.8 or Section 2.3, and except for a Change of Control under Section 10.4(b)(7) that does not provide Monsanto termination rights under this Agreement, neither this Agreement nor any of the rights, interests, or obligations hereunder shall be transferred, delegated, or assigned by a party (by operation of law or otherwise) without the prior written consent of the other party.

(b) Notwithstanding the foregoing:

(1) Monsanto shall have the right to transfer and assign its rights, interests and obligations hereunder to any of its Affiliates; provided, that Monsanto shall remain liable for the performance of its obligations hereunder, and provided, further, that any such Affiliate shall be subject to the provisions of this Agreement as if it were the original party hereto, including, without limitation, this Section 11.8;

(2) Subject to Agent's rights set forth in Section 10.6, Monsanto shall have the right to transfer and assign all or a portion of its rights, interests and obligations hereunder to a Person that acquires all or a portion of Monsanto's business related to the Lawn and Garden Market (whether by sale or transfer of equity interests or assets, merger or otherwise); provided, that any such assignee shall be subject to the provisions of this Agreement as if it were the original party hereto, including, without limitation, this Section 11.8;

(3) the Agent shall have the right to transfer and assign its rights, interests and obligations hereunder to any of its Affiliates; provided, that the Agent shall remain liable for the performance of its obligations hereunder, and provided, further, that any such Affiliate shall be subject to the provisions of this Agreement as if it were the original party hereto, including, without limitation, this Section 11.8; and

(4) the Agent shall be entitled to transfer and assign its rights, interests and obligations hereunder with respect to the Included Markets; provided, that (A), the Agent may only make one (1) assignment pursuant to this Section 11.8(b)(4) with respect to the North America Territories and one (1) assignment pursuant to this Section 11.8(b)(4) with respect to any Other Included Markets, and (B) Monsanto determines in its reasonable commercial opinion (and provides written confirmation of such determination to the Agent) that the assignee of such rights pursuant to this Section 11.8(b)(4) has (i) sufficient experience in the consumer products industry or products sold for Lawn and Garden Uses industry and (ii) sufficient capitalization to be able to satisfy the obligations of the Agent under this Agreement; provided, further, that this Section 11.8(b)(4) shall also apply to the consummation of a Change of Control of an SMG Target that holds no significant assets other than those exclusively dedicated to the Roundup L&G Business unless such transaction is related to the bona fide sale (regardless of the form of the transaction) of other SMG Targets (that, in the aggregate, hold significant assets other than those exclusively dedicated to the Roundup L&G Business) to the same third party, or such third party's Affiliates, in connection with the same transaction or series of related transactions.

(c) Notwithstanding anything in this Agreement to the contrary, the Agent may not transfer or assign any rights, interests or obligations (i) under this Agreement to any Restricted Party or (ii) that are provided pursuant to Section 10.6 of this Agreement. Any transfer or assignment not permitted by this Section 11.8 shall be null and void.

Section 11.9 ***Notices.*** All notices and other communications hereunder shall be in writing and shall be deemed given on the same business day if delivered personally or sent by telefax with confirmation of receipt, on the next business day if sent by overnight courier, or on the earlier of actual receipt as shown on the registered receipt or five business days after mailing if mailed by

registered or certified mail (return receipt requested) to the parties at the addresses set forth below (or at such other address for a party as shall be specified by like notice):

If to the Agent, to:	The Scotts Company LLC 14111 Scottslawn Road Marysville, OH 43041 Attn: President Telephone: (937) 644-0011 Facsimile: (937) 644-7568
with a copy to	The Scotts Company LLC 14111 Scottslawn Road Marysville, OH 43041 Attn: General Counsel Telephone: (937) 644-0011 Facsimile: (937) 644-7568
If to Monsanto, to:	Monsanto Company 800 North Lindbergh Boulevard St. Louis, MO 63167 Attn: Dr. Jacqueline Applegate Telephone: (314) 694-6900 Facsimile: (314) 694-7030
with a copy to	Monsanto Company 800 North Lindbergh Boulevard St. Louis, Missouri 63167 Attn: Martin Kerckhoff Telephone: (314) 694-1536 Facsimile: (314) 694-9009

If any notice required or permitted hereunder is to be given a fixed amount of time before a specified event, such notice may be given any time before such fixed amount of time (e.g., a notice to be given thirty (30) days prior to an event may be given at any time longer than thirty (30) days prior to such event).

Section 11.10 ***Severability.*** If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, under a judgment, Law or statute now or hereafter in effect, the remainder of this Agreement shall not thereby be impaired or affected.

Section 11.11 ***Equal Opportunity.*** To the extent applicable to this Agreement, Monsanto and the Agent shall each comply with the following clauses contained in the Code of Federal Regulations and incorporated herein by reference: 48 C.F.R. §52.203-6 (Subcontractor Sales to Government); 48 C.F.R. §52.219-8, 52.219-9 (Utilization of Small and Small Disadvantaged Business Concerns); 48 C.F.R. §52.219-13 (Utilization of Women-Owned Business Concerns); 48 C.F.R. §52.222-26 (Equal Opportunity); 48 C.F.R. §52.222-35 (Disabled and Vietnam Era Veterans); 48 C.F.R. §52.222-36 (Handicapped Workers); 48 C.F.R. §52.223-2 (Clean Air and Water); and 48 C.F.R. §52.223-3 (Hazardous Material Identification and Material Safety Data). Unless previously

provided, if the value of this Agreement exceeds $10,000, the Agent shall provide a Certificate of Nonsegregated Facilities to Monsanto. Furthermore, Monsanto and the Agent shall each comply with the Immigration Reform and Control Act of 1986 and all rules and regulations issued thereunder. Each party hereby certifies, agrees and covenants that none of its employees or employees of its subcontractors who perform work under this Agreement is or shall be unauthorized aliens as defined in the Immigration Reform and Control Act of 1986, and each party shall defend, indemnify and hold the other party harmless from any and all liability incurred by or sought to be imposed on the other party as a result of the first party's failure to comply with the certification, agreement and covenant made by such party in this Section.

Section 11.12 ***Governing Law; Dispute Resolution Procedures.***

(a) The validity, interpretation and performance of this Agreement and any dispute connected with this Agreement will be governed by and determined in accordance with the statutory, regulatory and decisional law of the State of Delaware (exclusive of such state's choice of laws or conflicts of laws rules) and, to the extent applicable, the federal statutory, regulatory and decisional law of the United States.

(b) Any and all disputes among the parties with respect to the subject matter of this Agreement, except as set forth in Section 3.4, shall be subject to the following dispute resolution procedures:

(1) If a party has any claim against the other party under this Agreement, such party shall first contact the other party as described below and shall not reduce the claim to writing to any third party (other than its legal and professional advisors) or to the other party until after the completion of the Leadership Escalation (as described below).

(2) All disputes, disagreements or business issues among the parties, are subject to the following:

(i) First, the parties shall, in good faith, engage in confidential escalation through successive levels of each party's leadership teams, and if resolution of the dispute is not achieved after such confidential escalation within sixty (60) days; then

(ii) Second, the parties shall, in good faith, engage in a confidential mediation led by an independent mediator mutually agreed to by the parties, and if resolution of the dispute is not achieved within thirty (30) days of the commencement of such mediation (such escalation and mediation, "Leadership Escalation"); then

(iii) Third, the parties shall, in good faith, engage in confidential arbitration pursuant to the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association (the "AAA Rules") (as described below).

(3) Notwithstanding Section 11.12(b)(2), if a party desires to (i) seek injunctive relief (including, without limitation, injunctive relief related to either party's indemnity and defense obligations), or (ii) seek determinations as to the infringement, validity or enforceability

of intellectual property, such party will first submit the underlying matter to the escalation procedures set forth in Section 11.12(b)(2) (but only for a maximum of fourteen (14) days) and, in the event that the dispute is not resolved through the escalation procedures set forth in Section 11.12(b)(2) within fourteen (14) days, then such dispute and such party's desire to seek injunctive relief and determinations with respect to such matters will not be required to be addressed in or subject to mediation or arbitration and will not be subject to the mediation or arbitration provisions in this Agreement.

(4) In the event that a dispute between the parties is not resolved following Leadership Escalation and is not subject to the exceptions set forth in the foregoing Section 11.12(b)(3), then the party asserting the claims subject to arbitration may initiate confidential arbitration. The parties shall appoint three arbitrators, all of whom shall be neutral former federal court judges, in accordance with the procedures for appointing arbitrators under the then applicable AAA Rules (the three arbitrators, collectively, the "Arbitrators"). Upon their selection, the Arbitrators shall expeditiously proceed to resolve the dispute, in accordance with the procedures hereafter set forth.

(i) Except as specifically modified herein, the arbitration proceeding contemplated by this section (the "Arbitration") shall be conducted in accordance with Title 9 of the US Code (United States Arbitration Act) and the AAA Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The cost of the Arbitration shall be borne equally by the parties, with the understanding that the Arbitrators may reimburse the prevailing party, if any, as determined by the Arbitrators for that party's cost of the Arbitration in connection with the award made by the Arbitrators as described below.

(ii) The determinations shall be made within six (6) months after the appointment of the Arbitrators and each of the Arbitrators shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the parties or by the Arbitrators for good cause shown.

(iii) Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the other with copies of documents relevant to the issues raised by the notice or the response, including those documents on which the producing party may rely in support of or in opposition to any claim or defense. The parties may pursue other documents using standards similar to the Federal Rules of Civil Procedure. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the Arbitrators. All discovery shall be completed within one-hundred and twenty (120) days following the appointment of the Arbitrators. However, this time limit may be extended by agreement of the parties or by the Arbitrators for good cause shown.

(iv) Each party shall have the ability to take no more than five depositions of current or former employees of a party (one of which may be a corporate deposition). Unless otherwise agreed to by the parties, depositions shall be held within twenty-one (21) days of the making of a request, and shall be limited to a maximum of seven (7) hours' duration. All objections shall be handled in accordance with the applicable rules. Upon the request of a party for good cause shown, the Arbitrators shall have the discretion to order additional depositions of current or former employees of a party or to extend the maximum time for depositions. The parties may

also take depositions of third parties or issue subpoenas to third parties in accordance with the AAA rules applying standards similar to the Federal Rules of Civil Procedure.

(v) The Arbitrators' determination shall be in writing, shall be signed by a majority of the Arbitrators, and shall include a statement regarding the reasons for the disposition of any claim.

(vi) The written determination of the Arbitrators shall be made and delivered promptly to the parties to the Arbitration and shall be final and conclusive upon the parties to the Arbitration, subject to any right to seek review in accordance with applicable law.

(vii) To the extent that the Arbitrators determine that there is a prevailing party, and that said prevailing party should receive an award of its Costs and Fees, the written documentation delivered by the Arbitrators shall specify the award to the prevailing Party.

(viii) Except as may be required by law or any applicable orders or regulations from judicial or government authorities, neither a party nor an Arbitrator may disclose the existence, content, or results of any Arbitration hereunder without the prior written consent of both parties.

Section 11.13 ***Public Announcements.*** No written or oral public announcement or disclosure may be made by either party with regard to this Agreement or the transactions contemplated hereby without the prior consent of the other party; provided, that either party may make (a) such announcement or disclosure (i) with respect to operational matters related to the parties under this Agreement in response to inquiries by customers and vendors in the ordinary course of business (but not with respect to the substantive rights between the parties hereto) ("Operational Matters"); or (ii) if advised by counsel that such party is required to do so by applicable law or by order of a court of competent jurisdiction, by rule or regulation of any governmental agency or by any listing agreement with, or rule or regulation of, any stock exchange upon which securities of such party are registered; (b) any written public announcement or disclosure, if the other party has previously consented to any announcement or disclosure that is the same (other than immaterial, non-substantive deviations) to such announcement or disclosure; or (c) any oral public announcement or disclosure, if the other party has previously consented to any announcement or disclosure that is substantially similar to such announcement or disclosure. Notwithstanding the foregoing and except with respect to Operational Matters, each party shall (i) provide to the other party reasonable advance notice, and a draft copy or summary, of any written or oral public announcements or disclosures (regardless of whether or not such announcement or disclosure is required, as described in the preceding sentence) concerning this Agreement or the transactions contemplated hereby, (ii) give the other party a reasonable opportunity to comment on such announcement or disclosure and (iii) consider in good faith such comments, prior to making any such written or oral public announcement or disclosure.

Section 11.14 ***Counterparts.*** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall be constitute one and the same agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above mentioned.

MONSANTO COMPANY

By:	/s/ Brett Begemann
Name:	Brett Begemann
Title:	President

THE SCOTTS COMPANY LLC

By:	/s/ Thomas Randal Coleman
Name:	Thomas Randal Coleman
Title:	Chief Financial Officer

EXHIBIT D

PERMITTED PRODUCTS

United States

GroundClear, including all sizes, formulations and SKUs, present and future, within the entire GroundClear product line, regardless of package size, label, or marketing

Ortho Max Poison Ivy & Tough Brush Killer, including all sizes, formulations and SKUs, present and future, within the entire product line, regardless of package size, label, or marketing

SCHEDULE 1.1(a)

ACTIVATED INCLUDED MARKETS

The United States of America
Canada
Puerto Rico
Mexico
Provided, that with respect to all matters related to Roundup 365, only the United States of America

SCHEDULE 1.1(b)

ROUNDUP PRODUCTS

United States, Mexico and Puerto Rico	**Formulation**	**Size**
Roundup Ready-to-Use Products	2% glyphosate or less	2 gal or less
Roundup Concentrated Products	18% - 41% glyphosate	1 gal or less

Canada	**Formulation**	**Size**
Roundup Ready-to-Use	2% Glyphosate or less	2 liter or less
Roundup Concentrate	18% - 41% Glyphosate	2 liter or less
EcoSense Path Clear Ready-to-Use	x% or less	2 liter or less
EcoSense Path Clear Concentrate	x% or less	2 liter or less
Roundup Advanced	62.5g/L (6.25%) acetic acid	1 liter trigger & 5 liter pull n spray

SCHEDULE 2.2(a)

ILLUSTRATIVE EXAMPLE ANNUAL BUSINESS PLAN TEMPLATE

1) Mission Statement and Explanation: Answers questions: What business are we in? Why does the business exist?
2) Category Definition/Growth Trend: Also need to address related categories and their potential interaction with the target category
   a) Assessment of growth potential
   b) Competitor evaluation/assessment of threat
3) Business Review: Summary of a process that will occur in each preceding January
   a) Critical learning from prior year
   b) Key Implications from learning: Arranged by key functional area
4) Brand Positioning:
   a) Consumer Target: Demographics, Psychographics, use Segmentation
   b) Key feature(s), Attribute(s) and Benefits delivered (for brand and sub-brands)
   c) Brand Character/Imagery: Describe the personification of the brand/sub-brands
      i) This section should also specifically address the degree to which the proposed positioning consistent with the Brand's historical image
5) Key Business Goals
   a) Financial: Historical trend and three year projections of Equivalent Case Volume, Net Sales, EBIT and ACM
   b) Competitive:
      i) Market Share Goal and trend
      ii) Advertising Share of Voice Goal and trend
   c) Consumer: Critical behavioral and attitudinal measures that describe the development of the Brand which could include:
      i) Penetration
      ii) Unaided awareness
      iii) Annual usage
      iv) Seasonal usage
   d) Customer:
      i) % ACV Distribution by Channel
      ii) Fill Rates by Top 10 customers (with detailed definition of what constitutes an on-time shipment)
      iii) Display achievement
      iv) Other measurable customer satisfaction measures
6) Major Strategies to achieve Key Goals (some examples include...)
   a) Product Line: What products/drive groups/lines to focus on
   b) Significant new product launches
   c) Private Label at a Key Account(s)
   d) Marketing Support focus: Example would be a shift from advertising to promotion
   e) New Consumer Uses: Extended use campaign, new forms
   f) Geographic focus including a new regional/market emphasis. CDI/BDI analysis

g) Seasonal focus including new emphasis if relevant. Weekly seasonality by region and drive group/item.
h) Channel/Customer including new/alternative channels if relevant
i) Operational strategies to address quality, capacity, cost position, service, technology application, etc., including fill rates, inventory levels and turns
j) Acquisition/divestiture strategies to improve market position

7) Functional Operating Plans: This is a lengthy section that lays out a detailed annual operating plan for each functional area in the business (including rationale where appropriate) and that pays particular attention to changes in that plan from the prior year's plans and results. Each section will contain a detailed budget with direct and assigned expenses shown.
   a) General Management: Description of Business Unit Management team and planned costs
      i) Performance standards for all employees
      ii) Description of employee performance incentives and link to performance standards
   b) Marketing:
      i) Organization Plan
      ii) Spending allocation: Total spending by marketing support category including working and non-working media, consumer promotion, public relations, market research, etc.
      iii) Advertising: Preliminary media plan including spending trends, creative strategy and discussion of any planned/contemplated changes to that strategy.
      iv) Consumer Promotion: Promotion objectives, key plan elements and payout calculations
      v) POP Plan: Focus on Key changes versus prior year plan
      vi) Pricing: To include trends and competitive benchmarks
      vii) Packaging - graphic and physical: Changes planned along with specific costs, implementation timing and risk factors
      viii) Market Research plan: List all studies, cost estimate and rationale for each, including tracking
      ix) Public Relations
      x) Test plans (applies to all of above)
   c) Sales:
      i) Organization Plan
      ii) Top 5 Account Plans
         (i) Program changes anticipated
         (ii) Planned Net Sales trend by drive group/item (with historical trend)
         (iii) Profitability analysis
         (iv) Category Management plans
      iii) Five year sales goal
      iv) Private Label/control brand opportunities
      v) Headquarters Sales Presentation plan with a focus on what the key messages are and discussion of any unique methods of communication to customers

vi) Retail Merchandising Support including planned in-house, distributor and contracted merchandising services. Focus on in-store merchandising and display techniques as well as pre-season store set plans
    (i) Share of shelf
    (ii) Share of off-shelf
vii) Other selling services plans as appropriate
viii) Product Knowledge Plan including principle target(s) and vehicles

d) Operations:
i) Organization Plan
ii) Key Manufacturing initiatives such as: Cost savings, capacity planning, make/buy analyses, etc.
iii) Distribution/Warehousing Plan
iv) Inventory plan by month (versus prior year) that balances the need for high fill rates with a product utilization of working capital. Targets to be included in plan.
v) Purchasing: Including Key supplier relationship development
vi) Quality: Measurement and delivery against objectives from balanced scorecard
vii) Capital Plan with capital expenditure detail

e) Research & Development:
i) Organization/Staffing Plan
ii) Priority projects and innovation pipeline - new product portfolio review
iii) Innovation launch timeline
iv) Product specifications and planned changes
v) Pioneering Research

f) Customer Service:
i) Organization Plan
ii) Special Programs such as telemarketing
iii) Discussion of and key changes to order taking, order processing invoicing, collection, reconciliation (to original PO and program) procedures

g) Consumer Service:
i) Organization plan including a discussion of outscored versus in-house services
ii) Call volume and measurement of answering efficiency and effectiveness
iii) Plan for communicating to marketing and operations any significant consumer complaints

8) Detailed Financials - Prior Year, Current Year, Future Year
a) Income Statement (annual and monthly), cash flow and balance sheet
b) Net Sales and margins by key drive group/item, and including product mix analysis
c) Selling and Marketing Expenses by key line item
d) Assignment of Shared Services: This section will discuss the agreed upon allocation methodology for shared services to their respective Business Unit statements and highlights any proposed changes to that methodology
e) Anticipated changes form prior year
f) Financial Metrics
i) Invoice accuracy
ii) Days Sales Outstanding (DSO)
iii) Obsolete inventory charge

iv) Bad debt allowance
v) Netbacks, MAT and COGS detail prior, current and next year

9) Approved amendments: This section will show any amendments approved by senior management (or the Steering Committee)
a) Includes spending at levels above those established in the annual business plan.

SCHEDULE 3.2(c)

FORM OF RECONCILIATION STATEMENT

Description		Amount	
True-up from Previous Month:			
Receipts	$	-	**(XX)**
Disbursements	$	-	**(AH)**
Shared Services	$	-	
Manufacturing	$	-	
Misc. Charges--Shared Component	$	-	
Total True-up Adjustment	$	-	
Current Week Flows:			
Cash Receipts	$	-	**(A)**
Cash Disbursements	$	-	**(B)**
Shared Services (Administration)	$	-	**(C)**
Misc. Billings - Due to/Due From (GL Acct 223200)	$	-	**(D)**
Manufacturing Expenses			
Shared Components - Materials	$	-	**(E)**
Formulation Fees - Labor & Overhead	$	-	**(F)**
Temecula - Labor & Overhead	$	-	**(G)**
Credit for RUP materials used in Ortho products	$	-	**(H)**
Capital charge	$	-	**(I)**
Outsourcing display assembly @ FTM	$	-	**(J)**
Other	$	-	**K-(E+H)**
Total Manufacturing	**$**	**-**	
Net Amount Due to (Scotts) Monsanto:	**$**	**-**	
Commission Payment - 2017 - Due to Scotts			
2017 FYTD Commission	$	-	**(L-1a)**
2017 FYTD Commission Paid	$	-	**(L-2a)**
2017 Int'l & Canada FYTD Collections	$	-	**(L-3a)**
Net Commission Due to Scotts	**$**	**-**	**(L-a)**
365 Commission Payment - 2017 - Due to Scotts			
2017 FYTD Commission on 365 Incremental	$	-	**(L-1b)**
2017 FYTD Commission on 365 Incremental Paid	$	-	**(L-2b)**
Net Commission Due to Scotts	**$**	**-**	**(L-b)**
	$	**-**	**(L)**
Contribution Payment - 2017 Currently Due to Monsanto			
2017 FYTD Contribution Payments	$	-	
2017 FYTD Contributions Paid to Date	$	-	
Net Contribution Due to Monsanto	**$**	**-**	
Net Amount Due to (Scotts) / Monsanto	**$**	**-**	

Signature of Authorized Monsanto Representative: _____ Date:_____

Signature of Authorized Scotts Representative: _____ Date:_____

The Determination/Allocation Method for the Revenue/Expense Categories set forth on this Schedule 3.3(c) will be reviewed and approved through the Annual Business Plan

			Anticipated Source		
Revenue/Expense Category	**Definition**	**Determination/Allocation Method**	**Roundup**	**SMG**	**MTC**
Gross sales	Gross revenues for all sales of Roundup L&G products in defined markets	Direct; minor allocations as necessary; default based on % of gross sales	X		
Markdowns & allowances	Discounts or other allowances provided to customers as reductions of gross sales	same as gross sales	X		
Product returns	Any product returns and related allowances provided customers for previously billed gross sales	same as gross sales	X		
Trade	Deductions from gross sales				
Cash discounts	Any early payment discounts offered to customers	Direct; minor allocations as necessary; default based on % of gross sales	X		
MDF	Marketing Development Funds - display and merchandising allowances, volume discounts, and any other incentives provided to customers for the purpose of promoting Roundup sales	Actual; default based on % of gross sales to specific customer	X		
Merchandising	In store product display, housekeeping and general store level relationship management	Actual; default based on % of gross sales to specific customer		X	

The Determination/Allocation Method for the Revenue/Expense Categories set forth on this Schedule 3.3(c) will be reviewed and approved through the Annual Business Plan

			Anticipated Source		
Revenue/Expense Category	**Definition**	**Determination/Allocation Method**	**Roundup**	**SMG**	**MTC**
Cost to serve	Discount to reduced invoiced sales depending on the customer's delivery method. Plant and Mixing Warehouse collection offer the highest discount and direct-to-store shipments offer the lowest discount. Services include warehousing and handling, and product distribution and logistics.	For distribution and warehousing activities, if allocations are necessary, split will be based on a reasonable driver (e.g. cubic feet or hundred weight) shipped and stored.	X	X	
Other Sales Program	Other programs directed at retailers to increase product movement	Actual; default based on % of sales attributable to specific program	X	X	
Net Sales	Gross sales less trade, as defined				
Product Costs	Direct materials and supplies, plus direct and indirect costs of producing finished goods to be sold	Based on standard costs as defined in formulation agreement	X	X	
Non-Standards	Costs associated with product production not included in standard costs or variances from established standard costs				
Purchasing	Functional area responsible for negotiating prices and procuring production materials, and negotiating agreements with toll manufacturers	Based on management's assessment of % of time spent on Roundup activities as agreed upon in the Annual Business Plan		X	
Quality	Functional area responsible for establishing, monitoring and enforcing product quality standards	Based on management's assessment of % of time spent on Roundup activities as agreed upon in the Annual Business Plan		X	

The Determination/Allocation Method for the Revenue/Expense Categories set forth on this Schedule 3.3(c) will be reviewed and approved through the Annual Business Plan

			Anticipated Source		
Revenue/Expense Category	**Definition**	**Determination/Allocation Method**	**Roundup**	**SMG**	**MTC**
Manufacturing	Functional area responsible for managing arrangements with toll manufacturers	Based on management's assessment of % of time spent on Roundup activities as agreed upon in the Annual Business Plan		X	
Packaging	Functional area responsible for engineering aspects of package design and development. Group works closely with marketing and production management	Based on management's assessment of % of time spent on Roundup activities as agreed upon in the Annual Business Plans		X	
Planning & logistics	Functional area responsible for product demand and distribution planning. Group works closely with marketing, sales, manufacturing and distribution management in developing demand forecasts, and production and product deployment plans	Based on management's assessment of % of time spent on Roundup activities as agreed upon in the Annual Business Plan		X	
Freight	Costs associated with storing and transporting products	Direct; allocations based on a reasonable driver (e.g. cubic feet or hundred weight) shipped and stored.	X	X	
Warehousing	Costs directly incurred for handling and warehousing of finished goods inventory.	When warehousing costs are not directly assigned by product, they are allocated based on percent of Roundup pounds within the warehouse. At sites where storage or handling costs are given a variable rate, they are assigned directly to Roundup skus.		X	

The Determination/Allocation Method for the Revenue/Expense Categories set forth on this Schedule 3.3(c) will be reviewed and approved through the Annual Business Plan

			Anticipated Source		
Revenue/Expense Category	**Definition**	**Determination/Allocation Method**	**Roundup**	**SMG**	**MTC**
Product liability	Insurance and direct costs associated with product liability [1]	Direct, based on claims activity.	X	X	X
Poison Tax	Taxes imposed by various governmental bodies for specific substances	Actual; default based on % of sales	X		
Defective Goods	Costs incurred related to mitigating defective goods. Costs include the finished goods value and all costs related with disposing defective products	Actual; default based on % of sales	X	X	
Inventory tax	Property and other taxes associated with holding inventories	Actual; default based on cases produced	X		
Stud Pallets	Costs associated with retailer special pellet requests, not otherwise included in standard costs	Based on cases produced, including production activity at toll manufacturers	X	X	
Inventory write-offs & other	Reductions in carrying value and other write-offs associated with slow-moving, and excess and obsolete inventory	Actual	X		
Rebates	Volume and other rebates provided by vendors associated with raw and packaging material purchases	Actual; default based on % of purchases for specific material for Roundup	X		
Ft. Madison and Pearl yield & production variances	Differences between actual and standard costs of production at the Ft. Madison and Pearl facilities	Based on cases produced at the facilities; subject to terms of the Formulation Agreement between Monsanto and the Agent	X	X	

[1] "direct costs" refers to the costs related to product replacement, product recall, product rework, etc., and does not include (i) indemnification paid under Section 9 of this Agreement, or (ii) costs arising from any third party claim, action, suit, inquiry, proceeding, notice of violation or investigation, whether written or oral, formal or informal, or any other arbitration, mediation or similar proceeding, whether public or private, judicial or extrajudicial.

The Determination/Allocation Method for the Revenue/Expense Categories set forth on this Schedule 3.3(c) will be reviewed and approved through the Annual Business Plan

Revenue/Expense Category	Definition	Determination/Allocation Method	Anticipated Source		
			Roundup	SMG	MTC
Toller variances	Differences between actual and standard costs of products produced at toll manufacturers	Direct; default based on % of Roundup cases produced at specific toll manufacturer	X	X	
Price variances	Differences between actual and standard costs of raw and packaging materials acquired for production	Direct; default based on % of Roundup purchases related to price variance drivers	X	X	
Gross Profit	Net sales less product and non-standard cost of good sold				
MAT-Marketing	Functional areas responsible for creating brand image, developing brand awareness strategies and promotions. Also includes all sales activities performed by business unit personnel.				
Direct Marketing	Marketing activities and associated expenses which can be directly traced to Roundup				
Advertising	Includes network, spot and cable TV, radio, print media, advertising production costs, and advertising agency fees	Actual; default based on % of direct media spending	X		
Public relations	Includes expenses related to public relations (indirect advertising) and related agency fees	Actual	X		
Consumer promotion	Includes consumer directed rebates, in-stores promotional activities and give-aways, and point-of-purchase materials	Actual	X		
Trade promotion	Any trade directed promotions (not already included in MDF), including related agency fees	Actual	X		
Brand specific market research	Market research directed toward the Roundup brand	Actual	X		

The Determination/Allocation Method for the Revenue/Expense Categories set forth on this Schedule 3.3(c) will be reviewed and approved through the Annual Business Plan

			Anticipated Source		
Revenue/Expense Category	**Definition**	**Determination/Allocation Method**	**Roundup**	**SMG**	**MTC**
Brand specific marketing management	Primarily personnel and related support costs (salaries, incentives, fringes, travel & entertainment, computers, communications, and space & supplies) of marketing personnel dedicated to L&G Roundup	Actual	X	X	X
Allocated marketing	Marketing activities managed on a shared services basis				
Marketing management	Primarily personnel and related support costs (salaries, incentives, fringes, relocation, travel & entertainment, computers, communications, and space & supplies) of the marketing management group overseeing L&G Roundup and related products	Based on management's assessment of % of time of general marketing management group spend on Roundup activities as agreed upon in the Annual Business Plan		X	
Marketing support functions	Functions include innovation, market research and creative services. Principally personnel costs (salaries, incentives, fringes, travel & entertainment, computers, communications, and space & supplies) of the marketing support functions	Based on management's assessment of % of time marketing support function groups spend on Roundup activities as agreed upon in the Annual Business Plan		X	
Other marketing expenses	All other marketing related expenses, excluding advertising, promotions and personnel costs				
Innovation projects	Consulting, materials and other non-personnel related costs associated with innovation projects	Direct; default based on overall % of innovation group activities directed toward Roundup	X	X	X
Package design	Agency fees, supplies and materials, and other non-personnel related costs associated with package design	Direct; default based on overall % of creative service group activities directed toward Roundup	X	X	

The Determination/Allocation Method for the Revenue/Expense Categories set forth on this Schedule 3.3(c) will be reviewed and approved through the Annual Business Plan

Revenue/Expense Category	Definition	Determination/Allocation Method	Anticipated Source		
			Roundup	SMG	MTC
Market research services	Fees and other non-personnel costs associated with non-brand specific market research (POS data, usage and attitudes studies, etc)	Direct; default based on overall % of market research group activities directed toward Roundup	X	X	
Sales & promotional literature	Non-personnel costs associated with developing, publishing and disseminating sales materials and other non-POP related promotional literature	Direct; default based on overall % of total sales & promotional space employed for Roundup	X	X	
Consumer services	Costs related to handling consumer inquiries. Function maybe performed by Scotts personnel or outsourced. In handled internally costs will include personnel related expenses, communications expenses (toll-free numbers and internet), and other costs necessary to maintain this function	Direct; default based on overall % of consumer service activities directed toward Roundup	X	X	
Consumer guarantee	If offered, costs associated with guaranteeing product performance to consumers	Direct	X	X	
Sales management	Primarily personnel and related support costs (salaries, incentives, fringes, relocation, travel & entertainment, computers, communications, and space & supplies) of the sales management group	Based on weighting of factors including selling, display servicing and shelf work. If shared service arrangements change, allocation percentages will be re-established based on then current facts and circumstances.		X	
Field sales/merchandisers	Primarily personnel and related support costs (salaries, incentives, fringes, travel & entertainment, computers, communications, and space & supplies) of the fields sales force	Based on weighting of factors including selling, display servicing and shelf work. If shared service arrangements change, allocation percentages will be re-established based on then current facts and circumstances.		X	

The Determination/Allocation Method for the Revenue/Expense Categories set forth on this Schedule 3.3(c) will be reviewed and approved through the Annual Business Plan

			Anticipated Source		
Revenue/Expense Category	**Definition**	**Determination/Allocation Method**	**Roundup**	**SMG**	**MTC**
Category management	Primarily personnel and related support costs (salaries, incentives, fringes, travel & entertainment, computers, communications, and space & supplies) of the teams assigned to work closely with specific retailers (e.g. Home Depot, Wal*Mart, Lowe's, etc) to assist in the management of their lawn and garden operations.	Based on weighting of factors taking into consideration the category management activities at each retailer or group which these functions are performed. If shared service arrangements change, allocation percentages will be re-established based on then current facts and circumstances.		X	
Customer Service/OTC	Principally personnel and related support costs (salaries, incentives, fringes, travel & entertainment, computers, communications, and space & supplies) related to customer service (order-to-cash) function. Scotts may include some of these functions (credit, cash application, collections and claims management) as a Finance function	Based on management's assessment of % of time support function groups spend on Roundup activities as agreed upon in the Annual Business Plan		X	
MAT-Administration	Personnel and related support costs (salaries, incentives, fringes, travel & entertainment, computers, communications, and space & supplies) of the general and administrative functions supporting the business unit, part of whose responsibility includes managing the L&G Roundup brand. Also includes other general and administrative support costs necessary to run the business unit, not otherwise assigned.				
SVP and general management	Primarily personnel and related support costs (salaries, incentives, fringes, travel & entertainment, computers, communications, and space & supplies) of the business unit general management group. Also includes general costs of operating the business unit not otherwise assigned or classified	Direct for Roundup assigned employees, including reasonable charges for fringe benefits and related support costs. Scotts costs will be allocated based on agreed to % of actual business unit general support costs		X	X

The Determination/Allocation Method for the Revenue/Expense Categories set forth on this Schedule 3.3(c) will be reviewed and approved through the Annual Business Plan

			Anticipated Source		
Revenue/Expense Category	**Definition**	**Determination/Allocation Method**	**Roundup**	**SMG**	**MTC**
Information technology	Personnel and related support costs (salaries, incentives, fringes, travel & entertainment, computers, communications, and space & supplies) of the information technology function supporting the business unit which manages the L&G Roundup brand. Costs also include depreciation and annual software license fees, hardware depreciation and rental, outside service fees and contracts and other non-personnel costs associated with operating the information technology group.	Scotts costs will be allocated based on agreed to % of actual business unit information technology costs, net of developmental costs, but including service costs		X	
Finance and accounting	Personnel and related support costs (salaries, incentives, fringes, travel & entertainment, computers, communications, and space & supplies) of the finance and accounting functions supporting the business unit which manages the L&G Roundup brand. Functions include financial planning and analysis, general accounting, order-to-cash functions assigned to finance, accounts payable and payroll. Costs will also include internal and external audit Tees, specialized IT services, and corporate treasury, tax and controllership functions.	Direct for Roundup seconded people, including reasonable charges for fringe benefits and related support costs. Scotts costs will be allocated based on agreed to % of actual business unit finance and accounting costs		X	X

The Determination/Allocation Method for the Revenue/Expense Categories set forth on this Schedule 3.3(c) will be reviewed and approved through the Annual Business Plan

			Anticipated Source		
Revenue/Expense Category	**Definition**	**Determination/Allocation Method**	**Roundup**	**SMG**	**MTC**
Human resources	Personnel and related support costs (salaries, incentives, fringes, travel & entertainment, computers, communications, and space & supplies) of the human resource function supporting the business unit which manages the L&G Roundup brand. Costs also include external fees and consulting related to human resource matters not assigned to other functional areas.	Scotts costs will be allocated based on agreed to % of headcount for actual business unit related human resource costs		X	
Site/administrative services	Costs associated with procuring and maintaining general office space, not otherwise assigned to functional areas. Costs include lease/rental fees, heating and cooling, lighting, telecommunications, general and grounds maintenance, amortization of leasehold improvements, and depreciation of furniture and fixtures. Will also include personnel costs to manage these functions.	Scotts costs will be allocated based on agreed to % of headcount for actual business unit site/administrative service costs		X	
Legal services	Primarily personnel and related support costs (salaries, incentives, fringes, travel & entertainment, computers, communications, and space & supplies) of the legal services group supporting the business unit which manages the L&G Roundup brand. Also includes other expenses of maintaining in-house legal counsel and any outside attorney's fees for work on the L&G Roundup brand.	Direct for specific outside legal fees and services. Scotts costs will be allocated based on agreed to % of actual business unit general legal costs	X	X	

The Determination/Allocation Method for the Revenue/Expense Categories set forth on this Schedule 3.3(c) will be reviewed and approved through the Annual Business Plan

			Anticipated Source		
Revenue/Expense Category	**Definition**	**Determination/Allocation Method**	**Roundup**	**SMG**	**MTC**
Scotts or Monsanto corporate services	Any other Scotts or Monsanto corporate services used to support the L&G Roundup brand, not otherwise assigned to a functional area.	If the business unit managing the L&G Roundup brand uses services supplied by either Scotts or Monsanto, either party has the right to bill for such services, provided the cost of such services was agreed to in advance by business unit management. Allocation of such services to the L&G Roundup business will be based on agreed to % of the actual costs billed to the business unit.		X	X
MAT-Technical	Functional areas responsible for product development, product registration and regulatory activities, field research and environmental matters.				
Product development	Personnel and related support costs (salaries, incentives, fringes, travel & entertainment, computers, communications, and space & supplies) of the product development group supporting the business unit which manages the L&G Roundup brand. Also includes other expenses related to product development work on the L&G Roundup brand.	Direct for Roundup assigned employees, including reasonable charges for fringe benefits and related support costs. Direct for specific outside services related to L&G Roundup product development. Scotts costs will be allocated based on agreed to % of actual business unit general product development costs.	X	X	X

The Determination/Allocation Method for the Revenue/Expense Categories set forth on this Schedule 3.3(c) will be reviewed and approved through the Annual Business Plan

			Anticipated Source		
Revenue/Expense Category	**Definition**	**Determination/Allocation Method**	**Roundup**	**SMG**	**MTC**
Registration and regulatory	Product registration fees, tonnage taxes and other direct regulatory costs. Personnel and related support costs (salaries, incentives, fringes, travel & entertainment, computers, communications, and space & supplies) of the registrations and regulatory group supporting the business unit which manages the L&G Roundup brand.	Direct for Roundup assigned employees, including reasonable charges for fringe benefits and related support costs. Direct for product registrations and regulatory activities specifically identified to L&G Roundup. Scotts costs will be allocated based on agreed to % of actual business unit general registration and regulatory costs.	X	X	X
Field research	Personnel and related support costs (salaries, incentives, fringes, travel & entertainment, computers, communications, and space & supplies) of the field research group supporting the business unit which manages the L&G Roundup brand. Also includes other expenses related to field research activities on the L&G Roundup brand.	Direct for field research activities specifically identified to L&G Roundup. Scotts costs will be allocated based on agreed to % of actual business unit general field research costs.	X	X	
Environmental engineering	Personnel and related support costs (salaries, incentives, fringes, travel & entertainment, computers, communications, and space & supplies) of the environmental engineering group supporting the business unit which manages the L&G Roundup brand. Also includes other expenses related to environmental engineering activities on the L&G Roundup brand.	Direct for environmental engineering activities specifically identified to L&G Roundup. Scotts costs will be allocated based on agreed to % of actual business unit general environmental engineering costs.	X	X	
Other (income) and expense	Other (income) and expense items generally accepted as being included in determining operating income				
Foreign exchange	Income statement impact of foreign exchange activities and translating the results of foreign operations into U.S. dollars.	Direct	X		

The Determination/Allocation Method for the Revenue/Expense Categories set forth on this Schedule 3.3(c) will be reviewed and approved through the Annual Business Plan

			Anticipated Source		
Revenue/Expense Category	**Definition**	**Determination/Allocation Method**	**Roundup**	**SMG**	**MTC**
Royalty (income)/expense	(Income) or expense associated with licensing the L&G Roundup name in the markets included in the agency agreement	Direct	X		
Fixed asset write-downs and disposals	The net book value and associated costs related to fixed asset write-downs and disposals	Direct	X		
Other	Any other items reasonably included in determining EBITA/operating profit, not otherwise classified	Direct	X		
EBITA/Operation profit	Earnings before interest, taxes and amortization. Excludes interest expense, income and franchise taxes, amortization of intangible property, agreed upon non-recurring items, and pre-agreement legal, environmental and other contingencies above the defined amount.				

SCHEDULE 4.2(a)

STEERING COMMITTEE

For the Agent:

Michael Lukemire, President, Chief Operating Officer

Randy Coleman, Executive Vice President, Chief Financial Officer

For Monsanto:

Jim Guard, Global Lawn and Garden Lead

Anthony Leisure, Lawn and Garden Finance Lead

SCHEDULE 6.11(a)

ADDITIONAL ROUNDUP PRODUCTS

Additional Roundup Products	Included Markets
Smith & HawkenTM Grass & Weed Killer (RTU formula: 18.75% Soybean Oil); and Whitney FarmsTM Weed & Grass Killer (RTU formula: 18.75% Soybean Oil).	United States and its territories

SCHEDULE 6.11(f)

ADDITIONAL ROUNDUP PRODUCTS TRADEMARKS

ADDITIONAL ROUNDUP PRODUCT	MARK	U.S. Application No.
	SMITH & HAWKEN SMITH & HAWKEN SMITH & HAWKEN & Design WHITNEY FARMS	77/95 1348 77/578659 85/004995 77/927438

SCHEDULE 6.20

BEA PRODUCTS

PRODUCT	ASSOCIATED SKUS	ASSOCIATED EPA REGISTRATION NO.
Roundup for Lawns Bug Destroyer	4385404; 4385440; 4385524, 4385501, 4385542	239-2701
Roundup for Lawns Crabgrass Destroyer	4385606; 4386004; 4386020; 4386015	239-2740; 239-2743
Roundup for Lawns (RTU – Northern)	4385010; 4386154; 4375010; 4385048; 4375005; 4385005	2217-917
Roundup for Lawns (RTS – Northern)	5008801; 5008810	2217-918
Roundup for Lawns (Concentrate – Northern)	5008701; 5008710; 5008772	2217-918
Roundup for Lawns (RTS – Southern)	5008601; 5008610; 5008672	2217-1010
Roundup for Lawns (Concentrate – Southern)	5008401; 5008410; 5008472	2217-1010
Roundup for Lawns (RTU – Southern)	5008910; 5009010; 4386254; 5008940; 5008905; 5009005	2217-1009
Roundup – Landscape Weed Preventer	4385106; 4385203; 4385301; 4385101; 4385118; 4385201; 4385248; 4385105	538-192

EXHIBIT 10.4

EXECUTION VERSION

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

MONSANTO COMPANY

AND

THE SCOTTS COMPANY LLC

Dated July 29, 2019

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Exhibits

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is entered into as of this 29th day of July, 2019, by and between Monsanto Company, a Delaware corporation (the "Buyer"), and The Scotts Company LLC, an Ohio limited liability company ("Seller"). Capitalized terms are defined in Article 1.

RECITALS

A. Buyer has previously granted the Seller certain licenses relating to the Business and the Brand Extension Products.

B. Buyer and Seller desire that such licenses be terminated pursuant to the BEA Termination Agreement in substantially the form attached hereto as Exhibit E.

C. The Seller owns the Purchased Assets and desires to: (i) sell, and, to the extent necessary, cause its applicable Affiliates, to sell to the Buyer the Purchased Assets; and (ii) assign, and to the extent necessary cause the Seller and/or its applicable Affiliates to assign to the Buyer the Assumed Liabilities, all on the terms and conditions set forth in this Agreement and the other Transaction Documents.

D. The Buyer desires to: (i) purchase from the Seller the Purchased Assets; and (ii) assume from the Seller the Assumed Liabilities, all on the terms and conditions set forth in this Agreement and the other Transaction Documents.

E. Following the Closing, the Seller and Buyer desire that the Seller serve as an agent to Buyer with respect to the Brand Extension Products pursuant to the terms and conditions set forth in the Agency Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, and the mutual covenants, representations, warranties, conditions, and agreements hereinafter expressed, the adequacy and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

The following words shall have the meanings given or otherwise ascribed to them in this Article 1:

1.1 [Intentionally Omitted]

1.2 "Action" means any alternative dispute resolution, arbitration, audit, claim, demand, examination, investigation, hearing, litigation, mediation, proceeding or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, and whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

1.3 "Affiliate" means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person.

1.4 "Agency Agreement" means that certain Third Amended and Restated Exclusive Agency and Marketing Agreement, effective as of the Closing Date, by and between Seller and the Buyer.

1.5 "Allocation" has the meaning set forth in Section 2.9.

1.6 "Allocation Schedule" has the meaning set forth in Section 2.9.

1.7 [Intentionally Omitted]

1.8 "Assumed Contracts" has the meaning set forth in Section 2.1(d).

1.9 "Assumed Liabilities" has the meaning set forth in Section 2.4.

1.10 "Assumed Rights" has the meaning set forth in Section 2.2.

1.11 "BEA Termination Agreement" means that certain Brand Extension Agreement Termination Agreement, effective as of the Closing Date, by and between Seller and Buyer.

1.12 "Benefit Plans" means (a) all "employee benefit plans" as defined in Section 3(3) of ERISA and (b) any other agreement, arrangement, plan, or policy, qualified or non-qualified, written or oral, funded or unfunded, that involves any (i) pension, retirement, profit sharing, savings, deferred compensation, bonus, stock option, simple retirement account (as described in Code Section 408(p)), stock purchase, phantom stock, incentive plan, or change-in-control benefits; (ii) welfare or "fringe" benefits, including vacation, holiday, severance, redundancy, disability, medical, hospitalization, dental, life and other insurance, tuition, company car, club dues, sick leave, maternity, paternity or family leave, health care reimbursement, dependent care assistance, cafeteria plan, regular in-kind gifts, or other benefits; or (iii) employment, consulting, engagement, retainer or golden parachute agreement or arrangement, in each case, which is sponsored, maintained or contributed to by Seller or any ERISA Affiliate and with respect to which Seller or any ERISA Affiliate has or may have any current or future Liability.

1.13 "Bill of Sale" means that certain Bill of Sale to be entered into by and between Seller and the Buyer at the Closing in substantially the form attached hereto as Exhibit C.

1.14 "Brand Extension Products" means those products set forth on Schedule 1.14.

1.15 "Business" means the development, manufacture, production, advertising, marketing, promotion, distribution, importation, exportation, offer for sale and sale of the Brand Extension Products.

1.16 "Business Day" means any day which is not a Saturday, a Sunday or a legal holiday in the State of Missouri, USA.

1.17 "Buyer" has the meaning set forth in the preamble.

1.18 "Cap" has the meaning set forth in Section 9.5(a).

1.19 "Claim Notice" has the meaning set forth in Section 9.4(a).

1.20 "Closing" means the consummation of the transactions contemplated by this Agreement and the other Transaction Documents, as provided for in Section 2.7.

1.21 "Closing Date" means August 1, 2019.

1.22 "Code" means the U.S. Internal Revenue Code of 1986, as amended.

1.23 "Commercialization and Technology Termination Agreement" means that certain Commercialization and Technology Agreement Termination Agreement, effective as of the Closing Date, by and between Seller and Buyer.

1.24 "Contract" means any legally binding contract, agreement, understanding, lease, license, indenture, mortgage, deed of trust, evidence of indebtedness, commitment or instrument, purchase order or other purchasing arrangement, or offer, written or oral, express or implied.

1.25 "control," including the terms "controlled by" and "under common control with," means the ownership, directly or through one or more Affiliates, of (i) fifty percent (50%) or more of the shares of stock entitled to vote for the election of directors, in the case of a corporation, or fifty percent (50%) or more of the equity interests in the case of any other type of legal entity, or (ii) the power to direct or cause the direction of the management of an entity, whether through ownership of voting securities, by contract or otherwise.

1.26 [Intentionally Omitted]

1.27 [Intentionally Omitted]

1.28 "Data Room" means the "Project Sapphire II" virtual data room hosted at https://bcconnect.bryancave.com/bryancave.

1.29 "Direct Claim" has the meaning set forth in Section 9.4(c).

1.30 "Effective Time" means 12:01 a.m. Central Time in the USA on the Closing Date.

1.31 "Encumbrances" means any lien (statutory or otherwise), security interest, security agreement, mortgage, indenture, deed of trust, pledge, charge, adverse claim, easement, assessment, hypothecation, collateral assignment, deposit arrangement, right of first refusal, preemptive right, option, lease, license, restriction, agreement, adverse interest, restriction on transfer, covenant, condition, servitude, right of way, encroachment, exception to or defect in title or other restriction or encumbrance of any kind, including the interest of any vendor or lessor under any conditional sale, capital lease, or other title retention agreement.

1.32 "Environmental Law" means any currently applicable Law, including common law, relating to: (a) the environment, including pollution, contamination, cleanup, preservation, or protection, or remediation of the environment, or (b) the management or release into the environment of any Hazardous Material, including the manufacture, production, generation, presence, formulation, processing, labeling, distribution, introduction into commerce, registration, use, treatment, handling, storage, disposal, discharge, transportation, re-use, recycling or reclamation of any Hazardous Material or the containment, removal or remediation thereof. including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 1801, et seq.), the Federal Solid Waste Disposal Act (which includes the Resource Conservation and Recovery Act) (42 U.S.C. § 6901, et seq.), the Federal Water Pollution Control Act (which includes the Clean Water Act) (33 U.S.C. § 1251, et seq.), the Clean Air Act (42 U.S.C. § 7401, et seq.), FIFRA, the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. §§ 11001, et seq.), the Safe Drinking Water Act (42 U.S.C. §§ 300f, et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601, et seq.), and the Oil Pollution Act of 1990 (P.L. 101-380, 104 Stat. 486, et seq.), as such laws may be amended or otherwise modified from time to time, any regulations promulgated thereunder, and any similar state or local law provisions.

1.33 "EPA" mean the United States Environmental Protection Agency.

1.34 "ERISA" means the U.S. Employee Retirement Income Security Act of 1974, as amended from time to time.

1.35 "ERISA Affiliate" means any corporation or trade or business controlled by, controlling or under common control with Seller (within the meaning of Code Section 414 or ERISA Section 4001(a)(14) or 4001(b)).

1.36 "Excluded Assets" has the meaning set forth in Section 2.3.

1.37 "Excluded Liabilities" has the meaning set forth in Section 2.5.

1.38 "Excluded Taxes" has the meaning set forth in Section 2.5(e).

1.39 "FIFRA" shall mean the Federal Insecticide, Fungicide and Rodenticide Act, as amended, and its implementing regulations.

1.40 "Final Inventory Value" has the meaning set forth in Section 2.8(e).

1.41 "Financial Statements" has the meaning set forth in Section 3.3(a).

1.42 "Fraud" means a Person's willful and knowing commission of common law fraud.

1.43 "Fundamental Representations" means the representations and warranties set forth in Sections 3.1 (Existence and Power); 3.2(a); 3.2(b) and the first two sentences of 3.2(c) (Authorization; Valid and Enforceable Agreements); 3.9(a) (first sentence) (Title to Assets); 3.20 (Brokers, Finders); 4.1 (Existence and Power); 4.2 (Authorization; Valid and Enforceable Agreements); 4.4 (Brokers, Finders); and 4.5 (No Conflict; Required Filings and Consents).

1.44 "Governmental Authority" means any nation or state, any federal, bilateral or multilateral governmental authority, any possession, territory, local, county, district, city or other governmental unit or subdivision, and any branch, entity, agency, or judicial body of any of the foregoing.

1.45 "Hazardous Material" means any hazardous substances, hazardous wastes, toxic pollutants, toxic substances, deleterious substances, caustics, radioactive substances or materials, hazardous materials, and other sources of pollution or contamination, or terms of similar import, that are identified, listed and regulated under any Environmental Law including, but not limited to, petroleum and petroleum products, by-products or breakdown products, radioactive materials, friable asbestos, heavy metals, lead-based paint, nuclear fuel, and polychlorinated biphenyls.

1.46 "Indemnified Party" has the meaning set forth in Section 9.4(a).

1.47 "Indemnifying Party" has the meaning set forth in Section 9.4(a).

1.48 "Inputs" means all capital assets (molds, dies, etc.), intellectual property rights, supply chain or other contractual rights, and other property rights utilized in the design, development, manufacture, use, importation, exportation, marketing, distribution, promotion, development, sale and offer for sale of all Brand Extension Products and all other products covered by the Agency Agreement, including without limitation active ingredients, formulas and propriety packaging (drain back caps, wands, etc.).

1.49 "Intellectual Property" means all intellectual property, whether protected, created or arising under the Laws of the United States or any other jurisdiction, including all: (a) patents and applications therefor, including continuations, divisionals, continuations-in-part, or applications for reissue and patents issuing thereon (collectively, "Patents"); (b) trademarks, service marks, trade names, service names, brand names, slogans, logos, business names, domain names, trade dress rights, all goodwill associated therewith, and all applications, registrations and renewals thereof (collectively, "Marks"); (c) Know-How; (d) works protected by copyright, copyright registrations and applications therefor, and mask work rights; and (e) websites and related content, accounts with Twitter, Facebook and other social media companies and the content found thereon and related thereto.

1.50 "Intellectual Property Assignment Agreements" has the meaning set forth in Section 2.7(b)(v).

1.51 "Intellectual Property License Agreement" means the license agreement in the form attached hereto as Exhibit A, to be entered into between the Buyer and Seller at Closing, pursuant to which Seller grants Buyer a license to and under the Seller Licensed Intellectual Property, other than the Seller Licensed Marks.

1.52 "Inventory" means the raw materials, packaging, intermediates, work in progress and finished goods inventory exclusively related to the Transferred Products and a reasonable allocation (consistent with past practices) of raw materials, packaging, intermediates and work in progress related to the Transferred Products, in each case, to the extent owned by Seller and/or its

Affiliate immediately prior to the Closing, whether held in Seller's (or its Affiliates') premises or a Third Party's premises.

1.53 "IRS" means the United States Internal Revenue Service.

1.54 "Know-How" means technology, processes and procedures, formulae, contents of research and development notebooks, specifications, procedures for experiments and tests and results of experimentation and testing; formulation, tolling, packaging and distribution information; together with all common law or statutory rights protecting the same, and any similar or analogous rights to any of the foregoing, whether arising or granted under any Laws.

1.55 "Knowledge" means, in respect of any individual, the actual knowledge of such individual upon due inquiry or investigation. In the case of Seller, those relevant individuals are listed on Schedule 1.55.

1.56 "Law" means in any jurisdiction, any federal, state or local, domestic or foreign, statute, law, treaty, ordinance, decree, order, injunction, rule, code, directive, or regulation of any Governmental Authority, and includes rules and regulations of any regulatory or self-regulatory authority compliance with which is required by Law, in effect on the date hereof, or, with respect to prior time periods, as in effect during the applicable prior period.

1.57 "Letter of Authorization" means a letter authorizing Buyer to rely on the Registration Data, which letter shall be in substantially the same form as attached hereto as Exhibit G.

1.58 "Liability" or "Liabilities" means all debts, adverse claims, liabilities and/or obligations, direct, indirect, absolute or contingent, whether accrued, vested or otherwise and whether or not reflected or required to be reflected on the financial statements of a Person.

1.59 "Loss" or "Losses" means any and all losses, awards, liabilities, damages, obligations, fines, penalties, encumbrances, settlements, judgments, costs and expenses that are probable and reasonably foreseeable (including reasonable attorneys' fees), including, but not limited to, any of the foregoing arising under, out of or in connection with any Action; provided, however, that Losses exclude punitive, remote, or speculative damages, including any valuation methodology based on a multiple of earnings, in each case except to the extent actually awarded to a Third Party. For the avoidance of doubt, to be included as Losses, lost profits or other types of damages such as consequential, indirect or special damages, must be probable and reasonably foreseeable.

1.60 "Marks" has the meaning set forth in Section 1.49.

1.61 "Material Adverse Effect" means any change in, or effect on, the Purchased Assets or the Transferred Products taken as a whole, or the Business, that individually or in the aggregate, is or would reasonably be expected to be, materially adverse to the Business or the assets or liabilities, results of operations, or condition (financial or otherwise) of the Business.

1.62 "Material Contracts" has the meaning set forth in Section 3.10(a).

1.63 "Order" means an order, writ, injunction, judgment, ruling, assessment, arbitration award or decree of any Governmental Authority.

1.64 "Ordinary Course" means, with respect to Seller's and its Affiliates' activities related to the sale of the Transferred Products, the ordinary course of day-to-day operations customarily engaged in by Seller and/or its Affiliates.

1.65 "Party" means, individually, Seller and the Buyer, and "Parties" means both of them.

1.66 "Patents" has the meaning set forth in Section 1.49.

1.67 "Payment Date" shall have the meaning set forth in Section 2.6.

1.68 "Permits" has the meaning set forth in Section 3.12.

1.69 "Permitted Encumbrances" means (i) Encumbrances for Taxes which are not yet delinquent and for which an adequate reserve has been recorded on the Financial Statements as a current liability in accordance with GAAP; (ii) statutory Encumbrances for mechanics, material men, laborers, employees or suppliers arising by operation of Law for amounts which are owed, but not yet delinquent; and (iii) in the case of real property, applicable zoning and building ordinances and land use regulations, but only if same are not being violated.

1.70 "Person" means an individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, disregarded entity, unincorporated organization, government or governmental or regulatory body thereof, or political subdivision thereof, whether national, federal, regional, state, or local, or any agency, instrumentality or authority thereof, or any court or arbitrator, or any other entity.

1.71 "Pre-Closing Period" means any Tax period ending on or before the day before the Closing Date and the portion of any Straddle Period ending on and including the day before the Closing Date.

1.72 "Purchase Price" means One Hundred Twelve Million Dollars ($112,000,000).

1.73 "Purchased Assets" has the meaning set forth in Section 2.1.

1.74 "Registration Data" means any and all data, studies, or summaries of the same, including efficacy data or studies, that support the Specified Product Registrations or claims made with respect to the Transferred Products within the Territory.

1.75 [Intentionally Omitted]

1.76 [Intentionally Omitted]

1.77 "Related Packaging" has the meaning set forth in Section 1.84.

1.78 "Relevant Information" has the meaning set forth in Section 6.2(b).

1.79 "Representatives" means, with respect to any Person, the officers, directors, members, managers, principals, employees, agents, auditors, advisors, bankers and other representatives of such Person.

1.80 "Second Amended and Restated Formulation Agreement" means the Second Amended and Restated Formulation Agreement in substantially the form attached hereto as Exhibit H, to be entered into between the Buyer and Seller at Closing.

1.81 "Seller" has the meaning set forth in the preamble.

1.82 "Seller Intellectual Property License Agreements" means the Intellectual Property License Agreement and the Trademark License Agreement.

1.83 "Seller Licensed Copyrights" means (a) the copyright registrations and pending applications to register copyrights identified on Schedule 1.83 and (b) any common law or unregistered copyrights in the tangible works of expression identified on Schedule 1.83.

1.84 "Seller Licensed Intellectual Property" means, with the exception of those items listed on Schedule 3.14(d), all Seller Licensed Patents, Seller Licensed Marks, the Seller Licensed Copyrights and all other Intellectual Property owned by Seller or any of its Affiliates that is necessary for the conduct of the Business as currently conducted, including: (a) all Brand Extension Product formulations and all other Intellectual Property that is embodied by or in any Brand Extension Product, (b) all Intellectual Property that is embodied by or in any packaging that is currently used in connection with any Brand Extension Product (the "Related Packaging") and (c) all Intellectual Property that relates to the development, manufacture or production of any Brand Extension Product or Related Packaging, in each case to the extent owned by Seller or any of its Affiliates but excluding all Intellectual Property included in the Transferred Intellectual Property.

1.85 "Seller Licensed Marks" means: (a) the Marks identified on Schedule 1.85 and (b) the trade dress elements of Related Packaging that are identified on Schedule 1.85.

1.86 "Seller Licensed Patents" means: (a) the Patents identified on Schedule 1.86, all Patents that claim priority to any such Patent or from which such Patent claims priority, including all continuations, continuations-in-part, divisionals, reissues, reexaminations, and other Patents issued in connection with any post-grant proceedings related to any such Patent and all foreign counterparts of any of the foregoing and (b) all other Patents owned by the Seller or any of its Affiliates that would be infringed by the conduct of the Business as currently conducted or proposed to be conducted absent a license thereto, but excluding any Patents included in the Transferred Intellectual Property.

1.87 "Seller Name" means Scotts and any variations thereof or logos associated therewith that are used on or in connection with any Brand Extension Product or Related Packaging.

1.88 "Specified Agreements" means the agreements, documents and instruments entered into contemporaneously with execution of this Agreement, including, without limitation (i) the BEA Termination Agreement; (ii) the Commercialization and Technology Termination Agreement; (iii)

the Agency Agreement; and (iv) all other agreements, documents and instruments contemplated by each of the foregoing.

1.89 "Straddle Period" has the meaning set forth in Section 2.10(b).

1.90 "Tax" or "Taxes" means (i) any U.S. federal, state or local or non-U.S. net income, gross income, gross receipts, property, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add-on minimum, ad valorem, value-added, transfer or excise tax, windfall profit, severance, production, stamp, unclaimed property, escheat, environmental, gross receipts, severance, occupation, premium, capital stock, social security (or similar), disability, workers' compensation, registration, estimated or any other tax, custom, duty, governmental fee, withholding, levy, impost or other like assessment or charge of any kind whatsoever, (ii) any interest, penalty, fine, addition to tax or additional amount imposed by any Governmental Authority, in connection with (a) any item described in clause (i), or (b) the failure to comply with any requirement imposed with respect to any Tax Return, and (iii) any liability in respect of any items described in clause (i) or (ii) payable by reason of Contract (including any Tax indemnity agreement, Tax sharing agreement or Tax allocation agreement or similar Contract or arrangement, but excluding for this purpose agreements entered into in the ordinary course of business and not primarily related to Taxes), assumption, transferee, or successor liability or operation of Law (including pursuant to Treasury Regulations Section 1.1502-6 (or any predecessor or successor thereof or any analogous or similar state, local, or foreign Law)).

1.91 "Tax Authority" means any domestic, foreign, federal, national, state, county or municipal or other local government responsible for the collection of Taxes.

1.92 "Tax Returns" means all returns, reports, estimates, claims for refund, or information statements required to be filed with any Tax Authority in connection with the Purchased Assets or the Business, including any schedule or attachment thereto, and including any amendment thereof.

1.93 "Territory" means the USA.

1.94 "Third Party" means any Person other than Seller, or the Buyer, or any of their respective Affiliates.

1.95 "Third Party Claim" has the meaning set forth in Section 9.4(a).

1.96 "Trademark License Agreement" means the license agreement in the form attached hereto as Exhibit F, to be entered into between the Buyer and Seller at Closing, pursuant to which Seller grants Buyer a license to use the Seller Licensed Marks.

1.97 "Transaction Documents" means each of the following:

(a) this Agreement;

(b) [Intentionally Omitted];

(c) the Bill of Sale;

(d) the Trademark License Agreement;

(e) the Intellectual Property License Agreement;

(f) the Intellectual Property Assignment Agreements;

(g) the BEA Termination Agreement; and

(h) the Second Amended and Restated Formulation Agreement.

1.98 "Transferred Books and Records" means, historical program margin reports for the customers of the Business, and to the extent exclusively related to the Business, (i) the Seller's purchase and order supplier data and (ii) the Seller's sales and order customer data.

1.99 "Transferred Intellectual Property" means the Intellectual Property owned by Seller or any of its Affiliates that is exclusively related to the Business, excluding Know-How but including the Intellectual Property listed on Schedule 1.99, subject to the limitations and caveats set forth on such Schedule. To the extent Seller or any of its Affiliates owns or claims to own any trade dress elements of Related Packaging or other Marks used or contemplated for use in connection with the marketing, promotion, offer for sale or sale of any Brand Extension Products as of the Closing that are not (a) the Seller Name or (b) expressly identified as Seller Licensed Marks on Schedule 1.85, such trade dress elements or other Marks shall be deemed to be Transferred Intellectual Property. To the extent Seller or any of its Affiliates owns or claims to own any copyright in any tangible work of expression used exclusively in connection with the marketing, promotion, offer for sale or sale of any Brand Extension Products as of the Closing that is not expressly identified as Seller Licensed Copyrights on Schedule 1.83, all such copyrights shall be deemed to be Transferred Intellectual Property. For clarity, the foregoing presumptions do not apply to Patents, Know-How or any other Intellectual Property not specifically within the scope of such presumptions.

1.100 "Specified Product Registrations" means federal and state registrations for the Transferred Products, as set forth on Schedule 1.100.

1.101 "Scotts Product Registrations" means the Specified Product Registrations where the base registration is held by Seller and/or its Affiliates, as set forth in Schedule 1.101.

1.102 "Third Party Product Registrations" means the Specified Product Registrations where the base registration is held by a third party, as set forth in Schedule 1.102.

1.103 "Transferred Products" means the products that are sold by Seller and/or its Affiliates and listed on Schedule 1.103.

1.104 "Transfer Taxes" has the meaning set forth in Section 2.10(a).

1.105 "Tri-Party Agreement and Consent" means that certain Tri-Party Agreement and Consent, by and among Buyer, Seller and PBI-Gordon Corporation.

1.106 "USA" means the United States of America.

ARTICLE 2
PURCHASE AND SALE OF THE PURCHASED ASSETS AND ASSUMED LIABILITIES

2.1 Transfer of Purchased Assets. Upon the terms and subject to the conditions of this Agreement and the other Transaction Documents, at the Closing, Seller shall, and shall cause its Affiliates to, sell, assign, transfer and convey to the Buyer, and the Buyer shall acquire, assume and accept from Seller, all of Seller's right, title and interest to and in all of the Purchased Assets, free and clear of all Encumbrances other than Permitted Encumbrances. For the purposes of this Agreement, "Purchased Assets" means only:

(a) the Transferred Intellectual Property;

(b) the Inventory;

(c) the Transferred Books and Records existing on the Closing Date (subject to Section 6.2);

(d) all rights of Seller and/or its Affiliates under the Contracts listed on Schedule 2.1(d) (the "Assumed Contracts");

(e) all advertising, marketing, promotional and sales materials, and other literature, catalogues and other sales-related materials, to the extent owned by Seller and used in connection with the marketing, promotion or sale of the Transferred Products; and

(f) any goodwill related to the foregoing.

2.2 Assumed Rights. Upon the terms and subject to the conditions of this Agreement and the other Transaction Documents, Buyer shall assume and receive from Seller the rights and licenses outlined in the BEA Termination Agreement (the "Assumed Rights").

2.3 Excluded Assets. Notwithstanding any provision in this Agreement to the contrary, the Excluded Assets shall be retained by Seller and its Affiliates, and shall be excluded from the assets transferred under the terms of this Agreement. "Excluded Assets" means any asset of Seller or its Affiliates other than the Purchased Assets.

2.4 Assumption of Liabilities. Subject to the terms and conditions of this Agreement and the other Transaction Documents, at the Closing, Seller shall, and shall cause its applicable Affiliates, to assign and transfer to the Buyer, and the Buyer shall assume, become liable for and discharge when and as due, the Assumed Liabilities. The "Assumed Liabilities" means:

(a) the obligations of the Seller (with respect to the Business) under the Assumed Contracts to the extent such obligations are applicable to and accrue with respect to periods subsequent to the Closing; and

(b) all other Liabilities arising out of or relating to Buyer's ownership or operation of the Purchased Assets or the Business after the Closing.

2.5 Excluded Liabilities. Any Liability of Seller or its Affiliates other than the Assumed Liabilities (the "Excluded Liabilities") shall be retained by Seller and its applicable Affiliates, and the Buyer shall not hereunder assume or become liable for any Excluded Liability, including (to the extent related to the ownership or operation of any of the Purchased Assets):

(a) any Liability of the Business or the Seller or any other Person arising out of or relating to the ownership or operation of the Purchased Assets or the Business prior to the Closing;

(b) any Liability for accounts payable, accrued expenses and similar items to the extent that they arise or are incurred prior to the Closing Date;

(c) any Liability relating to any Action that (i) on the Closing Date, is pending against Seller or its Affiliates, in connection with the Purchased Assets, the Business or any other business of Seller or its Affiliates or (ii) arises after the Closing Date, to the extent arising from, or relating to, acts or omissions of Seller and/or its Affiliates prior to the Closing Date;

(d) any Liabilities arising from or relating to (i) any employee of Seller or its Affiliates, (ii) any Benefit Plan or (iii) any other employee benefit plans, programs, policies, agreements and arrangements with respect to which Seller or any of its Affiliates has, now or in the future, any obligation to make contributions or pay benefits;

(e) any Liabilities for Taxes (i) of the Seller resulting from the ownership or operation of the Business or the Purchased Assets for a Pre-Closing Period, (ii) of the Seller or any of its Affiliates (including any Liability of the Seller and any of its Affiliates for the Taxes of any other Person (other than the Buyer or its Affiliates) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or non-U.S. Law), as a transferee or successor, by Contract or otherwise), (iii) that arise out of or result from the consummation of the transactions contemplated by this Agreement (other than Buyer's 50% share of any Transfer Taxes pursuant to Section 2.10(a)) or (iv) required to be withheld in connection with any payment to or for the benefit of the Seller pursuant to this Agreement, to the extent not withheld pursuant to Section 2.12 (collectively, "Excluded Taxes");

(f) any Liability arising out of, or related to, the failure to comply with FIFRA or similar state pesticide laws regarding any Transferred Product manufactured, produced, sold, distributed, or offered for sale or distribution prior to the Closing Date; and

(g) any Liability arising out of, or related to, any Contract of the Seller or its Affiliates that is not an Assumed Contract.

2.6 Consideration. As consideration for the Purchased Assets and the Assumed Rights, the Purchase Price and Final Inventory Value shall be deemed to be earned by Seller on the Closing Date; provided, however, that the Parties have agreed that such payments are payable on January 15, 2020 (the "Payment Date"). On the Payment Date, Buyer shall deliver, or cause to be delivered, to Seller, by wire transfer of immediately available funds to a bank account chosen by Seller, in

accordance with the wire instructions and other directions provided to Buyer by Seller on or before the Closing as set forth on Schedule 2.6, an amount equal to:

(a) the Purchase Price; and

(b) the Final Inventory Value, as determined in accordance with Section 2.8.

2.7 Closing.

(a) The Closing shall take place on the Closing Date at the offices of Bryan Cave Leighton Paisner LLP, in St. Louis, Missouri, or at such other place as the Parties may agree in writing. In lieu of a physical Closing, the Parties agree that all documents required for Closing may be exchanged electronically at the Closing, and that documents so exchanged shall be binding on the Parties for all purposes. For all purposes under this Agreement, the Closing shall be effective as of the Effective Time.

(b) Subject to the terms and conditions in this Agreement, at the Closing, Seller shall deliver, or cause to be delivered, to Buyer:

(i) [Intentionally Omitted];

(ii) the Bill of Sale, duly executed by Seller;

(iii) the Trademark License Agreement, duly executed by Seller;

(iv) the Intellectual Property License Agreement, duly executed by Seller;

(v) one or more assignment agreements providing for transfer of the Transferred Intellectual Property to the Buyer and/or its Affiliates, in the form attached hereto as Exhibit D (the "Intellectual Property Assignment Agreements"), duly executed by Seller;

(vi) the BEA Termination Agreement, duly executed by Seller;

(vii) the Second Amended and Restated Formulation Agreement, duly executed by Seller;

(viii) each Letter of Authorization, duly executed by Seller;

(ix) a non-foreign person affidavit in form and substance satisfactory to the Buyer that complies with the requirements of Section 1445 of the Code, duly executed by The Scotts Miracle-Gro Company;

(x) a properly executed and completed IRS Form W-9 from Seller; and

(xi) such other documents, certificates or instruments as Buyer may reasonably request.

(c) Subject to the terms and conditions in this Agreement, at the Closing, Buyer shall deliver, or cause to be delivered, to Seller:

(i) [Intentionally Omitted];

(ii) the Trademark License Agreement, duly executed by Buyer;

(iii) the Intellectual Property License Agreement, duly executed by Buyer;

(iv) the BEA Termination Agreement, duly executed by Buyer;

(v) the Second Amended and Restated Formulation Agreement, duly executed by Buyer;

(vi) the Intellectual Property Assignment Agreements, duly executed by Buyer or one or more of its Affiliates, as appropriate; and

(vii) such other documents, certificates or instruments as Seller may reasonably request.

(d) Following the Closing, Buyer shall deliver payments in respect of the Purchase Price and the Final Inventory Value to Seller on the Payment Date in accordance with Section 2.6.

2.8 Inventory.

(a) Following the date hereof, and prior to the Closing, Seller shall perform a physical count of the finished goods inventory included in the Inventory (such finished goods inventory, the "Finished Goods Inventory") and shall record each item of Finished Goods Inventory with a date and timestamp. Seller shall track and record the quantities and movements of all Finished Goods Inventory from the date hereof until the inventory count set forth in Section 2.8(c) is completed.

(b) Within 10 calendar days following the Closing Date, Seller shall cause to be prepared and delivered to Buyer a certified statement (the "Estimated Inventory Statement") setting forth Seller's calculation of the value of the Finished Goods Inventory (calculated using Seller's historical accounting principles as consistently applied).

(c) Following the delivery of the Estimated Inventory Statement, at a time that is mutually agreeable to Buyer and Seller (but prior to September 30, 2019), Buyer and Seller will mutually take a physical count of the Finished Goods Inventory.

(d) No later than ten (10) Business Days following the completion of the physical count set forth in Section 2.8(c), Seller shall cause to be prepared and delivered to Buyer a statement, in a format substantially equivalent to the Estimated Inventory Statement (the "Closing Inventory Statement") setting forth a reconciled calculation of the value of Finished Goods Inventory (calculated using Seller's historical accounting principles as consistently applied) following the physical count set forth in Section 2.8(c).

(e) Following delivery of the Closing Inventory Statement, Buyer and Seller shall cooperate in good faith to resolve any disputes relating to the Closing Inventory Statement (or the value of the Finished Goods Inventory set forth therein), and such disputes shall be resolved by Buyer and Seller with ten (10) Business Days following the delivery of the Closing Inventory Statement. If the Parties are unable to resolve such disputes within ten (10) Business Days following the delivery of the Closing Inventory Statement, then the Parties shall refer such disputes to a mutually agreeable third party accounting expert to finally resolve, as soon as practicable, and in any event prior to the Payment Date, all points of disagreement with respect to the Closing Inventory Statement. The value of the Finished Goods Inventory as agreed by Buyer and Seller following the resolution of any such disputes (or as determined by the mutually agreeable third party accounting expert, if applicable) shall be the "Final Inventory Value".

2.9 Allocation of Purchase Price. The Parties agree to allocate the Aggregate Consideration among the Purchased Assets and Assumed Rights in accordance with the schedule set forth in Exhibit I (the "Allocation Schedule" and the allocation thereunder, the "Allocation"), which is in accordance with Section 1060 of the Code. For purposes of this Section 2.9, "Aggregate Consideration" means an amount equal to the sum of the Purchase Price, the Final Inventory Value, and the Assumed Liabilities (to the extent, if any, included in "amount realized" for U.S. federal income Tax purposes). Each Party shall timely and properly prepare, execute, file and deliver all such documents, forms and other information as the other Party may reasonably request reflecting the Allocation. The Seller, the Buyer and their respective Affiliates each shall (a) be bound by the Allocation for purposes of determining any Tax, and (b) prepare and file, and cause each of its Affiliates to prepare and file, its Tax Returns on a basis consistent with the Allocation. None of the Seller, the Buyer or their respective Affiliates shall take any position inconsistent with the Allocation in any Tax Return, in any refund claim, in any litigation, or otherwise for any Tax purpose unless required by final determination by a Tax Authority. In the event that the Allocation is disputed by any Tax Authority, the Party receiving notice of such dispute shall promptly notify the other Party and the Parties shall consult in good faith how to resolve such dispute in a manner consistent with such Allocation.

2.10 Taxes.

(a) All sales, use, value-added, gross receipts, occupation, property, excise, registration, stamp duty (or other duties) or other similar transfer Taxes and conveyance fees, recording charges, and other such fees and charges, including any penalties and interest ("Transfer Taxes"), if any, incurred in connection with the transfer and sale of the Purchased Assets as contemplated by the terms of this Agreement shall be paid by the Seller when due; provided, however, that the Buyer shall pay, or reimburse the Seller for, fifty percent (50%) of such Transfer

Taxes. All necessary Tax Returns and other documentation with respect to all such Transfer Taxes will be prepared and filed, or caused to be prepared and filed, by the Seller, and if required by applicable Law, the Buyer will, and will cause its Affiliates to, join with the Seller in the execution of any certificate, including a resale certificate or other document from any Tax Authority as may be necessary to mitigate, reduce or eliminate any Transfer Tax that could be imposed.

(b) For any Taxes levied with respect to the Purchased Assets or the Assumed Liabilities relating to a Tax period that begins before and ends on or after the Closing Date (a "Straddle Period"), the Seller shall pay the Buyer an amount that relates to the portion of such Tax period ending on and including the day before the Closing Date. The Buyer shall prepare or cause to be prepared and timely file or cause to be timely filed all such Straddle Period Tax Returns consistent with past practice, unless otherwise required by applicable Law. The portion of any Straddle Period Tax that is allocable to a Pre-Closing Period shall be: (i) with respect to any real property Taxes, personal property Taxes, or similar ad valorem obligations and similar recurring Taxes imposed on a periodic basis, deemed to be the amount of such Taxes for the entire period multiplied by a fraction the numerator of which is the number of calendar days in the period ending on and including the day before the Closing Date, and the denominator of which is the number of calendar days in the entire period, and (ii) with respect to any other Taxes, deemed equal to the amount which would be payable if the taxable year ended at the end of the day before the Closing Date. Any amounts payable by the Seller, shall be paid to the Buyer within fifteen (15) Business Days after the date on which such Taxes are paid with respect to such Straddle Periods. Any credits or refunds relating to a Straddle Period shall be allocated between the Seller, on the one hand, and the Buyer, on the other hand, in the same proportion as the liability for such Tax to which the refund or credit relates. The Buyer shall promptly pay over to Seller, its allocable portion of such refunds or credits paid to or credited for the account of the Buyer.

(c) From and after the Closing Date, to the extent reasonably requested by the other Party, and at such other Party's expense, Seller and the Buyer shall assist and cooperate with each other in the preparation and filing of any Tax Return described in this Section 2.10, and shall assist and cooperate with the other in preparing for any disputes, audits or other litigation relating to Taxes for which the other Party is responsible pursuant to this Agreement. Any Tax audit or other Tax proceeding shall be deemed to be a Third Party Claim subject to the procedures set forth in Section 9.4.

2.11 Completion of Transfers. The entire beneficial interest in and to, and the risk of loss with respect to, the Purchased Assets and the Assumed Liabilities, shall, regardless of when legal title thereto shall be transferred to the Buyer, pass to the Buyer as of the Closing. All operations with respect to the Purchased Assets and Assumed Liabilities, once the Closing has occurred, and beginning at the Closing, shall be for the account of the Buyer.

2.12 Withholding. Each of the Buyer and the Seller, as the case may be, shall be entitled to deduct and withhold from any consideration otherwise payable to any Person pursuant to this Agreement such amounts as it is required under applicable Law to deduct and withhold. To the extent that such amounts are so deducted or withheld, they shall be paid over to or deposited with the applicable Governmental Authority, and such withheld amounts that are paid over to, or deposited

with, such Governmental Authority shall be treated for all purposes of this Agreement as having been paid to the applicable Person in respect to which such deduction and withholding was made.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the corresponding sections or subsections of the disclosure schedules attached hereto (collectively, the "Schedules") (each of which shall qualify only the specifically identified Sections or subsections hereof to which such Schedule relates and such other Sections or subsections hereof for which the applicability of such information and disclosure to such other Sections or subsections is reasonably apparent on its face), Seller hereby makes the following representations and warranties to Buyer, each of which is true and correct on the date hereof and as of the Closing and shall survive the Closing Date and the transactions contemplated hereby to the extent set forth herein.

3.1 Existence and Power. Seller is duly organized, validly existing and in good standing under the Laws of Ohio and has the power and authority to operate the Business and to own and/or use the Purchased Assets.

3.2 Authorization; Valid and Enforceable Agreements; Non-contravention.

(a) The execution, delivery and performance by Seller of this Agreement and each Transaction Document to which Seller is a party have been duly authorized by all necessary limited liability company action with respect to Seller.

(b) This Agreement and each other Transaction Document to which Seller is a party, constitute the legal, valid and binding obligation of Seller, as applicable, enforceable against Seller in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors' rights and remedies generally, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

(c) Neither the execution and delivery of this Agreement or any of the Transaction Documents, nor the consummation of the transactions contemplated hereby or thereby, will violate or result in a breach, default or violation under any Order of any Governmental Authority, domestic or foreign or any Law applicable to Seller, except where any such breach, default or violation would not have a Material Adverse Effect. Except as set forth on Schedule 3.2(c) or otherwise provided for herein, no permit, consent, waiver, approval or authorization of, or declaration to or filing or registration with, any Governmental Authority is required in connection with the execution, delivery or performance of this Agreement or any of the Transaction Documents by Seller or the consummation of the transactions contemplated hereby. Except as set forth on Schedule 3.2(c), neither the execution and delivery of this Agreement or any of the other Transaction Documents by Seller will materially adversely affect, violate, conflict with or result in a breach of, or otherwise give any contracting party rights to compensation under or the right to accelerate, amend, cancel, or terminate any Contract to which Seller is a party or by which Seller is bound with respect to the Business. The execution of this Agreement and the Transaction Documents and

the consummation of the transactions contemplated hereby and thereby will not result in the creation of any Encumbrance against the Purchased Assets.

3.3 Financial Statements.

(a) Attached as Schedule 3.3(a) are true and complete copies of (collectively, the "Financial Statements") the unaudited (A) statements of earnings of the Seller with respect to the Business for (i) the fiscal years ended September 30, 2017 and 2018, and (ii) the period ending on June 30, 2019; (B) pro forma balance sheet information of the Seller with respect to the Business for the fiscal years ended September 30, 2017 and 2018, and (C) the balance sheet of the Seller with respect to the Business as of June 30, 2019.

(b) The Financial Statements (i) have been prepared from and are consistent with the books and records of the Seller and (ii) present fairly and accurately the financial position of the Seller with respect to the Business as of the dates referred to for such financial statements, and the results of their operations for the period referred to therein, in conformity with GAAP.

3.4 Absence of Certain Developments. Except as set forth on Schedule 3.4, since December 31, 2018, (a) the Purchased Assets have not suffered a material adverse effect; and (b) Seller has not waived, or committed pursuant to a legally binding agreement to waive, any claims or rights of material value concerning the Business or the Purchased Assets other than in the Ordinary Course.

3.5 Taxes. Except as set forth on Schedule 3.5:

(a) Seller has filed, or caused to be filed, all Tax Returns for periods ending prior to the Closing Date that are required to be filed with respect to the Purchased Assets, and such Tax Returns are true, correct and complete in all material respects.

(b) All Taxes due and owing by Seller with respect to the Purchased Assets have been fully paid.

(c) There are no Encumbrances for Taxes upon any of the Purchased Assets other than the Permitted Encumbrances.

(d) No deficiencies with respect to any Taxes in respect of the Purchased Assets have been asserted or assessed in writing and remain unpaid.

(e) The Seller has not received from any Tax Authority any written Tax inquiry, Tax claim or notice of any Tax audit or other examination with respect to the Purchased Assets.

(f) No written claim has been made by any Tax Authority in a jurisdiction where the Seller does not file Tax Returns with respect to the Purchased Assets that the Seller is or may be subject to taxation by that jurisdiction that would be covered by such Tax Returns.

(g) Buyer will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any Tax period (or portion thereof) beginning on or

after the Closing Date as a result of any of the Purchased Assets constituting a prepaid amount, deferred revenue, or advance payment received on or prior to the Closing Date.

3.6 Litigation. Except as set forth on Schedule 3.6:

(a) there is no, and since June 1, 2017, there has not been any Action pending or, to Seller's Knowledge, threatened (i) against the Business (including any of the Purchased Assets or the Assumed Liabilities), or (ii) that, as of the date hereof, challenge the validity or propriety of the transactions contemplated by this Agreement or any Transaction Document;

(b) neither the Seller nor the Business (including any of the Purchased Assets or the Assumed Liabilities), is or since June 1, 2017 has been subject to any Order other than Orders of general applicability; and

(c) neither the Seller nor the Business (including any of the Purchased Assets or the Assumed Liabilities) has been subject to any Action or Order relating to personal injury, death, or property or economic damage arising from the Brand Extension Products.

3.7 Inventory. All Inventory is of a quantity and quality usable and salable in the Ordinary Course, and is not physically damaged, previously used, obsolete, discontinued or excess Inventory.

3.8 Real Property. The Purchased Assets do not include any real property.

3.9 Title to Purchased Assets.

(a) Except as set forth on Schedule 3.9(a), the Seller owns, or in the case of leased assets, has a valid leasehold interest in, all of the tangible personal property included in the Purchased Assets, free and clear of all Encumbrances other than Permitted Encumbrances, and there exists no restriction on the transfer or use of such property. Upon the Closing, good and marketable title to the tangible personal property included in the Purchased Assets shall be vested in Buyer free and clear of all Encumbrances other than Permitted Encumbrances. Except as set forth on Schedule 3.9(a), none of the tangible personal property included in the Purchased Assets are in the possession of others and the Seller does not hold any property on consignment.

(b) Except as set forth on Schedule 3.9(b) or as otherwise included in the Purchased Assets, the Seller does not own, hold or control any assets or property (other than Inventory) that are exclusive to the Business.

3.10 Contracts.

(a) Schedule 3.10(a) sets forth a list of the following Contracts to which the Seller or any of its Affiliates is a party or otherwise bound with respect to the Business (collectively, "Material Contracts"):

(i) Any Contract providing for expenditure by the Seller or its Affiliates, in an amount in excess of $50,000, or Contracts with the same or affiliated vendor(s)

providing for expenditure by the Seller or its Affiliates in an amount in excess of $50,000, in the aggregate, for the same, or a related product or service;

(ii) Any Contract providing for the purchase of goods or services from the Seller or its Affiliates substantially in an amount in excess of $50,000, which has not yet been completed by the Seller or any of its Affiliates;

(iii) Any Contract, bid or offer to sell products or to provide services to third parties which (a) is at a price which would over the life of such Contract be reasonably expected to result in a net loss to the Seller or any of its Affiliates on the sale of such products or provision of such services, or (b) contains terms or conditions the Seller or any of its Affiliates cannot reasonably expect to satisfy or fulfill in all material respects;

(iv) Any Contract which involves (A) a sharing of profits, or (B) future payments of $50,000 or more per annum to other Persons;

(v) Any Contract pursuant to which any Person has acquired the right to (A) market, distribute or resell any product, (B) to represent the Seller with respect to any products or (C) to act as agent for the Seller in the marketing, distribution or sale of any product;

(vi) Any Contract providing for rebates or other payments contingent upon sales, purchases or profits to be made by the Seller to any Person in connection with any products marketed or sold by the Seller;

(vii) Any Contract with a supplier of products or raw materials;

(viii) Any Contract which will be binding on the Seller containing covenants that limit the freedom of the Seller or any of its Affiliates to engage in the business of the Seller, to compete in any geographic region or to compete with any Person;

(ix) Any Contract with any information technology vendors;

(x) Any Contract providing for the disposition, merger or similar transaction of any significant portion of the assets or business of the Seller or any of its Affiliates (other than sales of products in the Ordinary Course) or any agreement providing for the acquisition, merger, or similar transaction by the Seller of the assets or business of any other entity (other than purchases of inventory or components in the Ordinary Course);

(xi) Any Contract concerning the operation or establishment of a joint venture, strategic alliance, partnership, or similar arrangement;

(xii) Any sales agency, sales representation, dealer, consultant, distributorship or franchise agreement;

(xiii) Any non-competition, non-solicitation, or exclusive dealing agreement restricting the Seller or any of its Affiliates or any other Contract which purports

to limit or restrict in any respect (A) the ability of the Seller or any of its Affiliates to solicit customers or employees or (B) the manner in which, or the location in which, all or any portion of the business of the Seller or any of its Affiliates, or, following the consummation of the transactions contemplated by this Agreement, the business and operations of Buyer and its subsidiaries and Affiliates, is or would be conducted;

(xiv) Any Contract that grants any right of first refusal, right of first offer, right of first negotiation, or similar right with respect to any material asset or business of the Seller or any of its Affiliates or that limits or purports to limit the ability of the Seller or any of its Affiliates to own or operate any material asset or business;

(xv) Any Contract that contains a "most favored nation" clause or other term providing preferential pricing or treatment by the Seller or any of its Affiliates in favor of a third party;

(xvi) Any Contract that requires the purchase by Seller or any of its Affiliates of any product or service, or all or any portion of the Seller's or any of its Affiliates' requirements, exclusively from a third party or grants exclusive rights to marketing or distribution;

(xvii) Any Contract with a Governmental Authority;

(xviii) Any Contract that is a settlement, conciliation, or similar agreement, the performance of which involves payment by the Seller or any of its Affiliates after the Closing Date;

(xix) Any Contract or commitment not made in the Ordinary Course;

(xx) Intentionally Omitted;

(xxi) Any Contract relating to Inputs that is (A) exclusive to the Business or (B) not exclusive to the Business and which relates to active ingredients, proprietary surfactants or proprietary packaging.

(b) Except as set forth on Schedule 3.10(b), prior to the date hereof, the Seller has delivered to Buyer correct, complete, and current copies of all Material Contracts, and a written description of each Material Contract that is an oral agreement or arrangement, and none of such Material Contracts has been modified or amended in any respect, except as reflected in such disclosure to Buyer.

3.11 [Intentionally Omitted]

3.12 Licenses and Permits. The Seller holds, and at all times since June 1, 2017, has held, all permits, licenses, registrations, certificates, franchises, and authorizations necessary for the lawful conduct of the Business (collectively, "Permits"), and each such Permit is valid, subsisting, in full force and effect, and listed on Schedule 3.12. Neither the execution of this Agreement nor

the consummation of the transactions contemplated hereby constitutes or will constitute or result in a default under or violation of any such Permit. To Seller's Knowledge, the Seller (i) is in compliance with all Permits held by it, except where the failure to be in compliance would not result in a Material Adverse Effect, (ii) there are no outstanding violations of any, defaults under, or failures to comply with, such Permits, and (iii) has not received any notice asserting any such violation, default or failure to comply. There are no Actions pending or, to Seller's Knowledge, threatened that seek or are reasonably likely to result in the suspension, revocation, failure to renew or modification of any such Permit held by the Seller. Except as described on Schedule 3.2(c), neither the execution of this Agreement nor the Closing do or will constitute or result in a default under or violation of any such Permit.

3.13 Compliance with Laws. Except (a) where the failure to be in compliance would not result in a Material Adverse Effect, (b) with respect to the subject matter of the representations and warranties set forth in Section 3.12 (Licenses and Permits), Section 3.14 (Intellectual Property), Section 3.15 (Registrations and Registrations Data) and Section 3.22 (Environmental), or (c) as set forth on Schedule 3.13, the Seller is, and at all times since June 1, 2017, has been, in compliance with all applicable Laws and Orders relating to the Purchased Assets and the Business, and the Seller has not received any notice from any Governmental Authority regarding any actual or alleged violation or breach of such Laws or Orders.

3.14 Intellectual Property.

(a) Schedules 1.83, 1.85, 1.86 and 1.99 are true and complete lists, as applicable, of all Patents, registered and unregistered Marks and pending applications to register Marks, copyright registrations and pending applications to register copyrights that are owned by Seller or any of its Affiliates and that are used or contemplated for use in the conduct of the Business as of the Closing, and a list of tangible works of expression in which Seller or its Affiliates owns common law or unregistered copyrights which are necessary to the conduct of the Business. Except as otherwise set forth on the applicable Schedule, each item listed or required to be listed on such Schedules is valid, subsisting and, to Seller's Knowledge, enforceable. Seller has good title to each item of Transferred Intellectual Property (as applicable), free and clear of all Encumbrances (other than Permitted Encumbrances), except as otherwise set forth on the applicable Schedule. Seller has good title to each item of Seller Licensed Intellectual Property and has the right to grant Buyer the licenses under and to the Seller Licensed Intellectual Property on the terms set forth in the Seller Intellectual Property License Agreements, and such license grants do not conflict with any agreement, order, instrument or understanding, oral or written, to which Seller or any of its Affiliates is a party or by which any of them are bound. Immediately following the Closing, Buyer will have the right to use all Transferred Intellectual Property and Seller Licensed Intellectual Property in the same manner as used by Seller and its Affiliates in the conduct of the Business immediately prior to Closing.

(b) The use of the Transferred Intellectual Property and the Seller Licensed Intellectual Property in the development, manufacture, use, importation, exportation, marketing, promotion, sale and offer for sale of the Brand Extension Products and Related Packaging and in the conduct of the Business as presently conducted does not and has not, to Seller's Knowledge,

infringed, diluted, misappropriated or otherwise violated any Third Party's rights in Intellectual Property. To Seller's Knowledge, no Transferred Intellectual Property or Seller Licensed Intellectual Property is being or has been, infringed, diluted or misappropriated or otherwise violated by a Third Party.

(c) Except as provided on Schedule 3.14(c) and Schedule 3.14(d), to Seller's Knowledge: (i) Seller has not licensed, sublicensed or otherwise acquired rights to any Intellectual Property necessary for or used in the conduct of the Business and owned by a Third Party, including, for clarity, rights in any tangible works of expression in which a Third Party owns common law or unregistered copyrights, that is being or has been used in the development, manufacture, use, importation, exportation, marketing, promotion, sale and offer for sale of any Brand Extension Product or Related Packaging or that is embodied by any Brand Extension Product or Related Packaging; (ii) Seller has not licensed, sublicensed or otherwise transferred rights in or to any Transferred Intellectual Property or Seller Licensed Intellectual Property to any Person; and (iii) Seller has not entered into any agreement with any Person to develop or assist in the development of any Transferred Intellectual Property or Seller Licensed Intellectual Property.

(d) Except as provided on Schedule 3.14(d), neither Seller nor any of its Affiliates owns any right, title or interest in or to any Intellectual Property that is used in or necessary for the conduct of the Business as currently conducted that is not either Transferred Intellectual Property or Seller Licensed Intellectual Property.

(e) There has been no action filed, or to the Seller's Knowledge, any claim threatened, against the Seller or any of its Affiliates (and neither the Seller nor any of its Affiliates has not been a party to any action including such a claim), and neither the Seller nor any of its Affiliates has received written notice of any such claim or other communication: (i) asserting the invalidity, misuse or unenforceability of, or challenging Seller's or any Affiliate's right to use, any Transferred Intellectual Property or Seller Licensed Intellectual Property, (ii) asserting the infringement, misappropriation, dilution or other violation of any Third Party Intellectual Property in connection with the Business or (iii) asserting that Seller or any of its Affiliates have engaged in unfair competition, false advertising or other unfair business practices in connection with the Business.

(f) All current and former employees, officers, independent contractors and consultants of the Seller or any of its Affiliates, and agencies engaged by Seller or any of its Affiliates, who have created any Transferred Intellectual Property or Seller Licensed Intellectual Property have assigned ownership of such Intellectual Property to the Seller or its Affiliate pursuant to a binding, written agreement.

3.15 Registrations and Registration Data. Except as set forth in Schedule 3.15:

(a) As of the Closing Date, each of the Specified Product Registrations is valid and in full force and effect and has been valid and in full force and effect (i) with respect to federal Specified Product Registrations, since the date identified on Schedule 3.12; and (ii) with respect to state Specified Product Registrations, since the first shipment date of the applicable Transferred

Products by Seller. Schedule 3.15(a) contains a list of all Specified Product Registrations held as of the Closing Date relating to the Transferred Products.

(b) For the five (5) years prior to Closing Date, Seller has not received any notice or allegation from any Governmental Authority or other third party that the manufacturing, production, labelling, storage, transportation, sale, distribution or offering for sale or distribution of the Transferred Products failed in any way to comply with FIFRA or similar state laws, nor has Seller received any written notice or allegation of actual or potential liability under FIFRA or similar state laws.

(c) To Seller's Knowledge, the Specified Product Registrations or the manufacturing, production, labelling, storage, transportation, sale, distribution or offering for sale or distribution of the Transferred Products are, and have been in material compliance with the requirements of FIFRA or similar state laws (i) since the date identified on Schedule 3.12 with respect to federal Specified Product Specifications; and (ii) with respect to state Specified Product Registrations, since the first shipment date of the applicable Transferred Products by Seller.

(d) As of the Closing Date, Seller has issued all offers to pay data compensation as required by FIFRA or similar state laws in order to obtain the Specified Product Registrations, and there are no outstanding claims or demands for data compensation pending against Seller nor does the Seller owe or reasonably expect to receive any claims or demands for data compensation for the Transferred Products. As of the Closing Date, Seller has obtained, or has obtained access to, all Registration Data that Seller deems reasonably necessary to support the Specified Product Registrations, and all advertising or marketing claims made with respect to the Transferred Products. Schedule 3.15(d)(i) contains a list of all Registration Data that is owned by Seller, and Schedule 3.15(d)(ii) contains a list of all Registration Data to which Seller has citation rights through a letter of access or similar grant of right.

3.16 Product and Service Warranties.

(a) Set forth in Schedule 3.16(a) are the standard forms of product and service warranties and guarantees used by the Seller with respect to the Business and copies of all other outstanding product and service warranties and guarantees. To Seller's Knowledge, no product or service warranties or guaranties have been orally authorized or made except as set forth in Schedule 3.16(a).

(b) Except as set forth in Schedule 3.16(b), no product or service warranty or similar claims have been made against the Seller or its Affiliates with respect to the Business.

3.17 Product Standards. With respect to the Business:

(a) To Seller's Knowledge, neither the Seller nor any of its Affiliates has manufactured for commercial supply, marketed, sold, or supplied any product which was at the time not compliant with its standard terms and conditions of sale or any applicable product registration.

(b) No product sold by the Seller has been the subject of any voluntary or involuntary recall, market withdrawal, post-sale warning or other similar action due to any product or manufacturing defect or any safety concern. The Seller has a recall plan in place with respect to products it designs, manufactures, imports distributes or sells.

(c) Intentionally Omitted.

(d) There exists no pending or, to the Seller's Knowledge, threatened action or proceeding by any Person or by or before any Governmental Authority relating to any product designed, manufactured, imported, distributed, or sold by the Seller or any of its Affiliates, and alleged to have been defective, unsafe, unlawful, improperly designed or manufactured, mislabeled, adulterated or in breach of any express or implied product warranty or any applicable Law. The Seller is insured against product liabilities in accordance with the insurance policies held by the Seller.

(e) None of the products produced by the Seller or any of its Affiliates (i) have, at the time of delivery, been adulterated, contaminated, or misbranded or (ii) constitute articles prohibited from introduction into interstate commerce under any Law. The Seller has not been required to file any notification or other report with or provide information to any Governmental Authority or product safety standards group concerning actual or potential defects or hazards with respect to any services performed or products manufactured, sold, distributed, or put in commerce by the Seller or any of its Affiliates.

(f) All claims made by the Seller or any of its Affiliates on product labels, labeling, marketing, advertising or technical materials are true, accurate, not misleading and comply with all applicable Laws regarding such claims.

(g) Except as set forth on Schedule 3.17(g), no product manufactured, imported, distributed, or sold, nor any ingredients used in any such product, is (i) listed under or requires warnings under California's Safe Drinking Water and Toxic Enforcement Act of 1986; (ii) identified under any applicable Law as persistent, bioaccumulative and toxic or very persistent and very bioaccumulative; (iii) identified under any applicable Law as an actual or potential endocrine disruptor; (iv) identified under any applicable Law as toxic or extremely toxic; or (v) identified under the European REACH regulation as being on the candidate list of substances of very high concern.

3.18 Customers and Suppliers. Schedule 3.18 sets forth a true, complete, and correct list of the ten (10) largest customers of the Business and the ten (10) largest suppliers of the Business by volume of sales and purchases, respectively (by dollar volume) for the twelve (12)-month period ending at the end of the calendar month immediately prior to the execution of this Agreement. To Seller's Knowledge, the Seller has not received any indication from any supplier to the effect that such supplier will stop or decrease, or plans to stop or materially decrease the rate of supplying materials, products, or services to the Business. To Seller's Knowledge, the Seller has not received any indication from any customer to the effect that such customer will stop or materially decrease the rate of buying materials, services, or products from the Business.

3.19 No Improper Payments. No Person associated with the Seller has promised or given anything of value to another person to obtain or retain business or an advantage in the conduct of the Business, and the Seller has in place adequate procedures designed to prevent Persons associated with the Seller from undertaking any such conduct.

3.20 Brokers, Finders. No finder, broker, agent, or other intermediary, acting on behalf of the Seller or under the Seller's authority is or will be entitled to a commission, fee, or other compensation in connection with the negotiation or consummation of this Agreement or any of the transactions contemplated hereby.

3.21 [Intentionally Omitted]

3.22 Environmental. Seller is in material compliance with applicable Environmental Laws with respect to the manufacturing, storage and distribution of the Transferred Products, including but not limited to, material compliance with all permits required by Environmental Laws. With respect to the Transferred Products, Seller has not received written notice of any claim, investigation, suit, prosecution, fine, penalty, assessment, charge, hearing or proceeding by a third person, including, without limitation, a judicial, administrative, or civil proceeding instigated by a government or other authority, alleging a violation by Seller of any Environmental Law. With respect to the Transferred Products, Seller has not caused or allowed any material release into the environment of any Hazardous Material.

3.23 No Other Representations or Warranties. Except for any representations and warranties set forth in this Article 3 or any Transaction Document, neither Seller nor any of its Affiliates or Representatives has made or makes any other express or implied representation or warranty, either written or oral, including any representation or warranty as to the accuracy or completeness of any information regarding the Business or the Purchased Assets furnished or made available to Buyer and its Representatives (including any information, documents or materials made available through the Data Room, through management presentations or in any other form), and any such other representation or warranty is hereby expressly disclaimed.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer hereby makes the following representations and warranties to Seller, each of which is true and correct on the date hereof and as of the Closing and shall survive the Closing Date and the transactions contemplated hereby to the extent set forth herein.

4.1 Existence and Power. The Buyer is duly organized, validly existing and in good standing under the Laws of the State of Delaware, and has the power and authority to execute and deliver this Agreement and each of the Transaction Documents to which it is a party, and to consummate the transactions contemplated hereby and thereby.

4.2 Authorization; Valid and Enforceable Agreements. This Agreement has been duly executed and delivered by Buyer and constitutes a legal, valid, and binding obligation of Buyer, enforceable against it in accordance with its terms, except that such enforcement may be subject to

(i) bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting or relating to enforcement of creditors' rights generally, and (ii) general principles of equity. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Buyer.

4.3 Litigation. There are no actions, suits, proceedings, orders or investigations pending or, to the Buyer's Knowledge, threatened against the Buyer or any of the Buyer's Affiliates, at law or in equity, which if adversely determined would have a material adverse effect on the Buyer's performance under this Agreement, or the consummation of the transactions contemplated hereby. There are no injunctions, decrees or unsatisfied judgments outstanding against or related to the Buyer which could interfere with the Buyer's ability to consummate the transactions contemplated by this Agreement. The Buyer is not subject to any order, judgment, writ, injunction or decree of any Governmental Authority which would have a material adverse effect on the Buyer's ability to consummate the transactions contemplated by this Agreement.

4.4 Brokers, Finders. No finder, broker, agent, or other intermediary, acting on behalf of the Buyer or under the Buyer's authority is or will be entitled to a commission, fee, or other compensation in connection with the negotiation or consummation of this Agreement or any of the transactions contemplated hereby.

4.5 No Conflict; Required Filings and Consents.

(a) Except as otherwise provided for herein, no material permit, consent, waiver, approval or authorization of, or declaration to or filing or registration with, any Governmental Authority is required in connection with the execution, delivery or performance of this Agreement or any of the Transaction Documents by Buyer or the consummation of the transactions contemplated hereby.

(b) Neither the execution and delivery of this Agreement or any of the Transaction Documents, nor the consummation of the transactions contemplated hereby or thereby, by Buyer will violate or result in a material breach of or constitute a material default under any Order.

(c) Neither the execution and delivery of this Agreement or any of the Transaction Documents, nor the consummation of the transactions contemplated hereby or thereby, by Buyer will violate or result in a material breach of or constitute a material default under any applicable Law.

4.6 Independent Knowledge; No Reliance. Except in the case of Fraud or intentional misrepresentation, Buyer acknowledges that no information or materials provided or made available by, and no representation or warranty (except for those contained in Article 3), express or implied of Seller or Seller's respective Affiliates or Representatives with respect to the Business or the Purchased Assets, shall form the basis of any claim against Seller or Seller's respective Affiliates or Representatives pursuant to this Agreement.

ARTICLE 5
COVENANTS PENDING CLOSING

5.1 Conduct of Business Until Closing. From the date of this Agreement until the Closing Date, Seller shall, and shall cause its Affiliates to, continue to operate and conduct the Business, including with respect to the Purchased Assets, in the Ordinary Course, on a basis consistent with past practices. Each of Buyer and Seller shall use commercially reasonable efforts to execute and deliver, and cause PBI-Gordon Corporation to execute and deliver, the Tri-Party Agreement and Consent.

ARTICLE 6
ADDITIONAL COVENANTS OF THE PARTIES

6.1 Registrations and Data Rights.

(a) Buyer shall use all commercially reasonable efforts to cause applications in the name of Buyer or its designated Affiliate for FIFRA section 3 registrations for the Scotts Product Registrations to be submitted to the EPA within six months after Closing. Seller agrees to provide, or cause its Affiliates to provide, access to the Seller Registration Data in the registration files of the Scotts Product Registrations, including confidential statements of formula, to Buyer and/or its Affiliates in support of these applications, and also agrees to execute such Letters of Authorization or similar documents as may be necessary to enable Buyer or its designated Affiliate(s) to obtain new FIFRA section 3 registrations and related state-level registrations for the Scotts Product Registrations; provided, however, Seller shall not be obligated to share any Registration Data owned or licensed by a third party without such third party's consent, which Buyer acknowledges may be withheld or conditioned by such third party. Any and all reasonable out-of-pocket fees, expenses and costs associated with effectuating such applications shall be borne by the Buyer and/or its Affiliate(s) and neither Seller nor its Affiliates shall be responsible for the payment of any such fees, expenses or costs.

(b) Seller shall, and shall cause its Affiliates to, maintain all existing Specified Product Registrations for a period of thirty-six (36) months after Buyer or its designated Affiliates obtains all necessary federal and state registrations for the Transferred Products in their own names; provided, however, that Buyer shall reimburse Seller for costs incurred by Seller to maintain such Specified Product Registrations during such period of time.

(c) Registration Data.

(i) With respect to Registration Data that is owned by Seller or its Affiliate or to which Seller or its Affiliate has the right to grant access ("Seller Registration Data"), Seller or its relevant Affiliate shall, within ten (10) Business Days of a request from Buyer or its designated Affiliate, issue a Letter of Authorization in substantially the same form as Exhibit G or as may be required by the relevant Governmental Authority, granting Buyer or its designated Affiliate the authority to cite, use and otherwise rely upon the Seller Registration Data. Seller Registration Data shall include, but shall not be limited to, the Registration Data identified on Schedule 6.1(c)(i). Additionally, within thirty (30) days after

the Closing Date, Seller shall provide to Buyer, and shall cause its Affiliates to provide to Buyer, hard copies of all Seller Registration Data and registration files, including complete EPA and California registration applications, data summaries or analyses prepared by a Governmental Authority in the possession of Seller or its Affiliates, and current confidential statements of formula, for all Specified Product Registrations. Buyer and its designated Affiliates shall have "hard copy rights" to use the Seller Registration Data, provided, however, that nothing in this Section 6.1(c) shall be deemed to be a transfer of all ownership interest in the Seller Registration Data to Buyer, nor shall Seller or its Affiliates be precluded from continuing to cite, use or rely upon the Seller Registration Data.

(ii) With respect to Registration Data that is owned by a third party in whole or in part or to which Seller does not have the sole right to grant access ("Third Party Registration Data"), Seller or its Affiliate agree to issue a Letter of Authorization in substantially the same form as Exhibit G or as may be required by the relevant Governmental Authority, and/or to provide to Buyer, hard copies of any such Third Party Registration Data, in whole or in part, if, and only if, the relevant third party/ies agree to the same. To Seller's Knowledge, Third Party Registration Data includes the Registration Data identified on Schedule 6.1(c)(ii). Upon request from Buyer or its Affiliates and agreement by the relevant third party/ies, Seller shall not unreasonably delay providing to Buyer or its Affiliates hard copies of the Third Party Registration Data or issuing a Letter of Authorization with respect to such Third Party Registration Data.

(d) Upon receipt of all necessary federal and state registrations for the Transferred Products in the name of Buyer or its Affiliates, the Buyer shall, and shall cause its Affiliates to, without undue delay, comply with all Laws for changeover of all applicable packaging, labelling, package inserts and safety data sheets associated with the Transferred Products that are the subject of such registrations.

(e) In connection with the actions contemplated by this Section 6.1, each Party shall, and shall cause its Affiliates to, provide reasonably necessary assistance to the other Party and its Affiliates in seeking to obtain federal and state registrations for the Transferred Products in the name of Buyer and/or its Affiliates; provided, however, that the Buyer shall, or shall cause its Affiliates to, reimburse Seller and its Affiliates for any reasonable out-of-pocket fees, expenses and other costs incurred by Seller and its Affiliates in connection with such assistance promptly following receipt of a written request for reimbursement (including reasonable supporting documentation for such fees, expenses and other costs).

(f) Subject to Section 6.1(c)(ii) with respect to Third Party Registration Data, Seller hereby authorizes Buyer and/or its Affiliates to cite, refer to or submit the Registration Data in order to support the ability of Buyer and/or its Affiliates to obtain and hold registrations of the Transferred Products in their own name; provided, however, that neither Seller nor its Affiliates shall seek, nor shall Seller or its Affiliates be entitled to, any data compensation from Buyer or its designated Affiliates associated with the citation to, use of or reliance on Registration Data generated, cited, relied upon or submitted to a Governmental Authority by Seller or any of its Affiliates. For the avoidance of doubt, all Registration Data remains the property of Seller and/or its licensor/third

party owner and Buyer is only granted the right to cite, refer to or submit such data, without further data compensation, solely and exclusively for the use in obtaining registrations for the Brand Extension Products for sale by Buyer.

6.2 Books and Records; Transfer of Books and Records.

(a) Seller and/or its Affiliates shall have the right to retain copies of any Transferred Books and Records for legal, regulatory, Tax or accounting purposes.

(b) Except for the Transferred Books and Records, to the extent the Seller possesses customer data related to the Transferred Products or supplier data related to the Transferred Products, in each case, for Fiscal Year 2017 through Fiscal Year 2019 (the "Relevant Information"), such information is subject to the following conditions:

(i) if it is reasonably practicable for the Relevant Information to be physically extracted from the corresponding books and records, or if it is reasonably practicable for a copy of the corresponding books and records to be transmitted to the Buyer, redacting any information that is not Relevant Information, then the Seller shall, and shall cause its Affiliates to, transmit to the Buyer such extract or such redacted copy;

(ii) if it is not reasonably practicable for the Relevant Information to be physically extracted or to be transmitted in a redacted form, then the Seller shall, and shall cause its Affiliates to, give access to such Relevant Information to the Buyer according to the following conditions:

(A) such Relevant Information must be reasonably useful to the Buyer to satisfy the Buyer's Tax or financial reporting requirements;

(B) upon reasonable advance notice by Buyer, access shall be given in the offices of the Seller or its Affiliates during normal business hours on a Business Day; and

(C) all information included in such books and records that is not Relevant Information shall constitute confidential information and shall be subject to the provisions of Section 6.3.

6.3 Confidentiality; Announcements.

(a) Following Closing, Seller shall maintain, and shall cause its Affiliates to maintain, in confidence any information in its or their possession related to the Business, the Purchased Assets and the Assumed Liabilities, and such information shall not be disclosed or used by Seller or its Affiliates with Buyer's prior written consent, except in connection with this Agreement and unless such information is: (i) otherwise publicly available; or (ii) if advised by counsel that such information required to be disclosed applicable law or by order of a court of competent jurisdiction, by rule or regulation of any governmental agency or by any listing

agreement with, or rule or regulation of, any stock exchange upon which securities of such Party are registered.

(b) No written or oral public announcement or disclosure may be made by either Party with regard to this Agreement, the Specified Agreements or the transactions contemplated hereby or thereby without the prior consent of the other Party; provided, that either Party may make (a) such announcement or disclosure (i) with respect to operational matters related to the Parties under the Agency Agreement in response to inquiries by customers and vendors in the ordinary course of business (but not with respect to the substantive rights between the Parties under the Agency Agreement or any other agreement between the Parties) ("Operational Matters"); or (ii) if advised by counsel that such Party is required to do so by applicable law or by order of a court of competent jurisdiction, by rule or regulation of any governmental agency or by any listing agreement with, or rule or regulation of, any stock exchange upon which securities of such Party are registered; (b) any written public announcement or disclosure, if the other Party has previously consented to any announcement or disclosure that is the same (other than immaterial, non-substantive deviations) to such announcement or disclosure; or (c) any oral public announcement or disclosure, if the other Party has previously consented to any announcement or disclosure that is substantially similar to such announcement or disclosure. Notwithstanding the foregoing and except with respect to Operational Matters, each Party shall, (i) provide to the other Party reasonable advanced notice, and a draft copy or summary, of any written or oral public announcements or disclosures (regardless of whether or not such announcement or disclosure is required, as described in the preceding sentence) concerning this Agreement, the Specified Agreements or the transactions contemplated thereby, (ii) give the other Party a reasonable opportunity to comment on such announcement or disclosure and (iii) consider in good faith such comments, prior to making any such written or oral public announcement or disclosure.

6.4 Regulatory Filings. Except as contained in Section 6.1:

(a) Subject to the terms and conditions of this Agreement, each Party will use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable Laws to consummate the transactions contemplated by this Agreement and the other Transaction Documents. The Buyer and Seller shall furnish to each other and to each other's counsel all such information as may be reasonably required in order to accomplish the foregoing actions.

(b) Subject to the terms and conditions of this Agreement, each Party will use its commercially reasonable efforts to cooperate with one another in seeking any actions, consents, approvals or waivers required to be obtained from parties to any Assumed Contracts in connection with the consummation of the transactions contemplated by this Agreement and the other Transaction Documents, and in making any filings with any Governmental Authority and furnishing information required in connection therewith and timely seeking to obtain any such actions, consents, approvals or waivers.

(c) In furtherance and not in limitation of the foregoing, and subject to the terms set forth in this Section 6.4, each Party shall cooperate and consult with the other Party in connection with the actions referenced in this Section 6.4. In particular, each Party shall, subject to applicable

Law and except as prohibited by any Governmental Authority: (i) furnish to the other Party such information and assistance as the other Party reasonably may request in connection with the preparation of any submissions to, or agency proceedings by, any Governmental Authority relating to this Agreement; (ii) promptly notify and apprise the other Party of (and, if in writing, supply such Party with) any communication (or other correspondence or other memoranda) to that Party from any Governmental Authority relating to this Agreement; (iii) permit the other Party to review in advance, and consider in good faith the comments of the other Party in connection with, any proposed written communication with any Governmental Authority relating to this Agreement; (iv) to the extent reasonably practicable, not participate in any substantive meeting or any material discussion or communication with any Governmental Authority in respect of any filings, investigation or inquiry concerning this Agreement, unless it consults with the other Party in advance and, as permitted by such Governmental Authority, gives the other Party the opportunity to attend and participate thereat or, to the extent prior consultation is not reasonably practicable, promptly report to the other Party the substance of the communication; (v) furnish the other Party with copies of all correspondence, filings, and written communications (and memoranda setting forth the substance thereof) between it and its Affiliates and their respective Representatives and any Governmental Authorities or their respective representatives with respect to this Agreement; and (vi) make available such Party's counsel, experts and advisors to (and have such Persons participate with) the other Party and its counsel, experts, and advisors for the purpose of (and in connection with) the actions contemplated in this Section 6.4. Notwithstanding the foregoing or anything to the contrary in this Agreement, neither Party shall be required to disclose any information to the extent that disclosing such information would violate any Law or require the disclosing Party or any of its Affiliates to disclose information subject to attorney-client privilege, or conflict with any confidentiality obligations to which the disclosing Party or any of its Affiliates are bound.

6.5 Further Actions; Cooperation. On or after the Closing Date, the Parties shall, on request, cooperate with one another by furnishing any additional information, executing, delivering and filing (as the case may be) any additional documents and instruments, including, without limitation, contracts and/or instruments of transfer or assignment, files, books and records and doing any and all such other things as may be reasonably required by the Parties or their counsel to consummate or otherwise implement the transactions contemplated by this Agreement and any other Transaction Document. In connection with the Assumed Liabilities and liabilities retained by Seller and its Affiliates pursuant to this Agreement, each of the Parties hereto shall, and shall cause their Affiliates and employees to, aid, cooperate with and assist the other Party in their defense of such assumed or retained liabilities, by, among other things, providing such other Party with reasonable access to pertinent records at such times as such other Party may reasonably request; provided, however, that neither Party shall be required by this Section 6.5 to take any such action that would unreasonably interfere with the conduct of its business, or unreasonably disrupt its normal operations. Seller shall use commercially reasonable efforts to assist Buyer with effecting the transfer of any social media accounts or domain names included in the Transferred Intellectual Property. To the extent that Buyer seeks to use additional copyrighted materials subject to unregistered copyright interests that were used by Seller in the Business prior to Closing but were not included in the Transferred Intellectual Property, Seller shall use commercially reasonable efforts to make such unregistered copyrights available to Buyer (whether via a transfer or license). Within thirty (30)

days of the Closing Date, Seller shall deliver to Buyer (i) the unaudited statements of earnings of the Seller with respect to the Business for the fiscal period ending on July 31, 2019 and (ii) the balance sheet of the Seller with respect to the Business as of July 31, 2019.

6.6 Wrongfully Transferred or Retained Assets and Liabilities. In the event any of the Parties discovers after the Closing that it, or its Affiliates, is the owner of, receives, or otherwise comes to possess any asset (including the receipt of payments made pursuant to Assumed Contracts) or is liable for any liability (including liability for accounts payable pursuant to Assumed Contracts) that is allocated to any Person other than in accordance with this Agreement or any other Transaction Documents (except as the Parties may otherwise agree), such Party shall, or shall cause its Affiliates to, use all commercially reasonable efforts to convey such asset or liability, at no cost, to the Party so entitled thereto in accordance with this Agreement (and the relevant Party will cause such entitled Party to accept such asset or assume such liability).

6.7 Seller Name. Subject to the other provisions of this Section 6.7, the Seller hereby grants a limited, non-exclusive, fully paid, non-royalty bearing right and license to the Buyer for a period of thirty-six (36) months following the Closing Date to use and sublicense the Seller Name only to the extent necessary to allow the Buyer, its Affiliates and its Third Party manufacturers and distributors to market, distribute, and sell all Inventory of finished Brand Extension Products or any finished Brand Extension Products manufactured after the Closing Date, utilizing the labels and packaging, advertising, marketing, sales and promotional materials that either exist on the Closing Date and are included in the Purchased Assets or that are identical, in all material respects, to such labels, packaging or advertising, marketing, sales and promotional materials. Any Brand Extension Products that are manufactured or otherwise acquired by the Buyer or its Affiliates after the Closing Date shall be of quality consistent with the quality of the Inventory of finished Brand Extension Products included in the Purchased Assets and all uses of the Seller Name shall be in a form and manner consistent with the use thereof by the Seller in connection with the Business immediately prior to the Closing Date. All goodwill arising out of use by Buyer or any of its Affiliates of the Seller Name shall inure solely to the benefit of the Seller.

6.8 PBI. In the event that the Tri-Party Agreement and Consent has not been executed and delivered by Seller and PBI-Gordon Corporation at Closing, then (i) each of Buyer and Seller shall continue to use commercially reasonable efforts to execute and deliver, and cause PBI-Gordon Corporation to execute and deliver the Tri-Party Agreement and Consent, and (ii) Seller agrees to waive any Seller restrictive covenant, exclusivity obligation or right or other obligation set forth in any agreement between Seller and PBI-Gordon Corporation or its Affiliates that would prevent PBI-Gordon Corporation or its Affiliates from entering into, or performing under, any agreement with Buyer with respect to the Mixture Products (as such term is defined in the Tri-Party Agreement and Consent).

ARTICLE 7
CONDITIONS PRECEDENT TO THE OBLIGATIONS OF BUYER

The obligation of Buyer to proceed with the Closing shall be subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions precedent, any of which may be waived in whole or in part by Buyer:

7.1 No Contrary Judgment. On the Closing Date there shall not exist (i) any order, decree or ruling permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement or (ii) any pending action, demand, suit, claim, litigation, investigation or other proceeding by a Governmental Authority against either Party for the purpose of enjoining or otherwise preventing the transactions contemplated herein.

7.2 Deliveries. Seller shall have made or tendered, or caused to be made or tendered, delivery to the Buyer of the documents and deliverables set forth in Section 2.7(b).

ARTICLE 8
CONDITIONS PRECEDENT TO OBLIGATIONS OF THE SELLER

The obligation of the Seller to proceed with the Closing shall be subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions precedent, any of which may be waived in whole or in part by the Seller:

8.1 No Contrary Judgment. On the Closing Date there shall not exist (i) any order, decree or ruling permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement or (ii) any pending action, demand, suit, claim, litigation, investigation or other proceeding by a Governmental Authority against either Party for the purpose of enjoining or otherwise preventing the transactions contemplated herein.

8.2 Deliveries. Buyer shall have made or tendered, or caused to be made or tendered, delivery to the Seller of the documents and deliverables set forth in Section 2.7(c).

ARTICLE 9
INDEMNIFICATION

9.1 Survival.

(a) The representations and warranties of Buyer and Seller contained in this Agreement and any certificate delivered pursuant hereto shall survive the Closing until the fifteen (15) month anniversary of the Closing Date; provided, however that the Fundamental Representations, and any representation in the case of Fraud, shall survive until the close of business on the sixtieth (60^{th}) day following the expiration of the applicable statute of limitations.

(b) Neither Buyer nor Seller shall have any liability with respect to any representations, warranties, covenants or agreements unless the requisite Claim Notice under Section 9.4 with respect to an actual or threatened claim hereunder is given to the other Party prior

to the expiration of the applicable survival period, if any, for such representation, warranty, covenant or agreement, in which case such representation, warranty, covenant or agreement shall survive as to such claim until such claim has been finally resolved in accordance with this Article 9, without the requirement of commencing any Action in order to extend such survival period or preserve such claim; provided, however, that any representation, warranty, covenant or agreement that would otherwise expire will continue to survive if the requisite Claim Notice under Section 9.4 has been timely given in good faith based on facts reasonably expected to establish a valid claim under this Article 9 that occurred on or prior to such expiration date, until the related indemnity claim shall have been satisfied or otherwise resolved as provided in this Article 9.

9.2 Indemnification by Seller. Subject to the limitations set forth in this Article 9, Seller shall save, defend, indemnify and hold harmless Buyer and its Affiliates and the respective Representatives, successors and assigns of each of the foregoing from and against, and shall compensate and reimburse each of the foregoing for, any and all Losses incurred, sustained or suffered by any of the foregoing as a result of, arising out of or relating to:

(a) any breach of any of the representations or warranties made in Article 3 by Seller;

(b) any breach or violation of the obligations or covenants made in this Agreement by Seller;

(c) the ownership, use or possession of the Excluded Assets; and

(d) the Excluded Liabilities.

9.3 Indemnification by Buyer. Subject to the limitations set forth in this Article 9, Buyer shall save, defend, indemnify and hold harmless Seller and its Affiliates and the respective Representatives, successors and assigns of each of the foregoing from and against, and shall compensate and reimburse each of the foregoing for, any and all Losses incurred, sustained or suffered by any of the foregoing as a result of, arising out of or relating to:

(a) any breach of any of the representations and warranties made in Article 4 by Buyer;

(b) any breach or violation of the obligations or covenants made in this Agreement by Buyer; or

(c) any Assumed Liability.

9.4 Procedures.

(a) A Party seeking indemnification (the "Indemnified Party") as a result of, arising out of, or relating to a Loss involving a claim or demand made by any person against the Indemnified Party (a "Third Party Claim") shall deliver notice (a "Claim Notice") in respect thereof to the Party against whom indemnity is sought (the "Indemnifying Party") with reasonable promptness after receipt by such Indemnified Party of notice of the Third Party Claim, and shall

provide the Indemnifying Party with such information with respect thereto as the Indemnifying Party may reasonably request. The failure to deliver a Claim Notice, however, shall not release the Indemnifying Party from any of its obligations under this Article 9 except to the extent that the Indemnifying Party is materially prejudiced by such failure.

(b) The Indemnifying Party shall have the right, upon written notice to the Indemnified Party within thirty (30) days of receipt of a Claim Notice from the Indemnified Party in respect of such Third Party Claim, to assume the defense thereof at the expense of the Indemnifying Party with counsel selected by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. If the Indemnifying Party does not expressly elect to assume the defense of such Third Party Claim within the time period set forth above, the Indemnified Party shall have the sole right to assume the defense of and to settle such Third Party Claim in accordance with the terms of this Section 9.4(b); provided that such settlement shall not be deemed evidence that the Indemnified Party is entitled to indemnification hereunder nor shall it be determinative of the amount of Loss. If the Indemnifying Party assumes the defense of such Third Party Claim, the Indemnified Party shall have the right to employ separate counsel and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the sole expense of the Indemnified Party. If the Indemnifying Party assumes the defense of any Third Party Claim, the Indemnified Party shall, at the Indemnifying Party's expense, cooperate with the Indemnifying Party in such defense and make available to the Indemnifying Party all witnesses, pertinent records, materials and information in the Indemnified Party's possession or under the Indemnified Party's control relating thereto as is reasonably required by the Indemnifying Party. If the Indemnifying Party assumes the defense of any Third Party Claim, the Indemnifying Party shall not, without the prior written consent of the Indemnified Party, enter into any settlement or compromise or consent to the entry of any judgment with respect to such Third Party Claim if such settlement, compromise or judgment (i) involves a finding or admission of wrongdoing by the Indemnified Party, (ii) does not include an unconditional written release by the claimant or plaintiff of the Indemnified Party from all liability in respect of such Third Party Claim or (iii) imposes equitable remedies or any obligation on the Indemnified Party other than solely the payment of money damages for which the Indemnified Party will be fully indemnified hereunder.

(c) An Indemnified Party seeking indemnification as a result of, arising out of or relating to a Loss or a claim or demand hereunder that does not involve a Third Party Claim being asserted against or sought to be collected from such Indemnified Party (a "Direct Claim") shall deliver a Claim Notice in respect thereof to the Indemnifying Party with reasonable promptness after becoming aware of facts supporting such Direct Claim, and shall provide the Indemnifying Party with reasonably detailed information of the facts and circumstances underlying such claim along with a good faith estimate of Loss and supporting documents. The failure to deliver a Claim Notice, however, shall not release the Indemnifying Party from any of its obligations under this Article 9 except to the extent that the Indemnifying Party is materially prejudiced by such failure and shall not relieve the Indemnifying Party from any other obligation or liability that it may have to the Indemnified Party or otherwise than pursuant to this Article 9.

(d) The Indemnifying Party shall not be entitled to require that any Action be made or brought against any other Person before a claim is made against it hereunder by the Indemnified Party.

(e) In respect of any amounts due and payable by a Party, pursuant to this Article 9, such Party shall pay to the other Party such amounts by wire transfer of immediately available funds to an account designed by the other Party in writing.

9.5 Limitation on Indemnification. Notwithstanding anything to the contrary contained in this Agreement:

(a) an Indemnifying Party shall not be liable for any claim for indemnification pursuant to Section 9.2(a) or Section 9.3(a), as the case may be, unless and until the aggregate amount of indemnifiable Losses which may be recovered from the Indemnifying Party equals or exceeds Two Hundred Fifty Thousand Dollars ($250,000), in which case the Indemnifying Party shall be liable only for the amount of such Losses that exceeds Two Hundred Fifty Thousand Dollars ($250,000) and subject to the other limitations set forth herein; provided, however, that the maximum aggregate amount of indemnifiable Losses which may be recovered from an Indemnifying Party arising out of or relating to the causes set forth in Section 9.2(a), on the one hand, or Section 9.3(a), on the other hand, as the case may be, shall be an amount equal to Eight Million Dollars ($8,000,000) (the "Cap"), provided, further, that the foregoing limitations shall not apply to Losses arising out of or relating to (i) the inaccuracy or breach of any Fundamental Representation or (ii) any representation or warranty in the event of Fraud;

(b) except as otherwise provided in this Section 9.5, the maximum aggregate amount of Losses which may be recovered from the Indemnifying Party arising out of or relating to this Agreement shall be limited to an aggregate amount equal to the Purchase Price;

(c) notwithstanding anything to the contrary herein, it is intended that the provisions of this Agreement will not result in a duplicative payment of any amount required to be paid under this Agreement such that a Party would receive payment on more than one occasion in respect of the same specific Loss and this provision will be construed accordingly;

(d) for purposes of this Article 9, the representations and warranties of either Party qualified by any references to materiality, material adverse effect or any similar qualifier shall be deemed to have been made with such qualification for purposes of determining whether a breach occurred but, if such breach has occurred, shall be deemed to have been made without such qualification for purpose of determining the amount of any Losses resulting from any such breach;

(e) the amount of any and all Losses under this Article 9 shall be reduced by the net Tax benefit actually realized by the Indemnified Party as a result of a deduction with respect to such Loss in the Tax period in which such Loss was incurred or the two (2) Tax periods immediately following the last day of such Tax period (with a 25% effective Tax rate being assumed for this purpose). The net Tax benefit that is actually realized by the Indemnified Party for a Tax period shall be the excess, if any, of (x) the Indemnified Party's cumulative liability for Taxes

through the end of such Tax period, calculated by excluding any Tax items attributable to the payment with respect to the Loss at issue for all Tax periods, over (y) the Indemnified Party's actual cumulative liability for Taxes through the end of such Tax period, calculated by taking into account any Tax items attributable to the payment with respect to the Loss at issue for all Tax periods (to the extent permitted by relevant Tax Law). For the avoidance of doubt, the result of the foregoing is to treat such Tax items as the last items claimed for any Tax period; and

(f) each Indemnified Party shall take, and cause its Affiliates to take, all reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach giving rise to such Loss.

9.6 Characterization of Indemnity Payments. Any indemnification payments made pursuant to this Agreement shall be considered, to the extent permissible under Law, as adjustments to the Purchase Price provided herein for all Tax purposes.

9.7 Exclusive Remedy. The Parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from Fraud) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein shall be pursuant to the indemnification provisions set forth in this Article 9; provided that nothing herein shall limit (a) any Party's right to seek specific performance or other equitable remedy or (b) any Party's rights or remedies under any Transaction Document.

ARTICLE 10
TERMINATION

10.1 Termination. This Agreement may be terminated and the transactions contemplated hereunder may be abandoned at any time prior to the Closing Date by mutual written consent of Buyer and the Seller.

ARTICLE 11
MISCELLANEOUS PROVISIONS

11.1 Fees and Expenses. Except as otherwise provided herein, all fees and expenses incurred in connection with or related to this Agreement and the Transaction Documents and the transactions contemplated hereby and thereby shall be paid by the Party incurring such fees or expenses, whether or not such transactions are consummated.

11.2 Amendment and Modification. This Agreement may not be amended, modified or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing specifically designated as an amendment hereto, signed on behalf of each Party.

11.3 Waiver. No failure or delay of a Party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power.

The rights and remedies of the Parties hereunder are cumulative and are not exclusive of any rights or remedies which they would otherwise have hereunder. Any agreement on the part of a Party to any such waiver shall be valid only if set forth in a written instrument executed and delivered by a duly authorized officer on behalf of such Party.

11.4 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, or if by e-mail, upon written or machine generated confirmation of receipt by e-mail or otherwise, (b) on the first Business Day following the date of dispatch if delivered utilizing a next-day service by a recognized next-day courier or (c) on the earlier of confirmed receipt or the fifth Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered to the addresses set forth below, or pursuant to such other instructions as may be designated in writing by the Party to receive such notice:

(i) if to Seller, to:

The Scotts Company LLC
Attention: Ivan Smith, General Counsel
14111 Scottslawn Road
Marysville, Ohio 43041
Email: ivan.smith@scotts.com

with a copy (which shall not constitute notice) to:

The Scotts Company LLC
Attention: Michael Lukemire, Chief Operating Officer
14111 Scottslawn Road
Marysville, Ohio 43041
Email: michael.lukemire@scotts.com

(ii) if to Buyer, to:

Monsanto Company
Attention: Randy Mariani, Chief Deputy General Counsel
800 N. Lindbergh Blvd.
St. Louis, MO 63167
Email: randy.mariani@bayer.com

with a copy (which shall not constitute notice) to:

Monsanto Company
Attention: Jacqueline Applegate
800 N. Lindbergh Blvd.
St. Louis, MO 63167
Email: jacqueline.applegate@bayer.com

11.5 Interpretation. When a reference is made in this Agreement to a Section, Article, Exhibit or Schedule such reference shall be to a Section, Article, Exhibit or Schedule of this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement or in any Exhibit or Schedule are for convenience of reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein shall have the meaning as defined in this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth herein. The word "including" and words of similar import when used in this Agreement will mean "including, without limitation," unless otherwise specified. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to the Agreement as a whole and not to any particular provision in this Agreement. The term "or" is not exclusive. The word "will" shall be construed to have the same meaning and effect as the word "shall." References to days mean calendar days unless otherwise specified.

11.6 Entire Agreement. This Agreement (including the Exhibits and Schedules hereto), the Transaction Documents and the Mutual Confidentiality Agreement, effective May 8, 2019, constitute the entire agreement with respect to the purchase and sale of the Purchased Assets, and supersede all prior written agreements, arrangements, communications and understandings and all prior and contemporaneous oral agreements, arrangements, communications and understandings between the Parties with respect to the subject matter hereof and thereof. Notwithstanding any oral agreement or course of conduct of the Parties or their Representatives to the contrary, no Party to this Agreement shall be under any legal obligation to enter into the transactions contemplated hereby unless and until this Agreement shall have been executed and delivered by each of the Parties. Notwithstanding the foregoing, the Parties acknowledge and agree that this Agreement together with the Specified Agreements constitute an indivisible, integrated agreement with (a) a single nature and purpose and (b) interrelated obligations. The Parties acknowledge and agree that the consideration for this Agreement is adequate, that the consideration for each of the Specified Agreements is adequate, and that subsequent defaults or terminations of any of the Specified Agreements will not render this Agreement unenforceable due to lack of consideration. The Parties further acknowledge and agree that, subject to the foregoing sentence, the consideration for each of the Specified Agreements is intended as interdependent consideration for all Specified Agreements and is not separate, distinct or capable of apportionment, such that a rejection in any proceeding pursuant to any applicable bankruptcy or insolvency Laws of any terms of this Agreement or any of the Specified Agreements would constitute a rejection of all such agreements. The Parties acknowledge and agree that they would not have entered into this Agreement or any Specified Agreement without entering into all such agreements. Notwithstanding the foregoing, the Parties acknowledge and agree that no breach of this Agreement shall be deemed to be a breach of any Specified Agreement and that no breach of any Specified Agreement shall be deemed to be a breach of this Agreement; provided, that the foregoing shall not be deemed to negate an actual breach of this Agreement or the Specified Agreements, as applicable.

11.7 No Third-Party Beneficiaries. Except for Affiliates and Representatives with respect to indemnification rights pursuant to Article 9, nothing in this Agreement, express or implied,

is intended to or shall confer upon any Person other than the Parties and their respective successors and permitted assigns any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement.

11.8 Governing Law. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of Delaware, applicable to contracts to be carried out wholly within such State, without regard to the principles of conflicts of Laws that might otherwise be applicable.

11.9 Jurisdiction; Service of Process. To the extent a Party seeks a determination as to the infringement, validity or enforceability of intellectual property rights ("Specified Actions"), any suit, action or proceeding against any Party hereto with respect to the such matters, or any judgment entered by any court in respect of a Specified Action, must be brought or entered in the United States District Court for the District of Delaware, and each such Party hereby irrevocably submits to the jurisdiction of such court for the purpose of any Specified Action. If such court does not have jurisdiction over the Specified Action or, if such jurisdiction is not available, then such Specified Action or proceeding against any Party hereto shall be brought or entered in the Court of Chancery of the State of Delaware, County of New Castle, and each Party hereby irrevocably submits to the jurisdiction of such court for the purpose of any such Specified Action. Each Party hereto hereby irrevocably waives any objection which either of them may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to a Specified Action brought as provided in this subsection, and hereby further irrevocably waives any claim that any such Specified Action brought in any such court has been brought in an inconvenient forum. To the extent each Party hereto has or hereafter may acquire any immunity from jurisdiction of any court or from legal process with respect to itself or its property, each Party hereto hereby irrevocably waives such immunity with respect to any Specified Action. Except as otherwise provided herein, the Parties agree that exclusive jurisdiction of all Specified Actions between the Parties hereto with respect to the subject matter of this Agreement lies in the United States District Court for Delaware, or the Court of Chancery of the State of Delaware, County of New Castle, as hereinabove provided. Seller hereby irrevocably appoints CT Corporation, having an address at 1209 Orange Street, Wilmington, Delaware 19801 and Buyer hereby irrevocably appoints Corporation Service Corporation, having an address at 2711 Centerville Rd, Suite 400, Wilmington, Delaware 19808, as its agent to receive on behalf of each such Party and its respective properties, service of copies of any summons and complaint and any other pleadings which may be served in any Specified Action. Service by mailing (by certified mail, return receipt requested) or delivering a copy of such process to a Party in care of its agent for service of process as aforesaid shall be deemed good and sufficient service thereof, and each Party hereby irrevocably authorizes and directs its respective agent for service of process to accept such service on its behalf. To the extent a Party seeks injunctive relief (including without limitation injunctive relief related to the scope or validity of indemnity or defense obligations), the Party may seek such relief in any federal or state court with applicable jurisdiction or any venue permitted by law.

11.10 Assignment; Successors. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise, by either Party without the prior written consent of the other Party, and any

such assignment without such prior written consent shall be null and void; provided, however, that a Party may assign this Agreement to any Affiliate of such Party without the prior consent of the other Party; provided, further, that that assigning Party shall remain liable for all of the assignee's obligations hereunder. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns.

11.11 Currency. All references to "dollars" or "$" or "US$" in this Agreement or any Transaction Document refer to United States dollars, which is the currency used for all purposes in this Agreement and any Transaction Document.

11.12 Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

11.13 Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to each of the other Parties.

11.14 Facsimile or pdf Signature. This Agreement may be executed by facsimile or .pdf signature and a facsimile or.pdf signature shall constitute an original for all purposes.

11.15 Time of Essence. Time is of the essence with regard to all dates and time periods set forth or referred to in this Agreement.

11.16 No Presumption Against Drafting Party. Each of Seller and Buyer acknowledges that each Party to this Agreement has been represented by legal counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the drafting Party has no application and is expressly waived.

[Remainder of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed as of the date first above written.

BUYER:

MONSANTO COMPANY

By: /s/ Brett Begemann
Name: Brett Begemann
Title: President

[Signature Page to Asset Purchase Agreement]

SELLER:

THE SCOTTS COMPANY LLC

By: /s/ Thomas Randal Coleman

Name: Thomas Randal Coleman
Title: Chief Financial Officer

[Signature Page to Asset Purchase Agreement]

EXHIBIT A

INTELLECTUAL PROPERTY LICENSE AGREEMENT

This INTELLECTUAL PROPERTY LICENSE AGREEMENT (this "License Agreement") is entered into as of July 29, 2019 and effective as of August 1, 2019 (the "Effective Date"), by and between The Scotts Company LLC, an Ohio limited liability company ("Scotts"), OMS Investments, Inc., a Delaware corporation ("OMS"), and Monsanto Company, a Delaware corporation, and a Bayer subsidiary ("Monsanto"). Scotts, OMS, and Monsanto are referred to herein individually as a "Party" and together as the "Parties."

WHEREAS, pursuant to that certain Asset Purchase Agreement dated as of July 29, 2019 by and between Scotts and Monsanto (the "Purchase Agreement"), Scotts agreed to grant Monsanto, and Monsanto desires to accept from Scotts and OMS, a license to the BEA Licensed Intellectual Property as provided in this License Agreement.

WHEREAS, pursuant to that certain Second Amended and Restated Formulation Agreement by and between Scotts and Monsanto (the "Formulation Agreement"), Scotts agreed to grant Monsanto, and Monsanto desires to accept from Scotts, a license to certain BEA Critical Input Rights as provided in this License Agreement.

NOW, THEREFORE, Monsanto, Scotts, and OMS, in consideration of the foregoing recital and the mutual covenants, representations, warranties, conditions and agreements hereinafter expressed, agree as follows:

1. Definitions and Interpretation. Unless otherwise defined in this License Agreement, all capitalized terms used in this License Agreement shall have the meaning ascribed to such term in the Purchase Agreement. The following capitalized terms used in this License Agreement shall have the meanings set forth below.

1.1 "BEA Critical Inputs" has the meaning ascribed to such term in the Formulation Agreement.

1.2 "BEA Licensed Intellectual Property" means all Intellectual Property that is Seller Licensed Intellectual Property (excluding any Excluded Intellectual Property as set forth in the Purchase agreement), other than the Seller Licensed Marks, as such terms are defined in the Purchase Agreement.

1.3 "BEA Licensed Patents" means the Seller Licensed Patents, as such term is defined in the Purchase Agreement.

1.4 "Licensed Intellectual Property" means, collectively, the BEA Critical Inputs and the BEA Licensed Intellectual Property.

1.5 "Specified Inputs" has the meaning ascribed to such term in the Formulation Agreement.

2. Grant of Rights.

2.1 Initial License Grant. Subject to the terms and conditions of this License Agreement and any limitations in the applicable rights as owned and licensable by Scotts, Scotts hereby grants to Monsanto, and Monsanto hereby accepts a worldwide, non-exclusive, sublicensable, non-transferable (except in accordance with Section 5.1 below), irrevocable (except in accordance with Section 0 below), royalty-free and fully paid-up license: (a) under and to the BEA Licensed Patents to research, develop, make, have made, use, sell, offer for sale, distribute, perform, practice and import products, processes and systems embodying the claimed inventions of the BEA Licensed Patents for all purposes, and (b) under and to all other BEA Licensed Intellectual Property for any and all purposes.

2.2 Subsequent License Grants. Subject to the terms and conditions of this License Agreement, Scotts grants to Monsanto, and Monsanto accepts a worldwide, non-exclusive, sublicensable, non-transferable (except in accordance with Section 0 below), irrevocable (except in accordance with Section 0 below), royalty-free and fully paid-up license under and to the BEA Critical Input Rights effective as and when Scotts licenses or is obligated to license such BEA Critical Input Rights to Monsanto pursuant to the Formulation Agreement, for any and all purposes.

2.3 [INTENTIONALLY OMITTED]

2.4 Non-Exclusive Licenses. This license is non-exclusive, and nothing in this License Agreement does or shall be deemed to limit Scotts' right to, directly or indirectly, use, employ or grant rights in or to any Licensed Intellectual Property for any purpose.

2.5 Use by Affiliates. Any Affiliate of Monsanto shall have the same right and license under the Licensed Intellectual Property as Monsanto. Each Affiliate that exercises such right shall be bound by, and shall comply with all of the terms and conditions of, this License Agreement as though it were "Monsanto" hereunder.

3. Other Rights and Obligations.

3.1 Prosecution and Maintenance of Patents. Subject to Section 3.2, OMS retains the sole right to control the prosecution and maintenance of any Patents included in the Licensed Intellectual Property and shall have no obligation or duty to maintain, file, or continue to prosecute any such Patent. In the event that OMS elects not to pay the maintenance, annuity or similar fee necessary to maintain any issued patent included in the Licensed Intellectual Property that is not the subject of a terminal disclaimer or the assignment of which would not invalidate, cancel or otherwise limit or eliminate the enforceability of any other Patents owned by OMS, OMS shall use its best commercial efforts to notify Monsanto at least forty-five (45) days before the final, non-extendable due date for payment of such maintenance, annuity or similar fee that is necessary to maintain any such issued patent, and Monsanto shall have the right (but not the obligation), at its sole cost and expense, to pay such maintenance, annuity or similar fee necessary to maintain any such issued patent and take such other steps as may be necessary to maintain such issued patent. Upon receipt of notice of Monsanto's election to pay such fee,

Scotts shall assign title to such issued patent to Monsanto. Upon Monsanto's request, Scotts shall take such actions and execute such documents as the Monsanto may reasonably request to effect the assignment of such issued patent to the Monsanto.

3.2 Maintenance of Certain Patents. OMS shall use its best commercial efforts to continue to maintain any issued patent included in the Licensed Intellectual Property that is the subject of a terminal disclaimer or the assignment of which would invalidate, cancel or otherwise limit or eliminate the enforceability of any Patents that remain in the Licensed Intellectual Property, such that it would not be subject to Monsanto's rights under Section 0 above if OMS elected to fail to maintain such issued patent.

3.3 Enforcement and Protection of Licensed Intellectual Property. Scotts shall have the exclusive right (but not the obligation) to determine whether to seek to abate any actual, alleged or threatened infringement of any Licensed Intellectual Property by any person, including by filing suit (an "Enforcement") and shall have exclusive control of any Enforcement. Any and all recoveries (including settlement proceeds and damage awards) from any Enforcement shall be retained exclusively by Scotts. Scotts shall have exclusive control of the defense to any challenge by any person to any Licensed Intellectual Property, including in connection with an Enforcement, or any declaratory judgment claim or counterclaim.

4. Term and Termination.

4.1 Term. This License Agreement shall commence on the Effective Date and shall continue in perpetuity unless otherwise terminated as provided herein.

4.2 Termination for Cause by Scotts. In the event of a material breach of this License Agreement by Monsanto, Scotts may provide notice in writing to Monsanto setting forth the nature of the breach and a description of the facts underlying the breach sufficient to identify the breach. If Monsanto has not cured, proposed a reasonable plan to cure and made good faith efforts to implement such plan, or otherwise remedied such breach to Scotts' reasonable satisfaction within ninety (90) days from the date of receipt of such notice of breach, Scotts may provide a notice of termination to Monsanto and this License Agreement shall terminate sixty (60) days after such notice of termination unless the breach is cured to Scotts' reasonable satisfaction during such sixty (60) day period.

5. Miscellaneous.

5.1 Bankruptcy. All rights and licenses granted by Scotts under this License Agreement are and shall be deemed to be rights and licenses to "intellectual property" as such term is used in, and interpreted under, Section 365(n) of the United States Bankruptcy Code (the "Code") (11 U.S.C. § 365(n)). In the event of Scotts' bankruptcy, insolvency or similar event, Monsanto shall have all rights, elections, and protections under the Code and under all other bankruptcy, insolvency and similar laws with respect to this License Agreement, and the subject matter hereof that are available to Monsanto under the Code or such other laws. Without limiting the generality of the foregoing, Scotts acknowledges and agrees that, if Scotts or its estate shall become subject to any proceeding governed by Section 365(n) of the Code, then if Monsanto

elects to retain its rights under this License Agreement, in accordance with Section 365(n) of the Code, all rights, licenses, and privileges granted to Monsanto under this License Agreement will continue subject to the respective terms and conditions hereof and Section 365(n) of the Code, notwithstanding the bankruptcy trustee's rejection of this License Agreement.

5.2 Assignment. Monsanto may assign or transfer this License Agreement and its rights or obligations hereunder without the consent of Scotts to a person who is (a) an Affiliate, (b) any assignee of all or substantially all of its business or assets relating to this License Agreement, (c) its successor in the event of a change of control of Monsanto or an Affiliate to which this License Agreement relates or (d) any other third party with the consent of Scotts, such consent not to be unreasonably withheld. Scotts may freely assign its rights and obligations under this License Agreement; provided, however, for the avoidance of doubt, any assignment by Scotts of its rights in the Licensed Patents shall be subject to the license granted to Monsanto under this License Agreement.

5.3 Coordination with Purchase Agreement. This License Agreement is being executed and delivered pursuant and subject to the terms and conditions of the Purchase Agreement. Nothing in this License Agreement shall, or shall be deemed to, defeat, limit, alter or impair, enhance or enlarge any right, obligation, claim or remedy created by the Purchase Agreement.

5.4 Amendment and Modification. This License Agreement may not be amended, modified or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing specifically designated as an amendment hereto, signed on behalf of each Party.

5.5 Waiver. No failure or delay of a Party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties hereunder are cumulative and are not exclusive of any rights or remedies which they would otherwise have hereunder. Any agreement on the part of a Party to any such waiver shall be valid only if set forth in a written instrument executed and delivered by a duly authorized officer on behalf of such Party.

5.6 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, or if by e-mail, upon written or machine generated confirmation of receipt by e-mail or otherwise, (b) on the first Business Day following the date of dispatch if delivered utilizing a next-day service by a recognized next-day courier or (c) on the earlier of confirmed receipt or the fifth Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered to the addresses set forth below, or pursuant to such other instructions as may be designated in writing by the Party to receive such notice:

if to Scotts, to:

The Scotts Company LLC
Attention: Ivan Smith, General Counsel
14111 Scottslawn Road
Marysville, Ohio 43041
Email: ivan.smith@scotts.com

with a copy (which shall not constitute notice) to:

The Scotts Company LLC
Attention: Michael Lukemire, Chief Operating Officer
14111 Scottslawn Road
Marysville, Ohio 43041
Email: michael.lukemire@scotts.com

if to OMS, to:

OMS Investments, Inc.
Attention: Luis A. Rodriguez, who is the Assistant Secretary
10250 Constellation Blvd., Suite 2800
Los Angeles, CA 90067
Email: LRodriguez@WilmingtonTrust.com

if to Monsanto, to:

Monsanto Company
Attention: Randy Mariani, Chief Deputy General Counsel
800 N. Lindbergh Blvd.
St. Louis, MO 63167
Email: randy.mariani@bayer.com

with a copy (which shall not constitute notice) to:

Monsanto Company
Attention: Jacqueline Applegate
800 N. Lindbergh Blvd.
St. Louis, MO 63167
Email: jacqueline.applegate@bayer.com

5.7 Interpretation. Titles and headings contained in this License Agreement are for convenience of reference purposes only and shall not affect in any way the meaning or interpretation of this License Agreement. All words used in this License Agreement will be construed to be of such gender or number as the circumstances require. The word “including” and words of similar import when used in this License Agreement will mean “including, without limitation,” unless otherwise specified. The words “hereof,” “herein” and “hereunder” and words of similar import when used in this License Agreement shall refer to the License Agreement as a whole and not to any particular provision in this License Agreement. The term “or” is not exclusive. The word “will” shall be construed to have the same meaning and effect as the word “shall.” References to days mean calendar days unless otherwise specified.

5.8 Governing Law. This License Agreement shall be governed by, and construed in accordance with, the Laws of the State of Delaware, applicable to contracts to be carried out wholly within such State, without regard to the principles of conflicts of Laws that might otherwise be applicable.

5.9 Jurisdiction; Service of Process. Each of the Parties hereto irrevocably submits to the exclusive jurisdiction of the United States District Court for the District of Delaware for the purposes of any suit, action or other proceeding arising out of this License Agreement or any transaction contemplated hereby. Each of the Parties agrees to commence any action, suit or proceeding relating hereto in the United States District Court for the District of Delaware, or, if such suit, action or other proceeding may not be brought in such court for jurisdictional reasons, in the Court of Chancery of the State of Delaware, County of New Castle. Each of the Parties further agrees that service of any process, summons, notice or document by U.S. registered mail to such Party's address set forth in Section 0 shall be effective service of process for any action, suit or proceeding with respect to any matters to which it has submitted to jurisdiction in this Section 11.9. Each of the Parties waives any objection to the laying of venue of any action, suit or proceeding arising out of this License Agreement or the transactions contemplated hereby in (a) United States District Court for the District of Delaware or (b) Court of Chancery of the State of Delaware, County of New Castle, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum or to raise any similar defense or objection.

5.10 Further Assurances. Each Party shall, upon the reasonable request of the other Party, and, except as otherwise expressly set forth herein, at such other Party's sole expense, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this License Agreement.

5.11 Severability. Whenever possible, each provision or portion of any provision of this License Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this License Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this License Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

5.12 Counterparts. This License Agreement may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to each of the other Parties.

5.13 Facsimile or pdf Signature. This License Agreement may be executed by facsimile or .pdf signature and a facsimile or.pdf signature shall constitute an original for all purposes.

5.14 No Presumption Against Drafting Party. Each of Scotts, OMS, and Monsanto acknowledges that each Party to this License Agreement has been represented by legal counsel in connection with this License Agreement and the transactions contemplated by this License Agreement. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this License Agreement against the drafting Party has no application and is expressly waived.

5.15 Complete Agreement. This License Agreement, the Purchase Agreement, the Formulation Agreement and the other Transaction Documents embody the entire agreement and understanding of the Parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings among the Parties relating to such subject matter.

[*Signature Page Follows*]

IN WITNESS WHEREOF, each of the Parties hereto has caused this License Agreement to be executed as of the date first above written.

SCOTTS
The Scotts Company LLC

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, each of the Parties hereto has caused this License Agreement to be executed as of the date first above written.

OMS
OMS Investments, Inc.

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, each of the Parties hereto has caused this License Agreement to be executed as of the date first above written.

MONSANTO
Monsanto Company

By: _____

Name: Brett Begemann

Title: President

Signature Page to IP License Agreement

EXHIBIT C

Bill of Sale

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, The Scotts Company LLC, an Ohio limited liability company ("Scotts"), does hereby grant, bargain, transfer, sell, assign, convey, and deliver to Monsanto Company, a Delaware corporation ("Monsanto"), all of its right, title and interest in and to all of the Inventory (as defined in that certain Asset Purchase Agreement, dated July 29, 2019, between Monsanto and Scotts), to have and to hold the same unto Monsanto, its successors and assigns, forever.

Effective: August 1, 2019

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has duly executed this Bill of Sale as of the date first above written.

THE SCOTTS COMPANY LLC

By: _____
Name:
Title:

[Signature Page to Bill of Sale]

EXHIBIT D

INTELLECTUAL PROPERTY

ASSIGNMENT AGREEMENT

This INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT (this "Agreement") is entered into as of this day of July 29, 2019 and effective August 1, 2019 ("Effective Date"), by and between The Scotts Company LLC, an Ohio limited liability company ("Scotts") and Monsanto Company, a Delaware corporation ("Monsanto"). Scotts and Monsanto are referred to herein individually as a "Party" and together as the "Parties." Unless otherwise defined herein, capitalized terms used herein will have the meaning ascribed to them in that certain Asset Purchase Agreement dated as of July 29, 2019 by and between Scotts and Monsanto (the "Purchase Agreement").

WHEREAS, pursuant to the Purchase Agreement, at Closing, Scotts agreed to sell, convey, transfer and assign to Monsanto, and Monsanto has agreed to purchase and accept from Scotts all of Scotts' right, title and interest in and to the Transferred Intellectual Property.

NOW, THEREFORE, Scotts and Monsanto, in consideration of the foregoing recitals and the mutual covenants, representations, warranties, conditions and agreements hereinafter expressed, agree as follows:

1. Subject to all other terms and conditions of the Purchase Agreement, Scotts hereby irrevocably assigns, conveys, transfers and delivers to Monsanto all of Scotts' right, title and interest in and to all Transferred Intellectual Property, which includes all Intellectual Property listed on Exhibit A, including any and all goodwill associated therewith, to the extent any such goodwill exists. This assignment includes all rights and benefits of Scotts relating to the Transferred Intellectual Property including (without limitation) any right Scotts may have to bring action and claim relief in respect of any infringement, misappropriation, violation or dilution of the Transferred Intellectual Property.

2. Scotts, upon request, shall provide such assistance to Monsanto as may be necessary to complete or perfect the assignments, grants, conveyances and transfers of Transferred Intellectual Property to Monsanto. Without limiting the generality of the foregoing, Scotts will promptly provide all transfer approvals and otherwise complete any online procedures set forth by the registrar of the domain name registration and the social media accounts included in the Transferred Intellectual Property, in accordance with such registrar's processes and will promptly provide all user name, password and other account information necessary to enable Monsanto to assume administrative control over all social media accounts included in the Transferred Intellectual Property.

3. This Agreement is being executed and delivered pursuant and subject to the terms and conditions of the Purchase Agreement. Nothing in this Agreement shall, or shall be deemed to, defeat, limit, alter or impair, enhance or enlarge any right, obligation, claim or remedy created by the Purchase Agreement.

4. This Agreement may not be amended, modified or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing specifically designated as an amendment hereto, signed on behalf of each Party.

5. No failure or delay of a Party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties hereunder are cumulative and are not exclusive of any rights or remedies which they would otherwise have hereunder. Any agreement on the part of a Party to any such waiver shall be valid only if set forth in a written instrument executed and delivered by a duly authorized officer on behalf of such Party.

6. Any notice, request, instruction or other document to be given hereunder by any Party to the other Party shall be made in accordance with the Purchase Agreement.

7. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become fully executed when one or more counterparts have been signed by each of the Parties and delivered to each of the other Parties. This Agreement may be executed by facsimile or .pdf signature and a facsimile or.pdf signature shall constitute an original for all purposes.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed as of the date first above written.

SCOTTS
The Scotts Company LLC

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed as of the date first above written.

MONSANTO
Monsanto Company

By: _____

Name: Brett Begemann
Title: President

EXHIBIT A

Transferred Intellectual Property

1. The common law and unregistered trademarks identified below:

    - BUG DESTROYER (jurisdiction: United States; goods/services: insecticide);
    - CRABGRASS DESTROYER (jurisdiction: United States; goods/services: herbicide);
    - LANDSCAPE WEED PREVENTER (jurisdiction: United States; goods/services: herbicide); and
    - WEEDING WISELY (jurisdiction: United States; goods/services: herbicide).
2. The common law or unregistered copyrights in the tangible works of expression identified below:

    - All images associated with the Brand Extension Products on the webpage available at www.roundup.com.
    - Packaging graphics for Roundup for Lawns Bug Destroyer.
    - Packaging graphics for Roundup for Lawns Bug Destroyer.
    - Packaging graphics for Roundup for Lawns Crabgrass Destroyer.
    - Packaging graphics for Roundup for Lawns Crabgrass Destroyer.
    - Packaging graphics for Roundup for Lawns – Northern.
    - Packaging graphics or Roundup for Lawns – Concentrate Northern.
    - Packaging graphics for Roundup for Lawns – Extend Wand Northern.
    - Packaging graphics for Roundup for Lawns – Refill Northern.
    - Packaging graphics for Roundup for Lawns – Southern.
    - Packaging graphics for Roundup for Lawns – Concentrate Southern.
    - Packaging graphics for Roundup for Lawns – Extend Wand Southern.
    - Packaging graphics for Roundup for Lawns – Refill Southern.
    - Packaging graphics for Roundup for Lawns Landscape Weed Preventer, with the exception of those stock images licensed by Seller.
    - Packaging graphics for Roundup for Lawns Landscape Weed Preventer, with the exception of those stock images licensed by Seller.
3. Trade dress elements of the following Related Packaging, including as depicted on Annex 1.99:

    - Packaging for Roundup for Lawns Bug Destroyer.
    - Packaging for Roundup for Lawns Bug Destroyer.
    - Packaging for Roundup for Lawns Crabgrass Destroyer.
    - Packaging for Roundup for Lawns Crabgrass Destroyer.
    - Packaging for Roundup for Lawns – Northern.
    - Packaging or Roundup for Lawns – Concentrate Northern.
    - Packaging for Roundup for Lawns – Extend Wand Northern.
    - Packaging for Roundup for Lawns – Refill Northern.

- Packaging for Roundup for Lawns – Southern.
- Packaging for Roundup for Lawns – Concentrate Southern.
- Packaging for Roundup for Lawns – Extend Wand Southern.
- Packaging for Roundup for Lawns – Refill Southern.
- Packaging for Roundup for Lawns Landscape Weed Preventer.
- Packaging for Roundup for Lawns Landscape Weed Preventer.

4. Registration for the domain name weedingwisely.com.

5. YouTube account used for publishing commercial cuts and product demo videos.

6. Social Media Accounts related to Roundup generally, that are not exclusive or specific to the Brand Extension Products:

    - Instagram: https://www.instagram.com/roundup/
        - Private account not actively used (for posting or engagement)

    - Twitter: https://twitter.com/Roundup
        - Public, but the tweets on this account are protected

    - YouTube: https://www.youtube.com/channel/UC81dhuAg9rXwuk9jjxRlBYQ?view_as=subscriber
        - Used for publishing commercial cuts and product demo videos here
        - Actively monitored and consumer services does respond to questions

    - Facebook: https://www.facebook.com/roundup/
        - Page is unpublished and not accessible to users

    - Pinterest: https://www.pinterest.com/roundup1438/
        - All Pinterest accounts are public, but this account is not used for publishing content

EXHIBIT E

BRAND EXTENSION AGREEMENT TERMINATION AGREEMENT

This BRAND EXTENSION AGREEMENT TERMINATION AGREEMENT (this "Agreement") is entered into July 29, 2019 and effective as of August 1, 2019 (the "Effective Date"), by and between Monsanto Company, a Delaware corporation ("Monsanto"), and The Scotts Company LLC, an Ohio limited liability company ("Scotts"). Each of Monsanto and Scotts may be referred to herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Monsanto and Scotts are parties to that certain Amended and Restated Lawn and Garden Brand Extension Agreement - Americas, effective as of May 15, 2015 (the "Brand Extension Agreement"); and

WHEREAS, the Parties desire to mutually terminate the Brand Extension Agreement, with such termination to be effective as of the Effective Date.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

1. Termination of Brand Extension Agreement. Each Party mutually agrees that the Brand Extension Agreement shall be terminated effective as the Effective Date, and following such termination, the Brand Extension Agreement shall be of no further force or effect. This Agreement is written notification by each Party to the other Party of its intention to terminate the Brand Extension Agreement, and each Party hereby waives any right to prior notice or other requirements of termination that may be required under the Brand Extension Agreement.

2. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction).

3. Assignment. Neither this Agreement nor any right or interest under this Agreement may be assigned by any Party without the prior written consent of the other Party.

4. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given on the same business day if delivered personally or sent by telefax with confirmation of receipt, on the next business day if sent by overnight courier, or on the earlier of actual receipt as shown on the registered receipt or five business days after mailing if mailed by registered or certified mail (return receipt requested) to the Parties at the addresses set forth below (or at such other address for a Party as shall be specified by like notice):

(i) if to Monsanto, to:

Monsanto Company
800 North Lindbergh Boulevard
St. Louis, MO 63167
Attn: Dr. Jacqueline Applegate
Telephone: (314) 694-6900
Facsimile: (314) 694-7030

with a copy (which shall not constitute notice) to:

Monsanto Company
800 North Lindbergh Boulevard
St. Louis, Missouri 63167
Attn: Martin Kerckhoff
Telephone: (314) 694-1536
Facsimile: (314) 694-9009

(ii) if to Scotts, to:

The Scotts Company LLC
14111 Scottslawn Road
Marysville, OH 43041
Attn: President
Telephone: (937) 644-0011
Facsimile: (937) 644-7568

with a copy (which shall not constitute notice) to:

The Scotts Company LLC
14111 Scottslawn Road
Marysville, OH 43041
Attn: General Counsel
Telephone: (937) 644-0011
Facsimile: (937) 644-7568

5. Further Assurances. The Parties shall execute and deliver such further instruments and take such further actions as may be necessary or desirable to evidence more fully the agreement contained herein, including without limitation the termination of the Brand Extension Agreement.

6. Entire Agreement. This Agreement, together with all respective exhibits and schedules hereto, constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof. Notwithstanding the foregoing, the Parties acknowledge and agree that this Agreement together with the Specified Agreements constitute an indivisible, integrated agreement with (a) a single nature and purpose and (b) interrelated obligations. The Parties acknowledge and agree that the consideration for this Agreement is adequate, that the consideration for each of the Specified Agreements is adequate, and that subsequent defaults or terminations of any of the

Specified Agreements will not render this Agreement unenforceable due to lack of consideration. The Parties further acknowledge and agree that, subject to the foregoing sentence, the consideration for each of the Specified Agreements is intended as interdependent consideration for all Specified Agreements and is not separate, distinct or capable of apportionment, such that a rejection in any proceeding pursuant to any applicable bankruptcy or insolvency laws of any terms of this Agreement or any of the Specified Agreements would constitute a rejection of all such agreements. The Parties acknowledge and agree that they would not have entered into this Agreement or any Specified Agreement without entering into all such agreements. Notwithstanding the foregoing, the Parties acknowledge and agree that no breach of this Agreement shall be deemed to be a breach of any Specified Agreement and that no breach of any Specified Agreement shall be deemed to be a breach of this Agreement; provided, that the foregoing shall not be deemed to negate an actual breach of this Agreement or the Specified Agreements, as applicable. "Specified Agreements" means the agreements, documents and instruments entered into contemporaneously with execution of this Agreement, including, without limitation (i) that certain Commercialization and Technology Agreement Termination Agreement by and between Monsanto and Scotts; (ii) that certain Asset Purchase Agreement by and between Monsanto and Scotts; (iii) that certain Third Amended and Restated Exclusive Agency and Marketing Agreement by and between Monsanto and Scotts, and (iv) all other agreements, documents and instruments contemplated by each of the foregoing.

7. Amendment and Modification. This Agreement may not be amended, modified or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing specifically designated as an amendment hereto, signed on behalf of each Party.

8. Execution by Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed to be one and the same instrument. A signed copy of this Agreement delivered by e-mail, facsimile or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

MONSANTO COMPANY

By: _____
Name: _____
Title: _____

THE SCOTTS COMPANY LLC

By: _____
Name: _____
Title: _____

EXHIBIT F

TRADEMARK LICENSE AGREEMENT

This TRADEMARK LICENSE AGREEMENT (this "License Agreement") is entered into as of July 29, 2019 and effective as of August 1, 2019 (the "Effective Date"), by and between The Scotts Company LLC, an Ohio limited liability company ("Scotts"), OMS Investments, Inc., a Delaware corporation ("OMS"), and Monsanto Company, a Delaware corporation ("Monsanto"), a Bayer subsidiary. Scotts, OMS, and Monsanto are referred to herein individually as a "Party" and together as the "Parties."

WHEREAS, pursuant to that certain Asset Purchase Agreement dated as of July 29, 2019 by and between Scotts and Monsanto (the "Purchase Agreement"), Scotts agreed to grant Monsanto, and Monsanto desires to accept from Scotts, a license to the Licensed Trademark as provided in this License Agreement.

NOW, THEREFORE, Monsanto and OMS, in consideration of the foregoing recital and the mutual covenants, representations, warranties, conditions and agreements hereinafter expressed, agree as follows:

1. Definitions and Interpretation. Unless otherwise defined in this License Agreement, all capitalized terms used in this License Agreement shall have the meaning ascribed to such term in the Purchase Agreement. The following capitalized terms used in this License Agreement shall have the meanings set forth below.

1.1 "Formulation Agreement" means the Second Amended and Restated Formulation Agreement by and between Scotts and Monsanto dated as of the Effective Date.

1.2 "Licensed Trademark" means U.S. Trademark Reg. No. 4,191,099 for COMFORT WAND covering power-operated sprayers in International Class 7 and the goodwill associated therewith.

1.3 "Product" has the meaning ascribed to such term in the Formulation Agreement.

1.4 "Territory" means the United States of America.

2. Grant of Rights.

2.1 License Grant. Subject to the terms and conditions of this License Agreement, OMS hereby grants to Monsanto, and Monsanto hereby accepts a non-exclusive, sublicensable, non-transferable (except in accordance with Section 0 below), royalty-free and fully paid-up license to the Licensed Trademark, in the Territory, during the term of this License Agreement, on and in connection with the marketing, advertising promotion, distribution, importation, exportation, sale and offer for sale of sprayers that are substantially similar, in all material respects, to sprayers associated with the Licensed Trademark and included in product packaging for Products as of the Effective Date or at any time during the term of the Formulation Agreement or that include one or more features covered by any Seller Licensed Patents, in

combination with or as a component of packaging for products, including but not limited to Products (collectively, the "Licensed Products").

2.2 Non-Exclusive Licenses. This license is non-exclusive, and nothing in this License Agreement does or shall be deemed to limit Scotts' or OMS's (or any Scotts or OMS Affiliate's) right to, directly or indirectly, use, employ or grant rights in or to any Licensed Intellectual Property for any purpose.

2.3 Use by Affiliates. Any Affiliate of Monsanto shall have the same right and license under the Licensed Intellectual Property as Monsanto. Each Affiliate that exercises such right shall be bound by, and shall comply with all of the terms and conditions of, this License Agreement as though it were "Monsanto" hereunder.

3. Quality Control and Property Rights.

3.1 Goodwill. Monsanto covenants and agrees that all uses by it of the Licensed Trademark during the term of this License Agreement, including but not limited to all goodwill accrued by, and due to, Monsanto's use of the Licensed Trademark anywhere, shall inure solely to the benefit of Scotts.

3.2 Quality Standards. Monsanto covenants and agrees all Licensed Products and all packaging, labeling, advertising and promotional materials for Licensed Products that bear the Licensed Trademark shall be of high standards and of such quality, style and appearance as shall be designed to maintain the quality of the Licensed Trademark and keeping with the image, reputation and goodwill symbolized by and associated with the Licensed Trademark as of the Effective Date and in a form and manner that is consistent with the use of the Licensed Trademark in connection with the Business as of the Effective Date.

3.3 Review Rights.

(a) Scotts acknowledges and agrees that any Licensed Products supplied or otherwise provided by it or any of its Affiliates to Monsanto or any of its Affiliates will satisfy its quality standards for such Licensed Products.

(b) Upon Scotts' or OMS's request, but no more than once per year, Monsanto shall furnish to Scotts, free of cost, for its review and comment: (i) two (2) representative production samples of each Licensed Product that were not supplied or otherwise provided by Scotts or its Affiliate and (ii) packaging and labeling materials for each Licensed Product. If Scotts or OMS gives Monsanto written notice that any samples of such Licensed Products or materials do not comply with the terms and conditions of this License Agreement, Monsanto shall promptly respond with an appropriate corrective action plan.

3.4 Enforcement and Protection of Licensed Trademark. OMS shall have the exclusive right (but not the obligation) to determine whether to seek to abate any actual, alleged or threatened infringement, dilution or violation of the Licensed Trademark by any person, including by filing suit (an "Enforcement") and shall have exclusive control of any Enforcement.

Any and all recoveries (including settlement proceeds and damage awards) from any Enforcement shall be retained exclusively by OMS. OMS shall have exclusive control of the defense to any challenge by any person to the Licensed Trademark, including in connection with an Enforcement, or any declaratory judgment claim or counterclaim.

4. Term and Termination.

4.1 Trademark License Term. The license granted under this Section 2 shall begin on the Effective Date and, unless sooner terminated pursuant to this Section 0, shall terminate twenty (20) years after the Effective Date. Unless this License Agreement has been terminated pursuant to Section 4.2 below prior to the expiration of the initial term or any renewal term, then upon expiration of the initial term or any renewal term, this License Agreement shall automatically renew for an additional ten (10) year term.

4.2 Termination Events.

(a) In the event of a material breach of this License Agreement by Monsanto, Scotts may provide notice in writing to Monsanto setting forth the nature of the breach and a description of the facts underlying the breach sufficient to identify the breach. If Monsanto has not cured, proposed a reasonable plan to cure and made good faith efforts to implement such plan, or otherwise remedied such breach to Scotts' reasonable satisfaction within ninety (90) days from the date of receipt of such notice of breach, Scotts may provide a notice of termination to Monsanto and this License Agreement shall terminate sixty (60) days after such notice of termination unless the breach is cured to Scotts' reasonable satisfaction during such sixty (60) day period.

(b) Monsanto may terminate this License Agreement at any time, upon ninety (90) days written notice to Scotts.

4.3 Wind-Down Rights. Following termination of this License Agreement, Monsanto may continue to distribute, offer to sell, and sell Licensed Products that were in existence or in production as of the effective date of such termination for an additional two (2) years following termination of this License Agreement (the "Sell-Off Period"); provided that all of the provisions of this Agreement applicable to Monsanto's use of the Licensed Trademark shall apply during such Sell-Off Period and Monsanto's right to use the Licensed Trademark shall be subject to Monsanto's continued compliance with such terms during the Sell-Off Period.

5. Miscellaneous.

5.1 [INTENTIONALLY OMITTED]

5.2 Additional Scotts Representations and Related Indemnification Obligations. Scotts represents and warrants that use of the Licensed Trademark as permitted under this License Agreement will not infringe, dilute, misappropriate or otherwise violate any Third Party's rights in Intellectual Property, Scotts shall defend, indemnify and hold harmless Monsanto and its Affiliates and the respective Representatives, successors and assigns of each of

the foregoing from and against, and shall compensate and reimburse each of the foregoing for, any and all Losses incurred, sustained or suffered by any of the foregoing as a result of, arising out of or relating to any Third Party Claim relating to breach or alleged breach of the foregoing representation and warranty. The procedures of Section 9.4 of the Purchase Agreement shall apply in respect of any such Third Party Claim.

5.3 Assignment. Monsanto may assign or transfer this License Agreement and its rights or obligations hereunder without the consent of Scotts to a person who is (a) an Affiliate, (b) any assignee of all or substantially all of its business or assets relating to this License Agreement, (c) its successor in the event of a change of control of Monsanto or an Affiliate to which this License Agreement relates or (d) any other third party with the consent of Scotts, such consent not to be unreasonably withheld. Scotts may freely assign its rights and obligations under this License Agreement; provided, however, for the avoidance of doubt, any assignment by Scotts of its rights in the Licensed Patents shall be subject to the license granted to Monsanto under this License Agreement.

5.4 Coordination with Purchase Agreement. This License Agreement is being executed and delivered pursuant and subject to the terms and conditions of the Purchase Agreement. Nothing in this License Agreement shall, or shall be deemed to, defeat, limit, alter or impair, enhance or enlarge any right, obligation, claim or remedy created by the Purchase Agreement.

5.5 Amendment and Modification. This License Agreement may not be amended, modified or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing specifically designated as an amendment hereto, signed on behalf of each Party.

5.6 Waiver. No failure or delay of a Party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties hereunder are cumulative and are not exclusive of any rights or remedies which they would otherwise have hereunder. Any agreement on the part of a Party to any such waiver shall be valid only if set forth in a written instrument executed and delivered by a duly authorized officer on behalf of such Party.

5.7 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, or if by e-mail, upon written or machine generated confirmation of receipt by e-mail or otherwise, (b) on the first Business Day following the date of dispatch if delivered utilizing a next-day service by a recognized next-day courier or (c) on the earlier of confirmed receipt or the fifth Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered to the addresses set forth below, or pursuant to such other instructions as may be designated in writing by the Party to receive such notice:

if to Scotts, to:

The Scotts Company LLC
Attention: Ivan Smith, General Counsel
14111 Scottslawn Road
Marysville, Ohio 43041
Email: ivan.smith@scotts.com

with a copy (which shall not constitute notice) to:

The Scotts Company LLC
Attention: Michael Lukemire, Chief Operating Officer
14111 Scottslawn Road
Marysville, Ohio 43041
Email: michael.lukemire@scotts.com

if to OMS, to:

OMS Investments, Inc.
Attention: Luis A. Rodriguez, who is the Assistant Secretary
10250 Constellation Blvd., Suite 2800
Los Angeles, CA 90067
Email: LRodriguez@WilmingtonTrust.com

if to Monsanto, to:

Monsanto Company
Attention: Randy Mariani, Chief Deputy General Counsel
800 N. Lindbergh Blvd.
St. Louis, MO 63167
Email: randy.mariani@bayer.com

with a copy (which shall not constitute notice) to:

Monsanto Company
Attention: Jacqueline Applegate
800 N. Lindbergh Blvd.
St. Louis, MO 63167
Email: jacqueline.applegate@bayer.com

5.8 Interpretation. Titles and headings contained in this License Agreement are for convenience of reference purposes only and shall not affect in any way the meaning or interpretation of this License Agreement. All words used in this License Agreement will be construed to be of such gender or number as the circumstances require. The word “including” and words of similar import when used in this License Agreement will mean “including, without limitation,” unless otherwise specified. The words “hereof,” “herein” and “hereunder” and words of similar import when used in this License Agreement shall refer to the License

Agreement as a whole and not to any particular provision in this License Agreement. The term “or” is not exclusive. The word “will” shall be construed to have the same meaning and effect as the word “shall.” References to days mean calendar days unless otherwise specified.

5.9 Governing Law. This License Agreement shall be governed by, and construed in accordance with, the Laws of the State of Delaware, applicable to contracts to be carried out wholly within such State, without regard to the principles of conflicts of Laws that might otherwise be applicable.

5.10 Jurisdiction; Service of Process. Each of the Parties hereto irrevocably submits to the exclusive jurisdiction of the United States District Court for the District of Delaware for the purposes of any suit, action or other proceeding arising out of this License Agreement or any transaction contemplated hereby. Each of the Parties agrees to commence any action, suit or proceeding relating hereto in the United States District Court for the District of Delaware, or, if such suit, action or other proceeding may not be brought in such court for jurisdictional reasons, in the Court of Chancery of the State of Delaware, County of New Castle. Each of the Parties further agrees that service of any process, summons, notice or document by U.S. registered mail to such Party’s address set forth in Section 0 shall be effective service of process for any action, suit or proceeding with respect to any matters to which it has submitted to jurisdiction in this Section 11.9. Each of the Parties waives any objection to the laying of venue of any action, suit or proceeding arising out of this License Agreement or the transactions contemplated hereby in (a) United States District Court for the District of Delaware or (b) Court of Chancery of the State of Delaware, County of New Castle, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum or to raise any similar defense or objection.

5.11 Further Assurances. Each Party shall, upon the reasonable request of the other Party, and, except as otherwise expressly set forth herein, at such other Party's sole expense, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this License Agreement.

5.12 Severability. Whenever possible, each provision or portion of any provision of this License Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this License Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this License Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

5.13 Counterparts. This License Agreement may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to each of the other Parties.

5.14 Facsimile or pdf Signature. This License Agreement may be executed by facsimile or .pdf signature and a facsimile or.pdf signature shall constitute an original for all purposes.

5.15 No Presumption Against Drafting Party. Each of Scotts, OMS, and Monsanto acknowledges that each Party to this License Agreement has been represented by legal counsel in connection with this License Agreement and the transactions contemplated by this License Agreement. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this License Agreement against the drafting Party has no application and is expressly waived.

5.16 Complete Agreement. This License Agreement, the Purchase Agreement and the other Transaction Documents embody the entire agreement and understanding of the Parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings among the Parties relating to such subject matter.

[*Signature Page Follows*]

IN WITNESS WHEREOF, each of the Parties hereto has caused this License Agreement to be executed as of the date first above written.

SCOTTS

The Scotts Company LLC

By: _____

Name: _____

Title: _____

[Signature Page to Trademark License Agreement]

IN WITNESS WHEREOF, each of the Parties hereto has caused this License Agreement to be executed as of the date first above written.

OMS

OMS Investments, Inc.

By: _____

Name: _____

Title: _____

[Signature Page to Trademark License Agreement]

IN WITNESS WHEREOF, each of the Parties hereto has caused this License Agreement to be executed as of the date first above written.

MONSANTO

Monsanto Company

By: _____

Name: Brett Begemann

Title: President

[Signature Page to Trademark License Agreement]

EXHIBIT G

[NOTE: Agency name and referenced geographical territory may change depending on need.]

[DATE]

[RECIPIENT]

Subject: Letter of Authorization to Refer to Scotts Data for [COMPANY NAME] Registration of [PRODUCT NAME]

Dear [INSERT RECIPIENT NAME]:

[[The Scotts Company] or [relevant Affiliate]] ("Scotts") hereby authorizes the [U.S. Environmental Protection Agency (EPA)] to refer to the Scotts Data (as defined below in Section 1) in support of [COMPANY NAME]'s ("Company") application for registration of [PRODUCT NAME] solely for the uses described below in Section 2.

1. "Scotts Data", for purposes of this Letter of Authorization, means, certain registration data that includes [INSERT DESCRIPTION OF DATA].

2. This authorization is granted solely to allow Company to support the registration of [PRODUCT NAME] with [EPA] for manufacture and sale within the U.S. only for [uses]. No other uses are permitted or authorized.

Scotts does not grant the Company any ownership interest whatsoever in any of the Scotts Data. This Letter of Authorization is not and shall not be construed as an authorization to refer to or to cite the Scotts Data, directly or indirectly, in support of any other application submitted by Company or any other applicant for any other purpose, including, but not limited to, applications for new or amended registrations or distributor products. This letter does not authorize EPA to allow Company to have access to or to review any Scotts Data or any other data submitted by Scotts. Furthermore, this letter is not a waiver of any of Scotts' rights in the referenced Scotts Data, nor may these Scotts Data be referenced or cited by other governmental regulatory agencies not previously authorized by Scotts in writing.

Sincerely,

[SCOTTS SIGNATORY NAME]
[SCOTTS SIGNATORY TITLE]

cc: [INSERT AS NEEDED]

EXHIBIT H

SECOND AMENDED AND RESTATED
FORMULATION AGREEMENT

by and between

MONSANTO COMPANY

and

THE SCOTTS COMPANY LLC

Contents

SECOND AMENDED AND RESTATED FORMULATION AGREEMENT

THIS SECOND AMENDED AND RESTATED FORMULATION AGREEMENT (this "Formulation Agreement"), is entered into as of July, 29, 2019 and effective as of August 1, 2019 (the "Second Amendment Date"), by and between MONSANTO COMPANY, a Delaware corporation, having its principal place of business at 800 North Lindbergh Blvd., St. Louis, Missouri 63167 (hereinafter called "Monsanto"), and THE SCOTTS COMPANY LLC, an Ohio limited liability company (f/k/a The Scotts Company, an Ohio corporation), having its principal place of business at 14111 Scottslawn Road, Marysville, Ohio 43041 (hereinafter called "Formulator") amends and restates that certain Amended and Restated Formulation Agreement, dated as of the First Amendment Date, by and between Monsanto and Formulator (as amended from time to time, the "Amended and Restated Formulation Agreement").

WITNESSETH:

WHEREAS, Monsanto and Formulator completed the transaction contemplated by that certain Asset Purchase Agreement, dated November 11, 1998 (as amended from time to time, the "Asset Purchase Agreement") pursuant to which Formulator has purchased certain assets of The Solaris Group operating unit of Monsanto, including Monsanto's manufacturing facility at Ft. Madison, Iowa;

WHEREAS, Monsanto and Formulator entered into that certain Amended and Restated Exclusive Agency and Marketing Agreement, dated September 30, 1998 (as amended from time to time, the "Original Agency Agreement") pursuant to which Formulator serves as Monsanto's exclusive agent for the marketing and distribution of Roundup Products to be sold in Lawn and Garden Channels (each, as defined in the Agency Agreement);

WHEREAS, Monsanto and Formulator entered into that certain letter agreement, dated August 31, 2009, which amended the Original Formulation Agreement and the Original Agency Agreement in settlement of certain claims and issues thereunder;

WHEREAS, prior to the transaction effectuated by the Asset Purchase Agreement, Monsanto prepared such Roundup Products at the Ft. Madison, Iowa facility sold to Formulator;

WHEREAS, Formulator represented to Monsanto that as a result of the transactions described in the Asset Purchase Agreement and the Agency Agreement, Formulator had or would have the necessary skill and facilities to perform all of the operations and services for Monsanto as hereinafter described and defined, including the preparation of Roundup Products to be sold in Lawn and Garden Channels in the United States and Canada;

WHEREAS, Monsanto and Formulator entered into that certain Formulation Agreement, dated as of the Effective Date (as amended from time to time, the "Original Formulation Agreement") pursuant to which Monsanto retained Formulator for such operations and services on an exclusive basis with respect to Products to be sold in Lawn and Garden Channels in the United States and Canada during the term of the Original Formulation Agreement;

WHEREAS, on February 24, 2012, Monsanto and Formulator entered into the Amended and Restated Formulation Agreement, which amended and restated the Original Formulation Agreement;

WHEREAS, on August 31, 2017, Monsanto and Formulator entered into that certain Second Amended and Restated Exclusive Agency and Marketing Agreement (the "Second Amended and Restated Agency Agreement"), which amended and restated the Original Agency Agreement;

WHEREAS, simultaneously with the execution of this Formulation Agreement, Monsanto and Formulator are entering into that certain Third Amended and Restated Exclusive Agency and Marketing Agreement, effective of the Second Amendment Date (the "Agency Agreement"), which amended and restated the Second Amended and Restated Agency Agreement; and

WHEREAS, Monsanto and Formulator now wish to amend and restate the Amended and Restated Formulation Agreement as set forth herein.

NOW THEREFORE, in consideration of the mutual agreements herein contained, Monsanto hereby engages Formulator for, and Formulator hereby undertakes, all of such operations and services in accordance with the terms and conditions set forth herein.

1.0 Definitions

As used in this Formulation Agreement, the following terms shall have the following respective meanings:

1.1 "Actual Quantities" is defined in Section 4.1.

1.2 "Amended and Restated Formulation Agreement" is defined in the introductory paragraph above.

1.3 "Agency Agreement" is defined in the recitals above.

1.4 "Annual Business Plan" has the meaning set forth in the Agency Agreement.

1.5 "Annual Plant Budget" means the annual fiscal operating plan of the Plants applicable to all products manufactured at the Plants, which includes (i) annual expenses based upon a given production budget, (ii) annual expenses by cost center, (iii) the method of allocation of Overhead Costs and Production Lines to direct cost centers, (iv) Direct Labor Hours, (v) Machine Hours, (vi) the ratio of Product hours to total hours, (vii) production volumes by SKU by month and (viii) the budgeted formulation fee. The Annual Plant Budget does not include the annual plan for component costs or inventory levels, as Formulator and Monsanto have agreed to track that information separately.

1.6 "Asset Base" is defined in Section 9.1.1.

1.7 "Asset Purchase Agreement" is defined in the recitals above.

1.8 "BEA Products" means, initially, those products set forth on Schedule A hereto, which may be updated from time to time in accordance with the Annual Business Plan or Quality Assurance Manual under the Agency Agreement.

1.9 "BEA Products Capital Charge" is defined in Section 9.1.3.

1.10 "Capital Charge" is defined in Section 9.1.3.

1.11 "Closing" has the meaning set forth in the Asset Purchase Agreement.

1.12 "Closing Date" has the meaning set forth in the Asset Purchase Agreement.

1.13 "Direct Labor Costs" is defined in Section 9.1.4.

1.14 "Direct Labor Hours" is defined in Section 9.1.5.

1.15 "Documents" is defined in Section 5.6.

1.16 "Effective Date" means January 21, 1999.

1.17 "Final Determination Date" is defined in Section 9.3.4.

1.18 "First Amendment Date" means February, 24, 2012.

1.19 "Formulating Services" is defined in Section 2.1.

1.20 "Formulation Agreement" is defined in the introductory paragraph above.

1.21 “Formulation Fee” is defined in Section 9.1.4.

1.22 “Formulator” is defined in the introductory paragraph above.

1.23 “Global Support Team” has the meaning set forth in the Agency Agreement.

1.24 “Glyphosate” means N-phosphonomethylglycine, in any form, including, but not limited to, its acid, esters and salts.

1.25 “Independent Accounting Firm” is defined in Section 9.3.4.

1.26 “Input Materials” means all materials necessary for the Preparation of Products, such as Surfactants, other active ingredients, inert ingredients, and Packaging Materials.

1.27 “Invoiced Amounts” is defined in Section 9.3.2.

1.28 “Labels” means the labels to be attached to Products, the text of which labels has been approved by Monsanto and supplied to and approved by the U.S. Environmental Protection Agency or other applicable regulatory authority.

1.29 “Latent Defect” is defined in Section 5.3.

1.30 “Lawn and Garden Channels” has the meaning set forth in the Agency Agreement.

1.31 “Legacy Products” means all Products other than BEA Products.

1.32 “Loss Standard” is defined in Section 9.3.5.

1.33 “Machine Hours” is defined in Section 9.1.7.

1.34 “Monsanto” is defined in the introductory paragraph above.

1.35 “Monsanto’s Materials” is defined in Section 10.1.

1.36 “Notice of Disagreement” is defined in Section 9.3.4.

1.37 “Original Agency Agreement” is defined in the recitals above.

1.38 “Original Formulation Agreement” is defined in the recitals above.

1.39 “Overhead Costs” is defined in Section 9.1.8.

1.40 “Packaging Materials” means all containers, including but not limited to boxes, bottles, pallets, corrugated packing materials, caps and Labels meeting the applicable Specifications, necessary to Prepare Products in their final packaged form.

1.41 “Plant” or “Plants,” as applicable, means those portions of the plant and other facilities of Formulator located at Ft. Madison, Iowa; and such other location(s) as are mutually agreed upon in writing by Monsanto and Formulator, which are to be used for the receipt, storage and handling of Salt and Input Materials and for the Preparation of Product.

1.42 “Prepare” or any variation thereof as used in this Formulation Agreement means and includes all operations necessary to formulate, test, package, label, mark, handle, store, arrange for shipping and ship a Product that

meets the Specifications therefor, in accordance with Monsanto's instructions and the Quality Assurance Manual.

1.43 "Product" means the product(s) to be Prepared for Monsanto by Formulator hereunder as set forth from time to time in the Annual Business Plan or, in the event of the termination of the Agency Agreement and after the effective date of such termination, the Quality Assurance Manual. Following the Second Amendment Date, the Products shall also include the BEA Products.

1.44 "Production Line" is defined in Section 9.1.9.

1.45 "Production Run" is defined in Section 9.1.10.

1.46 "Program Year" has the meaning set forth in the Agency Agreement.

1.47 "Quality Assurance Manual" means that manual created by Monsanto for the Preparation of each Product. Revision number 9 of the Quality Assurance Manual, which is in effect as of the First Amendment Date, is attached hereto in Appendix B. In the event of any inconsistency between the Quality Assurance Manual and the specific terms of this Formulation Agreement, the terms of this Formulation Agreement shall control. Monsanto and Formulator completed the Quality Assurance Manual after the Closing Date, and Monsanto and Formulator agree to keep the Quality Assurance Manual current. Monsanto may change and update any portion or all of the Quality Assurance Manual at any time upon giving prior written notice to Formulator, if such change is (i) required to comply with applicable law, statutes, rule or regulation (including registration and label requirements), (ii) necessary to reflect new Products agreed to pursuant to the Annual Business Plan or otherwise by and between the parties in writing, (iii) necessary to change the Specifications due to environmental, health or safety concerns, (iv) if a third party patent may be asserted against Monsanto or Formulator as described in Section 13.0 hereof, or (v) for such other reason as the parties hereto may agree in writing. In the event that Formulator reasonably believes that the standards set forth in the Quality Assurance Manual could adversely affect Formulator, Monsanto shall change such standards in the manner Formulator reasonably requests and to the extent Monsanto consents to such changes, which consent is not to be unreasonably withheld.

1.48 "Salt" means salt of Glyphosate necessary for the Preparation of the applicable Product as set forth in the Quality Assurance Manual.

1.49 "Second Amended and Restated Agency Agreement" is defined in the recitals above.

1.50 "Second Amendment Date" is defined in the introductory paragraph above.

1.51 "SKU" means "Stock Keeping Unit" and refers to any individual item that is included among the Products to be Prepared by Formulator.

1.52 "Specifications" means the standards of quality and purity and composition of a Product, Salt, Surfactant, other Input Materials and Packaging Materials therefore as set forth in the Quality Assurance Manual or, with respect to BEA Products, as provided by Monsanto to the Formulator until such BEA Product has been added to the Quality Assurance Manual. The term also means the standards of quality, and criteria and methodology for formulating, producing, handling and storing, as well as any other factor established by Monsanto and set forth in the Quality Assurance Manual for such Product or, with respect to BEA Products, as provided by Monsanto to the Formulator until such BEA Products have been added to the Quality Assurance Manual, and relating to Formulator's Formulating Services under this Formulation Agreement. Monsanto reserves the right to change any portion or all of the Specifications set forth in the Quality Assurance Manual, at any time, including, in connection with the BEA Products, as such BEA Products are added to the Quality Assurance Manual. Any such changes in the Specifications made by Monsanto which could adversely impact costs or adversely affect the Formulating Services or Plant operations shall be subject to prior discussions between

Formulator and Monsanto. Any incremental increases or decreases in costs relating to the Formulating Services as a result of any such changes by Monsanto shall be borne by or credited to Monsanto, as the case may be.

1.53 "Standard Analytical Methods" has the meaning set forth in the Quality Assurance Manual.

1.54 "Statement of Actual Results" means each report prepared and submitted by Formulator to Monsanto no later than November 15 of each year during the term of this Formulation Agreement, setting forth the Formulation Fee for the preceding Program Year.

1.55 "Steering Committee" has the meaning set forth in the Agency Agreement.

1.56 "Support Ratio" is defined in Section 9.1.11.

1.57 "Surfactant" shall mean any wetting agent added to the formulation for the applicable Product as specified in the Quality Assurance Manual.

1.58 "Total RU Labor Hours" is defined in Section 9.1.12. 1.51 "Total RU Machine Hours" is defined in Section 9.1.13.

1.59 "Volume" means the number of cases of Product (or particular SKUs of Product) actually Prepared at the Plants each Program Year, where "cases" means cases having specifications not materially different than those that are the standard of the Plants as of the Second Amendment Date.

2.0 Formulating Services

2.1 Monsanto hereby engages Formulator, on an exclusive basis with respect to Products to be sold in Lawn and Garden Channels in the United States and Canada during the term of this Formulation Agreement, and Formulator hereby undertakes, to (a) receive, unload and store Salt for each Product as supplied by Monsanto; (b) subject to the terms of Section 5.0 hereof, provide all Input Materials and other materials and services necessary to Prepare Product; (c) Prepare each Product; (d) store and ship each Product to and for the account of Monsanto; and (e) perform all other operations ancillary to such activities, such as waste management and disposal, all of such activities upon the terms, conditions and provisions set forth in the Quality Assurance Manual and this Formulation Agreement (all of such activities of Formulator being sometimes hereinafter collectively called "Formulating Services").

2.2 Notwithstanding Section 2.1, following the notice by a party to terminate this Formulation Agreement or to terminate the Formulating Services with respect to any given Product, Monsanto shall not be obligated to engage Formulator on an exclusive basis as set forth in the Section 2.1 during the final three (3) months for such Products during which Formulator is to provide Formulating Services.

2.3 Formulator shall, for a period not less than eighteen (18) months after the Second Amendment Date, supply to Monsanto finished and packaged BEA Products to Monsanto under Formulator's own registrations and labels. All such BEA Products supplied under Formulator's own registrations and labels shall comply with applicable specifications and be produced in accordance with applicable law, and Monsanto and its Affiliates shall have the right to distribute such supplied BEA Products in accordance with applicable law. Title and risk of loss for such supplied BEA Products shall transfer from Formulator to Monsanto Ex Works Plant (Incoterms 2010). Monsanto hereby grants to Formulator, and Formulator hereby accepts, a non-exclusive, sublicensable, non-transferable, royalty-free, and fully paid-up license in accordance with the terms set forth in Schedule 2.3.

2.4 Notwithstanding Section 2.1, purchases under any New Agreement shall be deemed to not violate Monsanto's obligation to engage Formulator on an exclusive basis with respect to Products as set forth in the Section 2.1.

3.0 Term and Termination

3.1 Subject to the provisions herein, this Formulation Agreement shall be effective from the Effective Date through September 30, 2022. Thereafter, this Formulation Agreement shall automatically renew for additional, consecutive terms of one Program Year each. Notwithstanding the foregoing, this Formulation Agreement shall not terminate so long as the Formulator is providing Formulation Services.

Either party may (i) terminate the Formulating Services for Legacy Products at the end of a Program Year by providing written notice of such termination to the other party no later than March 31 of the Program Year immediately preceding the Program Year to be terminated (i.e., at least eighteen (18) months' notice) and (ii) terminate the Formulating Services for BEA Products at the end of a Program Year by providing written notice of such termination to the other party no less than three (3) full Program Years prior to the termination of such Formulating Services (i.e., at least thirty-six (36) months' notice) (any such notice, a "Formulation Termination Notice"); provided, however, that in the event of a termination pursuant to this Section 3.1(i), Formulator shall also supply those Specified Materials used in Legacy Products for a period of thirty six (36) months after the Formulation Termination Notice. For example, a Formulation Termination Notice with respect to Legacy Products provided no later than March 31, 2021 would terminate the Formulating Services of the Legacy Products effective as of October 1, 2022 and a Formulation Termination Notice with respect to BEA Products provided no later than September 30, 2019 would result in the termination of the Formulating Services of the BEA Products effective as of October 1, 2022. Notwithstanding the foregoing, following the delivery of a Formulation Termination Notice, Monsanto may terminate such Formulating Services earlier by providing written notice of earlier termination to Formulator not less than eighteen (18) months' prior to the effective date of such earlier termination.

3.2 Monsanto may terminate this Formulation Agreement, without liability, at any time, by written notice to Formulator if (i) Formulator has failed to comply in any material respect with its obligations under this Formulation Agreement; (ii) Monsanto determines that Formulator's providing Formulating Services hereunder violates, in whole or in part, in any material respect, any law, decree, order, rule, regulation, ordinance, action or request of any court or governmental unit; (iii) Monsanto determines that it is necessary to discontinue such Formulating Services in order to prevent hazard to humans, animals, aquatic life or the environment; (iv) any of the representations, warranties or covenants of Formulator set forth in Section 6.1 hereof are or become untrue in any material respect or are not complied with in any material respect; or (v) except as otherwise approved by Monsanto in writing, Formulator does not own any of the Plants; provided that for items of the type described in clauses (i) through (iv) above, such condition continues unremedied for thirty (30) days after written notice thereof by Monsanto; provided, further, that, if during such 30-day period Formulator shall have commenced action to remedy such condition and thereafter diligently and in good faith prosecutes such action to the remediation of such condition, there shall be no such termination if such condition is remedied to the reasonable satisfaction of Monsanto within ninety (90) days following the delivery of written notice to Formulator pursuant to this Section 3.2, and, provided, further, that, for the items described in clauses (ii) and (iii) above, if such condition is a result of or is caused by Formulator's adherence to the Specifications and if it is commercially reasonable to modify such Specifications to eliminate such condition, then Monsanto shall not be entitled to terminate this Formulation Agreement pursuant to such clauses (ii) and (iii).

3.3 Formulator may terminate this Formulation Agreement, without liability, by written notice to Monsanto, if (i) Monsanto has failed to comply in any material respect with its obligations under this Formulation Agreement, (ii) Formulator determines that Formulator's providing Formulating Services hereunder violates, in whole or in part, in any material respect, any law, decree, order, rule, regulation, ordinance, action or request of any court or governmental unit, (iii) Formulator determines that it is necessary to discontinue such Formulating Services in order to prevent hazard to humans, animals, aquatic life or the environment, or (iv) any of the representations, warranties or covenants of Monsanto set forth in Section 6.2 hereof are or become untrue in any material respect or are not complied with in any material respect; provided that for items of the type described in clauses (i) through (iv) above, such condition continues unremedied for thirty (30) days after written notice thereof by Formulator; provided, further, that, if during such 30-day period Monsanto shall have commenced action to remedy such condition and thereafter diligently and in good faith prosecutes such action to the remediation of such condition, there shall be no such termination if such condition is remedied to the reasonable satisfaction of Formulator within ninety (90) days following the delivery of written notice delivered

to Formulator pursuant to this Section 3.3, and, provided, further, that, for the items described in clauses (ii) and (iii) above, if such condition is a result of or is caused by adherence to the Specifications and if it is commercially reasonable to modify such Specifications to eliminate such condition and Monsanto agrees to do so, then Formulator shall not be entitled to terminate this Formulation Agreement pursuant to such clauses (ii) and (iii).

3.4 In the event of the termination of the Agency Agreement, then: (i) if such termination is pursuant to Section 10.5(a) of the Agency Agreement, then Formulator may terminate this Formulation Agreement upon six (6) months prior written notice to Monsanto, which notice may not be sent prior to the issuance of the notice of the termination of the Agency Agreement; (ii) if such termination is pursuant to Section 10.4(b) (except Sections 10.4(b)(7) and 10.4(b)(8)) of the Agency Agreement, then Monsanto may terminate this Formulation Agreement upon six (6) months prior written notice to Formulator, which notice may not be sent prior to the issuance of the notice of the termination of the Agency Agreement; or (iii) if such termination is pursuant to any other provision of the Agency Agreement, including but not limited to Sections 10.4(a)(2), 10.4(b)(7), 10.4(b)(8) and 10.5(b) of the Agency Agreement, then the termination of the Agency Agreement shall in no way affect the term of this Formulation Agreement; provided, however, that the right of a non-breaching party to terminate this Formulation Agreement pursuant to the provisions of this Section 3.4 shall expire ninety (90) days after the effective date of the termination of the Agency Agreement.

3.5 In the event that Monsanto or Formulator terminate Formulator as the provider of the BEA Agent Services (as such term is defined in the Agency Agreement) under the Agency Agreement, Monsanto shall have the right to terminate all Formulating Services with respect to the BEA Products under this Formulation Agreement, with such termination to be effective as of the date that is eighteen (18) months following such notice of termination.

3.6 **[Deleted]**

3.7 **Input Transition**

BEA Critical Materials.

Formulator shall exercise commercially reasonable efforts to cause the BEA Critical Material Agreements to be replicated in favor of or assigned to Monsanto within six (6) months following the Second Amendment Date, such that following such replication or assignment, Monsanto would have an agreement or other arrangement directly with each third party to provide all BEA Critical Materials to Monsanto for use in the BEA Products in the Lawn and Garden Channels (a "New BEA Critical Material Agreement").

Specified Inputs.

In the event that Formulating Services are terminated with respect to any Products, Formulator shall, beginning when the notice of such termination is first delivered, use its commercially reasonable efforts to cause all Specified Input Agreements to be replicated in favor of or assigned to Monsanto prior to the termination of the Agency Agreement and such Formulating Services with respect to such Products, such that following such replication or assignment, Monsanto would have an agreement or other arrangement directly with each third party to provide all Specified Inputs to Monsanto for use in the Products in the Lawn and Garden Channels (each, a "New Specified Input Agreement").

New Agreements.

Subject to the applicable counterparty's consent and agreement, Formulator shall pursue and propose that each New BEA Critical Material Agreement and New Specified Input Agreement (collectively, the "New Agreements") provide (i) for the supply of the applicable BEA Critical Materials or Specified Inputs (the "Supplied Inputs") on terms substantially similar to the applicable Underlying Agreement and (ii) that Monsanto has full control over purchasing decisions, pricing, terms and conditions of supply related to the

applicable Supplied Inputs. Formulator's obligations to exercise commercially reasonable efforts to cause the entry into New Agreements for each Supplied Input are deemed satisfied by, without limitation, (i) a full assignment of the applicable Underlying Agreement, (ii) in the case where the applicable Supplied Material is not used by Formulator solely in connection with the Products, a partial assignment of all relevant portions of the applicable Underlying Agreement, or (iii) the entry by Monsanto, on the one hand, and the applicable counterparty, on the other hand, into a New Agreement that achieves the requirements of the preceding sentence; provided, however, in no event shall Formulator be deemed to be in breach of such obligation where the applicable counterparty to the applicable Underlying Agreement does not agree or otherwise cooperate with such efforts performed by Formulator in good faith and reasonable diligence. In no event shall Formulator be required to incur any out of pocket costs in the course of exercising commercially reasonable efforts as provided herein.

Within three (3) months following the Second Amendment Date, Formulator shall provide to Monsanto a copy of each Underlying Agreement to the extent permitted by the terms thereof, and if not so permitted, Formulator shall seek a waiver of such restriction such that Formulator may provide a copy of such agreement with reasonable redactions required to comply with such confidentiality obligations. Formulator shall work with Monsanto to, within three (3) months following the Second Amendment Date (i) provide a list of all Underlying Agreements and (ii) develop a mutually agreeable transition plan for all Supplied Inputs to ensure continuity of supply for Monsanto. Monsanto acknowledges that although Formulator may include an Underlying Agreement on the list described by clause (i) of the preceding sentence, such Underlying Agreement may contain confidentiality obligations that may preclude or restrict Formulator's ability to provide full disclosure of such Underlying Agreements.

In the event Formulator enters into any material, new written agreement or amends any material written agreement, in each case, that relates to any Supplied Input, Formulator shall use commercially reasonable efforts to ensure that each such new agreement or amended agreement (i) permits Formulator to share all relevant terms and provisions of such agreement with Monsanto, (ii) permits the partial assignment of all relevant portions of such agreement to Monsanto so that Monsanto can purchase the Supplied Inputs directly and (iii) permits the supply of the applicable Supplied Input from Formulator to Monsanto. For purposes of clarification, certain supply agreements between Formulator and a third party are based on spot market pricing and not subject to written agreements.

Obligations Pending Transitions.

Pending the entry into a New Agreement with respect to all Supplied Inputs, and subject to and to the extent allowable by the Underlying Agreement, Formulator shall continue to purchase any such Supplied Inputs for which a New Agreement has not been entered into (each a "Non-Transitioned Input"), for the benefit of Monsanto on substantially similar terms that Formulator receives from the supplier or provider of such Supplied Inputs and shall continue to supply such Non-Transitioned Inputs to Monsanto until a New Agreement is entered into with respect to each such Non-Transitioned Input.

Waiver of Exclusivity.

Formulator shall waive any Formulator restrictive covenant, exclusivity obligation or right or other obligation for the Lawn and Garden Channels set forth in any Underlying Agreement or any other agreement that would prevent any third party under any Underlying Agreement or any other agreement from providing BEA Critical Materials or Specified Inputs to Monsanto and its affiliates and their respective representatives and agents. In the event that Monsanto or any third party requests consent (including the waiver of any exclusivity obligation, restrictive covenant or other similar obligation preventing the supply or provision of BEA Critical Materials or Specified Inputs) from Formulator in connection with the provision of BEA Critical Materials or Specified Inputs from a third party to Monsanto, Formulator shall promptly provide such consent without any unreasonable condition.

IP License

If and to the extent that any BEA Critical Input Rights exist as of the date that is six (6) months following the Second Amendment Date, then effective as of such date: (i) subject to and to the extent allowable under the applicable instrument granting such rights to Formulator, Formulator hereby assigns and agrees to assign (and to cause its Affiliates to assign) to Monsanto all such BEA Critical Input Rights that are solely and exclusively related to the development, manufacture, production, advertising, marketing, promotion, distribution, importation, exportation, offer for sale and sale of any BEA Product and (ii) Formulator hereby grants and agrees to grant (and to cause its Affiliates to grant) Monsanto and its Affiliates a license under and to all such BEA Critical Input Rights, subject to and to the extent allowable under the applicable instrument granting such rights to Formulator, that are not within the scope of item (i) above in accordance with the terms of the Intellectual Property License Agreement, and such BEA Critical Input Rights shall thereafter be deemed to be Licensed Intellectual Property under the Intellectual Property License Agreement.

Within ninety (90) days of the Second Amendment Date, Formulator shall work in good faith with Monsanto to (i) catalogue the Specified Input Rights necessary for the development, manufacture, production, advertising, marketing, promotion, distribution, importation, exportation, offer for sale and sale of each Product in the Lawn and Garden Channel (the "Cataloguing Process") and (ii) establish agreed-upon terms effectuating the assignment or license, according and subject to the applicable rights owned or licensed by Formulator, to Monsanto of such Specified Input Rights. In the event that Formulating Services are terminated with respect to any one or more Products, Formulator shall, beginning when the notice of such termination is first delivered, (i) use its commercially reasonable efforts to cause such assignment or license to be effected prior to the termination of the Agency Agreement and such Formulating Services with respect to such Products and (ii) repeat the Cataloguing Process with Monsanto with respect to such Products and shall work in good faith with Monsanto to (with respect to any improvements related to each such Product since the original Cataloguing Process was completed) establish agreed-upon terms effectuating the assignment or license, according and subject to the applicable rights owned or licensed by Formulator, to Monsanto of such Specified Input Rights. It is the parties intent that the assignment or license terms would follow the following construct except to the extent that the parties reasonably determine otherwise after completing the Cataloguing Process: (a) Formulator would assign (and cause its Affiliates to assign) to Monsanto all Specified Input Rights, subject to and to the extent allowable under the applicable instrument granting such rights to Formulator, that are solely and exclusively related to the development, manufacture, production, advertising, marketing, promotion, distribution, importation, exportation, offer for sale and sale of such Product in the Lawn and Garden Channel; and (b) Formulator would agree to grant a license (and cause its Affiliates to grant) Monsanto and its Affiliates a license under and to all Specified Input Rights, subject to and to the extent allowable under the applicable instrument granting such rights to Formulator, related, but not solely and exclusively related, to the development, manufacture, production, advertising, marketing, promotion, distribution, importation, exportation, offer for sale and sale of such Product in the Lawn and Garden Channels.

Definitions.

"BEA Critical Input Rights" means all Input Rights owned by Formulator or any of its Affiliates that relate to any BEA Critical Inputs, utilized in, or that would be infringed, misappropriated or otherwise violated, absent a license thereto, by the design, manufacture, formulation, use distribution, marketing, promotion or sale of any BEA Product, in each case to the extent owned by Formulator or any of its Affiliates, but excluding all Transferred Intellectual Property and Seller Licensed Intellectual Property.

"BEA Critical Material Agreements" means all agreements, rights, purchasing relationships or other arrangements between Formulator and its Affiliates, on the one hand, and any third party, on the other hand, to the extent related to any BEA Critical Materials, including, without limitation, all agreements, rights, purchasing relationships or other arrangements that provide access to intellectual property or other rights related to the BEA Critical Materials.

"BEA Critical Materials" means all active ingredients, formulated products and proprietary inerts (e.g., proprietary surfactants) used by Formulator in the design, manufacture, formulation, use, marketing,

promotion, sale or distribution of the BEA Products, including, without limitation those items set forth on Schedule 3.7(a) attached hereto.

"Input Rights" means rights in and to: (a) patents and applications therefor, including continuations, divisionals, continuations-in-part, or applications for reissue and patents issuing thereon; (b) trade dress; (c) technology, processes and procedures, formulae, specifications, procedures for tests and results of testing; formulation, tolling, packaging and distribution information, and other know-how; and (d) works protected by copyright; and (e) trademarks and service marks (but excluding SCOTTS and its associated design variations and logos).

"Intellectual Property License Agreement" means that certain Intellectual Property License Agreement by and between the Parties dated July 29, 2019 and effective as of the Second Amendment Date.

"Licensed Intellectual Property" has the meaning ascribed to such term in the Intellectual Property License Agreement.

"Licensed Products" has the meaning ascribed to such term in the Trademark License Agreement.

"Licensed Trademark" has the meaning ascribed to such term in the Trademark License Agreement.

"Seller Licensed Intellectual Property" has the meaning ascribed to such term in the APA.

"Specified Inputs" means all Specified Materials and Specified Services.

"Specified Input Rights" means all Input Rights owned or licensed by Formulator or any of its Affiliates that relate to any Specified Inputs utilized in, or that would be infringed, misappropriated or otherwise violated, absent a license thereto, by the design, manufacture, formulation, use, sale, marketing, promotion or distribution of any Product, in each case to the extent owned or licensed by Formulator or any of its Affiliates.

"Specified Materials" means all raw materials, formulated products, packaging, delivery systems and other assets used by Formulator in the manufacture, formulation, sale or distribution of Products in the Lawn and Garden Channels, including those materials set forth on Schedule 3.7(b) attached hereto.

"Specified Services" means all tolling and other services used by Formulator in the manufacture, formulation, sale or distribution of Products in the Lawn and Garden Channels, including those services provided by the third parties set forth on Schedule 3.7(c) attached hereto.

"Specified Input Agreements" means all agreements, rights, purchasing relationships or arrangements between Formulator and any third party to the extent related to any Specified Inputs, including, without limitation, all agreements or other arrangements that provide access to, or rights to use, capital assets (molds, dies, etc.), intellectual property or other rights, in each case, utilized in the design, manufacture, formulation, use, distribution, marketing, promotion or sale of any Product.

"Transferred Intellectual Property" has the meaning ascribed to such term in the APA.

"Underlying Agreements" means, collectively, the applicable BEA Critical Material Agreements and the Specified Input Agreements.

3.8 **[Deleted]**

3.9 Termination by either party hereto under any circumstances shall not (i) terminate any continuing obligations of Formulator and its employees or agents, including, but not limited to, those set forth in Sections 3.8, 6.0, 10.0, 16.0, 17.0, and 18.0, and shall in no way be deemed to be or construed as a restriction, limitation or waiver of Monsanto's rights to pursue any additional available remedy at law or in equity or (ii) terminate any continuing obligations of Monsanto and its employees or agents, including, but not limited to, those set forth

in Sections 6.0, 10.0, 13.0, 16.0, 17.0, and 18.0, and shall in no way be deemed to be or construed as a restriction, limitation or waiver of Formulator's rights to pursue any additional available remedy at law or in equity.

3.10 Termination of this Formulation Agreement under any circumstances shall be without prejudice to any rights or diminution of any obligations or liabilities of the parties hereto that may have accrued prior to the effective date of termination (including, but not limited to, the payment of any and all fees and amounts due and owing to Formulator for Formulating Services performed on or prior to the date of termination).

4.0 Quantity, Storage, Delivery, Transportation and Shipment

4.1 Monsanto and Formulator shall compile estimates of the quantity of each Product to be Prepared by Formulator for Monsanto for each Program Year to be included in the Annual Business Plan. Such quantities shall be used by Formulator in the preparation of its Annual Plant Budget. Thereafter, Formulator shall determine, based on point of sale data and other available information, the actual amount of each Product to Prepare in order to maintain appropriate stock levels throughout Formulator's distribution network to support customer demand (the "Actual Quantities"). No later than the tenth (10th) working day of each calendar month, Formulator shall provide to Monsanto written notice of the Actual Quantities of Product that are scheduled to be Prepared for the immediately following month. This notice shall be deemed Monsanto's definitive order for each Product to be Prepared for the month immediately following the notice. Formulator shall Prepare Product each month in accordance with the Actual Quantities for the applicable month. In addition, no later than the tenth (10th) working day of each calendar month, Formulator shall provide to Monsanto written notice of the estimated quantity of each Product to be Prepared for the remainder of the then-current Program Year.

4.2 Formulator shall determine the shipping schedule of each Product from the Plants in accordance with Formulator's evaluation of customer demand and appropriate stocking levels and shall ship each Product in accordance with such schedule and with such arrangements as Formulator shall make from time to time. Formulator shall prepare all appropriate bills of lading and other shipping papers and provide copies to Monsanto upon request. Shipper's weights shall govern unless shown to be in error. All freight charges for shipment of a Product shall be borne by Monsanto.

4.3 When storing a Product and shipping a Product from a Plant, Formulator shall use reasonable care to insure that the equipment used in transporting the Product is appropriate for transporting the Product, as well as suitable for the climatic conditions that might be expected or exist along the route of shipment and the destination. As used in this Section 4.3, "reasonable care" means the care, skill, prudence and diligence under the circumstances then prevailing, that a prudent person acting in a like capacity and familiar with such matters would use in making such a determination.

4.4 Formulator shall Prepare and distribute Product no less efficiently than any other product or product line that Formulator prepares and/or distributes. At Monsanto's request, Formulator shall provide documentation of shipping efficiencies and logistics cost reports.

5.0 Materials, Quality and Analysis

5.1 Monsanto, at its own expense, shall supply Formulator with Salt that the parties have agreed in this Formulation Agreement or shall otherwise agree in writing that Monsanto supply Formulator, at the Plants, at such times and in such quantities as will enable Formulator to Prepare each Product in such Actual Quantities as are required by customers from time to time pursuant to Section 4.1 hereof Monsanto shall make all necessary arrangements for carriers and shall pay all costs of shipping and delivery of Salt to the Plants. Shipper's weights shall govern unless shown to be in error. Such Salt shall remain at all times the property of Monsanto (as shall the containers in which such Salt is shipped unless otherwise agreed to in writing) and shall be used by Formulator only for the Preparation of Product.

5.2 With respect to Input Materials, Monsanto and Formulator shall work together to negotiate the terms upon which such materials will be supplied. As the parties determine to be best for purposes of maintaining the quality and cost competitiveness of the Products, the parties hereto may jointly or individually negotiate the agreements related to the Input Materials. Where one party has negotiated the supply terms for Input Materials,

such party shall provide the other party hereto with a description of the likely terms prior to any agreements being finally executed. Neither party hereto shall finalize any agreement or arrangement related to the supply of Input Materials without the prior agreement of the other party hereto. In the event Monsanto and Formulator cannot agree with each other as to acceptable terms for the supply of any Input Material, the terms for such supply shall be determined by the Steering Committee in accordance with the procedures set forth in the Agency Agreement. Administration of contracts related to the supply of the Input Materials, including but not limited to placing orders and making any necessary payments thereunder, shall be the responsibility of Formulator unless the parties hereto jointly agree in writing to act otherwise. The costs of the Input Materials shall be borne by Monsanto, and Formulator shall bill Monsanto for such costs in the invoices described in Section 9.3.1 hereof. With respect to materials of types utilized by Formulator for both (i) Preparing the Products, and (ii) purposes outside of those described in this Formulation Agreement, Formulator shall purchase such materials and invoice Monsanto periodically for such materials that are purchased on Monsanto's behalf and used for the Preparation of the Products.

5.3 Formulator shall analyze all Salt in accordance with the procedures specified in the Quality Assurance Manual for the applicable Product. With respect to any Salt not meeting the Specifications therefor, Formulator shall have the right to reject same if Formulator gives Monsanto written notice thereof within sixty (60) working days after receipt thereof by Formulator; provided that, with respect to any defect in the Salt that Formulator could not have reasonably discovered within such 60-working day period using reasonable care consistent with industry practice (a "Latent Defect"), Formulator shall have the right to reject same within five (5) working days after the discovery of such Latent Defect; otherwise, all such Salt shall be deemed to have met such Specifications. If Formulator shall give notice of the rejection of Salt to Monsanto, then, at the election and expense of Monsanto, Formulator shall either return such Salt to Monsanto in accordance with Monsanto's instructions or make such other disposition thereof as may be requested by Monsanto. Any dispute as to whether any Salt meets the applicable Specifications shall be determined by an independent laboratory appointed by both parties. All costs and fees of such determination shall be paid by the party against whom such determination is made.

5.4 Each lot of Product formulated hereunder shall be analyzed by Formulator in accordance with procedures specified by Monsanto in the Quality Assurance Manual or otherwise approved by Monsanto in writing for the applicable Product. Formulator shall promptly notify Monsanto in writing of the results of every such analysis on the forms set forth in the Quality Assurance Manual or as otherwise approved by Monsanto in writing.

5.5 All Product formulated hereunder shall meet the applicable Specifications therefor and be formulated in accordance with a quality system that is equal to or exceeds the guidelines set forth in the Quality Assurance Manual. In the event that Product has been formulated by Formulator that does not conform to said Specifications and if said Product can be reworked or reprocessed to produce Product that does conform to said Specifications, Formulator shall have the option of either reworking or reprocessing the Product within thirty (30) working days after discovery of the defect. In either case, Formulator shall bear all costs and expenses in connection therewith, including, but not limited to, the Direct Labor Costs, Input Materials and the cost of Salt. All non-Specification Product that is not capable of being reworked or reprocessed into Specification-meeting Product shall be disposed of by Formulator only in accordance with the express written instructions of Monsanto. Formulator shall assume and bear all costs and expenses associated with such disposal of non-Specification Product, as well as all costs and expenses incurred in connection with the formulation of said non-Specification Product, including, without limitation, the Direct Labor Costs, Input Materials and the cost of Salt. Any dispute as to whether any Product meets the Specifications or whether it is capable of being reworked or reprocessed shall be determined by an independent laboratory or other third party appointed by both parties. All costs and fees of such determination shall be paid by the party against whom such determination is made. Anything contained in this Section 5.5 to the contrary notwithstanding, if the Product does not conform to said Specifications due to a Latent Defect in the Salt or otherwise due to the fault of Monsanto, then the costs and expenses (including, but not limited to, the cost of additional labor and Salt) of reworking or reprocessing the Product or the costs and expenses (including, but not limited to the

costs incurred in the formulation thereof as aforesaid) of the disposal of non-Specification Product shall be for the account of and paid for by Monsanto.

5.6 Formulator shall retain samples of each lot of Product formulated hereunder and of each lot of Salt delivered to the Plants in accordance with the specifications and procedures set forth in the Quality Assurance Manual or otherwise approved by Monsanto in writing. Formulator shall store samples of inert raw materials, Salt and Product, in a manner consistent with the specifications and procedures set forth in the Quality Assurance Manual or otherwise approved by Monsanto in writing. All laboratory data, notebooks, gas or liquid chromatograph tapes and traces, production records, and all other documents relating to Salt and Products, including, but not limited to analytical results (hereinafter referred to as "Documents"), shall also be retained by Formulator for periods that are in accordance with the specifications and procedures set forth in the Quality Assurance Manual or otherwise approved by Monsanto in writing. At the end of such respective periods, unless otherwise requested by Monsanto in writing, all such samples and Documents shall be properly and promptly disposed of by Formulator; provided, that if this Formulation Agreement is terminated, Formulator shall send all samples to Monsanto in accordance with Section 10.2 of this Formulation Agreement. Monsanto shall have the right to inspect such samples and Documents upon prior written notice at any time during business hours, and Formulator shall provide access and cooperation in assisting Monsanto's inspection. Formulator shall ship samples of Salt or Product to Monsanto at such times as Monsanto may request.

5.7 Any and all costs and expenses incurred by or for the account of Formulator in performing the above described Product and Salt sampling, analysis and storage shall be borne by Formulator and all Product and Input Materials shall be received, stored, handled and utilized in accordance with manufacturer's instructions, if any, such that the quality of such Product, Salt and Input Materials is maintained.

6.0 Representations, Warranties, Covenants and Liabilities

6.1 Formulator represents, warrants and covenants to Monsanto that:

6.1.1 All Product formulated hereunder will meet the Specifications therefor and will be Prepared in a safe and lawful manner (except with respect to Latent Defects in the Salt or any Input Materials provided directly by Monsanto that Formulator could not have reasonably discovered prior to the formulation of Product using reasonable care consistent with industry practices as to which Formulator makes no representation, warranty or covenant);

6.1.2 It is capable of Preparing and will Prepare said Product from time to time at a rate sufficient to meet the reasonable requirements of customers in accordance with Section 4.1 hereof;

6.1.3 In order to prevent cross-contamination, it will clean and maintain the formulation equipment used hereunder in accordance with the Standard Analytical Methods;

6.1.4 It will use in the Preparation of a Product only the applicable Salt that meets the Specifications therefor;

6.1.5 It has complied and will comply in all material respects with all laws, decrees, rules, regulations, orders, ordinances, actions and requests of national and local courts and governmental units from which liability may accrue to Monsanto under this Formulation Agreement because of noncompliance by Formulator;

6.1.6 It has obtained and will maintain in effect all permits, licenses and other documentation required now or hereafter to be obtained and maintained by Formulator in order to comply with all applicable laws, ordinances, rules, orders, regulations and actions, and will furnish copies of same at its expense to Monsanto upon Monsanto's request;

6.1.7 It will dispose of all wastes generated as a result of this Formulation Agreement in a safe and lawful manner and in accordance with the Quality Assurance Manual and at a disposal site approved by Monsanto;

6.1.8 Except as contemplated by Section 5.5 hereof, it will not in any way salvage, recycle, reclaim, sell, use or distribute any non-Specification Product, by-products, wastes or residues resulting from Formulator's activities hereunder; and

6.1.9 In its performance of this Formulation Agreement it will comply with the requirements of the Fair Labor Standards Act of 1938, as amended, and with Executive Order 11246 and the rules, regulations and relevant orders of the Secretary of Labor, if applicable. Section 202 of Executive Order 11246 is incorporated herein by specific reference.

6.2 Monsanto represents, warrants and covenants to Formulator that:

6.2.1 Monsanto shall provide Salt to Formulator from time to time in sufficient quantities to meet the quantity requirements of customers in accordance with Section 4.1 hereof;

6.2.2 It has complied and will comply in all material respects with all laws, decrees, rules, regulations, orders, ordinances, actions and requests of national and local courts and governmental units, from which liability may accrue to Formulator under this Formulation Agreement because of noncompliance by Monsanto;

6.2.3 It has obtained and will maintain in effect all permits, licenses and other documentation required now or hereafter to be obtained or maintained by Monsanto in order to comply with all laws, ordinances, rules, orders, regulations and actions applicable to its supply of Salt hereunder, and will furnish copies of same at its expense to Formulator upon Formulator's request; and

6.2.4 In its performance of this Formulation Agreement it will comply with the requirements of the Fair Labor Standards Act of 1938, as amended, and with Executive Order 11246 and the rules, regulations and relevant orders of the Secretary of Labor, if applicable. Section 202 of Executive Order 11246 is incorporated herein by specific reference.

6.3 Without limiting any of Formulator's obligations under this Formulation Agreement, Formulator shall assume full responsibility for and shall indemnify and hold harmless Monsanto, Monsanto's past, present and future directors, officers, employees and agents and all persons acting on their behalf, from and against any and all losses, claims, obligations, liens, encumbrances, liabilities, penalties, causes of action, damages, costs and expenses (including, without limitation, costs and expenses of defense, orders, judgments, fines, amounts paid in settlement and reasonable attorneys' fees and expenses), whether the foregoing are based in contract, warranty, negligence (except to the extent due to the negligence of Monsanto), strict liability, other tort, or any other legal theory, in connection with any of the activities contemplated or encompassed under this Formulation Agreement, including, without limitation, injury to or death of persons (including, without limitation, employees or agents of Monsanto or Formulator) and/or damage to or loss (including, without limitation, loss of use of) or destruction of any property (including, without limitation, property of Monsanto or Formulator, or their respective employees or agents) or contamination of, injury or damage to, or adverse effect on humans, animals, aquatic and wildlife, vegetation, air, water, land or the environment, caused by or connected with: (i) the failure of any Product formulated by Formulator hereunder to meet the Specifications therefor or the failure of any Product to be fully Prepared, except insofar as the same shall be caused by any Latent Defect in the Salt or any Input Materials provided directly by Monsanto that Formulator could not have reasonably discovered prior to the formulation of the product or as otherwise caused by Monsanto; (ii) the disposal by Formulator of any liquid and/or solid waste generated, produced or resulting from Formulator's activities hereunder, including, but not limited to, non-Specification Product and waste water or solids resulting from cleaning of equipment or from spills and/or leakage; (iii) any failure by Formulator or any of its employees to observe or comply with any applicable laws, decrees, ordinances, codes, rules, regulations or orders, actions

or requests of any governmental unit or entity or a court with respect to any matter arising hereunder; (iv) any breach by Formulator of any of the terms or provisions of this Formulation Agreement; (v) the handling, possession, transportation, processing, further manufacture, other use or disposition hereunder by Formulator of Salt or Product; or (vi) any negligent act or omission of Formulator, its officers, employees, agents, contractors. In case any action, suit or proceeding (whether civil, criminal, administrative or investigative) is brought against any party indemnified by Formulator under this Formulation Agreement, Formulator, upon the request of said indemnified party, will, at Formulator's expense, cause such action, suit or proceeding to be defended by counsel mutually agreed upon by Monsanto and Formulator and under the direction of Formulator, and Monsanto shall have the right, at Monsanto's expense, to participate in the investigation, settlement and/or compromise of same.

6.4 Without limiting any of Monsanto's obligations under this Formulation Agreement, Monsanto shall assume full responsibility for and shall indemnify and hold harmless Formulator, Formulator's past, present and future directors, officers, employees and agents and all persons acting on their behalf, from and against any and all losses, claims, obligations, liens, encumbrances, liabilities, penalties, causes of action, damages, costs and expenses (including, without limitation, costs and expenses of defense, orders, judgments, fines, amounts paid in settlement and reasonable attorneys' fees and expenses), whether the foregoing are based in contract, warranty, negligence (except to the extent due to the negligence of Formulator), strict liability, other tort, or any other legal theory, in connection with any of the activities contemplated or encompassed under this Formulation Agreement, including, without limitation, injury to or death of persons (including, without limitation, employees or agents of Monsanto or Formulator) and/or damage to or loss (including, without limitation, toss of use of) or destruction of any property (including, without limitation, property of Monsanto or Formulator, or their respective employees or agents) or contamination of, injury or damage to, or adverse effect on humans, animals, aquatic and wildlife, vegetation, air, water, land or the environment, caused by or connected with: (i) any breach by Monsanto of any of the terms or provisions of this Formulation Agreement; (ii) any failure by Monsanto or any of its employees to observe or comply in any material respect with any applicable laws, decrees, ordinances, codes, rules, regulations or orders, actions or requests of any governmental unit or entity or a court with respect to any matter arising hereunder, (iii) the handling, possession, transportation, processing, manufacture, other use or disposition hereunder by Monsanto of Salt or Product; or (iv) any negligent act or omission of Monsanto, its officers, employees, agents or contractors. In case any action, suit or proceeding (whether civil, criminal, administrative or investigative) is brought against any party indemnified by Monsanto under this Formulation Agreement, Monsanto, upon the request of said indemnified party, will, at Monsanto's expense, cause such action, suit or proceeding to be defended by counsel mutually agreed upon by Monsanto and Formulator and under the direction of Monsanto, and Formulator shall have the right, at Formulator's expense, to participate in the investigation, settlement and/or compromise of same.

6.5 The indemnification provided pursuant to Section 6.4 hereof shall be Formulator's sole and exclusive remedy against Monsanto for any losses due to third party claims against Formulator which are a result of, with respect to or arising out of this Formulation Agreement. The indemnification provided pursuant to Section 6.3 hereof shall be Monsanto's sole and exclusive remedy against Formulator for any losses due to third party claims against Monsanto which are a result of, with respect to, or arising out of this Formulation Agreement.

6.6 Formulator knows and understands the potential health, safety and/or environmental considerations associated with the Salt and each Product and any toxic or hazardous properties connected with the Salt, each Product and all wastes generated therefrom. Information concerning the foregoing and recommended precautions for exposure to, handling and storage of the Salt and Product has been provided to Formulator by Monsanto as set forth in the Quality Assurance Manual for the applicable Product. Formulator agrees that the information referred to in this paragraph has been and will be transmitted to Formulator's employees, agents and representatives prior to their employment in connection with the services to be performed under this Formulation Agreement and shall see that all appropriate safety, handling and storage precautions are followed to ensure the safety and well-being of persons, property and the environment in the performance of such services.

7.0 Records and Inspection

7.1 Formulator shall: (i) keep appropriate and complete records and submit periodic reports, as so directed by Monsanto, of all Formulating Services provided hereunder; (ii) after Monsanto's prior request, make all such records available to Monsanto for inspection at all reasonable times; and (iii), at its expense, provide copies thereof as requested by Monsanto, except insofar as the same are protected by any legal privilege. Formulator shall submit to Monsanto, at such times and on a form as required in the Quality Assurance Manual or otherwise approved in writing by Monsanto, a production and shipping report, which report shall include a detailed explanation of all production, Preparation and shipment of each Product, as well as any problems encountered regarding the same. In addition, Formulator shall, on a form as set forth in the Quality Assurance Manual or otherwise approved in writing by Monsanto, make written reports to Monsanto at the end of each calendar month or at such other interval as approved by Monsanto in writing, detailing the status of all inventories and usage of Salt, Product-in-process, and finished Product produced.

7.2 Monsanto or its designated representatives shall be given access at all reasonable times to the Plants with prior reasonable notice to observe and inspect all phases of Formulator's Formulating Services performed hereunder and as further defined in the Quality Assurance Manual, subject to such reasonable limitations as may be imposed by Formulator consistent with the dictates of orderly management, Plant efficiency and Plant safety.

8.0 Labeling

8.1 Appropriate Labels shall be supplied by Formulator for the packaging of each Product. Formulator shall use said Labels only for such packages and shall not use them in any other manner. Formulator shall not apply other labels to any Product packages unless specifically authorized in writing by Monsanto.

9.0 Financial Practices

9.1 Financial Definitions

9.1.1 "Actual Amounts" is defined in Section 9.3.2.

9.1.2 "Asset Base" for any Program Year means the Product-related net book value of the Plants as of the last day of each Program Year. The Asset Base shall exclude the net book value of any entire Production Line that does not engage in the Preparation of Product or support in the Preparation of Product in any way.

9.1.3 "Capital Charge" equals, with respect to all Products other than the BEA Products, nine percent (9%) of the Asset Base multiplied by the Support Ratio (excluding the Support Ratio applicable to the BEA Products). For the avoidance of doubt, for purposes of calculation of the Capital Charge, the BEA Products shall be excluded from such calculation. The "BEA Products Capital Charge", equals, with respect solely to the BEA Products, three percent (3%) of the Asset Base multiplied by the Support Ratio applicable to the BEA Products.

9.1.4 "Direct Labor Costs" means the actual costs associated with the Direct Labor Hours that are spent on a Production Run. If a Production Line is unscheduled, or down for scheduled or major maintenance, then such hours are not associated with any particular production order and, hence, not included in the calculation of Labor Costs for a particular Production Run. As of the First Amendment Date but subject to change from time to time, the Direct Labor Costs consist of the following cost elements identified in Formulator's cost center report: "Direct Labor," "Overtime Direct," "D/L Contracted Labor," and "Contracted D/L - Overtime."

9.1.5 "Direct Labor Hours" means the total hours of actual labor, as recorded in Formulator's software systems, used by a Production Line to execute a specific Production Run, including all downtime and machine changeover time associated with such Production Run, but excluding any hours of labor associated with scheduled down time.

9.1.6 “Formulation Fee” means the sum of the total labor costs and total overhead costs of all Production Lines used in Preparing Product during a Program Year, determined in accordance with the formula set forth below:

Formulation Fee = E [(Overhead Costs for Line n - Machine Hours for Line n) x Total RU Machine Hours for Line n + (Direct Labor Costs for Line n + Direct Labor Hours for Line n) x Total RU Labor Hours for Line n]

Where:

Line n = each Production Line used in Preparing Product.

9.1.7 “Machine Hours” means the period of time, in hours, used by a Production Line to execute a specific Production Run, including all downtime and machine changeover time associated with such Production Run, but excluding any hours of scheduled downtime.

9.1.8 “Overhead Costs” means the actual overhead costs at the Plants, as recorded in Formulator’s systems and as defined by the cost centers in Appendix A, which may be amended from time to time by the written agreement of the parties. One hundred percent (100%) of the Overhead Costs incurred by the Plants will be allocated among the individual Production Lines at the Plants. Overhead Costs directly associated with a particular Production Line, including maintenance costs and equipment depreciation, will be charged directly to that particular Production Line’s cost center. All other Overhead Costs will be allocated to each Production Line’s cost center in accordance with the applicable cost drivers for each type of Overhead Cost as set forth in Appendix A. The anticipated allocation of Overhead Costs to each Production Line for each Program Year will be reviewed by the parties as part of the Annual Plant Budget review process for such Program Year in accordance with Section 9.2.

9.1.9 “Production Line” means the equipment used to de-palletize, sort, fill, cap, label, and case pack bottles or used to create display units during a Production Run.

9.1.10 “Production Run” means the discreet production of a single Product on a specific Production Line to fulfill a production order, including all downtime and machine changeover time associated with producing such Product, but excluding any scheduled downtime.

9.1.11 “Support Ratio” means the sum of Machine Hours used in the Preparation of Product at the Plants, divided by the aggregate Machine Hours for all Production Lines used in the Preparation or support of Product at the Plants, excluding any Machine Hours on Production Lines excluded from the Asset Base.

9.1.12 “Total RU Labor Hours” means the total Direct Labor Hours used to execute all Production Runs for Products on a Production Line in a Program Year.

9.1.13 “Total RU Machine Hours” means the total Machine Hours used to execute all Production Runs on a Production Line in a Program Year.

9.2 During the term of this agreement, Formulator shall be responsible for submitting an Annual Plant Budget to Monsanto for each Program Year. The Annual Plant Budget for each Program Year must be finalized by Formulator and submitted to Monsanto in accordance with the notice provisions set forth herein no later than September 15 of each year during the term of this Formulation Agreement. Prior to finalizing the Annual Plant Budget for each Program Year, Formulator shall use its commercially reasonable efforts to review and discuss the Annual Plant Budget, the budgeted formulation fee, the budgeted capital charge and the methodologies used to establish the Annual Plant Budget, the budgeted formulation fee and the budgeted capital charge with the Global Support Team.

9.3 Payment Terms and Cash Settlement

9.3.1 During the term of this Formulation Agreement, Monsanto shall pay Formulator on a monthly basis for the prior month's Formulation Fee, Capital Charge and BEA Products Capital Charge through the monthly cash settlement process. For purposes of the settlement process as described hereto, the Formulation Fee, the Capital Charge and the BEA Products Capital Charge will be calculated based on actual costs for each given month in accordance with Section 9.1.4.

9.3.2 At the end of each Program Year during the term of this Formulation Agreement, upon the submission by Formulator to Monsanto of the Statement of Actual Results, the parties shall reconcile the Formulation Fee, the Capital Charges and the BEA Products Capital Charges set forth in the Statement of Actual Results for such Program Year (the "Actual Amounts") against the Formulation Fee, Capital Charges and BEA Products Capital Charges invoiced pursuant to Section 9.3.1 for such Program Year (the "Invoiced Amounts") such that (i) if and to the extent the Invoiced Amounts exceed the Actual Amounts, then Formulator shall pay Monsanto the amount of the difference, and (ii) if and to the extent the Actual Amounts exceed the Invoiced Amounts, then Monsanto shall pay Formulator the amount of the difference.

9.3.3 The comparison set forth in Section 9.3.2 will be estimated and completed at the end of the Monsanto fiscal year, August 31st, and finalized at the end of Formulator's fiscal year, September 30th, for each Program Year.

9.3.4 During the thirty (30) days immediately following the receipt of the Statement of Actual Results by Monsanto, Monsanto and its representatives shall, at Monsanto's expense, be entitled to review the Statement of Actual Results and any working papers, trial balances and similar materials relating to the Statement of Actual Results prepared by Formulator. During such 30-day period, Formulator will provide Monsanto and its representatives with access, not unreasonably interfering with the operations of the Plants, during normal business hours, to the personnel, properties, books and records of the Plants. The Statement of Actual Results shall become final and binding upon the parties on the thirty-first (31st) day following receipt thereof unless Monsanto gives written notice to Formulator of its disagreement with the Statement of Actual Results (a "Notice of Disagreement") prior to such date. Any Notice of Disagreement shall specify in reasonable detail the nature of any disagreement so asserted. If a timely Notice of Disagreement is delivered by Monsanto, then the Statement of Actual Results shall become final and binding upon the parties on the earlier of (a) the date the parties hereto resolve in writing all differences they have with respect to any matter specified in the Notice of Disagreement or (b) the date all matters in dispute are finally resolved by the Independent Accounting Firm. The date on which the Statement of Actual Results becomes final and binding upon the parties in accordance with this Section 9.3.4 is referred to herein as the "Final Determination Date." During the thirty (30) days immediately following the delivery of any Notice of Disagreement, Monsanto and Formulator shall seek in good faith to resolve in writing any differences that they may have with respect to any matters specified in such Notice of Disagreement. During such period, Monsanto and Formulator shall have access to the other's working papers, trial balances and similar materials prepared in connection with the Statement of Actual Results and the Notice of Disagreement, as the case may be. At the end of such 30-day period, Monsanto and Formulator shall submit to an independent, national public accounting firm that has no prior relationship with Formulator or Monsanto (the "Independent Accounting Firm") for review and resolution of any and all matters that remain in dispute and that are included in the Notice of Disagreement. The Independent Accounting Firm shall reach a final resolution of all matters and shall furnish such resolution in writing to Monsanto and Formulator as soon as practicable, but in no event more than thirty (30) days, after such matters have been referred to the Independent Accounting Finn. Such resolution shall be made in accordance with this Formulation Agreement and will be conclusive and binding upon Monsanto and Formulator. The costs related to the engagement of the Independent Accounting Firm shall be shared equally between the parties hereto.

9.3.5 Formulator acknowledges that the quantities of Salt and other Input Materials set forth for each Product in the Quality Assurance Manual constitute the quantities of such items normally used in Preparing Product. The loss factors for Input Materials shall be two percent (2%) (the "Loss Standard"). Commencing with the twelve (12) month period beginning October 1, 1999, with respect to each Input Material, if Formulator exceeds the greater of 125% of (i) the applicable quantity set forth in the Quality Assurance Manual, or (ii) the Loss Standard, for any reason (including, but not limited to, conversion, loss, theft, destruction or damage), Formulator shall reimburse Monsanto for the value of the loss of such Input Materials to the extent such losses exceed the thresholds established in either clause (i) or (ii) above, as applicable; provided, however, that Input Materials with Latent Defects shall not be included in determining Formulator's losses. Any such reimbursement will be based, at Monsanto's option, upon either the then-current United States market list price, if any, for the Salt or other Input Material, or Monsanto's then-current United States replacement cost of the Salt or other Input Material, including insurance, duties, importing costs, broker's fees and other charges, if any. Said reimbursement will be paid by Formulator to Monsanto within thirty (30) days after Monsanto notifies Formulator of each such excess Salt or other Input Material usage.

9.3.6 Prior to Formulator undertaking capital improvements at the Plants that relate to or affect the Preparation of the Products, Formulator shall use its commercially reasonable efforts to provide Monsanto with a description of such improvements and an estimate of the anticipated expenses related thereto.

9.4 In the event that the Formulation Fee as set forth in the Statement of Actual Results for any completed Program Year exceeds the Formulation Fee from the previous Program Year by more than ten percent (10%) (exclusive of increases agreed upon during such completed Program Year, increases in Volume at Monsanto's request, modifications as to the particular SKUs budgeted to be Prepared, and changes at Monsanto's request to Product Specifications during the course of such completed Program Year), then Formulator shall reimburse Monsanto for the difference between such Formulation Fee and one hundred ten percent (110%) of the Formulation Fee for the previous Program Year within 30 (thirty) days after the conclusion of the completed Program Year.

10.0 Title

10.1 Except as otherwise provided in this Formulation Agreement, title to and all other incidents of ownership of all Salt, Input Materials and Product (said Salt, Input Materials and Product being hereinafter sometimes collectively referred to as "Monsanto's Materials") shall be in Monsanto at all times. Formulator shall label or identify Monsanto's Materials in such a way as to put creditors and others on notice that Monsanto retains title thereto. Formulator shall not sell or otherwise dispose of Monsanto's Materials, or use Monsanto's Materials in any way other than as provided in this Formulation Agreement. Monsanto's Materials shall not be subject to distress or lien for payments or other encumbrances made, done or suffered by Formulator, and Formulator shall not directly or indirectly create, assume or permit to exist any mortgage, lien, charge or encumbrance on or pledge or security interest of any kind or character on Monsanto's Materials or any part thereof, nor take, nor permit to be taken, any action that might result in a mortgage, lien, charge, encumbrance, pledge or security interest on the same. In the event that any of the foregoing shall exist against Monsanto's Materials, or in the event any notice of attachment, levy or garnishment shall be served on Formulator in connection with Monsanto's Materials, Formulator shall promptly remove or discharge the same by bonding, payment or otherwise, but in no event more than fifteen (15) days after the date on which Formulator has been served or received notice of the same.

10.2 All of Monsanto's Materials remaining in Formulator's possession or custody upon termination or expiration of this Formulation Agreement shall be returned by Formulator to Monsanto loaded aboard a carrier at the applicable Plant within thirty (30) days after the effective date of such termination, with Formulator bearing all packing and loading costs unless the termination of this Formulation Agreement was caused by Monsanto's breach hereof or was a result of Monsanto providing notice of termination pursuant to Section 3.1 hereof in which case such costs shall be borne by Monsanto; provided, however, that at Monsanto's option, if said termination is due to Monsanto terminating this Formulation Agreement as a result of Formulator's breach of its obligations, warranties or representations under this Formulation Agreement, including, but not limited to

(except as excused by Force Majeure as set forth in Section 12), Formulator's failure to Prepare for Monsanto such Actual Quantities of Product as may be required by customers pursuant to Section 4.1 hereof, Formulator shall bear, in addition to packing and loading costs, the reasonable costs of shipping and insuring delivery of Monsanto's Materials and of any appropriate documents to a shipping point designated by Monsanto.

10.3 While any and all of Monsanto's Materials are in the possession, custody or control of Formulator, Formulator agrees to bear the risk of any loss or damage to same. Monsanto's Materials shall be deemed to be in the possession, custody or control of Formulator upon arrival at the Plant (with respect to Salt) or Preparation by Formulator (with respect to Product), as the case may be, and shall remain in Formulator's possession, custody and control until physical delivery to the carrier for delivery to Monsanto.

11.0 Taxes

11.1 Monsanto shall bear all tangible personal property taxes on Salt and each Product and all taxes or governmental charges (other than taxes measured by or placed upon gross receipts or net income) upon the transportation and delivery of each Product to Monsanto, whether such taxes or charges are now in effect or hereafter become effective during the term of this Formulation Agreement. Formulator shall bear all other taxes or other governmental charges arising out of this Formulation Agreement.

12.0 Force Majeure

12.1 Except for (i) Formulator's obligations under Sections 6.0, 10.0 (other than as provided therein), 13.1.3, 16.0, 17.0 and 18.0, and (ii) Monsanto's obligations under Sections 6.0, 10.0 (other than as provided therein), 13, 16.0, 17.0 and 18.0, performance of any obligation under this Formulation Agreement may be suspended by either party, in whole or in part, without liability to the other party, by promptly notifying the other party of the nature and estimated duration of the suspension period in the event of: an act of God, war, riot, fire, explosion, accident, flood, sabotage; lack of adequate fuel, power, labor, containers or transportation facilities; compliance with governmental requests, laws, regulations, orders or actions; breakage or failure of machinery or apparatus, which breakage or failure was beyond the reasonable control of the affected party or could not have been prevented by reasonable maintenance; national defense requirements or any other event, whether or not of the class enumerated herein, beyond the reasonable control of such party; or in the event of labor trouble, strike, lockout or injunction (provided that neither party shall be required to settle a labor dispute against its own best judgment); which event prevents the manufacture, Preparation or shipment, or the acceptance, use, sale or distribution of any Product or Salt, as the case may be, or any product manufactured or processed therefrom or therewith. At Monsanto's option, the period specified for delivery of any Product hereunder may be extended by the period of delay occasioned by any such suspension and deliveries omitted or portions thereof shall be made during such extension, or the total quantity ordered hereunder shall be reduced by the deliveries affected by the suspension of such performance, but this Formulation Agreement shall otherwise remain unaffected. Nothing in this Section 12.0 shall excuse Formulator from performance of its obligations under this Formulation Agreement by reason of its failure or inability to observe or comply with Section 6.1.5 or Section 6.1.6 of this Formulation Agreement or excuse Monsanto from performance of its obligations under this Formulation Agreement by reason of its failure or inability to observe or comply with Section 6.2.2 or Section 6.2.3 of this Formulation Agreement or excuse Monsanto from paying any and all fees due in accordance with Section 9.0 hereof to Formulator for Formulating Services performed to the date of suspension.

13.0 Patent Indemnity

13.1 Monsanto agrees to indemnify Formulator for any and all claims, losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees, court costs and settlement costs) incurred by Formulator as a result of, with respect to, or arising out of the use of Salt or any Product, other than a BEA Product, by Formulator in accordance with this Formulation Agreement which constitutes an infringement or an alleged infringement of a patent in the U.S. or any foreign country, provided that:

13.1.1 Monsanto is promptly notified in writing by Formulator of any such claim;

13.1.2 No attempt to settle said claim is made without Monsanto's prior written consent;

13.1.3 In the event of a suit, Monsanto shall, at Monsanto's election, have sole charge and direction thereof, in which event Formulator shall render such reasonable assistance in the defense thereof as Monsanto may require (all at Monsanto's expense); and

13.1.4 If Monsanto determines that any third party patents may be asserted against Monsanto or Formulator with respect to any Product, Monsanto may change the Quality Assurance Manual with respect to such Product, notwithstanding the provisions of the definition of "Quality Assurance Manual" in Section 1.41 hereof, upon thirty (30) days advance written notice to Formulator.

13.1.5 For clarity, in no event shall Monsanto's obligations under this Section 13.1 apply or otherwise extend to any BEA Product.

14.0 Insurance

14.1 Formulator shall not begin performance under this Formulation Agreement until it has obtained all the insurance hereinafter required.

14.2 Every contract of insurance providing the coverages required herein shall provide that such coverage shall not be terminated, reduced or substantially altered without the insurance carrier first giving Monsanto at least thirty (30) days prior written notice thereof, and Formulator shall make such arrangements as are reasonably necessary to ensure that no termination, reduction, cancellation or substantial alteration of the insurance required herein becomes effective until thirty (30) days after Monsanto receives such notice. If there is any material reduction in Formulator's insurance coverage as required by Section 14.3 hereof, then Monsanto may exercise its rights pursuant to clause (i) of Section 3.2 hereof.

14.3 Formulator shall take out and maintain, at its expense, during the term of this Formulation Agreement, and for a minimum of two (2) years following the expiration or termination of this Formulation Agreement, at least the following insurance with insurance companies reasonably satisfactory to Monsanto and Formulator and with deductibles not in excess of $2,000,000;

14.3.1 Workers' Compensation Insurance in compliance with the laws of the States of Iowa and any other states in which a Plant is located, including, if the Plant and Formulating Services involve navigable waters, coverage for United States Longshoremen's and Harbor Waters Act;

14.3.2 Employer's Liability Insurance, of not less than $1,000,000 including, if the Plant and Formulating Services involve navigable waters, coverage for Maritime (Jones Act);

14.3.3 Comprehensive General Liability and Comprehensive Automobile Liability, including all owned, hired and non-owned vehicles with limits of $5,000,000 each occurrence; and

14.3.4 Fire and extended coverage insurance in customary form and amount covering the Plant.

14.4 The insurance certificate evidencing the required coverage shall include a certification that the above-described insurance coverages include contractual coverage for Formulator's liability under this Formulation Agreement, and contain a waiver of subrogation by Formulator and its insurance carrier against Monsanto. Monsanto shall be named as an additional insured on all such insurance policies.

14.5 Formulator hereby waives any and all claims, rights of action or rights of recovery against Monsanto for any loss or damage which may occur to the Plant on which Formulator has in effect fire and extended coverage insurance or similar types of insurance, to the extent that such loss or damage is insured and regardless of whether or not any such loss or damage is caused by Monsanto's negligence.

14.6 The insurance described herein sets forth minimum amounts and coverages and is not to be construed in any way as a limitation on Formulator's liability.

15.0 Independent Contractor

15.1 Formulator is and shall always remain an independent contractor in its performance of this Formulation Agreement. The provisions of this Formulation Agreement shall not be construed as authorizing or reserving to Monsanto any right to exercise any control or direction over the operations, activities, officers, employees, or agents of Formulator in connection with this Formulation Agreement, it being understood and agreed that the entire control and direction of such operations, activities, employees, or agents shall remain with Formulator. Neither party to this Formulation Agreement shall have any authority to employ any person as an employee or agent for or on behalf of the other party to this Formulation Agreement for any purpose, and neither party to this Formulation Agreement, nor any person performing any duties or engaging in any work at the request of such party, shall be deemed to be an employee or agent of the other party to this Formulation Agreement. In addition, Formulator is not and shall not act or purport to act as a commercial agent for Monsanto.

16.0 Confidential Information

16.1 The parties hereto may not, at any time during the period beginning with the date of receipt of any confidential information of the other party and ending five (5) years after the termination of this Formulation Agreement, disclose to any other person any confidential information that has been disclosed to it by the other party, except with the prior written consent of such party or as provided in Section 16.2.

16.2 Except as otherwise provided in any agreement by and between the parties hereto or any of their affiliates, any confidential information that is disclosed by a party to the other party may be:

16.2.1 Disclosed to any directors, officers, employees, agents or contractors of such other party, to such extent only as is reasonably necessary for fulfillment of the party's obligations under this Formulation Agreement;

16.2.2 Disclosed to any governmental or other authority or regulatory body to the extent required by law, provided that the disclosing party must take all reasonable measures to ensure that such authority or body keeps the same confidential and does not use the same except for the purpose for which such disclosure is made, and further provided that the party proposing to so disclose must give prior notice of that intent to the other party and permit the other party, at its option, to contest said requirement and to seek confidential treatment of such information;

16.2.3 Disclosed to a court or litigant, to the extent such disclosure is ordered by a court or government agency of competent jurisdiction, provided that the disclosing party must take all reasonable measures to ensure that the court, other litigants, or government agency keep the same confidential and do not use the same except for the purpose for which such disclosure is made, and further provided that the disclosing party must give prior notice of that intent to the other party and permit the other party, at its option to contest said requirement and to seek confidential treatment of such information; and

16.2.4 Used for any purpose, or disclosed to any other person, to the extent only that it is on the Effective Date or thereafter becomes, public knowledge through no fault of the party proposing disclosure, or is disclosed to such party by a third party as a matter of right, or can be shown by such party to have been known to such party prior to such disclosure by written records.

16.3 Monsanto shall supply Formulator with sufficient technical information to enable Formulator to Prepare each Product. Monsanto hereby gives Formulator the right to use such technical information solely for the purposes, and solely during the term, of this Formulation Agreement. Notwithstanding any other provision of this Formulation Agreement, the parties agree that such information is the confidential property and trade secret of Monsanto and shall be governed by the provisions of this Section 16.0.

16.4 Each party hereto shall restrict the knowledge of all information regarding the Formulating Services hereunder to as few as possible of its officers and employees, and in all cases shall restrict such knowledge to only those officers and employees who are directly connected with the performance of this Formulation Agreement. Each

party hereto warrants that all of its officers and employees shall be subject to and shall comply with the restrictions set forth in this Section 16.0.

16.5 No right or license, express or implied, is granted or is intended to be granted by Monsanto to Formulator under this Formulation Agreement under any patent or application of Monsanto or any of its subsidiaries except permission to Prepare each Product for Monsanto.

17.0 Assignment

17.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that Formulator shall not (by operation of law or otherwise) transfer or assign its rights or delegate its performance hereunder without the prior written consent of Monsanto and any such transfer, assignment or delegation without such consent, shall be void and of no effect. Notwithstanding the foregoing, Formulator may at any time transfer its rights hereunder to any one or more of its subsidiaries or other affiliates so long as Formulator remains liable for all of its obligations hereunder, and so long as Formulator provides Monsanto with reasonable prior written notice of such transfer.

18.0 Notices

18.1 Any notice, request, instruction or other document to be given hereunder by any party hereto to any other party hereto must be in writing and delivered personally (including by overnight courier or express mail service) or sent by registered or certified mail, or be transmitted by facsimile or other means of electronic data transmission, confirmed by express mail or overnight courier service, in each case with postage or fees prepaid,

If to Formulator:	The Scotts Company LLC 14111 Scottslawn Road Marysville, OH 43041 Attn: President Telephone: (937) 644-7143 Facsimile No.: (937) 644-7568
With a copy to:	The Scotts Company LLC 14111 Scottslawn Road Marysville, OH 43041 Attn: Legal Department, General Counsel Telephone: (937) 644-7450 Facsimile No.: (937) 644-7568
If to Monsanto:	Monsanto Company 800 North Lindbergh Blvd. St. Louis, MO 63167 Attn: Director, Lawn & Garden Telephone: (314) 694-2612 Facsimile No.: (314) 694-4327
With a copy to:	Monsanto Company 800 North Lindbergh Blvd. St. Louis, MO 63168 Attn: Office of General Counsel Telephone: (314) 694-9323 Facsimile No.: (314) 694-6458

or to such other address as may be specified from time to time in a written notice given by such party. Any notice shall be deemed to be received on the day on which personally delivered or, if given by prepaid certified or registered mail, on the tenth (10th) day after being posted or on the date of actual receipt, whichever date is earlier. Both parties agree to acknowledge in writing the receipt of any notice delivered in person.

19.0 Governing Law; Jurisdiction

19.1 THE VALIDITY, INTERPRETATION AND PERFORMANCE OF THIS AGREEMENT AND ANY DISPUTE CONNECTED WITH THIS AGREEMENT SHALL BE GOVERNED BY AND DETERMINED IN ACCORDANCE WITH THE STATUTORY, REGULATORY AND DECISIONAL LAW OF THE STATE OF DELAWARE (EXCLUSIVE OF SUCH STATE'S CHOICE OR CONFLICTS OF LAWS RULES) AND, TO THE EXTENT APPLICABLE, THE FEDERAL STATUTORY, REGULATORY AND DECISIONAL LAW OF THE UNITED STATES (EXCEPT FOR THE U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, APRIL 10, 1980, U.N. DOC. A/CONF. 97/18, 19 I.L.M. 668,671 (1980) REPRINTED IN PUBLIC NOTICE, 52 FED. REG. 662-80 (1987), WHICH IS HEREBY SPECIFICALLY DISCLAIMED AND EXCLUDED).

19.2 Subject to Section 19.1 hereof, any suit, action or proceeding against any party hereto with respect to the subject matter of this Formulation Agreement, or any judgment entered by any court in respect thereof, shall be brought or entered in the United States District Court for the District of Delaware, if such court has jurisdiction over the subject matter of such proceeding or, if such jurisdiction is not available, in the Court of

Chancery of the State of Delaware, County of New Castle, and each such party hereby irrevocably submits to the jurisdiction of such court(s) for the purpose of any such suit, action, proceeding or judgment. Each party hereto hereby irrevocably waives any objection which any of them may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Formulation Agreement brought as provided in this Section 19.0, and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. To the extent each party hereto has or hereafter may acquire any immunity from jurisdiction of any court or from legal process with respect to itself or its property, each party hereto hereby irrevocably waives such immunity with respect to its obligations under this Section 19(b). The parties hereto agree that exclusive jurisdiction of all disputes, suits, actions or proceedings between the parties hereto with respect to the subject matter or this Formulation Agreement lies in the United States District Court of Delaware, or the Court of Chancery of the State of Delaware, County of New Castle, as hereinabove provided. Formulator hereby irrevocably appoints CT Corporation, having an address at 1209 Orange Street, Wilmington, Delaware 19801 and Monsanto hereby irrevocably appoints CT Corporation, having an address at 1209 Orange Street, Wilmington, Delaware 19801, as its agent to receive on behalf of each such party and its respective properties, services of copies of any summons and complaint and any other pleadings or process of any summons and complaint and any other pleadings or process which may be served in any such action or proceedings. Service by mailing (by certified mail, return receipt requested) or delivering a copy of such process to a party in care of its agent for service of process as aforesaid shall be deemed good and sufficient service thereof, and each party hereby irrevocably authorizes and directs its respective agent for service of process to accept such service on its behalf.

20.0 Miscellaneous

20.1 Entire Agreement. This Formulation Agreement (including the Exhibits), the Agency Agreement and all other agreements signed or delivered at Closing constitute a complete and exclusive statement of the terms and conditions of their agreement relating to the subject matter hereof and supersede any all prior agreements, whether written or oral, that may exist between the parties with respect thereto. Except as otherwise specifically provided in this Formulation Agreement, no conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms or conditions of this Formulation Agreement will be binding unless hereafter made in writing and signed by the party to be bound, and no modification will be effected by the acknowledgment or acceptance of documents containing terms or conditions at variance with or in addition to those set forth in this Formulation Agreement, except as the parties specifically agree otherwise in writing.

20.2 Employees. As used in this Formulation Agreement, employees or agents of a party hereto shall be deemed to include such party’s past, present and future officers and directors.

20.3 Headings. Section headings are for convenience of the parties only and are in no way to be construed as part of this Formulation Agreement or as a limitation of the scope of the particular Section to which they refer.

20.4 Holidays. If any date, or the last day of any period, set forth in this Formulation Agreement is a Saturday, Sunday or legal holiday in the United States or the States of Missouri, or Ohio such date or period shall be extended to the next business day.

20.5 Severability. The invalidity or unenforceability for any reason of any part of this Formulation Agreement shall not prejudice or affect the validity or enforceability of the remainder. The invalidity or unenforceability of this Formulation Agreement or any part hereof in any country or countries shall not prejudice or affect the validity or enforceability of this Formulation Agreement or any part thereof in any other country or countries.

20.6 Relationship of Parties. Nothing in this Formulation Agreement creates, or may be deemed to create, a partnership, joint venture or the relationship of principal and agent among the parties. Neither party is authorized or empowered to act as agent for the other for any purpose and shall not on behalf of the other party either enter into any contract, undertaking or agreement of any kind whatever.

20.7 Waivers. No waiver by a party with respect to any breach or default or of any right or remedy and no course of dealing or performance, will be deemed to constitute a continuing waiver of any other breach or default or

of any other right or remedy, unless such waiver is expressed in writing signed by the party to be bound. Failure of a party to exercise any right will not be deemed a waiver of such right or rights in the future.

20.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed to be an original and all of which will constitute the same instrument.

20.9 Public Announcements. The parties agree to make no press releases or public announcements relating to the subject matter of this Formulation Agreement without first obtaining the written consent of the other party.

20.10 Construction. Whenever examples are used in this Formulation Agreement with the words “including,” “for example,” “e.g.,” “such as,” “etc.” or any derivation of such words, such examples are intended to be illustrative and not limiting. For purposes of this Formulation Agreement, (i) the word “or” is not exclusive, (ii) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Formulation Agreement as a whole, (iii) each definition shall be equally applicable to the singular and plural forms of the terms defined, as well as the past and present tense and any nominalized form of any defined verb, and (iv) words importing the masculine gender shall also include the feminine and neutral genders, and vice versa. Unless the context otherwise requires, references herein: (a) to Sections and attachments mean the sections of and schedules to this Formulation Agreement; (b) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Formulation Agreement; and (c) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The attachments referred to herein shall be construed with and as an integral part of this Formulation Agreement to the same extent as if they were set forth verbatim herein.

[Signatures appear on following page]

IN WITNESS WHEREOF, the parties have caused this Formulation Agreement to be executed in duplicate by their duly authorized representatives as of the Second Amendment Date.

THE SCOTTS COMPANY LLC	MONSANTO COMPANY
By:_____	By:_____
Name:_____	Name:_____
Title:_____	Title:_____

Schedule A

BEA Products

PRODUCT	ASSOCIATED SKUS	ASSOCIATED EPA REGISTRATION NO.
Roundup for Lawns Bug Destroyer	4385404; 4385440; 4385524, 4385501, 4385542	239-2701
Roundup for Lawns Crabgrass Destroyer	4385606; 4386004; 4386020; 4386015	239-2740; 239-2743
Roundup for Lawns (RTU – Northern)	4385010; 4386154; 4375010; 4385048; 4375005; 4385005	2217-917
Roundup for Lawns (RTS – Northern)	5008801; 5008810	2217-918
Roundup for Lawns (Concentrate – Northern)	5008701; 5008710; 5008772	2217-918
Roundup for Lawns (RTS – Southern)	5008601; 5008610; 5008672	2217-1010
Roundup for Lawns (Concentrate – Southern)	5008401; 5008410; 5008472	2217-1010
Roundup for Lawns (RTU – Southern)	5008910; 5009010; 4386254; 5008940; 5008905; 5009005	2217-1009
Roundup – Landscape Weed Preventer	4385106; 4385203; 4385301; 4385101; 4385118; 4385201; 4385248; 4385105	538-192

Schedule 2.3

1.1. Monsanto is the owner of the copyright-protected labels and trademark(s) for the Products as identified in Exhibit A hereto (collectively, the "Monsanto IP", and the trademarks, the "Monsanto Trademarks") in the Territory.

1.2. Formulator desires to obtain a license to use the Monsanto IP in order to perform its obligations hereunder in connection with the Products as set forth in Section 2.3 herein.

1.3. Monsanto hereby grants to Formulator, subject to all of the terms and conditions herein, a non-exclusive, non-transferable, royalty-free license to use, with a right to sublicense, the Monsanto IP for the sole and express purpose to perform its obligations hereunder on and in connection with the Products.

1.4. Formulator agrees that it will use the Monsanto IP only on and in order to perform its obligations hereunder in connection with the Products in accordance with the terms of this Agreement. Formulator agrees to use the Monsanto IP only in the manner directed and approved by Monsanto.

1.5. During the Term, and for as long as Monsanto retains and maintains rights in and to the Monsanto IP, Formulator shall not: (a) use the Monsanto IP either alone or as part of Formulator's trade or corporate name; (b) attempt to register or register the Monsanto IP in any manner, and with respect to the Monsanto Trademarks, as a trademark, trade name, corporate name, domain name, or social media account name; or (c) use the Monsanto IP in any manner which, in the commercially reasonable opinion of Monsanto, tends to indicate, suggest, imply or permit the inference from such manner of use that the Monsanto IP is not solely and exclusively the property of Monsanto.

1.6. No right, title or interest of any kind in or to the Monsanto IP or the respective application(s)/registration(s) thereof is transferred by this Agreement to Formulator except an exclusive, non-transferable, royalty-free license to use the Monsanto IP on and in connection with the Products during the Term. The license to use the Monsanto IP is limited to the Territory. Monsanto reserves the unqualified right to use the Monsanto IP and to license other parties to use the Monsanto IP.

1.7. Formulator agrees that the Monsanto IP listed in Exhibit C is the exclusive property of Monsanto, and that Formulator's use of the Monsanto Trademarks in the Territory in accordance with this Agreement accrues and inures to the benefit of and constitutes use of the Monsanto Trademarks by Monsanto.

1.8. Formulator shall not have the right to assign its license to the Monsanto IP hereunder this Agreement. Any attempted assignment of Formulator's license to Monsanto's IP shall be void and of no effect.

1.9. The license for the Monsanto IP granted by Monsanto to Formulator under this Agreement shall terminate automatically upon the expiration or termination of this Agreement. Except as required by this Agreement, Formulator agrees that it will, upon expiration or termination of this Agreement for any reason whatsoever, discontinue all use of the Monsanto IP immediately, and deliver to Monsanto all copies, in any format now known or developed in the future, of all labels and other materials bearing or containing the Monsanto IP for the Products, including, but not limited to PDF(s) of the final label(s). Formulator agrees that it shall not thereafter adopt or use the Monsanto IP or any colorable imitation thereof or any trademark confusingly similar to or likely to conflict with or dilute the Monsanto Trademarks, either alone or in combination with any other words, letters, symbols, designs, or logos, and that it shall execute and file whatever documents and perform whatever other act are deemed necessary and desirable by Monsanto to fully return to Monsanto or its Affiliates, as applicable, all rights and licenses granted under this Agreement.

1.10. Nothing in this Schedule 2.3 shall amend or supersede the parties' respective rights and obligations under Section 6.14 of the Agency Agreement.

Exhibit A

Monsanto IP

1. The common law and unregistered Marks identified below:

    - BUG DESTROYER (jurisdiction: United States; goods/services: insecticide);
    - CRABGRASS DESTROYER (jurisdiction: United States; goods/services: herbicide);
    - LANDSCAPE WEED PREVENTER (jurisdiction: United States; goods/services: herbicide);
    - WEEDING WISELY (jurisdiction: United States; goods/services: herbicide).

2. Common law or unregistered copyrights in the tangible works of expression identified below:

    - All images associated with the Brand Extension Products on the webpage available at www.roundup.com.
    - Packaging graphics for Roundup for Lawns Bug Destroyer.
    - Packaging graphics for Roundup for Lawns Bug Destroyer.
    - Packaging graphics for Roundup for Lawns Crabgrass Destroyer.
    - Packaging graphics for Roundup for Lawns Crabgrass Destroyer.
    - Packaging graphics for Roundup for Lawns – Northern.
    - Packaging graphics or Roundup for Lawns – Concentrate Northern.
    - Packaging graphics for Roundup for Lawns – Extend Wand Northern.
    - Packaging graphics for Roundup for Lawns – Refill Northern.
    - Packaging graphics for Roundup for Lawns – Southern.
    - Packaging graphics for Roundup for Lawns – Concentrate Southern.
    - Packaging graphics for Roundup for Lawns – Extend Wand Southern.
    - Packaging graphics for Roundup for Lawns – Refill Southern.
    - Packaging graphics for Roundup for Lawns Landscape Weed Preventer, with the exception of those stock images licensed by Seller.
    - Packaging graphics for Roundup for Lawns Landscape Weed Preventer, with the exception of those stock images licensed by Seller.

3. Trade dress elements of the following Related Packaging:

    - Packaging for Roundup for Lawns Bug Destroyer.
    - Packaging for Roundup for Lawns Bug Destroyer.
    - Packaging for Roundup for Lawns Crabgrass Destroyer.
    - Packaging for Roundup for Lawns Crabgrass Destroyer.
    - Packaging for Roundup for Lawns – Northern.
    - Packaging or Roundup for Lawns – Concentrate Northern.
    - Packaging for Roundup for Lawns – Extend Wand Northern.
    - Packaging for Roundup for Lawns – Refill Northern.
    - Packaging for Roundup for Lawns – Southern.
    - Packaging for Roundup for Lawns – Concentrate Southern.
    - Packaging for Roundup for Lawns – Extend Wand Southern.
    - Packaging for Roundup for Lawns – Refill Southern.
    - Packaging for Roundup for Lawns Landscape Weed Preventer.
    - Packaging for Roundup for Lawns Landscape Weed Preventer.

Monsanto Trademarks

MARK	APP./REG. NO.	INT. CLASS/GOODS
ROUNDUP	Reg. No. 847,249	IC5: herbicides
	Reg. No. 2,662,000	IC5: herbicides for domestic and agricultural use
ROUNDUP	Reg. No. 5,448,853	IC 5: insecticides for domestic use

Schedule 3.7(a)

BEA CRITICAL MATERIALS

VENDOR	INPUT	INPUT	INPUT	INPUT
EXCLUSIVE FORMULA				
PBI GORDON CORP	EH-1552 MUP	EH-1463 MUP		
KADANT GRANTEK INC	BIODAC 10/30			
OTHER FORMULAS				
NEXEO SOLUTIONS LLC	Propylene Glycol	50% Citric Acid		
MOMENTIVE PERFORMANCE MATERIALS	SAG 10 Antifoam			
THOR SPECIALTIES INC	1 2-BENZISOTHIAZOLIIN-3-ONE			
BASF CORPORATION	Topramezone Tech	Pendimethalin 95% Technical		
CRODA INC	Brij O 10			
HARCROS CHEMICALS INC	Harcros 8810 Antifoam	T-DET N9-5		
RIBELIN SALES INC	Attagel 50			
SYNGENTA CROP CORPORATION	CHLORANTRANILIPROLE TECHNICAL 95.3%			
PACKAGING				
PLASTIPAK PACKAGING INC	BTL ROUINDUP W&G KLR RTU RFL 1.25GAL	BOTTLE - RUP FOR SO LAWNS RTU RFL 1GAL/4		
SILGAN PLASTICS CORPORATION	BTL WHT 1GAL VNGRD NON-F2	BOTTLE 5L WHITE HDPE (VANGUARD) 230 GRAM		
TRICORBRAUN INC	BTL-32OZ 43MM DRAINBCK CNC WHITE PET			
CONSOLIDATED CONTAINER COMPANY	BTL - 32OZ WHITE TYPHOON			
VIGOR PRECISION LTD	ASSEMBLY SCOTT GREEN 3-BATT. WAND+LABELS	ASSY CRBGRS KL ORNG 4BAT TWST NZL EXT WD	ASMBLD SCOTT GRN 3-BTRY DUAL TIP SS XWND	ASSY SLCT SO GRN 4BAT TWST NZL SS EXT WD

Schedule 3.7(b)

SPECIFIED MATERIALS

Drain back vanguard bottle (all sizes)
Drain back cap (all sizes)
Flip Cap
Twist Cap
Refill Cap & Concentrate bottle cap
Trigger sprayers (used on all sizes)
Extended Wand
Sure Shot® Wand
Comfort Wand®

Schedule 3.7(c)

SPECIFIED SERVICES

1. Buddy’s Plant Plus Corporation
2. The Andersons

Exhibit I

ALLOCATION SCHEDULE

The Aggregate Consideration (together with other relevant amounts, including any adjustments to the Purchase Price) shall be allocated among the Purchased Assets and Assumed Rights consistent with Section 1060 of the Code and the Treasury Department regulations thereunder, as follows:

Class I:	$0
Class II*:*	$0
Class III*:*	$0
Class IV*:*	Final Inventory Value
Class V*:*	$0
Class VI and VII*:*	$112,000,000 plus Assumed Liabilities (to the extent, if any, included in "amount realized" for U.S. federal income Tax purposes) and subject to any adjustments to the Purchase Price and any expenses

EXHIBIT 10.5

EXECUTION VERSION

BRAND EXTENSION AGREEMENT TERMINATION AGREEMENT

This BRAND EXTENSION AGREEMENT TERMINATION AGREEMENT (this "Agreement") is entered into July 29, 2019 and effective as of August 1, 2019 (the "Effective Date"), by and between Monsanto Company, a Delaware corporation ("Monsanto"), and The Scotts Company LLC, an Ohio limited liability company ("Scotts"). Each of Monsanto and Scotts may be referred to herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Monsanto and Scotts are parties to that certain Amended and Restated Lawn and Garden Brand Extension Agreement - Americas, effective as of May 15, 2015 (the "Brand Extension Agreement"); and

WHEREAS, the Parties desire to mutually terminate the Brand Extension Agreement, with such termination to be effective as of the Effective Date.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

1. Termination of Brand Extension Agreement. Each Party mutually agrees that the Brand Extension Agreement shall be terminated effective as the Effective Date, and following such termination, the Brand Extension Agreement shall be of no further force or effect. This Agreement is written notification by each Party to the other Party of its intention to terminate the Brand Extension Agreement, and each Party hereby waives any right to prior notice or other requirements of termination that may be required under the Brand Extension Agreement.

2. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction).

3. Assignment. Neither this Agreement nor any right or interest under this Agreement may be assigned by any Party without the prior written consent of the other Party.

4. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given on the same business day if delivered personally or sent by telefax with confirmation of receipt, on the next business day if sent by overnight courier, or on the earlier of actual receipt as shown on the registered receipt or five business days after mailing if mailed by registered or certified mail (return receipt requested) to the Parties at the addresses set forth below (or at such other address for a Party as shall be specified by like notice):

(i) if to Monsanto, to:

Monsanto Company
800 North Lindbergh Boulevard
St. Louis, MO 63167
Attn: Dr. Jacqueline Applegate
Telephone: (314) 694-6900
Facsimile: (314) 694-7030

with a copy (which shall not constitute notice) to:

Monsanto Company
800 North Lindbergh Boulevard
St. Louis, Missouri 63167
Attn: Martin Kerckhoff
Telephone: (314) 694-1536
Facsimile: (314) 694-9009

(ii) if to Scotts, to:

The Scotts Company LLC
14111 Scottslawn Road
Marysville, OH 43041
Attn: President
Telephone: (937) 644-0011
Facsimile: (937) 644-7568

with a copy (which shall not constitute notice) to:

The Scotts Company LLC
14111 Scottslawn Road
Marysville, OH 43041
Attn: General Counsel
Telephone: (937) 644-0011
Facsimile: (937) 644-7568

5. Further Assurances. The Parties shall execute and deliver such further instruments and take such further actions as may be necessary or desirable to evidence more fully the agreement contained herein, including without limitation the termination of the Brand Extension Agreement.

6. Entire Agreement. This Agreement, together with all respective exhibits and schedules hereto, constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof. Notwithstanding the foregoing, the Parties acknowledge and agree that this Agreement together with the Specified Agreements constitute an indivisible, integrated agreement with (a) a single nature and purpose and (b) interrelated obligations. The Parties acknowledge and agree that the consideration for this Agreement is adequate, that the consideration for each of the Specified Agreements is adequate, and that subsequent defaults or terminations of any of the Specified Agreements will not render this Agreement unenforceable due to lack of consideration.

The Parties further acknowledge and agree that, subject to the foregoing sentence, the consideration for each of the Specified Agreements is intended as interdependent consideration for all Specified Agreements and is not separate, distinct or capable of apportionment, such that a rejection in any proceeding pursuant to any applicable bankruptcy or insolvency laws of any terms of this Agreement or any of the Specified Agreements would constitute a rejection of all such agreements. The Parties acknowledge and agree that they would not have entered into this Agreement or any Specified Agreement without entering into all such agreements. Notwithstanding the foregoing, the Parties acknowledge and agree that no breach of this Agreement shall be deemed to be a breach of any Specified Agreement and that no breach of any Specified Agreement shall be deemed to be a breach of this Agreement; provided, that the foregoing shall not be deemed to negate an actual breach of this Agreement or the Specified Agreements, as applicable. "Specified Agreements" means the agreements, documents and instruments entered into contemporaneously with execution of this Agreement, including, without limitation (i) that certain Commercialization and Technology Agreement Termination Agreement by and between Monsanto and Scotts; (ii) that certain Asset Purchase Agreement by and between Monsanto and Scotts; (iii) that certain Third Amended and Restated Exclusive Agency and Marketing Agreement by and between Monsanto and Scotts, and (iv) all other agreements, documents and instruments contemplated by each of the foregoing.

7. Amendment and Modification. This Agreement may not be amended, modified or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing specifically designated as an amendment hereto, signed on behalf of each Party.

8. Execution by Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed to be one and the same instrument. A signed copy of this Agreement delivered by e-mail, facsimile or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

MONSANTO COMPANY

By: /s/ Brett Begemann

Name: Brett Begemann
Title: President

THE SCOTTS COMPANY LLC

By: /s/ Thomas Randal Coleman

Name: Thomas Randal Coleman
Title: Chief Financial Officer

EXHIBIT 10.7

EXECUTION VERSION

COMMERCIALIZATION AND TECHNOLOGY AGREEMENT TERMINATION AGREEMENT

This COMMERCIALIZATION AND TECHNOLOGY AGREEMENT TERMINATION AGREEMENT (this "Agreement") is entered into July 29, 2019 and effective as of August 1, 2019 (the "Effective Date"), by and between Monsanto Company, a Delaware corporation ("Monsanto"), and The Scotts Company LLC, an Ohio limited liability company ("Scotts"). Each of Monsanto and Scotts may be referred to herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Monsanto and Scotts are parties to that certain Commercialization and Technology Agreement, dated as of May 15, 2015 (the "Commercialization and Technology Agreement"); and

WHEREAS, the Parties desire to mutually terminate the Commercialization and Technology Agreement, with such termination to be effective as of the Effective Date.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

1. Termination of Commercialization and Technology Agreement. Each Party mutually agrees that the Commercialization and Technology Agreement shall be terminated effective as of the Effective Date, and following such termination, the Commercialization and Technology Agreement shall be of no further force or effect. This Agreement is written notification by each Party to the other Party of its intention to terminate the Commercialization and Technology Agreement, and each Party hereby waives any right to prior notice or other requirements of termination that may be required under the Commercialization and Technology Agreement.

2. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction).

3. Assignment. Neither this Agreement nor any right or interest under this Agreement may be assigned by any Party without the prior written consent of the other Party.

4. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given on the same business day if delivered personally or sent by telefax with confirmation of receipt, on the next business day if sent by overnight courier, or on the earlier of actual receipt as shown on the registered receipt or five business days after mailing if mailed by registered or certified mail (return receipt requested) to the Parties at the addresses set forth below (or at such other address for a Party as shall be specified by like notice):

(i) if to Monsanto, to:

(i) if to Monsanto, to:

Monsanto Company
800 North Lindbergh Boulevard
St. Louis, MO 63167
Attn: Dr. Jacqueline Applegate
Telephone: (314) 694-6900
Facsimile: (314) 694-7030

with a copy (which shall not constitute notice) to:

Monsanto Company
800 North Lindbergh Boulevard
St. Louis, Missouri 63167
Attn: Martin Kerckhoff
Telephone: (314) 694-1536
Facsimile: (314) 694-9009

(ii) if to Scotts, to:

The Scotts Company LLC
14111 Scottslawn Road
Marysville, OH 43041
Attn: President
Telephone: (937) 644-0011
Facsimile: (937) 644-7568

with a copy (which shall not constitute notice) to:

The Scotts Company LLC
14111 Scottslawn Road
Marysville, OH 43041
Attn: General Counsel
Telephone: (937) 644-0011
Facsimile: (937) 644-7568

5. Further Assurances. The Parties shall execute and deliver such further instruments and take such further actions as may be necessary or desirable to evidence more fully the agreement contained herein, including without limitation the termination of the Commercialization and Technology Extension Agreement.

6. Entire Agreement. This Agreement, together with all respective exhibits and schedules hereto, constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof. Notwithstanding the foregoing, the Parties acknowledge and agree that this

Agreement together with the Specified Agreements constitute an indivisible, integrated agreement with (a) a single nature and purpose and (b) interrelated obligations. The Parties acknowledge and agree that the consideration for this Agreement is adequate, that the consideration for each of the Specified Agreements is adequate, and that subsequent defaults or terminations of any of the Specified Agreements will not render this Agreement unenforceable due to lack of consideration. The Parties further acknowledge and agree that, subject to the foregoing sentence, the consideration for each of the Specified Agreements is intended as interdependent consideration for all Specified Agreements and is not separate, distinct or capable of apportionment, such that a rejection in any proceeding pursuant to any applicable bankruptcy or insolvency laws of any terms of this Agreement or any of the Specified Agreements would constitute a rejection of all such agreements. The Parties acknowledge and agree that they would not have entered into this Agreement or any Specified Agreement without entering into all such agreements. Notwithstanding the foregoing, the Parties acknowledge and agree that no breach of this Agreement shall be deemed to be a breach of any Specified Agreement and that no breach of any Specified Agreement shall be deemed to be a breach of this Agreement; provided, that the foregoing shall not be deemed to negate an actual breach of this Agreement or the Specified Agreements, as applicable. "Specified Agreements" means the agreements, documents and instruments entered into contemporaneously with execution of this Agreement, including, without limitation (i) that certain Brand Extension Agreement Termination Agreement by and between Monsanto and Scotts; (ii) that certain Asset Purchase Agreement by and between Monsanto and Scotts; (iii) that certain Third Amended and Restated Exclusive Agency and Marketing Agreement by and between Monsanto and Scotts, and (iv) all other agreements, documents and instruments contemplated by each of the foregoing.

7. Amendment and Modification. This Agreement may not be amended, modified or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing specifically designated as an amendment hereto, signed on behalf of each Party.

8. Execution by Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed to be one and the same instrument. A signed copy of this Agreement delivered by e-mail, facsimile or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

MONSANTO COMPANY

By: /s/ Brett Begemann

Name: Brett Begemann
Title: President

THE SCOTTS COMPANY LLC

By: /s/ Thomas Randal Coleman

Name: Thomas Randal Coleman
Title: Chief Financial Officer

[Signature Page to Termination Agreement
(regarding the Commercialization and Technology Agreement)]

Exhibit 99.1

The Scotts Miracle-Gro Company ***NEWS***

ScottsMiracle-Gro Announces Third Quarter Results and Raises Guidance; U.S. Consumer and Hawthorne Segments Continue to Show Strong Growth

Roundup Agency Agreement amended, includes new economics and sale of brand extensions

- *U.S. Consumer segment sales increase 10% in Q3, up 9% year-to-date*
- *Point-of-sale data shows consumer purchases up 4 percent entering August*
- *Hawthorne sales increase 138% in Q3 driven by acquisition of Sunlight Supply*
- *GAAP earnings of $3.15 per share in Q3, $8.78 year-to-date*
- *Non-GAAP adjusted earnings of $3.11 per share in Q3, $5.39 year-to-date*
- *Fiscal 2019 non-GAAP adjusted EPS guidance increased to $4.35 to $4.50 on expected sales growth of 16 to 17%*

MARYSVILLE, Ohio (July 31, 2019) - The Scotts Miracle-Gro Company (NYSE: SMG), the world's leading marketer of branded consumer lawn and garden as well as hydroponic growing products, today released record fiscal third quarter financial results that were driven by the continued strength of both its U.S. Consumer and Hawthorne reporting segments.

The Company also increased its full-year guidance for the second time in fiscal 2019 and now expects non-GAAP adjusted earnings in a range of $4.35 to $4.50 per share on projected sales growth of 16 to 17 percent.

For the quarter ended June 29, 2019, company-wide sales increased 18 percent to $1.17 billion, compared with $994.6 million a year earlier. GAAP income from continuing operations was $3.15 per diluted share, compared with $2.23 per diluted share in the prior year. Non-GAAP adjusted earnings, which is the basis of the Company's guidance and excludes impairment, restructuring, and other one-time items, were $3.11 per diluted share compared with $2.67 a year ago.

"Fiscal 2019 continues to deliver outstanding results as nearly every aspect of our business is exceeding our expectations," said Jim Hagedorn, chairman and chief executive officer. "In the U.S. Consumer segment, retailer and consumer engagement remains extremely positive, leading to sales growth of 10 percent in the quarter and 9 percent on a year-to-date basis. The recovery at Hawthorne has been even more impressive, with sales up 49 percent on an apples-to-apples basis in the quarter and 19 percent year-to-date through June."

In an unrelated matter, ScottsMiracle-Gro also announced it has entered into an amended Roundup Agency Agreement with Monsanto, a subsidiary of Bayer, and more broadly updated the business relationship between the companies.

Monsanto has agreed to purchase from ScottsMiracle-Gro four Roundup-branded product lines outside the non-selective weed control category, as well as the right to use the Roundup brand (previously licensed to Scotts by Monsanto) on those and future product lines outside the non-selective weed control category, for $112 million. ScottsMiracle-Gro will act as marketing agent for these brand extension product lines and the companies will equally share future profits, which are expected to be approximately $15 million in fiscal 2019.

Additionally, ScottsMiracle-Gro will now annually share equally in all profits derived from its work as marketing agent for the consumer Roundup business, effectively increasing the Company's net commission

by $20 million each year beginning in fiscal 2020. The relationship updates also include clarifications to various commercial, operational, and process commitments and rights of the companies, including their indemnity obligations with respect to non-selective weed control products and their termination rights.

“These are important changes to our agreement, each of which was designed to recognize the importance of Roundup to our business and enhance shareholder value into the future,” Hagedorn said.

Third quarter details

Company-wide sales increased 18 percent to $1.17 billion. U.S. Consumer increased 10 percent to $889.1 million from $810.9 million. Hawthorne sales increased 138 percent to $176.3 million compared with $74.2 million. The increase was driven largely by the acquisition in June 2018 of Sunlight Supply. On a comparative basis as if Sunlight was owned the entire third quarter of 2018, sales increased 49 percent.

“The strong recovery we have seen in Hawthorne this year is being led by increased sales of lighting and nutrients products, our largest and most important categories,” Hagedorn said. “We’re also pleased with the 15 percent growth we’ve seen year-to-date in California and the strong growth we’re seeing in emerging markets like Florida, Ohio, Michigan and Massachusetts, where changes to state laws regarding cannabis cultivation are starting to drive higher sales. Additionally, the integration of Sunlight Supply remains on track and we are confident we will achieve nearly 100 percent of the synergies we expected entering the year.”

For the quarter, the GAAP and adjusted non-GAAP gross margin rate was 36.2 percent compared with 34.9 percent and 36.1 percent, respectively, in the prior year. SG&A increased 15 percent to $166.4 million primarily due to higher accruals for annual incentive compensation payments, increased marketing investment and the impact of the Sunlight Supply acquisition.

Interest expense increased $2.7 million on a year-over-year basis to $25.9 million, reflecting higher interest rates. The Company said its leverage ratio at the end of the quarter was approximately 3.7 times debt-to-EBITDA.

GAAP income from continuing operations was $178.0, or $3.15 per diluted share, compared with $125.5 million, or $2.23 per diluted share. Non-GAAP adjusted earnings, which excluded impairment, restructuring, as well as other one-time items, were $176.3 million, or $3.11 per diluted share, compared with $150.1 million, or $2.67 per diluted share.

Year-to-Date Details

Company-wide sales for the first nine months increased 19 percent to $2.66 billion compared with $2.23 billion a year ago. Sales in the U.S. Consumer segment increased 9 percent, to $2.02 billion due to increased retail support and inventory levels and strong consumer demand. Hawthorne sales increased 139 percent to $461.1 million.

The GAAP gross margin rate on a year-to-date basis was 35.0 percent. The non-GAAP adjusted rate was 35.1 percent. These compare with 35.5 and 36.0 percent, respectively, last year. The declines were primarily driven by the impact of the Sunlight Supply acquisition and Hawthorne’s increased promotional activity, which has helped drive higher volume and improved market share.

SG&A was $462.4 million, a 10 percent increase from 2018. The reasons for the year-to-date increase are consistent with the factors that drove third quarter results.

Increased borrowing and higher interest rates resulted in an increase in interest expense to $80.0 million compared with $63.6 million.

GAAP income from continuing operations was $492.3 million, or $8.78 per diluted share, compared to $258.2 million, or $4.50 per diluted share in prior year. Non-GAAP adjusted earnings, which excluded impairment, restructuring, as well as the other one-time items, were $302.5 million, or $5.39 per share, compared with $253.2 million, or $4.41 per share a year ago.

Full-year outlook

The Company's newly revised sales guidance of 16 to 17 percent growth on a company-wide basis assumes the U.S. Consumer segment grows 6 to 7 percent in fiscal 2019 and that Hawthorne sales increase approximately 90 percent to $650 million compared with $345 million in fiscal 2018. In June, the Company said it expected U.S. Consumer to increase 3 to 4 percent in fiscal 2019 and Hawthorne to increase 75 to 80 percent.

The revised guidance for non-GAAP adjusted earnings per share in a range of $4.35 to $4.50 compares with the June forecast of $4.20 to $4.40 per share. The Company said it expected non-GAAP free cash flow of approximately $325 million when excluding the impact of expected litigation payments and a one-time tax payment associated with the sale of its minority interest in TruGreen.

"The momentum we saw early in fiscal 2019 has continued throughout the year and we're extremely pleased with our performance," said Randy Coleman, executive vice president and chief financial officer. "The business is well-positioned as we enter the final planning stages for fiscal 2020 and we expect our continued strong cash flow will provide increased financial flexibility going forward."

Conference Call and Webcast Scheduled for 9 a.m. ET Today, July 31

The Company will discuss results during a webcast and conference call today at 9:00 a.m. Eastern Time. Conference call participants should call 866-337-5532 (Conference Code: 6545843) A live webcast of the call will be available on the investor relations section of the Company's website at http://investor.scotts.com. An archive of the webcast, as well as any accompanying financial information regarding any non-GAAP financial measures discussed by the Company during the call, will remain available for at least 12 months. In addition, a replay of the call can be heard by calling 888-203-1112. The replay will be available for 30 days.

About ScottsMiracle-Gro

With approximately $2.6 billion in sales, the Company is one of the world's largest marketers of branded consumer products for lawn and garden care. The Company's brands are among the most recognized in the industry. The Company's Scotts®, Miracle-Gro® and Ortho® brands are market-leading in their categories. The Company's wholly-owned subsidiary, The Hawthorne Gardening Company, is a leading provider of nutrients, lighting and other materials used in the hydroponic growing segment. For additional information, visit us at www.scottsmiraclegro.com.

Forward Looking Non-GAAP Measures

In this release, the Company provides an outlook for fiscal 2019 non-GAAP adjusted EPS. The Company does not provide a GAAP EPS outlook, which is the most directly comparable GAAP measure to non-GAAP adjusted EPS, because changes in the items that the Company excludes from GAAP EPS to calculate non-GAAP adjusted EPS, described above, can be dependent on future events that are less capable of being controlled or reliably predicted by management and are not part of the Company's routine operating activities. Additionally, due to their unpredictability, management does not forecast the excluded items for internal use and therefore cannot create or rely on a GAAP EPS outlook without unreasonable efforts. The timing and amount of any of the excluded items could significantly impact the Company's GAAP EPS. As a result, the Company does not provide a reconciliation of guidance for non-GAAP adjusted EPS to GAAP EPS, in reliance on the unreasonable efforts exception provided under Item 10(e)(1)(i)(B) of Regulation S-K.

Cautionary Note Regarding Forward-Looking Statements

Statements contained in this press release, other than statements of historical fact, which address activities, events and developments that the Company expects or anticipates will or may occur in the future, including, but not limited to, information regarding the future economic performance and financial condition of the Company, the plans and objectives of the Company's management, and the Company's assumptions regarding such performance and plans are "forward-looking statements" within the meaning of the U.S. federal securities laws that are subject to risks and uncertainties. These forward-looking statements generally can be identified as statements that include phrases such as "guidance," "outlook," "projected," "believe," "target," "predict," "estimate," "forecast," "strategy," "may," "goal," "expect," "anticipate," "intend," "plan," "foresee," "likely," "will," "should" or other similar words or phrases. Actual results could differ materially from the forward-looking information in this release due to a variety of factors, including, but not limited to:

- Compliance with environmental and other public health regulations could increase the Company's costs of doing business or limit the Company's ability to market all of its products;
- Damage to the Company's reputation or the reputation of its products or products it markets on behalf of third parties could have an adverse effect on its business;
- The highly competitive nature of the Company's markets could adversely affect its ability to maintain or grow revenues;
- Because of the concentration of the Company's sales to a small number of retail customers, the loss of one or more of, or significant reduction in orders from, its top customers could adversely affect the Company's financial results;
- Climate change and unfavorable weather conditions could adversely impact financial results;
- Certain of the Company's products may be purchased for use in new or emerging industries or segments and/or be subject to varying, inconsistent, and rapidly changing laws, regulations, administrative practices, enforcement approaches, judicial interpretations and consumer perceptions;
- The Company may not be able to adequately protect its intellectual property and other proprietary rights that are material to the Company's business;
- In the event the Restated Marketing Agreement for consumer Roundup products terminates, or Monsanto's consumer Roundup business materially declines the Company would lose a substantial source of future earnings and overhead expenses absorption;
- Hagedorn Partnership, L.P. beneficially owns approximately 27% of the Company's common shares and can significantly influence decisions that require the approval of shareholders;
- Acquisitions, other strategic alliances and investments could result in operating difficulties, dilution and other harmful consequences that may adversely impact the Company's business and results of operations.

Additional detailed information concerning a number of the important factors that could cause actual results to differ materially from the forward-looking information contained in this release is readily available in the Company's publicly filed quarterly, annual and other reports. The Company disclaims any obligation to update developments of these risk factors or to announce publicly any revision to any of the forward-looking statements contained in this release, or to make corrections to reflect future events or developments.

Contact:
Jim King
Executive Vice President
Investor Relations & Corporate Affairs
(937) 578-5622

THE SCOTTS MIRACLE-GRO COMPANY

Condensed Consolidated Statements of Operations

(In millions, except for per common share data)

(Unaudited)

	Footnotes	Three Months Ended June 29, 2019	Three Months Ended June 30, 2018	% Change	Nine Months Ended June 29, 2019	Nine Months Ended June 30, 2018	% Change
Net sales		$ 1,170.3	$ 994.6	18%	$ 2,658.3	$ 2,229.5	19 %
Cost of sales		747.0	635.9		1,724.8	1,427.5	
Cost of sales—impairment, restructuring and other		(0.1)	11.1		3.4	11.1	
Gross profit		423.4	347.6	22%	930.1	790.9	18 %
% of sales		36.2%	34.9%		35.0%	35.5%	
Operating expenses:							
Selling, general and administrative		166.4	144.5	15%	462.4	418.7	10 %
Impairment, restructuring and other		0.6	19.3		4.3	29.4	
Other income, net		(1.8)	(1.9)		(0.1)	(3.3)	
Income from operations		258.2	185.7	39%	463.5	346.1	34 %
% of sales		22.1%	18.7%		17.4%	15.5%	
Equity in income of unconsolidated affiliates		—	(1.1)		(3.3)	(3.3)	
Interest expense		25.9	23.2		80.0	63.6	
Other non-operating (income) expense, net		(5.1)	(2.6)		(268.2)	4.2	
Income from continuing operations before income taxes		237.4	166.2	43%	655.0	281.6	133 %
Income tax expense from continuing operations		59.4	40.7		162.7	23.4	
Income from continuing operations		178.0	125.5	42%	492.3	258.2	91 %
Income (loss) from discontinued operations, net of tax		23.6	(42.7)		26.1	(47.6)	
Net income		$ 201.6	$ 82.8		$ 518.4	$ 210.6	
Net loss attributable to noncontrolling interest		0.1	0.1		0.2	0.1	
Net income attributable to controlling interest		$ 201.7	$ 82.9		$ 518.6	$ 210.7	
Basic income (loss) per common share:	(1)						
Income from continuing operations		$ 3.21	$ 2.27	41%	$ 8.89	$ 4.57	95 %
Income (loss) from discontinued operations		0.42	(0.77)		0.47	(0.84)	
Net income		$ 3.63	$ 1.50		$ 9.36	$ 3.73	
Diluted income (loss) per common share:	(2)						
Income from continuing operations		$ 3.15	$ 2.23	41%	$ 8.78	$ 4.50	95 %
Income (loss) from discontinued operations		0.41	(0.76)		0.46	(0.83)	
Net income		$ 3.56	$ 1.47		$ 9.24	$ 3.67	
Common shares used in basic income (loss) per share calculation		55.5	55.4	—%	55.4	56.5	(2)%
Common shares and potential common shares used in diluted income (loss) per share calculation		56.6	56.3	1%	56.1	57.4	(2)%
Non-GAAP results:							
Adjusted net income attributable to controlling interest from continuing operations	(3)	$ 176.3	$ 150.1	17%	$ 302.5	$ 253.2	19 %
Adjusted diluted income per common share from continuing operations	(2) (3)	$ 3.11	$ 2.67	16%	$ 5.39	$ 4.41	22 %
Adjusted EBITDA	(3)	$ 293.5	$ 253.7	16%	$ 573.7	$ 481.8	19 %

Note: See accompanying footnotes on page 10.

THE SCOTTS MIRACLE-GRO COMPANY

Segment Results
(In millions)
(Unaudited)

The Company divides its business into three reportable segments: U.S. Consumer, Hawthorne and Other. U.S. Consumer consists of the Company's consumer lawn and garden business located in the geographic United States. Hawthorne consists of the Company's indoor, urban and hydroponic gardening business. Other consists of the Company's consumer lawn and garden business in geographies other than the U.S. and the Company's product sales to commercial nurseries, greenhouses and other professional customers. Corporate consists of general and administrative expenses and certain other income/expense items not allocated to the business segments. This identification of reportable segments is consistent with how the segments report to and are managed by the chief operating decision maker of the Company.

The performance of each reportable segment is evaluated based on several factors, including income (loss) from continuing operations before income taxes, amortization, impairment, restructuring and other charges ("Segment Profit (Loss)"), which is a non-GAAP financial measure. Senior management uses Segment Profit (Loss) to evaluate segment performance because they believe this measure is indicative of performance trends and the overall earnings potential of each segment.

The following tables present financial information for the Company's reportable segments for the periods indicated:

	Three Months Ended			Nine Months Ended		
	June 29, 2019	June 30, 2018	% Change	June 29, 2019	June 30, 2018	% Change
Net Sales:						
U.S. Consumer	$ 889.1	$ 810.9	10 %	$ 2,019.5	$ 1,857.1	9 %
Hawthorne	176.3	74.2	138 %	461.1	192.8	139 %
Other	104.9	109.5	(4)%	177.7	179.6	(1)%
Consolidated	$ 1,170.3	$ 994.6	18 %	$ 2,658.3	$ 2,229.5	19 %
Segment Profit (Loss) (Non-GAAP):						
U.S. Consumer	$ 271.5	$ 243.1	12 %	$ 548.5	$ 491.4	12 %
Hawthorne	16.8	(3.6)	567 %	31.6	(6.6)	579 %
Other	13.2	13.1	1 %	13.0	10.6	23 %
Total Segment Profit (Non-GAAP)	301.5	252.6	19 %	593.1	495.4	20 %
Corporate	(34.4)	(29.2)		(96.7)	(87.8)	
Intangible asset amortization	(8.4)	(7.3)		(25.2)	(21.0)	
Impairment, restructuring and other	(0.5)	(30.4)		(7.7)	(40.5)	
Equity in income of unconsolidated affiliates	—	1.1		3.3	3.3	
Interest expense	(25.9)	(23.2)		(80.0)	(63.6)	
Other non-operating income (expense), net	5.1	2.6		268.2	(4.2)	
Income from continuing operations before income taxes (GAAP)	$ 237.4	$ 166.2	43 %	$ 655.0	$ 281.6	133 %

THE SCOTTS MIRACLE-GRO COMPANY

Condensed Consolidated Balance Sheets

(In millions)

(Unaudited)

	June 29, 2019	June 30, 2018	September 30, 2018
ASSETS			
Current assets:			
Cash and cash equivalents	$ 36.4	$ 29.6	$ 33.9
Accounts receivable, net	746.9	704.5	310.5
Inventories	533.7	500.5	481.4
Prepaid and other current assets	72.9	84.4	59.9
Total current assets	1,389.9	1,319.0	885.7
Investment in unconsolidated affiliates	—	34.4	36.1
Property, plant and equipment, net	506.7	517.6	530.8
Goodwill	541.9	621.2	543.0
Intangible assets, net	831.1	879.6	857.3
Other assets	197.8	192.1	201.6
Total assets	$ 3,467.4	$ 3,563.9	$ 3,054.5
LIABILITIES AND EQUITY			
Current liabilities:			
Current portion of debt	$ 363.2	$ 314.5	$ 132.6
Accounts payable	222.6	195.6	150.5
Other current liabilities	369.6	315.2	329.6
Total current liabilities	955.4	825.3	612.7
Long-term debt	1,563.5	1,975.4	1,883.8
Distributions in excess of investment in unconsolidated affiliate	—	21.9	21.9
Other liabilities	143.3	210.0	176.5
Total liabilities	2,662.2	3,032.6	2,694.9
Equity	805.2	531.3	359.6
Total liabilities and equity	$ 3,467.4	$ 3,563.9	$ 3,054.5

THE SCOTTS MIRACLE-GRO COMPANY

Reconciliation of Non-GAAP Disclosure Items (3)

(In millions, except per common share data)

(Unaudited)

	Three Months Ended June 29, 2019					Three Months Ended June 30, 2018			
	As Reported (GAAP)	Discontinued Operations	Impairment, Restructuring and Other	Other Non-Operating	Adjusted (Non-GAAP)	As Reported (GAAP)	Discontinued Operations	Impairment, Restructuring and Other	Adjusted (Non-GAAP)
Gross profit	$ 423.4	$ —	$ 0.1	$ —	$ 423.3	$ 347.6	$ —	$ (11.1)	$ 358.7
Gross profit as a % of sales	36.2%				36.2%	34.9%			36.1%
Income from operations	258.2	—	(0.5)	—	258.7	185.7	—	(30.4)	216.1
Income from operations as a % of sales	22.1%				22.1%	18.7%			21.7%
Income from continuing operations before income taxes	237.4	—	(0.5)	2.9	235.0	166.2	—	(30.4)	196.6
Income tax expense from continuing operations	59.4	—	(0.1)	0.7	58.8	40.7	—	(5.9)	46.6
Income from continuing operations	178.0	—	(0.4)	2.2	176.2	125.5	—	(24.5)	150.0
Net income attributable to controlling interest	**201.7**	**23.6**	**(0.4)**	**2.2**	**176.3**	**82.9**	**(42.7)**	**(24.5)**	**150.1**
Diluted income per common share from continuing operations	**3.15**	**—**	**(0.01)**	**0.04**	**3.11**	**2.23**	**—**	**(0.44)**	**2.67**

Calculation of Adjusted EBITDA (3):	Three Months Ended June 29, 2019	Three Months Ended June 30, 2018
Net income (GAAP)	$ 201.6	$ 82.8
Income tax expense from continuing operations	59.4	40.7
Income tax expense (benefit) from discontinued operations	7.3	(21.6)
Gain on sale / contribution of business	—	(0.8)
Interest expense	25.9	23.2
Depreciation	13.8	13.7
Amortization	8.4	7.5
Impairment, restructuring and other charges from continuing operations	0.5	30.4
Impairment, restructuring and other charges (recoveries) from discontinued operations	(30.9)	65.1
Other non-operating income, net	(2.9)	—
Interest income	(1.9)	(2.6)
Expense on certain leases	0.9	0.9
Share-based compensation expense	11.4	14.4
Adjusted EBITDA (Non-GAAP)	**$ 293.5**	**$ 253.7**

Note: See accompanying footnotes on page 10.

The sum of the components may not equal due to rounding.

THE SCOTTS MIRACLE-GRO COMPANY

Reconciliation of Non-GAAP Disclosure Items (3)

(In millions, except per common share data)

(Unaudited)

	Nine Months Ended June 29, 2019					Nine Months Ended June 30, 2018				
	As Reported (GAAP)	Discontinued Operations	Impairment, Restructuring and Other	Other Non-Operating	Adjusted (Non-GAAP)	As Reported (GAAP)	Discontinued Operations	Impairment, Restructuring and Other	Other Non-Operating	Adjusted (Non-GAAP)
Gross profit	$ 930.1	$ —	$ (3.4)	$ —	$ 933.5	$ 790.9	$ —	$ (11.1)	$ —	$ 802.0
Gross profit as a % of sales	35.0%				35.1%	35.5%				36.0%
Income from operations	463.5	—	(7.7)	—	471.2	346.1	—	(40.5)	—	386.6
Income from operations as a % of sales	17.4%				17.7%	15.5%				17.3%
Income from continuing operations before income taxes	655.0	—	(7.7)	260.2	402.5	281.6	—	(40.5)	(11.7)	333.8
Income tax expense from continuing operations	162.7	—	(2.1)	64.6	100.2	23.4	—	(54.2)	(3.1)	80.7
Income from continuing operations	492.3	—	(5.6)	195.6	302.3	258.2	—	13.7	(8.6)	253.1
Net income attributable to controlling interest	**518.6**	**26.1**	**(5.6)**	**195.6**	**302.5**	**210.7**	**(47.6)**	**13.7**	**(8.6)**	**253.2**
Diluted income per common share from continuing operations	**8.78**	**—**	**(0.10)**	**3.49**	**5.39**	**4.50**	**—**	**0.24**	**(0.15)**	**4.41**

Calculation of Adjusted EBITDA (3):	Nine Months Ended June 29, 2019	Nine Months Ended June 30, 2018
Net income (GAAP)	$ 518.4	$ 210.6
Income tax expense from continuing operations	162.7	23.4
Income tax expense (benefit) from discontinued operations	9.6	(23.3)
Loss on sale / contribution of business	—	2.8
Interest expense	80.0	63.6
Depreciation	41.8	39.2
Amortization	25.2	21.6
Impairment, restructuring and other charges from continuing operations	7.7	40.5
Impairment, restructuring and other charges (recoveries) from discontinued operations	(35.8)	66.6
Other non-operating (income) expense, net	(260.2)	11.7
Interest income	(6.7)	(7.5)
Expense on certain leases	2.6	2.6
Share-based compensation expense	28.4	30.0
Adjusted EBITDA (Non-GAAP)	**$ 573.7**	**$ 481.8**

Note: See accompanying footnotes on page 10.

The sum of the components may not equal due to rounding.

(1) Basic income (loss) per common share amounts are calculated by dividing income (loss) from continuing operations, income (loss) from discontinued operations and net income (loss) attributable to controlling interest by the weighted average number of common shares outstanding during the period.

(2) Diluted income (loss) per common share amounts are calculated by dividing income (loss) from continuing operations, income (loss) from discontinued operations and net income (loss) attributable to controlling interest by the weighted average number of common shares, plus all potential dilutive securities (common stock options, performance shares, performance units, restricted stock and restricted stock units) outstanding during the period.

(3) *Reconciliation of Non-GAAP Measures*

Use of Non-GAAP Measures

To supplement the financial measures prepared in accordance with U.S. generally accepted accounting principles ("GAAP"), the Company uses non-GAAP financial measures. The reconciliations of these non-GAAP financial measures to the most directly comparable financial measures calculated and presented in accordance with GAAP are shown in the tables above. These non-GAAP financial measures should not be considered in isolation from, or as a substitute for or superior to, financial measures reported in accordance with GAAP. Moreover, these non-GAAP financial measures have limitations in that they do not reflect all the items associated with the operations of the business as determined in accordance with GAAP. Other companies may calculate similarly titled non-GAAP financial measures differently than the Company, limiting the usefulness of those measures for comparative purposes.

In addition to GAAP measures, management uses these non-GAAP financial measures to evaluate the Company's performance, engage in financial and operational planning and determine incentive compensation because it believes that these measures provide additional perspective on and, in some circumstances are more closely correlated to, the performance of the Company's underlying, ongoing business.

Management believes that these non-GAAP financial measures are useful to investors in their assessment of operating performance and the valuation of the Company. In addition, these non-GAAP financial measures address questions routinely received from analysts and investors and, in order to ensure that all investors have access to the same data, management has determined that it is appropriate to make this data available to all investors. Non-GAAP financial measures exclude the impact of certain items (as further described below) and provide supplemental information regarding operating performance. By disclosing these non-GAAP financial measures, management intends to provide investors with a supplemental comparison of operating results and trends for the periods presented. Management believes these measures are also useful to investors as such measures allow investors to evaluate performance using the same metrics that management uses to evaluate past performance and prospects for future performance. Management views free cash flow as an important measure because it is one factor used in determining the amount of cash available for dividends and discretionary investment. Management views free cash flow productivity as a useful measure to help investors understand the Company's ability to generate cash.

Exclusions from Non-GAAP Financial Measures

Non-GAAP financial measures reflect adjustments based on the following items:

- Impairments, which are excluded because they do not occur in or reflect the ordinary course of the Company's ongoing business operations and their exclusion results in a metric that provides supplemental information about the sustainability of operating performance.
- Restructuring and employee severance costs, which include charges for discrete projects or transactions that fundamentally change the Company's operations and are excluded because they are not part of the ongoing operations of its underlying business, which includes normal levels of reinvestment in the business.
- Costs related to refinancing, which are excluded because they do not typically occur in the normal course of business and may obscure analysis of trends and financial performance. Additionally, the amount and frequency of these types of charges is not consistent and is significantly impacted by the timing and size of debt financing transactions.
- Charges or credits incurred by the Company's joint venture with TruGreen Holding Corporation (the "TruGreen Joint Venture") that are apart from and not indicative of the results of its ongoing operations, including transaction related costs, refinancing costs, restructurings and other discrete projects or transactions including a non-cash

purchase accounting fair value write-down adjustment related to deferred revenue and advertising ("TruGreen Joint Venture non-GAAP adjustments"). The Company held a noncontrolling equity interest of approximately 30% in the TruGreen Joint Venture. The Company did not control, nor did it have any legal claim to, the revenues and expenses of the TruGreen Joint Venture or its other unconsolidated affiliates. The use of non-GAAP measures that are subject to TruGreen Joint Venture non-GAAP adjustments is not intended to imply that the Company had control over the operations and resulting revenue and expenses of the TruGreen Joint Venture or its other unconsolidated affiliates. Moreover, these non-GAAP financial measures have limitations in that they do not reflect all revenue and expenses of the unconsolidated affiliates.

- Discontinued operations and other unusual items, which include costs or gains related to discrete projects or transactions and are excluded because they are not comparable from one period to the next and are not part of the ongoing operations of the Company's underlying business.

The tax effect for each of the items listed above is determined using the tax rate and other tax attributes applicable to the item and the jurisdiction(s) in which the item is recorded.

Definitions of Non-GAAP Financial Measures

The reconciliations of non-GAAP disclosure items include the following financial measures that are not calculated in accordance with GAAP and are utilized by management in evaluating the performance of the business, engaging in financial and operational planning, the determination of incentive compensation, and by investors and analysts in evaluating performance of the business:

Adjusted gross profit: Gross profit excluding impairment, restructuring and other charges / recoveries.
Adjusted income (loss) from operations: Income (loss) from operations excluding impairment, restructuring and other charges / recoveries.
Adjusted income (loss) from continuing operations before income taxes: Income (loss) from continuing operations before income taxes excluding impairment, restructuring and other charges / recoveries, costs related to refinancing and TruGreen Joint Venture non-GAAP adjustments.
Adjusted income tax expense (benefit) from continuing operations: Income tax expense (benefit) from continuing operations excluding the tax effect of impairment, restructuring and other charges / recoveries, costs related to refinancing and TruGreen Joint Venture non-GAAP adjustments.
Adjusted income (loss) from continuing operations: Income (loss) from continuing operations excluding impairment, restructuring and other charges / recoveries, costs related to refinancing and TruGreen Joint Venture non-GAAP adjustments, each net of tax.
Adjusted net income (loss) attributable to controlling interest from continuing operations: Net income (loss) attributable to controlling interest excluding impairment, restructuring and other charges / recoveries, costs related to refinancing, TruGreen Joint Venture non-GAAP adjustments and discontinued operations, each net of tax.
Adjusted diluted income (loss) per common share from continuing operations: Diluted income (loss) per common share from continuing operations excluding impairment, restructuring and other charges / recoveries, costs related to refinancing and TruGreen Joint Venture non-GAAP adjustments, each net of tax.
Adjusted EBITDA: Net income (loss) before interest, taxes, depreciation and amortization as well as certain other items such as the impact of the cumulative effect of changes in accounting, costs associated with debt refinancing and other non-recurring or non-cash items affecting net income (loss). The presentation of adjusted EBITDA is intended to be consistent with the calculation of that measure as required by the Company's borrowing arrangements, and used to calculate a leverage ratio (maximum of 5.00 at June 29, 2019) and an interest coverage ratio (minimum of 3.00 for the twelve months ended June 29, 2019).
Free cash flow: Net cash provided by (used in) operating activities reduced by investments in property, plant and equipment.
Free cash flow productivity: Ratio of free cash flow to net income (loss).

For the three and nine months ended June 29, 2019, the following items were adjusted, in accordance with the definitions above, to arrive at the non-GAAP financial measures:

- On April 1, 2019, the Company sold all of its noncontrolling equity interest in a joint venture with products supporting the professional U.S. industrial, turf and ornamental market for cash proceeds of $36.6 million. During the three and nine months ended June 29, 2019, the Company recognized a pre-tax gain of $2.9 million related to this sale in the "Other non-operating (income) expense, net" line in the Condensed Consolidated Statements of Operations.
- On March 19, 2019, the Company entered into an agreement under which it sold, to TruGreen Companies L.L.C., a subsidiary of TruGreen Holding Corporation, all of its approximately 30% equity interest in Outdoor Home Services Holdings LLC, a lawn services joint venture between the Company and TruGreen Holding Corporation (the "TruGreen Joint Venture"). Under the terms of the agreement, the Company received cash proceeds of $234.2 million related to the sale of its equity interest in the TruGreen Joint Venture and $18.4 million related to the payoff of second lien term loan financing. During the three and nine months ended June 29, 2019, the Company recognized a pre-tax gain of zero and $259.8 million, respectively, related to this sale in the "Other non-operating (income) expense, net" line in the Condensed Consolidated Statement of Operations.
- In connection with the acquisition of Sunlight Supply during the third quarter of fiscal 2018, the Company announced the launch of an initiative called Project Catalyst, which is a company-wide restructuring effort to reduce operating costs throughout the U.S. Consumer, Hawthorne and Other segments and drive synergies from recent acquisitions within the Hawthorne segment. During the three and nine months ended June 29, 2019, the Company continued to execute on its planned facility closures and consolidations which resulted in charges of $0.4 million and $8.0 million, respectively, related to Project Catalyst. During the three and nine months ended June 29, 2019, the Company recognized charges of $(0.1) million and $3.4 million, respectively, in the "Cost of sales—impairment, restructuring and other" line in the Condensed Consolidated Statements of Operations related to employee termination benefits, facility closure costs and impairment of property, plant and equipment. During the three and nine months ended June 29, 2019, the Company recognized charges of $0.5 million and $4.6 million, respectively, in the "Impairment, restructuring and other" line in the Condensed Consolidated Statements of Operations related to employee termination benefits and facility closure costs. The Company also recognized a charge of zero and $2.5 million for the three and nine months ended June 29, 2019, respectively, in the "Other non-operating (income) expense, net" line in the Condensed Consolidated Statements of Operations related to the write-off of accumulated foreign currency translation loss adjustments of a foreign subsidiary that was substantially liquidated.
- During the three and nine months ended June 29, 2019, the Company recognized favorable adjustments of zero and $0.4 million, respectively, related to the previously disclosed legal matter *In re Scotts EZ Seed Litigation* in the "Impairment, restructuring and other" line in the Condensed Consolidated Statements of Operations.
- During the three and nine months ended June 29, 2019, the Company recognized a favorable adjustment of $22.5 million related to the previously disclosed legal matter *In re Morning Song Bird Food Litigation* in the "Income (loss) from discontinued operations, net of tax" line in the Condensed Consolidated Statements of Operations as a result of the final resolution of the previously disclosed settlement agreement. In addition, during the three and nine months ended June 29, 2019, the Company recognized insurance recoveries of $8.4 million and $13.4 million, respectively, related to this matter in the "Income (loss) from discontinued operations, net of tax" line in the Condensed Consolidated Statements of Operations.

For the three and nine months ended June 30, 2018, the following items were adjusted, in accordance with the definitions above, to arrive at the non-GAAP financial measures:

- The Company recognized charges of $30.4 million related to Project Catalyst for the three and nine months ended June 30, 2018. This included employee termination benefits of $1.4 million, impairment of property, plant and equipment of $5.9 million, and facility closure costs of $3.8 million recognized in the "Cost of sales—impairment, restructuring and other" line in the Condensed Consolidated Statements of Operations. The Company also recognized a non-cash impairment charge of $17.5 million related to the write-off of previously acquired customer relationship intangible assets due to the acquisition of Sunlight Supply, and employee termination benefits of $1.8 million in the "Impairment, restructuring and other" line in the Condensed Consolidated Statements of Operations. Additionally, the Company reduced the value of deferred tax liabilities associated with the above write-off of previously acquired customer relationship intangible assets by $7.3 million, which was recognized in the "Income tax expense from continuing operations" line in the Condensed Consolidated Statement of Operations for the three and nine months ended June 30, 2018.

- The Company recognized a charge of $65.0 million for a probable loss related to the previously disclosed legal matter *In re Morning Song Bird Food Litigation* for the three and nine months ended June 30, 2018 in the "Income (loss) from discontinued operations, net of tax" line in the Condensed Consolidated Statements of Operations.
- The Company recognized adjustments to previously recognized employee termination benefits related to Project Focus activity of zero and $0.1 million for the three and nine months ended June 30, 2018 in the "Impairment, restructuring and other" line in the Condensed Consolidated Statements of Operations.
- The Company recognized charges of zero and $10.2 million for a probable loss on a previously disclosed legal matter for the three and nine months ended June 30, 2018 in the "Impairment, restructuring and other" line in the Condensed Consolidated Statements of Operations.
- On December 22, 2017, H.R.1 (the "Act," formerly known as the "Tax Cuts and Jobs Act") was signed into law. The Act provides for significant changes to the U.S. Internal Revenue Code of 1986, as amended. Among other items, the Act implements a territorial tax system, imposes a one-time transition tax on deemed repatriated earnings of foreign subsidiaries, and reduces the federal corporate statutory tax rate to 21% effective January 1, 2018. As the Company's fiscal year end falls on September 30, the federal corporate statutory tax rate for fiscal 2018 was prorated to 24.5%, with the statutory rate for 2019 and beyond at 21%. Included in the effective tax rate for the three and nine months ended June 30, 2018 are one-time impacts related to the tax law change of $45.7 million. These include a one-time $45.9 million net tax benefit adjustment reflecting the revaluation of the Company's net deferred tax liability at the lower tax rate. In addition, as part of the Act, the Company recognized a one-time tax expense on deemed repatriated earnings and cash of foreign subsidiaries as required by the Act of $14.0 million, partially offset by the recognition and application of foreign tax credits associated with these foreign subsidiaries of $13.9 million.
- As a result of the enactment of the Act, the Company repatriated cash from a foreign subsidiary during the second quarter of fiscal 2018 resulting in the liquidation of substantially all of the assets of the subsidiary and the write-off of accumulated foreign currency translation loss adjustments of zero and $11.7 million for the three and nine months ended June 30, 2018 in the "Other non-operating (income) expense, net" line in the Condensed Consolidated Statements of Operations.

Forward Looking Non-GAAP Measures

In this earnings release, the Company presents its outlook for fiscal 2019 non-GAAP adjusted EPS. The Company does not provide a GAAP EPS outlook, which is the most directly comparable GAAP measure to non-GAAP adjusted EPS, because changes in the items that the Company excludes from GAAP EPS to calculate non-GAAP adjusted EPS, described above, can be dependent on future events that are less capable of being controlled or reliably predicted by management and are not part of the Company's routine operating activities. Additionally, due to their unpredictability, management does not forecast the excluded items for internal use and therefore cannot create or rely on a GAAP EPS outlook without unreasonable efforts. The timing and amount of any of the excluded items could significantly impact the Company's GAAP EPS. As a result, the Company does not provide a reconciliation of guidance for non-GAAP adjusted EPS to GAAP EPS, in reliance on the unreasonable efforts exception provided under Item 10(e)(1)(i)(B) of Regulation S-K.