
**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): May 20, 2015 (May 15, 2015)

The Scotts Miracle-Gro Company

(Exact name of registrant as specified in its charter)

Ohio
(State or other jurisdiction
of incorporation or organization)

001-11593
(Commission
File Number)

31-1414921
(IRS Employer
Identification No.)

14111 Scottslawn Road, Marysville, Ohio
(Address of principal executive offices)

43041
(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))
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Item 1.01. Entry Into Material Definitive Agreement.

On May 15, 2015, 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) Amendment to Amended and Restated Exclusive Agency and Marketing Agreement (the “Agency Agreement Amendment”);
- (2) Lawn and Garden Brand Extension Agreement (the “Brand Extension Agreement”); and
- (3) Commercialization and Technology Agreement (the “Joint Technology Agreement”).

Pursuant to the entry into the above agreements, the Brand Extension Agreement provides for an initial lump sum payment of \$300 million to Monsanto.

A copy of the press release issued by Scotts Miracle-Gro on May 20, 2015 announcing the Company’s entry into these agreements is included as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Agency Agreement Amendment

The Company and Monsanto are parties to that certain Amended and Restated Exclusive Agency and Marketing Agreement effective as of September 30, 1998, and amended and restated as of November 11, 1998 (such agreement, as it has been further amended from time to time, the “Original Agency Agreement” and, as the Original Agency Agreement has been amended by the Agency Agreement Amendment, the “Agency Agreement”), 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 Amendment 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 Amendment amends the Original Agency Agreement in the following significant respects:

Included Markets. The Agency Agreement Amendment expands the markets in which the Company may serve as Monsanto’s exclusive agent in the lawn and garden market to include all countries other than Japan and countries subject to a comprehensive U.S. trade embargo or certain other embargoes and trade restrictions. The countries in which the Company currently serves as exclusive agent include the United States, Australia, Austria, Belgium, Canada, France, Germany, the Netherlands and the United Kingdom and the additional countries in which the Company is anticipated to serve as exclusive agent in the near future include Hungary, New Zealand, Portugal, Russia, the Republic of South Africa, Spain, Switzerland and Ukraine. The Agency Agreement Amendment also includes a mechanism to add other countries that are not yet activated markets for consumer ROUNDUP® herbicide products (including China and the Latin American countries) to the Roundup P&L, while balancing Monsanto’s rights with respect to its Ag Market.

EU Term. The Agency Agreement Amendment eliminates the initial and renewal terms that the Original Agency Agreement applied to EU Countries within the Included Markets. The term of the Agency Agreement will now continue for all Included Markets, including EU Countries within the Included Markets, unless and until otherwise terminated in accordance with its terms.

Roundup Sale. The Agency Agreement Amendment revises the procedures of the Original Agency Agreement relating to a potential Roundup Sale to (1) require Monsanto to negotiate exclusively with the Company with respect to any potential Roundup Sale for 60 days after the Company receives notice from Monsanto regarding a potential Roundup Sale and (2) provide the Company with a right of first offer and a right of last look in connection with a potential Roundup Sale to a third party. In addition, if the Company makes a bid in connection with a Roundup Sale, the then-applicable Termination Fee would serve as a credit against the purchase price and Monsanto’s board of directors would not be permitted to discount the value of the Company’s bid compared to a competing bid as a result of the Termination Fee discount.

Scotts Miracle-Gro Sale. The Agency Agreement Amendment requires Scotts Miracle-Gro to provide notice to Monsanto of (1) certain Scotts Miracle-Gro Sale proposals involving large competitors of Monsanto in the agricultural herbicide market and (2) a private or public sale process involving the solicitation of two or more indications of interest in

connection with a contemplated Scotts Miracle-Gro Sale. In the event of such a Scotts Miracle-Gro Sale, in addition to notice, Scotts Miracle-Gro has agreed to conduct non-exclusive negotiations with Monsanto during a five to 10 business day period.

Termination Fees. The Agency Agreement Amendment greatly increases the minimum Termination Fee payable under the Agency Agreement. Effective with the current Program Year, the Termination Fee, which as noted above would also serve as a credit in connection with a Roundup Sale, is equal to the greater of (i) \$200 million or (ii) four times (A) the average of the Program EBIT for the three trailing Program Years prior to the year of termination, minus (B) the 2015 Program EBIT. Based on this formula, the current Termination Fee would be approximately \$200 million.

Termination Rights. The Agency Agreement Amendment significantly reduces Monsanto's termination rights under the Original Agency Agreement and provides greater rights to the Company in the event of a termination, as follows:

- delays the effectiveness of a notice of termination given by Monsanto as a result of a change of control with respect to Monsanto or a Roundup Sale to a third party from the end of the later of 12 months or the next Program Year to the end of the fifth full Program Year after Monsanto gives such notice;
- eliminates Monsanto's termination rights for a Regional Performance Default, a Change of Significant Ownership of the Agent or an uncured or incurable Egregious Injury; and
- eliminates Monsanto's termination rights in connection with a change in control of the Company or Scotts Miracle-Gro as long as the Company has determined, in its reasonable commercial opinion, that the acquiror can and will fully perform the duties and obligations of the Company under the Agency Agreement.

The Agency Agreement Amendment also expands the Company's termination rights under the Agency Agreement to include termination for a Brand Decline Event, which addresses catastrophic declines in the Roundup Sell-Through Business as a result of external pressure on the market for Roundup Products or anti-Monsanto or anti-glyphosate sentiment, occurring before Program Year 2023. If a Brand Decline Event is determined to have occurred, the Company will have the choice of either (1) terminating the Agency Agreement Amendment, effective at the end of the third full Program Year following the Program Year in which the Company delivers notice of termination, or (2) not terminating the Agency Agreement and instead being entitled to Additional Commission Amounts ranging from a minimum of \$30 million in the aggregate over five Program Years to \$70 million in the aggregate over seven Program Years, depending on the timing of the Brand Decline Event, as set forth in the Agency Agreement Amendment.

Assignment. The Agency Agreement Amendment greatly expands the Company's assignment rights to allow the Company to transfer, and therefore monetize, its rights, interests and obligations under the Agency Agreement with respect to the North America Territories and with respect to up to three other assignees of one or more Other Included Markets, subject to the limitations set forth in the Agency Agreement Amendment.

Commission. The Agency Agreement Amendment (1) eliminates the Commission Threshold for Program Years 2016, 2017 and 2018, (2) sets the Commission Threshold for Program Year 2019 and thereafter at \$40 million and (3) establishes the Commission payable by Monsanto to the Company for each such Program Year as an amount equal to 50% of the Program EBIT for such Program Year.

The foregoing description of the Agency Agreement Amendment 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 Amendment, which is attached hereto as Exhibit 10.2 and incorporated herein by reference.

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 a residential lawn and garden field.

Exclusive License. The application of the ROUNDUP® brand is subject to a product review and approval process developed between the parties.

Benefits. The Brand Extension Agreement allows the Company to take advantage of the ROUNDUP® brand name. At this time, the type and nature of contemplated products is not known.

Customary Terms. The Brand Extension Agreement includes customary representations, warranties, covenants and indemnities regularly associated with transactions of this nature.

Oversight. Monsanto will maintain oversight of its brand, the handling of brand registrations covering these new products and new territories, as well as primary responsibility for brand enforcement in ongoing and close cooperation with the Company.

Retention of Rights by Monsanto. Monsanto continues to hold rights in the ROUNDUP® brand outside of this residential lawn and garden field.

Consideration. The Brand Extension Agreement provides for an initial lump sum payment of \$300 million to Monsanto. The lump sum payment in connection with the Brand Extension Agreement is the only consideration being paid to Monsanto in connection with the Agency Agreement Amendment, the Brand Extension Agreement and the Joint Technology Agreement.

Term. The Brand Extension Agreement has an initial term of 20 years, which will automatically renew for additional successive 20 year terms, at the Company's sole option, for no additional monetary consideration.

The foregoing description of the Brand Extension Agreement does not purport to be complete and is subject to and qualified in its entirety by reference to the full text of the Brand Extension Agreement, which is attached hereto as Exhibit 10.3 and incorporated herein by reference.

Joint Technology Agreement

The Joint Technology Agreement provides for a cooperative effort between the Company and Monsanto to further develop and commercialize new products and promising new technology developed at Monsanto, intended for introduction into the residential lawn and garden field. The Joint Technology Agreement allows the companies to take advantage of the product pipeline within Monsanto, and combine it with the commercialization skills of the Company.

"First Look" Right. Under the terms of the Joint Technology Agreement, the Company would receive an exclusive first look at new Monsanto technology, and developed Monsanto products which are deemed ready for commercialization in the residential lawn and garden field, through a review and proposal process developed by the parties.

Annual Technology Showcase. The Joint Technology Agreement further provides for an annual technology showcase meeting in which representatives from both companies meet to review and consider developing products and technologies for commercial exploitation.

Cooperation and Commercialization Process. The exact nature of the cooperation between the parties in the commercialization or development of a specific residential lawn and garden product/service will be established on a case by case basis through the Joint Technology Agreement's proposal process.

Term. The Joint Technology Agreement has a term of 30 years, provided that the Joint Technology Agreement will terminate immediately, without further notice or action by the Company or Monsanto, upon the termination of the Agency Agreement or the Brand Extension Agreement.

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

Item 2.01. Completion of Acquisition or Disposition of Assets.

The information disclosed under Item 1.01 is 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. Exhibit Description

10.1	Amended and Restated Exclusive Agency and Marketing Agreement, effective as of September 30, 1998, and amended and restated as of November 11, 1998, by and between the Company and Monsanto. Incorporated herein by reference to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 30, 2005 filed December 15, 2005 [Exhibit 10.x].
10.2	Amendment to Amended and Restated Exclusive Agency and Marketing Agreement, dated as of May 15, 2015, by and between the Company and Monsanto.
10.3	Lawn and Garden Brand Extension Agreement, dated as of May 15, 2015, by and between the Company and Monsanto.
10.4	Commercialization and Technology Agreement, dated as of May 15, 2015, by and between the Company and Monsanto.
99.1	News Release issued by Scotts Miracle-Gro on May 20, 2015.

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: May 20, 2015

By: /s/ IVAN C. SMITH

Printed Name: Ivan C. Smith

Title: Executive Vice President, General Counsel, Corporate Secretary and Chief Compliance Officer

INDEX TO EXHIBITS

Current Report on Form 8-K
Dated May 20, 2015
The Scotts Miracle-Gro Company

EXHIBIT NO.	EXHIBIT DESCRIPTION	LOCATION
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10.2	Amendment to Amended and Restated Exclusive Agency and Marketing Agreement, dated as of May 15, 2015, by and between the Company and Monsanto.	*
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99.1	News Release issued by Scotts Miracle-Gro on May 20, 2015.	*

* Filed herewith.

**AMENDMENT TO
AMENDED AND RESTATED EXCLUSIVE AGENCY
AND MARKETING AGREEMENT
BETWEEN
MONSANTO COMPANY
AND THE SCOTTS COMPANY LLC**

This AMENDMENT TO AMENDED AND RESTATED EXCLUSIVE AGENCY AND MARKETING AGREEMENT (this "Amendment"), effective as of May 15, 2015 (the "Effective Date"), is entered into by and between Monsanto Company, a Delaware corporation ("Monsanto"), and The Scotts Company LLC, an Ohio limited liability company (the "Agent").

WHEREAS, Monsanto and the Agent entered into that certain Amended and Restated Exclusive Agency and Marketing Agreement, effective as of September 30, 1998, and amended and restated as of November 11, 1998 (such agreement, as it has been amended from time to time, the "Agreement");

WHEREAS, Monsanto and the Agent are entering into a Lawn and Garden Brand Extension Agreement effective as of the date hereof (the "License Agreement");

WHEREAS, Monsanto and the Agent are entering into a Commercialization and Technology Agreement effective as of the date hereof (the "Joint Technology Agreement" and, together with this Amendment and the License Agreement, the "2015 Agreements"); and

WHEREAS, Monsanto and the Agent desire to further amend the Agreement as set forth below.

NOW THEREFORE, in consideration of the promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Monsanto and the Agent agree as follows:

**ARTICLE I
AMENDMENTS**

Section 1.01 Capitalized Terms. Capitalized terms used but not defined herein shall have the meaning set forth in the Agreement.

Section 1.02 Amendments Related to Included Markets.

- (a) Schedule 1.1(a) attached to the Agreement, as amended from time to time, is hereby deleted in its entirety and replaced with the Schedule 1.1(a) attached to this Amendment.
- (b) The following definitions included in Section 1.1 of the Agreement are hereby deleted in their entirety and replaced with the following text:

““Excluded Markets” means (i) Japan; (ii) any country subject to a comprehensive U.S. trade embargo (currently Cuba, Iran, North Korea, Sudan, Syria and Burma); (iii) 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; and (iv) each other country expressly excluded from Included Markets.”

““Included Markets” means every country throughout the world, other than the Excluded Markets; provided, however, that the list of Included Markets may be amended from time to time pursuant to Section 2.5 below.”

- (c) Section 1.1 of the Agreement is hereby amended by adding the following text as defined terms into Section 1.1 in alphabetical order:

““Activated Included Markets” means those Included Markets that are currently being serviced by the Agent, which are listed on Schedule 1.1(a).”

““Transition Markets” means Hungary, New Zealand, Portugal, Russia, the Republic of South Africa, Spain, Switzerland and Ukraine.”

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

- (d) Article 2 of the Agreement is hereby amended by adding, immediately after Section 2.4 of the Agreement, as Section 2.5, the following text:

“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 Transition Markets during the period of transition) 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 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 as an Activated Included Market (any Included Market that is not being serviced by the Agent, other than any of the Transition Markets, 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 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 new Activated 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 1.03 Assignment of Distribution Agreements. Upon execution of this Amendment, Monsanto and the Agent shall work in good faith to assign or otherwise transition to the Agent any distribution agreements, to the extent that such agreements are assignable in accordance with their terms, relating to Monsanto's distribution and sale of Roundup Products in the Transition Markets.

Section 1.04 Amendments Related to EU Term Changes.

- (a) Section 10.1 of the Agreement is hereby deleted in its entirety and replaced with the following text:

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

- (b) Section 10.2 of the Agreement is hereby deleted in its entirety and replaced with the following text:

“**Section 10.2 Reserved.**”

- (c) Section 10.3 of the Agreement is hereby deleted in its entirety and replaced with the following text:

“**Section 10.3 Reserved.**”

- (d) The Agreement is hereby amended by deleting all related references to the EU Term and EU Countries.

Section 1.05 Amendments Related to Roundup Sale.

- (a) Section 1.1 of the Agreement is hereby amended by adding the following text as defined terms into Section 1.1 in alphabetical order:

““Exclusive Roundup Sale Period” shall have the meaning set forth in Section 10.6(a)(iii)(A).”

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

““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 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.”

(b) Section 10.6(a) of the Agreement is hereby deleted in its entirety and replaced with the following text:

“(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 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.”

(c) Section 10.6 of the Agreement is hereby amended by adding, immediately after Section 10.6(d) of the Agreement, as Section 10.6(e), the following text:

“(e) *Noncompetition*. 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 (including formulation development, regulatory registrations, packaging and delivery systems development, and advertising and promotional material development and any other activities not prohibited by Section 6.13 of this Agreement during the Noncompetition Period, but excluding consumer-facing efforts or communications) 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).”

- (d) The parties acknowledge that there is disagreement regarding the scope of Section 6.13 of the Agreement in connection with non-commercial activities. Nothing contained in Section 1.05(c) hereof is intended to interpret the scope of Section 6.13 of the Agreement or prejudice either of the party’s positions with respect to Section 6.13 of the Agreement.

Section 1.06 Amendments Related to Certain Changes of Control or Changes of Significant Ownership of Scotts Miracle-Gro.

- (a) Section 1.1 of the Agreement is hereby amended by adding the following text as defined terms into Section 1.1 in alphabetical order:

““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, The Dow Chemical Company, Bayer AG, Syngenta AG, BASF SE and E. I. DuPont de Nemours and Company (or any Affiliate of any of such entities and its and their successors and assigns).”

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

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

““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(iii) of this Agreement.”

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

- (b) Article 2 of the Agreement is hereby amended by adding, immediately after Section 2.5 of the Agreement (as provided in Section 1.02 of this Amendment), as Section 2.6, the following text:

“Section 2.6 Scotts Miracle-Gro Sale.

(a) Scotts Miracle-Gro Sale Procedures

(i) *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.

(ii) *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 1.07 Amendment Related to the Termination Fee. Section 10.4(d) of the Agreement is hereby amended by deleting in its entirety the table set forth in Section 10.4(d) and replacing it with the following table:

“Program Year 2015 Program Year and thereafter	Termination Fee The greater of (i) \$200MM 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.
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For example, if the Roundup Sale occurs in 2033 (all expressed in \$MM):

<u>2015</u>	<u>2030</u>	<u>2031</u>	<u>2032</u>	<u>3 year Avg</u>	<u>Termination Fee</u>
\$220	\$310	\$309	\$314	\$311	\$364”

Section 1.08 Amendments Related to Termination Rights.

(a) Section 10.4(a)(2) of the Agreement is hereby deleted in its entirety and replaced with the following text:

“(2) A Change of Control with respect to Monsanto or a Roundup Sale, in each case, by giving the Agent a notice of termination, such termination to be effective at the end of the fifth (5th) full Program Year after such notice is provided.”

(b) Section 10.4(b)(4) of the Agreement is hereby deleted in its entirety and replaced with the following text:

“(4) [Intentionally omitted.]”

(c) Section 10.4(b)(5) of the Agreement is hereby deleted in its entirety and replaced with the following text:

“(5) [Intentionally omitted.]”

(d) Section 10.4(b)(7) of the Agreement is hereby deleted in its entirety and replaced with the following text:

“(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 acquiror can and will fully perform the duties and obligations of the Agent under this Agreement;”

(e) Section 10.4(b)(8) of the Agreement is hereby deleted in its entirety and replaced with the following text:

“(8) [Intentionally omitted.]”

- (f) The definitions of “Change of Significant Ownership” and “Egregious Injury” in Section 1.1 of the Agreement are hereby deleted in their entirety.
- (g) The definition of “Acquiror” in Section 1.1 of the Agreement is hereby deleted in its entirety.
- (h) The first three lines of Section 10.4(g) of the Agreement are hereby deleted in their entirety and replaced with the following text:

“(g) *Arbitration*. In the event either party claims 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 following procedures shall apply:”

- (i) Section 1.1 of the Agreement is hereby amended by adding the following text as defined terms into Section 1.1 in alphabetical order:

““Additional Commission Amount” shall have the meaning set forth in Section 10.5(d)(iv).”

““Brand Decline Event” shall have the meaning set forth in Section 10.5(d)(i).”

- (j) Section 10.5 of the Agreement is hereby amended by adding, immediately after subsection (c) of Section 10.5, as subsection (d), the following text:

“(d) *Brand Decline Event*.

(i) If prior to Program Year 2023

(A) the Sell-Through Business has declined by more than twenty-five percent (25%) as compared to the Sell-Through Business for Program Year 2014 due to legal, regulatory, governmental or non-governmental organization actions adversely affecting the market for Roundup Products or due to diminished consumer or retailer acceptance of Roundup Products due to anti-Monsanto or anti-glyphosate sentiment, or

(B) there has been a significant decline in the overall health and goodwill of the Roundup brand, as measured by industry standard market research and best practices such as attitude and usage studies (provided that the decline is not primarily due to the acts or omissions of the Agent or its Affiliates), and, in the case of (A) or (B),

(C) such declines cannot be remedied by the end of the next full Program Year,

then the Agent may provide notice to Monsanto of such alleged declines (such declines, a “Brand Decline Event”).

(ii) If Monsanto does not contest the occurrence of the alleged Brand Decline Event by submitting such alleged Brand Decline Event to resolution through arbitration in accordance with the provisions of Section 10.4(g) of this Agreement within ninety (90) days of receipt of such notice from the Agent, then that Brand Decline Event shall be deemed to have occurred as of the date of such notice, and thereafter the Agent shall be entitled to either, as the Agent’s sole remedy, (x) terminate this Agreement, which termination shall be effective at the end of the third (3rd) full Program Year following the Program Year in which the Agent delivers notice of termination pursuant to this Section 10.5(d)(ii), or (y) not terminate this Agreement and be entitled to the Additional Commission Amount (in addition to the Commission) set forth in Section 10.4(d)(iv) below, which Additional Commission Amount shall be subject to all other terms and conditions of this Agreement with respect to the Commission, except as otherwise expressly stated in this Section 10.5(d).

(iii) If Monsanto does contest the occurrence of the alleged Brand Decline Event by submitting such alleged Brand Decline Event to resolution through arbitration in accordance with the provisions of Section 10.4(g) of this Agreement within ninety (90) days of receipt of such notice from the Agent, then the question of whether a Brand Decline Event has occurred will be finally determined in accordance with the provisions of Section 10.4(g) of this Agreement, and if a Brand Decline Event is finally determined to have occurred, then the Brand Decline Event shall be deemed to have occurred as of the date of such notice, and thereafter the Agent shall be entitled to either, as the Agent’s sole remedy, (x) terminate this Agreement, which termination shall be effective at the end of the third (3rd) full Program Year following the Program Year in which the Agent delivers notice of termination pursuant to this Section 10.5(d)(iii), or (y) not terminate this Agreement and be entitled to the Additional Commission Amount (in addition to the Commission) set forth in Section 10.4(d)(iv) below, which Additional Commission Amount shall be subject to all other terms and conditions of this Agreement with respect to the Commission, except as otherwise expressly stated in this Section 10.5(d).

(iv) The amounts of the “Additional Commission Amount” mean, depending on the Program Year in which the Brand Decline Event occurs, the amounts indicated in the table below for the Program Years indicated:

Year of Brand Decline Event =>	Program Year 2015/2016	Program Year 2017	Program Year 2018	Program Year 2019	Program Year 2020	Program Year 2021	Program Year 2022
Additional Commission Amount in Program Year 2016	\$10MM						
Additional Commission Amount in Program Year 2017	\$10MM	\$10MM					
Additional Commission Amount in Program Year 2018	\$10MM	\$10MM	\$10MM				
Additional Commission Amount in Program Year 2019	\$10MM	\$10MM	\$10MM	\$10MM			
Additional Commission Amount in Program Year 2020	\$10MM	\$10MM	\$10MM	\$10MM	\$10MM		
Additional Commission Amount in Program Year 2021		\$10MM	\$10MM	\$10MM	\$10MM	\$8MM	
Additional Commission Amount in Program Year 2022		\$10MM	\$10MM	\$10MM	\$10MM	\$8MM	\$6MM
Additional Commission Amount in Program Year 2023			\$10MM	\$10MM	\$10MM	\$8MM	\$6MM
Additional Commission Amount in Program Year 2024			\$10MM	\$10MM	\$10MM	\$8MM	\$6MM
Additional Commission Amount in Program Year 2025						\$8MM	\$6MM
Additional Commission Amount in Program Year 2026							\$6MM"

Section 1.09 Amendments Related to Assignments.

- (a) Section 1.1 of the Agreement is hereby amended by adding the following text as a defined term into Section 1.1:

““License Agreement” means the Lawn and Garden Brand Extension Agreement entered into as of May 15, 2015 by and between Monsanto and the Agent.”

- (b) Section 11.8 of the Agreement is hereby deleted in its entirety and replaced with the following text:

“**Section 11.8 Assignment.** 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. Notwithstanding the foregoing, (i) 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; (ii) 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 (iii) the Agent shall be entitled to transfer and assign its rights, interests and obligations hereunder and under the License Agreement with respect to the North America Territories and any Other Included Markets; provided, that with respect to this clause (iii), (A) in addition to an assignment of the North America Territories, the Agent may only make three (3) assignments pursuant to this clause (iii) during the term of this Agreement, and provided, further, that with respect to this clause (iii) the Agent determines in its reasonable commercial opinion that the assignee of such rights can and will fully perform the duties and obligations under the License Agreement and with respect to the Roundup L&G Business in such Included Markets as specified in the License Agreement and this Agreement and provided, further, that any such assignee shall be subject to the provisions of the License Agreement and this Agreement as if it were an original party to each agreement. For the avoidance of doubt, in no event shall this Agreement be transferred, delegated, or assigned by a party (by operation of law, Change of Control, or otherwise) to a third party unless the applicable portions of the License Agreement are also transferred to such third party.”

Section 1.10 Amendment Related to Commission.

(a) Section 3.6(a) of the Agreement is hereby deleted in its entirety and replaced with the following text:

“(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 vary in accordance with the formula set forth below:

(i) Program Years 2016, 2017 and 2018: The Commission shall be equal to:

Amount of Program EBIT Commission Threshold	Amount of Program EBIT Multiplied By:
\$0	50%

(ii) Program Year 2019 and thereafter: The Commission Threshold shall be \$40MM.

Amount of Program EBIT Commission Threshold	Amount of Program EBIT Multiplied By:
\$0 - Commission Threshold	0%
Above Commission Threshold	50%

provided, the Commission Thresholds set forth above may be amended from time to time by mutual agreement of the parties following the inclusion or exclusion of either new or existing countries in the Included Markets, including Activated Included Markets, or Excluded Markets, as applicable.

Section 1.11 Amendment Related to Additional Obligations of the Parties. Article 6 of the Agreement is hereby amended by adding, immediately after Section 6.16, as Section 6.17, the following text:

“**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 1.12 Amendment Related to New Roundup Products.

(a) Section 1.1 of the Agreement is hereby amended by adding the following text as a defined term into Section 1.1:

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

(b) Section 6.10 of the Agreement is hereby amended by making the current language in Section 6.10 of the Agreement as subsection (a) of Section 6.10 and by adding the following text as a new subsection (b) to Section 6.10:

“(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 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. 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."

Section 1.13 Other Amendments.

- (a) The last sentence of Section 2.3 of the Agreement shall be deleted.
- (b) Section 2.2(a)(ii)(Z) of the Agreement shall be deleted in its entirety and replaced with the following:

"(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."

- (c) The last sentence of Section 6.4 of the Agreement shall be deleted in its entirety and replaced with the following:

"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."

**ARTICLE II
MISCELLANEOUS**

Section 2.01 Counterparts. This Amendment may be executed in one or more counterparts, all of which shall be considered one and the same agreement. Delivery of an executed counterpart of this Amendment by facsimile or other electronic image scan transmission shall be effective as delivery of an original counterpart hereof.

Section 2.02 Severability. If any provision of this Amendment (or any portion thereof) or the application of any such provision (or any portion thereof) to any person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof (or the remaining portion thereof) or the application of such provision to the Agreement or any other persons or circumstances, so long as the economic or legal substance of the transactions contemplated hereby and pursuant to the Agreement is not affected in any manner materially adverse to any party.

Section 2.03 Amendment and Restatement. The parties agree that the Agreement should be amended and restated to address and incorporate the numerous amendments and side letters, including this Amendment, that have been entered into since the last amendment and restatement on November 11, 1998, to eliminate anachronistic provisions and to incorporate course of conduct and practices that have developed since such date. The parties agree to negotiate in good faith to complete an amendment and restatement as soon as reasonably practicable and to commit appropriate resources, internal and external, to such effort.

Section 2.04 Mutual Release.

- (a) Monsanto, together with its Affiliates, which it represents and warrants that it can and hereby does bind, hereby releases, acquits and forever discharges the Released Scotts Parties from all Claims arising out of or under (i) the Agreement, (ii) amendments to the Agreement made prior to the Effective Date, and (iii) side letter agreements made prior to the Effective Date that address practices or disputes under the Agreement or any amendments thereto. For the avoidance of doubt, this paragraph does not apply to a breach of the Agreement, or such amendments or such side letter agreements, where such breach occurs on or after the Effective Date, unless such otherwise breaching activity constitutes the same continuing activity or course of conduct, known by Monsanto to have been occurring since the beginning of Program Year 2014, that was released, acquitted and discharged hereunder.
- (b) The Agent, together with its Affiliates, which it represents and warrants that it can and hereby does bind, hereby releases, acquits and forever discharges the Released Monsanto Parties from all Claims arising out of or under (i) the Agreement, (ii) amendments to the Agreement made prior to the Effective Date, and (iii) side letter agreements made prior to the Effective Date that address practices or disputes under the Agreement or amendments thereto. For the avoidance of doubt, this paragraph does not apply to a breach of the Agreement, or such amendments or such side letter agreements, where such breach occurs on or after the Effective Date, unless such otherwise breaching activity constitutes the same continuing activity or course of conduct, known by the Agent to have been occurring since the beginning of Program Year 2014, that was released, acquitted and discharged hereunder.
- (c) This Section 2.04 shall not alter or affect any contracts or agreements between the Monsanto Parties and the Scotts Parties made prior to the Effective Date that are not the express subject of the Agreement, as amended by this Amendment.

- (d) For purposes of this Section 2.04, “Claim” means any and all manner of claims and affirmative defenses, counterclaims, demands, actions, petitions, causes of action, suits, proceedings, investigations, damages, losses, liabilities, judgments, debts, claims over, accounts, warranties, liens, fines, administrative penalties, costs or expenses whatsoever (including court costs and reasonable fees of attorneys and other professionals) wherever arising, but only if known by the aggrieved party at the time of the Effective Date, and whether based on contract law, tort law, equity, statute, regulation, or any other source of law, and including for specific performance, declaratory judgment, injunctive relief, patent infringement, patent invalidity, patent unenforceability, violations of the antitrust, unfair trade practices, and/or competition laws, false advertising, false marking, unfair or deceptive acts or practices, product disparagement, unfair competition, restraint of trade, misappropriation, conversion, trade secret misappropriation, breach of contract, negligence, defamation, tortious interference, negligent misrepresentation, or failure to meet regulatory requirements or standards; provided, however, that a Claim does not include any demand, action, petition, cause of action, suit, or other proceeding to the extent that it asserts fraud or intentional misrepresentation as the basis for recovery.
- (e) “Released Scotts Parties” means the Agent and its current (as of the Effective Date) and former Affiliates and their respective past and present (as of the Effective Date) direct and indirect predecessors, successors, assigns, and all of their respective past and present (as of the Effective Date) officers, directors (with respect to directors and officers, in their individual and representative capacities), stockholders, employees, agents, and attorneys.
- (f) “Released Monsanto Parties” means Monsanto and its current (as of the Effective Date) and former Affiliates and their respective past and present (as of the Effective Date) direct and indirect predecessors, successors, assigns, and all of their respective past and present (as of the Effective Date) officers, directors (with respect to directors and officers, in their individual and representative capacities), stockholders, employees, agents, and attorneys.

Section 2.05 Publicity. The parties agree to confer and consult with each other regarding the contents of any press release(s) announcing the execution of this Amendment or the other 2015 Agreements. Each party shall have the right to review and provide comments to any such press release(s), which comments shall be given due consideration by the other party.

Section 2.06 Effect of Amendment. All terms and conditions of the Agreement not amended, replaced or modified hereby shall remain in full force and effect as set forth in the Agreement.

Section 2.07 Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Delaware (exclusive of such state’s choice of laws or conflicts of laws rules).

[Signature Page Follows]

SIGNATURE PAGE

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

MONSANTO COMPANY

By: /s/ HUGH GRANT
Name: Hugh Grant
Title: Chairman and Chief Executive Officer

THE SCOTTS COMPANY LLC

By: /s/ JAMES HAGEDORN
Name: James Hagedorn
Title: President and Chief Executive Officer

Schedule 1.1(a)

Activated Included Markets

The United States of America
Belgium
Denmark
Norway
Sweden
EIRE
France
Germany
Netherlands
Canada
Australia
Puerto Rico
United Kingdom
Austria
Finland
Luxembourg
Mexico
Iceland
Malta
Italy
Poland
Czech Republic
Slovakia
Hungary
New Zealand
Portugal
Russia
The Republic of South Africa
Spain
Switzerland
Ukraine

Lawn and Garden Brand Extension Agreement

THIS AGREEMENT is entered into as of this 15th day of May, 2015 between The Scotts Company LLC, an Ohio limited liability company, with its principal place of business at 14111 Scottslawn Road, Marysville, Ohio 43041, and Monsanto Company, a Delaware corporation, with its principal place of business at 800 N. Lindbergh Blvd., St. Louis, Missouri 63167.

RECITALS:

- A. Monsanto has rights in various names, symbols, designs and likenesses, including, but not limited to copyrights and trademarks listed in Schedule A, attached hereto and incorporated herein by this reference. The Licensed Marks have been used in commerce and extensively advertised and promoted by various means. The Licensed Marks and the reputation of Monsanto are associated with high quality and safety in the production and sale of its products and services, which high reputation and goodwill has been and continues to be a unique benefit to Monsanto.
- B. Scotts recognizes the benefits to be derived from utilizing the Licensed Marks and desires to utilize the Licensed Marks upon and in connection with the development, manufacture, production, advertising, marketing, promotion, distribution, and sale of products and services hereinafter described with the terms hereinafter described.
- C. The Parties or one of their respective Affiliates previously entered into an Amended and Restated Exclusive Agency and Marketing Agreement, effective as of September 30, 1998, and amended and restated as of November 11, 1998, as amended or modified from time to time (collectively referred to as the "Agency Agreement"), and are entering into an Amendment to the Agency Agreement contemporaneously with this Agreement.

NOW THEREFORE, in consideration of mutual promises contained herein, the Parties agree as follows:

- 1. DEFINITIONS For purposes of this Agreement, the following words and phrases shall have the following meanings and may be used interchangeably in the singular or plural context:
 - 1.1 "Affiliate(s)" shall mean with respect to any Person, any other Person that, directly or indirectly, whether through one or more intermediaries, Controls, is Controlled by, or is under common Control with that Person. For purposes of clarity, the Affiliates of a Party shall include those Persons existing prior to or after the Effective Date only during the period or periods in which the Person meets the criteria set forth in this Section 1.1 at the time the Person's Affiliate status is to be determined, including as a result of mergers or acquisitions undertaken by a Party or its Affiliates after the Effective Date.
 - 1.2 "Agreement" means this Lawn and Garden Brand Extension Agreement between the Parties.
 - 1.3 "Agricultural Uses" means the cultivation, maintenance, or harvest of plants, animals, or other organisms for the sale or other commercial use of such organisms or products made with or derived from those organisms.
 - 1.4 "Asserted Liability" means the definition set out in Section 13.1 of this Agreement.
 - 1.5 "Business Day" means Monday through Friday, excluding official United States federal holidays
 - 1.6 "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; or (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; or (iv) the consummation by such Person of a plan of complete liquidation or dissolution of such Person.

- 1.7 “Claims Notice” means the definition set out in Section 13.1 of this Agreement.
- 1.8 “Consumer Inquiries” means the definition set out in Section 5.1 of this Agreement.
- 1.9 “Contract Manufacturer” means the definition set out in Section 2.4.1 of this Agreement.
- 1.10 “Control”, “Controls”, “Controlled by” and “under common Control” shall mean (a) the ownership, directly or indirectly, of fifty percent (50%) or more of the voting equity interest in a Person or (b) the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise, or (c) beneficial ownership of a Person as defined by Section 13(d)(3) of the Securities Exchange Act of 1934, as amended; regardless of whether such control was acquired through a single transaction or through multiple transactions in each case.
- 1.11 “Copyright(s)” means original and creative works, whether registered or unregistered, used in connection with the Licensed Marks, including, but not limited to, the works contained in the Trademark Usage Rules.
- 1.12 “Costs” means all costs, expenses, fees (including reasonable attorney’s fees) and all Service Fees.
- 1.13 “Effective Date” means the date set forth above on which the Term of this Agreement commences.
- 1.14 “FTO Cleared Product(s)” means L&G Field Products within the categories on Schedule B attached hereto and incorporated by this reference.
- 1.15 “FTO Review Process” means the freedom to operate review process as set forth in Section 2.2 of this Agreement.
- 1.16 “FTO Review Product(s) & Service(s)” means L&G Field Products & Services as to which Scotts has requested an FTO Review Process and as to which Scotts has subsequently received notice from Monsanto that the proposed product or service has passed (rather than failed) the FTO Review Process pursuant to Section 2.2 of this Agreement and have subsequently been added to Schedule C.
- 1.17 “ITO” means industrial, turf and ornamental.
- 1.18 “ITO Uses” means the use of products in, on, or around a property by a Person who is not the owner or a resident of the property and who has been hired, employed, or otherwise commercially engaged, directly or indirectly, by the owner or a resident of such property to use such products in, on, or around such property and services commercially applying such products.
- 1.19 “L&G Field Product(s) & Services” means products and/or services in the Residential Lawn & Garden Field, provided that such products and/or services comply with the Stewardship Requirements and Trademark Usage Rules, and further provided that Scotts has obtained all Regulatory Approvals for such products and/or services.
- 1.20 “Laws” means the definition set out in Section 2.3.1 of this Agreement.
- 1.21 “Loss” means the definition set out in Section 13.1 of this Agreement.

- 1.22 “Licensed Marks” means the trademarks as set out on Schedule A, attached hereto and incorporated herein by this reference.
- 1.23 “Material Breach” means breach of Sections 2.3, 3, 6, and/or 12 including any subparts thereof.
- 1.24 “Monsanto” means Monsanto Company and its Affiliates.
- 1.25 “New Material” means the definition set out in Section 4.1. of this Agreement.
- 1.26 “Party” means either Monsanto or Scotts, and the term “Parties” means collectively Monsanto and Scotts.
- 1.27 “Person” means any individual, corporation, proprietorship, firm, partnership, limited liability company, trust, association, or other entity.
- 1.28 “Professional Residential Service Uses” means the subset of ITO Uses where the Person(s) hired, employed, or otherwise commercially engaged provides services to cultivate, maintain and control lawns, gardens or plants, and to control pests associated with such lawns, gardens or plants only or substantially only to private residential customers in, on or around those residential customers’ personal residential properties (such services being “Professional Residential Services” and Persons providing such services being “Professional Residential Service Providers”).
- 1.29 “Recall Campaign” means the definition as set forth in Section 5.2 of this Agreement.
- 1.30 “Regulatory Approval(s)” means all official recognition, including government approvals, conditions of approvals, licenses, clearances, permits, notifications, registrations, exemptions, deregulations, or other actions by a Regulatory Authority, authorizing or facilitating, research, field or laboratory testing, development, cultivation, making, use, production, commercialization, imports, exports, distribution, transportation, disposal, or any other activities related to a product that are required, advisable, or customary to obtain in any jurisdiction within the Territory in connection with a proposed use of a product in or in connection with that jurisdiction.
- 1.31 “Regulatory Authority(ies)” means any government authority of any type that has any direct or indirect control of any regulation or government rule, law, regulation, or the ability to grant, deny, or exert any control over Regulatory Approvals or implementation thereof in any jurisdiction.
- 1.32 “Residential Lawn & Garden Field” means (a) packaged goods marketed to, promoted or positioned solely for use by customers in, on, or around their personal residential properties to cultivate, maintain and control residential lawns, gardens, or house plants, or to control household pests or pests associated with such lawns, gardens or house plants, (b) packaged goods marketed, promoted or positioned solely for use by Professional Residential Service Providers in, on or around their personal residential properties to cultivate, maintain and control residential lawns, gardens or house plants, or to control household pests or pests associated with such lawns, gardens or house plants only when marketed, promoted and sold to consumers through DIY Superstores (i.e., stores ranging from 40,000 square feet to more than 100,000 square feet with expanded building materials with garden/landscaping centers outside of the stores such as Lowe’s and The Home Depot), and (c) Professional Residential Services provided by Professional Service Providers; but provided that notwithstanding the foregoing, the “Residential Lawn & Garden Field” excludes:
- (i) all products, containing one or more herbicides, where such products are promoted or positioned as non-selective or broad spectrum herbicide products with herbicidal activity against both grasses and broad leaf weeds;
 - (ii) all products promoted or positioned for ITO Uses other than Professional Residential Service Uses;
 - (iii) all products promoted or positioned for Agricultural Uses;

- (iv) all products that are or are promoted or positioned as pest control products for use on companion animals;
- (v) all products that are or are promoted or positioned as rodenticides or animal poisons or non-insect traps;
- (vi) all products that are or are promoted or positioned for human use as insect repellent or insect protectants where the product is to be applied topically to the skin or clothing or ingested as part of its use;
- (vii) all products that are or are promoted or positioned as animal feed products, including wild bird feed;
- (viii) all products that are or are promoted or positioned as seeds, sod, roots, bulbs, plants, viable vegetative material, or other organisms;
- (iv) all products that are or are promoted or positioned as pressurized sprayers;
- (x) all products that are or are promoted or positioned as hand-held sized backpack sprayers; and
- (xi) all products that are or are promoted as herbicides, unless:
 - (a) they have, as permitted by the EPA and other applicable regulatory authorities, an express (or explicit) and effective call-out on the outer panel (front or back) of the packaging that communicates that non-selective Roundup Products (as defined in the Agency Agreement) sold pursuant to the Agency Agreement are better suited for consumers who desire a product to kill both grasses and weeds in non-lawn areas;
 - (b) their packaging uses distinctive color and sub-branding to create a significant difference in appearance from the non-selective Roundup Products sold pursuant to the Agency Agreement. For the avoidance of doubt, Roundup “for Lawns” would be an acceptable sub-branding mechanism; and
 - (c) their marketing materials (website; point-of-purchase; etc.) actively and clearly differentiate Roundup-branded selective and non-selective herbicide products and their intended uses.

If, in any market, there are separate retail outlets that are promoted or positioned to serve customers purchasing for their own non-commercial use in, on or around their residential property versus outlets promoted and positioned to serve customers purchasing for ITO Uses (other than Professional Residential Service Uses), a product shall only be included in the “Residential Lawn & Garden Field” when it is sold through retail outlets predominately promoted and positioned to serve customers purchasing for their own non-commercial use in, on or around their residential property.

1.33 “Scotts” means The Scotts Company LLC and its Affiliates.

1.34 “Scotts’ Material” means the definition set out in Section 4.1 of this Agreement.

1.35 “Service Fees” means out of pocket expenses, plus personnel time at Monsanto’s fully loaded hourly rate of \$100 adjusted annually by the CPIu. Monsanto agrees that based on the projected volume of evaluation requests by Scotts, Monsanto will work with Scotts to provide a reasonable cost estimate, and all personnel time and relevant out of pocket expenses will be tracked by Monsanto.

- 1.36 “Stewardship Requirements” means those requirements set out on Schedule D attached hereto and incorporated herein by this reference along with any and all reasonable modifications provided by Monsanto in writing from time to time.
- 1.37 “Term” means the initial term and all renewals as set forth in Section 10 of this Agreement.
- 1.38 “Territory” means world-wide, with the exception of Japan and any countries subject to a comprehensive United States of America (“U.S.A.”) trade embargo (which as of the Effective Date are Cuba, Iran, North Korea, Sudan, Syria and Burma but may be subject to change during the Term of this Agreement) and countries subject to other relevant embargoes and trade restrictions to the extent that such relevant embargoes and trade restrictions would materially, adversely impact either Party’s ability to fulfill such Party’s duties and obligations under the Agreement. “North America Territories” means the United States of America, Puerto Rico, Canada and the Caribbean countries.
- 1.39 “Third Party” means any Person other than Monsanto and Scotts.
- 1.40 “Trademark Usage Rules” means the rules set forth on Schedule E, attached hereto and incorporated herein by this reference, which may be reasonably updated by Monsanto in writing from time to time. Notwithstanding the foregoing, Scotts agrees that the usage of a Licensed Mark shall be significantly different from overall appearance of Monsanto’s products outside of the Residential Lawn & Garden Field to avoid customer confusion.

2. CONVEYANCE OF RIGHTS - LICENSE

- 2.1 LICENSE GRANT. Subject to the terms and conditions of this Agreement, Monsanto hereby grants to Scotts and Scotts hereby accepts the following:
 - 2.1.1 A sole and exclusive license, even as to Monsanto, during the Term in the United States, to use the Licensed Marks solely to develop, manufacture, produce, have manufactured and produced, advertise, market, promote, distribute and sell FTO Cleared Products in the United States.
 - 2.1.2 A sole and exclusive license, even as to Monsanto, during the Term in the Territory, to use the Licensed Marks solely to develop, manufacture, produce, have manufactured and produced, advertise, market, promote, distribute and sell FTO Review Products & Services in the Territory.
 - 2.1.3 To the extent the Licensed Marks and the corresponding trademark applications/registrations in Schedule A cover uses outside of the Residential Lawn and Garden Field, Monsanto retains the right to use, itself or through Third Parties, the Licensed Marks, either alone or in combination with other terms, designs and logos, on and in connection with Monsanto and Third Party products, including, but not limited to the products that are identical or similar to L&G Field Products & Services but that are outside the Residential Lawn and Garden Field.
 - 2.1.4 The Parties agree that the Licensed Marks may not cover all FTO Cleared Products or FTO Review Products & Services, or be defined identically with the definition of FTO Cleared Products or FTO Review Products & Services in this Agreement.
 - 2.1.5 Scotts’ and Scotts’ Sub-Licensees’ use of the Licensed Marks shall accrue and inure to the benefit of Monsanto for all purposes.
 - 2.1.6 Reservation of Rights: All rights not expressly licensed to Scotts herein are reserved to Monsanto. No license, express or implied, is granted other than for the Licensed Marks in the manner and to the extent authorized by the Agreement.
- 2.2 FTO REVIEW PROCESS
 - 2.2.1 Scotts shall provide notice to Monsanto of the Licensed Mark(s) Scotts intends to use (a) in the United States on proposed FTO Review Products & Services, and/or (b) in

specified countries in the Territory, but outside the United States, on proposed FTO Review Products & Services. Scotts' notices shall include information adequate to allow Monsanto to conduct the FTO Review Process and Scotts shall also provide such other information as Monsanto may later reasonably request.

- 2.2.2 For each product and country combination noticed under Section 2.2.1, Monsanto shall expeditiously conduct an FTO Review Process, and the proposed FTO Review Products & Services shall only pass the FTO Review Process if all of the following are true: (i) if, after conducting trademark clearance as is customary under trademark best practices, Monsanto, in its reasonable business determination after consultation with Scotts, concludes that the trademark(s) is likely available for use and registration without a significant risk of conflict with the rights of others; (ii) if, after reasonable review, Monsanto does not identify any conflicting or potentially conflicting contractual obligations, (iii) if, in Monsanto's reasonable business determination, commercialization of the proposed FTO Review Product & Services will not negatively impact the Licensed Marks, and/or Monsanto's business, including, but not limited to adverse effects with regard to intellectual property protection and enforcement, or political, human rights, or environmental protection concerns, (iv) if, in Monsanto's reasonable determination, the proposed FTO Review Products & Services will comply with the Stewardship Requirements, and (v) if Scotts is in material compliance with the terms of this Agreement (provided that Monsanto's positive assessment of such compliance will not operate as a waiver or release of any claim or breach of this Agreement). If the proposed FTO Review Products & Services pass all elements of the FTO Review Process, Monsanto will notify Scotts that the proposed FTO Review Products & Services passed the FTO Review Process and are FTO Review Products & Services and shall be added to Schedule C. Monsanto shall conduct the FTO Review Process within a reasonable time frame, considering the volume of such requests and understanding that timing is important. In order to allow Monsanto to adequately prepare for the FTO Review Process, Scotts agrees to submit reasonable forecasts for product submissions on a quarterly basis.
- 2.2.3 For FTO Review Products & Services, Monsanto may use reasonable commercial efforts to timely register the Licensed Marks. All trademark applications/registrations of the Licensed Marks shall be in Monsanto's own name. Scotts shall cooperate with Monsanto in any such registration or application, including payment of all Costs, related thereto for trademark clearance, filing, and maintenance (which includes, but is not limited to, payment of use taxes, renewal fees, costs of oppositions and cancellation actions against confusingly similar Third Party trademarks as deemed necessary by Monsanto in its reasonable business judgment). Monsanto does not in any way guarantee or warrant the results of its efforts hereunder.
- 2.2.4 For FTO Cleared Products, Monsanto will use reasonable commercial efforts to timely register the Licensed Marks. All trademark applications/registrations of the Licensed Marks shall be in Monsanto's own name. Scotts shall cooperate with Monsanto in any such registration or application. Monsanto shall pay all Costs related thereto for trademark clearance, filing, and maintenance (which includes, but is not limited to, payment of use taxes, renewal fees, costs of oppositions and cancellation actions against confusingly similar Third Party trademarks as deemed necessary by Monsanto in its reasonable business judgment). Monsanto does not in any way guarantee the results of its efforts hereunder.
- 2.2.5 Scotts shall reimburse Monsanto for the reasonable Costs of the FTO Review Process in accordance with this Agreement, except that Scotts shall not reimburse Monsanto for

Costs relating to reviewing conflicting contractual obligations. Further, the Parties shall cooperate to control reimbursable Costs, including trademark clearance costs.

- 2.2.6 Subject to the provisions of Section 17 (CONFIDENTIALITY) to this Agreement, Monsanto may, in its reasonable business judgment, share information with Scotts (including Confidential Information) that could reasonably assist Scotts in the manufacture, production, advertising and marketing, to commercialize the FTO Cleared Products and/or FTO Review Products & Services; except that Monsanto shall provide the foregoing information to Scotts with respect to weed preventer technology that Monsanto's Lawn and Garden commercial staff has developed in 2014 and prior to the Effective Date.

2.3 LIMITS ON LICENSE

- 2.3.1 Without limiting any other provisions herein, Scotts shall perform its obligations under this Agreement and exercise the license rights granted hereunder in accordance with all applicable laws, rules, and regulations including but not limited to, local and national laws, rules, and regulations, treaties, voluntary industry standards (if any), association laws (if any), codes or other obligations pertaining to this Agreement and/or to any of Scotts activities under this Agreement, including but not limited to those applicable to any tax, privacy of individuals, anti-bribery or corruption (including, without limitation, the United States Foreign Corrupt Practices Act of 1977 and any amendment thereto), environmental laws, and the manufacture, pricing, packaging, sale, or distribution of the FTO Cleared Products or FTO Review Products & Services (collectively "Laws").
- 2.3.2 Scotts shall not knowingly, after conducting reasonable due diligence, use, manufacture, market, sell or distribute FTO Cleared Products or FTO Review Products & Services in violation of, or that infringe upon, any patents, trademarks, copyrights, trade dress, trade secrets or any other intellectual property rights of any Third Party and/or Monsanto.
- 2.3.3 Nothing in this Agreement shall be deemed to imply or create any restriction on Scotts' freedom to sell the FTO Cleared Products or FTO Review Products & Services at such prices as Scotts shall solely determine.
- 2.3.4 The license(s) granted herein shall not be sublicensed by Scotts except as set forth in Section 2.4 below and subject to all other terms of the Agreement.
- 2.3.5 Scotts expressly agrees it shall not knowingly, after conducting reasonable due diligence use the Licensed Marks outside the Residential Lawn & Garden Field or otherwise in a manner inconsistent with this Agreement.

2.4 SUBLICENSES

- 2.4.1 Scotts shall not grant a sublicense to any of its rights under this Agreement, including the Licensed Marks, except as expressly provided herein. Scotts may sublicense the Licensed Marks to Contract Manufacturers for the limited purpose of (i) manufacturing FTO Cleared Products or FTO Review Products and selling said products to Scotts, (ii) enabling Scotts' to market and promote the FTO Cleared Products and FTO Review Products & Services (for example, advertising and promotional agencies), and (iii) granting sub-licensees to Third Parties for the development, manufacture, production, advertising, marketing, promotion, distribution, and sale of FTO Cleared Products and FTO Review Products & Services ("Scotts Sub-Licensees"), (collectively "Contract Manufacturers"). Contract Manufacturers receiving a sublicense hereunder (i) must be subject to the terms and conditions of this Agreement, including the Stewardship

Requirement and Trademark Usage Rules, pertaining to the relevant FTO Cleared Products, FTO Review Products & Services and Licensed Marks, and (ii) may not grant any further sublicense or any other right, title or interest in the sublicense granted to it. If the conduct of a Contract Manufacturer, had such conduct been performed by Scotts, would be a breach of this Agreement, such conduct shall be deemed a breach by Scotts of this Agreement. Any sublicense granted hereunder shall provide for automatic and immediate termination if this Agreement expires or is terminated for any reason. Scotts shall, at its expense, record the sublicense or a registered user agreement in any country or territory where such recording is deemed reasonably necessary by Monsanto and no use of the Licensed Marks shall commence under any such sublicense in any country or territory in which approval of the sublicense by any entity is required prior to the use of the Licensed Marks thereunder until such approval is obtained.

- 2.4.2 In addition to the terms of this Agreement, Scotts shall require that its Sub-Licensees shall further comply with such additional product quality, stewardship and branding provisions as Scotts requires, for the same or similar products to the FTO Cleared Products and FTO Review Products, for licensees of the Scotts brand and Miracle-Gro brands on such products. Scotts and its Contract Manufacturers shall comply with certain standards of manufacturing (“Standards of Manufacturing”) as set forth on Schedule G and Scotts acknowledges it has received the terms of Monsanto’s Supplier Code of Conduct, which can be viewed at <http://www.monsanto.com/whoweare/pages/supplier-code-of-conduct.aspx> (or such website address or other source as Monsanto shall provide from time to time) and which is incorporated herein by reference in full. Scotts shall be liable for any breaches of the Standards of Manufacturing by its Contract Manufacturers as if Scotts itself had committed such breach.
- 2.4.3 Scotts shall comply with anti-bribery or corruption laws (including without limitation the United States Foreign Corrupt Practices Act of 1977 and any amendment thereto), and applicable local environmental laws and shall make commercially reasonable efforts to ensure its Contract Manufacturers comply with same. This includes, but is not limited to, taking appropriate steps to develop, implement and maintain procedures to evaluate and monitor Contract Manufacturers used to manufacture, market, sell and/or distribute the FTO Cleared Products or FTO Review Products & Services or components thereof and to ensure compliance with this Section 2.4, including but not limited to, on-site inspections of manufacturing, packaging and distribution facilities.
- 2.4.4 Monsanto and its designated agent(s) have the right, at all reasonable times and upon reasonable notice, to inspect and examine the methods, processes, containers, materials, and manufacturing locations, including Scotts’ and Contract Manufacturer’s locations, used in the manufacture and production of the FTO Cleared Products or FTO Review Products & Services on and in connection with which any Licensed Mark is used by Scotts. Such inspections and examinations shall not be more frequent than once per year absent a material breach of contract claim. Monsanto’s rights under this Section shall be without additional restrictions.

3. QUALITY AND QUALITY CONTROL

- 3.1 The quality and style of the FTO Cleared Products and FTO Review Products & Services and related packaging, labeling, shipping cartons, advertising and promotional materials shall be subject to Monsanto’s Trademark Usage Rules. Monsanto and Scotts acknowledge and agree that Monsanto shall prepare and provide appropriate Trademark Usage Rules for additional countries outside of the North America Territories to reflect the differences in branding appearance and brand architecture. Scotts agrees to comply with the Trademark

Usage Rules at all stages of production and distribution of the FTO Cleared Products and FTO Review Products & Services.

- 3.2 Scotts acknowledges that if the FTO Cleared Products or FTO Review Products & Services manufactured or sold by Scotts fall below the Stewardship Requirements and Scotts' usual standards for quality, safety, design, material and workmanship, the substantial goodwill which Monsanto has built up and now possesses in the Licensed Marks will be impaired. Accordingly, it is an essential condition of this Agreement and Scotts hereby covenants and agrees that the FTO Cleared Products or FTO Review Products & Services covered by this Agreement, and all packaging and labeling, shall be of high standards and of such quality, style and appearance as shall (in the reasonable judgment of Monsanto) be adequate and suited to their exploitation to the best advantage and to the protection and enhancement of the Licensed Marks and goodwill pertaining thereto. Monsanto does acknowledge that prior product, packaging and labeling produced and/or used by Scotts in connection with the Agency Agreement are representative of the high standards Monsanto requires for the protection and enhancement of its brands.
- 3.3 Scotts represents that it shall not knowingly, after conducting reasonable due diligence, make any claim or representation that is false, misleading, unsupported or in any way a violation of Laws, including, but not limited to, performance claims. Monsanto expressly disclaims and shall have no liability arising by virtue of right of review and/or approval to Scotts or any Third Party, for any damages whatsoever arising out of or related to the FTO Cleared Products or FTO Review Products & Services, and Scotts agrees not to make any claims that such liabilities exist.
- 3.4 Both before and after Scotts commercializes FTO Cleared Products or FTO Review Products & Services, Scotts shall follow reasonable and proper procedures for testing that such products comply with all Laws, the Stewardship Requirements, information provided by Scotts to Monsanto as part of an FTO Review Process for that product and all of Scotts' product quality and performance claims.
- 3.5 Scotts shall furnish to Monsanto, free of cost, for Monsanto's review and comment, two (2) representative production samples, within 60 days of commercialization, of all new, materially altered or materially modified FTO Cleared Products and FTO Review Products & Services, together with their packaging, labeling and shipping cartons. No later than August 1 of each year during the Term, Scotts shall furnish to Monsanto, free of cost, for its review and comment, two (2) representative production samples, as applicable, of each of the FTO Cleared Products and FTO Review Products & Services together with their packaging, labeling, shipping cartons which were used on or in any stock keeping unit ("SKU") of the FTO Cleared Products or FTO Review Products & Services sold by Scotts in each country of the Territory within the prior twelve (12) month period. For each use of the Licensed Mark, Scotts shall also furnish to Monsanto, free of costs, for its review and comment six (6) representative samples each of (i) print, television and radio advertising materials, (ii) promotional materials, (iii) point of sale displays, (iv) internet or other electronic related advertisements, and (v) social media uses to confirm compliance with the terms of this Agreement.
- 3.6 Products that would otherwise be FTO Cleared Products or FTO Review Products & Services, but which are not manufactured, packaged, advertised, marketed, promoted, distributed, or sold in accordance with all applicable Laws and the Stewardship Requirements shall be deemed outside of the Residential Lawn & Garden Field, and hence not FTO Cleared Products or FTO Review Products & Services, and shall not be shipped or permitted to be otherwise further commercialized unless and until they have been brought into full compliance.

3.7 Scotts hereby agrees, represents and warrants that it shall not knowingly use any Licensed Mark or any similar mark as part of any trade name, company name, or internet domain name without express prior written permission of Monsanto. Despite such usage being outside the scope of this Agreement, if Scotts desires to use a domain name that incorporates a Licensed Mark, it may request such permission from Monsanto, and Monsanto may consider, if applicable, whether to register and license such usage and the terms upon which it may do so, with Monsanto's timely and reasonable approval.

4. NEW MATERIAL

- 4.1 Subject to the terms of this Agreement, to the extent Scotts creates and develops new logos, designs or artwork incorporating the Licensed Marks, and subject to Monsanto's prior reasonable written approval of the representation of the Licensed Mark to be used by Scotts ("New Material"), any such New Material shall be the sole and exclusive property of Monsanto, and provided that such New Material complies with the Trademark Usage Rules, Section 3.2 and Section 6.2, shall be included in the definition of Licensed Marks and subject to the terms of this Agreement. For the purpose of clarification, all new logos, designs, and artwork created or developed by Scotts that does not incorporate the Licensed Marks, but are used in relation to the packaging or labeling of the FTO Cleared Products or FTO Review Products & Services shall remain the sole and exclusive property of Scotts ("Scotts' Material").
- 4.2 All such New Material are works for hire and commissioned works (in accordance with applicable intellectual property laws); Monsanto is the commissioning party for, author of, and owner of all rights in the New Material, and all intellectual property rights in the New Material shall vest ab initio in Monsanto. Scotts acknowledges and agrees that it does not own and shall not claim any rights in any New Material.
- 4.3 To the greatest extent permitted by Laws and in the event any right, title or interest in the New Material created by Scotts does not vest ab initio in Monsanto and remains vested in Scotts, Scotts hereby assigns absolutely and exclusively all such rights, title and interest world-wide in perpetuity to Monsanto and undertakes not to exercise any moral rights in any work comprising or contained in such New Material.
- 4.4 In the event that any right, title or interest in any New Material created by Scotts is not transferred to Monsanto by operation of assignment, Scotts undertakes not to exercise any moral rights in any work comprising or contained in any such New Material. In addition, Scotts hereby grants to Monsanto a non-exclusive license during the Term of this Agreement to use the Scotts' Material for the purpose of identifying all Roundup Branded products in relation to the promotion of Monsanto's products. Upon expiration, Monsanto may use the Scotts' Material only for archival or historical purposes to identify how the Roundup Branded products were used and hereby grants a world-wide paid up, royalty-free, non-terminable and irrevocable license thereto. If any Third Party makes or has made any contribution to the creation of any New Material, such contribution shall be deemed a work for hire and a commissioned work owned by Monsanto ab initio, or shall be duly assigned to Monsanto. Scotts shall require such commissioned party to enter into an agreement providing for ownership by Monsanto or its designee of all rights in the contribution.
- 4.5 During the Term and thereafter, Scotts shall promptly execute and provide to Monsanto such documents and take such actions as Monsanto reasonably requests or as is necessary or appropriate under Laws to vest in any of the foregoing rights in Monsanto or its authorized designee. Scotts further covenants that any such New Material and Scotts' Material is original to Scotts or such Third Party and does not and will not knowingly, after conducting reasonable due diligence, violate the rights of any other Person; this covenant regarding

originality shall not extend to any materials Monsanto supplies to Scotts, but does apply to all materials Scotts or Scotts' Third Party contractors may add.

5. PRODUCT INQUIRIES

5.1 Scotts will, at its sole cost, handle all product warranty and guarantee/satisfaction issues, response and compliance requirements, as well as all consumer inquiries, complaints, or reports of safety or quality issues (collectively "Consumer Inquiries") relating to any of the FTO Cleared Products or FTO Review Products & Services. Scotts shall handle any such inquiries in a manner and process consistent with the handling of similar inquiries for its own products, using tools, by way of example, such as a toll-free consumer comments phone number and/or an e-mail or website address (as well as contact information for any other than customary method for such communications). Scotts will provide, and fund resources for staffing, such methods for receipt of consumer comments at least during normal business hours, and shall also provide and fund a referral provision for handling emergency calls/e-mails/communications outside normal business hours. Scotts agrees to log all consumer complaints, along with contact information, into a database for tracking purposes. Scotts shall submit to Monsanto to the below address a summarized report of complaints received thirty (30) days after the end of each calendar quarter, which will include the type of complaint received and geographic location of the complaints. With respect to consumer complaints that may reasonably be expected to cause harm to the Licensed Marks, Scotts shall expeditiously notify Monsanto of any such complaints and the Parties shall confer and cooperate as to how to handle or respond to such complaints. Any consumer contact information that is collected will be summarized in such a way to make it legally permissible that it be shared with Monsanto to the extent permitted by applicable Laws. Scotts will reasonably expeditiously notify Monsanto of information suggesting a verifiable safety issue with any of the FTO Cleared Products or FTO Review Products & Services. Subject to privilege considerations, Scotts shall provide Monsanto with significant, relevant data, including the results of any testing or investigations. Any notices to Monsanto pursuant to this Section shall be sent to the following address or such other addresses as Monsanto designates by written notice:

Monsanto Company
800 N. Lindbergh Blvd.
St. Louis, MO 63167
Attn: Deputy General Counsel

5.2 Scotts shall reasonably promptly notify Monsanto if Scotts obtains information that Scotts' reasonably determines supports the conclusion that any FTO Cleared Products or FTO Review Products & Services may fail to comply with one or more safety requirements, the Stewardship Requirements under this Agreement, or may contain a defect that could create a substantial risk of injury to the public, in the United States this includes injury as required by 15. U.S.C. § 2064, and thereafter shall provide Monsanto with timely information regarding further developments. Scotts, at its expense and in compliance with CPSC regulations and any other applicable local governmental requirements, shall notify the CPSC (or other local governmental agency specified by local Law or Monsanto) of such defect or failure to comply and shall take such further actions as the CPSC or other local governmental agency shall direct, including, without limitation, notifying the public of such failure or defect, recalling the FTO Cleared Products and/or FTO Review Products & Services from

authorized customers, retailers and consumers, repairing or replacing the Licensed Products and refunding others by reason of the recall (all such actions being referred to collectively as the "Recall Campaign"). Subject to privilege considerations, Scotts shall provide Monsanto with contemporaneous copies of correspondence and communications related to the foregoing. Monsanto may share information received from Scotts under this Section 5.2 with any relevant government authorities. The obligations of Scotts under this paragraph are in addition to, and not in limitation of, other obligations, representations, warranties and indemnities of Scotts.

- 5.3 Notwithstanding anything to the contrary herein and upon reasonable consultation with Monsanto, Scotts shall determine the manner, text and timing of any publicity to be given in connection with such Recall Campaign, in conjunction with any applicable United States or other local governmental agency, such as the CPSC, EPA or FDA. However, Scotts shall be permitted to proceed without consultation with Monsanto, if in Scotts' sole discretion, it deems a particular situation to require an immediate response or public statement. Scotts agrees that it shall maintain all of its production and shipment records for such period as may be required by Laws, and in any event at least twelve (12) months beyond the stated shelf life of the FTO Cleared Products or FTO Review Products in order to facilitate any such Recall Campaign. Scotts shall (a) bear all costs and expenses incurred in withdrawing, recalling, recovering, reprocessing, repackaging, or destroying any affected FTO Cleared Products and/or FTO Review Products & Services, and (b) if FTO Cleared Products or FTO Review Products & Services must be destroyed, pay all costs of disposal and provide Monsanto with proof of destruction.
- 5.4 Without limiting the foregoing, Scotts shall give Monsanto written notice of any product liability suit filed with respect to any FTO Cleared Products or FTO Review Products & Services; any investigations or directives regarding the FTO Cleared Products or FTO Review Products & Services issued by the CPSC, EPA, FDA, or other federal, state, provincial, or local consumer safety agency; and any notices sent by Scotts to, or received by Scotts from, the CPSC or other consumer safety agency or other governmental agency regarding the safety of the FTO Cleared Products or FTO Review Products & Services within seven (7) days of Scotts' receipt or promulgation of claim, suit, investigation, directive, or notice.
- 5.5 Scotts shall place its own name on the FTO Cleared Products and FTO Review Products & Services and packaging materials unless such is expressly prohibited by applicable Laws.

6. TRADEMARK RIGHTS AND GOODWILL

- 6.1 Monsanto's Rights: Scotts recognizes the great value of the goodwill associated with the Licensed Marks, and Scotts acknowledges that its and Scotts' Sub-Licensees' use of the Licensed Marks in accordance with the terms of this Agreement shall accrue and inure to the sole benefit of Monsanto, that the Licensed Marks and all rights therein and goodwill pertaining thereto belong exclusively to Monsanto and that the Licensed Marks have secondary meaning in the minds of the public. Except as otherwise provided for herein, upon expiration or termination of this Agreement, Scotts shall immediately cease all use of the Licensed Marks and will not use the same thereafter, unless such use is otherwise authorized, and will, at Monsanto's direction, destroy or return to Monsanto all materials and documentation related to the Licensed Marks.
- 6.2 Scotts agrees that it will not, during the Term or thereafter, challenge the title or any rights of Monsanto in and to the Licensed Marks or challenge the validity of this Agreement or do anything either by an act of omission or commission which might impair, violate or infringe any of the Licensed Marks and will not claim adversely to Monsanto or anyone

claiming through Monsanto any right, title or interest in or to the Licensed Marks and will not misuse or harm or bring the Licensed Marks into public disrepute. In the event Scotts challenges any of the foregoing, such challenge shall immediately be deemed a Material Breach subject to the dispute resolution process set forth in Section 16 herein, and Scotts shall cooperate with Monsanto to dismiss with prejudice any such challenge. Scotts agrees that it has not and during the Term and thereafter will not for its benefit, directly or indirectly, register(ed) or apply(ied) for or maintain registration of any of the Licensed Marks or any mark which is, in Monsanto's reasonable opinion, the same as or confusingly similar to any of the Licensed Marks.

6.3 Scotts agrees to cooperate fully and in good faith with Monsanto for the purpose of securing and preserving Monsanto's rights in and to the Licensed Marks.

7. RECORDAL OF AGREEMENT

7.1 To the extent necessary to comply with applicable Laws, regulations and rules within the individual countries and jurisdictions within the Territory, including any obligation to record this Agreement, or a pro forma version of it, with respect to the Licensed Marks with appropriate governmental authorities to allow Scotts' use, in accordance with the terms and conditions of this Agreement, to accrue to the benefit of Monsanto, and to allow Scotts, if necessary, to be named as a party in any proceedings relating to a Third Party claim relating to the Licensed Marks, Scotts shall cooperate and reimburse all Costs related to Monsanto's preparation and filing of any and all required documents with the appropriate government authorities to record the license to the Licensed Marks granted by Monsanto to Scotts in this Agreement.

8. MARKING

8.1 In countries or jurisdictions where marking is required, Scotts will place on all FTO Cleared Products and FTO Review Products & Services and on all related advertising, promotional and marketing materials that incorporate a Licensed Mark a notice or notices either identifying Monsanto as owner of the Licensed Marks or that the Licensed Marks are used under License, without reference to Monsanto, as applicable; however, in any country or jurisdiction where Monsanto must be identified as the owner of the Licensed Marks, the Parties shall reasonably cooperate to discuss options so as to avoid Scotts having to make direct reference to "Monsanto" at Scotts' Costs. Such notice shall be sufficient in size, legibility, form, location, number and permanency to comply with relevant territory laws in effect at the time of public distribution of the FTO Cleared Products or FTO Review Products & Services or advertising, promotional, or marketing material and also to comply with the notice requirements.

8.2 Scotts will not distribute or sell any FTO Cleared Products and any FTO Review Products & Services or advertising, promotional or marketing materials in its possession, custody or control that do not carry notices meeting the requirements of this Section 8.

8.3 On each FTO Cleared Product or FTO Review Product & Service where the FTO Cleared Product or FTO Review Product & Service bears or is similar in appearance to the Licensed Marks of Monsanto, Scotts will ensure there shall be displayed a "TM" until such time as Monsanto notifies Scotts that the Licensed Marks are covered by a registration for the relevant FTO Cleared Product or FTO Review Product & Service and thereafter, as soon as is practical, such use of the Licensed Marks shall be accompanied by the use of the designation "®" immediately adjacent thereto.

9. PAYMENTS

- 9.1 In consideration of the rights and licenses granted herein, upon execution of this Agreement but no later than August 15, 2015, Scotts shall pay or cause to be paid to Monsanto in cash or by wire transfer of immediately available funds to an account designated by Monsanto an amount equal to the sum of Three Hundred Million U.S. Dollars (US\$300,000,000.00).
- 9.2 All Costs under this Agreement for which Scotts has agreed to pay Monsanto shall be paid within sixty (60) days of Scotts' receipt of Monsanto's invoice. Monsanto's invoice shall set out sufficient details to identify each Cost as covered by this Agreement.

10. TERM AND TERMINATION

- 10.1 The initial Term of this Agreement shall be from the Effective Date to May 31, 2035. The Term shall automatically renew for additional successive twenty (20) year periods, at Scotts' sole option and for no additional monetary consideration, unless (a) this Agreement is terminated by Scotts by providing Monsanto with a notice of termination on or before one hundred twenty (120) days prior to the expiration of any calendar year of the initial term or any renewal term, or (b) this Agreement is otherwise terminated as set forth by the terms in this Agreement.
- 10.2 However, provided Scotts has materially complied with all the terms of this Agreement, and provided the FTO Cleared Products and/or FTO Review Products subject to the Sell Off Period hereunder are not the subject of any pending dispute between the Parties, Scotts, except as otherwise provided in this Agreement, may sell the FTO Cleared Products and/or FTO Review by this Agreement which are on hand or in process of manufacture at the time of expiration or termination of this Agreement for a period of thirty-six (36) months after the expiration or termination (the "Sell Off Period").

11. ASSIGNMENT

- 11.1 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, and except for a Change of Control under Section 10.4(b)(7) of the Agency Agreement that does not provide Monsanto Company termination rights under the Agency 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. Notwithstanding the foregoing, (a) Monsanto Company shall have the right to transfer and assign Monsanto's rights, interests and obligations hereunder to any of its Affiliates; provided, that Monsanto Company shall remain liable for the performance of Monsanto's 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; (b) The Scotts Company LLC shall have the right to transfer and assign Scotts' rights, interests and obligations hereunder to any of its Affiliates; provided, that The Scotts Company LLC shall remain liable for the performance of Scotts' 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; and (c) The Scotts Company LLC shall be entitled to transfer and assign Scotts' rights, interests and obligations hereunder and under the Agency Agreement with respect to the North America Territories and any Other Included Markets (as such term is defined in the Agency Agreement); provided, that with respect to this clause (c), (i) in addition to an assignment of the North America Territories, The Scotts Company LLC may only make three (3) assignments pursuant to this clause (c) during the

Term of this Agreement, and provided, further, that with respect to this clause (c) The Scotts Company LLC determines in its reasonable commercial opinion that the assignee of such rights can and will fully perform the duties and obligations under this Agreement and with respect to the Roundup L&G Business (as such term is defined in the Agency Agreement) in such Included Markets (as such term is defined in the Agency Agreement) as specified in the Agency Agreement and this Agreement and provided, further, that any such assignee shall be subject to the provisions of the Agency Agreement and this Agreement as if it were an original party to each agreement. For the avoidance of doubt, in no event shall this Agreement be transferred, delegated, or assigned by a Party (by operation of law, Change of Control, or otherwise) to a Third Party unless the applicable portions of the Agency Agreement are also transferred to such Third Party.

12. REPRESENTATIONS AND WARRANTIES

12.1 SCOTTS' REPRESENTATION AND WARRANTIES:

- 12.1.1 The Scotts Company LLC is a corporation duly organized, validly existing and in good standing under the laws of the state of Ohio and has all requisite corporate power and authority to carry on and conduct its business as it is now being conducted.
- 12.1.2 The Scotts Company LLC has the corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder, to obligate its Affiliates to perform hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized, approved and ratified by all necessary action on the part of The Scotts Company LLC. This Agreement is a legal, valid and binding obligation of Scotts enforceable in accordance with its terms.
- 12.1.3 Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (a) contravene, conflict with or result in a violation of any applicable Laws; (b) conflict with any of the provisions of The Scotts Company LLC's organizational documents; (c) violate the terms of any other material agreement, contract or other instrument to which The Scotts Company LLC is a party; or (d) give rise to any consent or authorization of any other Person.
- 12.1.4 In addition to, and without limiting any representation and/or warranty contained in this Agreement, The Scotts Company LLC hereby further represents, warrants and agrees that it and its Affiliates will conduct its activities under this Agreement in accordance with all applicable Laws. The Scotts Company LLC further represents, warrants and agrees that the FTO Cleared Products and FTO Review Products & Services, packaging, labeling, shipping cartons, advertisement and/or promotional materials, and/or any other materials used by Scotts under Scotts' performance of this Agreement will not violate or infringe on any Third Party patents, trademarks, copyrights, trade dress, trade secrets or any other intellectual property rights.

12.2 MONSANTO'S REPRESENTATION AND WARRANTIES

- 12.2.1 Monsanto Company is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware and has all requisite corporate power and authority to carry on and conduct its business as it is now being conducted.
- 12.2.2 Monsanto Company has the corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder, to obligate its Affiliates to perform hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized, approved and ratified by all necessary

action on the part of Monsanto Company. This Agreement is a legal, valid and binding obligation of Monsanto, enforceable in accordance with its terms.

- 12.2.3 Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (a) contravene, conflict with or result in a violation of any applicable Laws; (b) conflict with any of the provisions of Monsanto Company's organizational documents; (c) violate the terms of any other material agreement, contract or other instrument to which Monsanto Company is a party, or (d) give rise to any consent or authorization of any other Person.
- 12.2.4 In addition to, and without limiting any representation and/or warranty contained in this Agreement, Monsanto Company hereby further represents, warrants and agrees that the Licensed Marks are exclusively owned by Monsanto Company or one of its Affiliates for the use and sale of the products referenced in each Trademark Registration for the Licensed Marks. Monsanto specifically disclaims any warranty that Scotts will be free from claims of third parties with respect to the use of the Licensed Marks as such claims may related to the FTO Review Products & Services. Scotts assumes the risk of use of the Licensed Marks as to the FTO Review Products & Services, including but not limited to, prior use or conflict based on Third Party rights.

13. INDEMNIFICATION AND CLAIMS PROCEDURE

13.1(a) Scotts agrees to indemnify, defend and hold harmless Monsanto and its employees, officers, directors, agents and assigns from and against any and all loss (including reasonable attorneys' fees), damage, injury or liability and asserted by or on behalf of a Third Party for injury, death or loss of or damage to property, including employees and property of Monsanto ("Loss"), to the extent resulting directly or indirectly from Scotts' (i) material breach of a duty, representation, or obligation under this Agreement, or (ii) negligence or willful misconduct in the performance of its obligations under this Agreement. Promptly after receipt by Monsanto of any notice of any demand, claim or circumstances which, with the lapse of time, would or would reasonably be expected to 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, Monsanto shall give notice thereof pursuant to Section 18 (the "Claims Notice") to Scotts to provide indemnification. 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 Monsanto.

(b) Monsanto agrees to indemnify, defend and hold harmless Scotts and its employees, officers, directors, agents and assigns from and against any and all loss (including reasonable attorneys' fees), damage, injury or liability and asserted by or on behalf of a Third Party for injury, death or loss of or damage to property, including employees and property of Monsanto ("Loss"), to the extent resulting directly or indirectly from (i) Monsanto's material breach of a duty, representation, or obligation under this Agreement, or (ii) Monsanto's negligence or willful misconduct in the performance of its obligations under this Agreement; or (iii) any alleged infringement related to the Licensed Marks in the United States for the FTO Cleared Products only. Promptly after receipt by Scotts of any notice of any demand, claim or circumstances which, with the lapse of time, would or would reasonably be expected to 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, Scotts shall give notice thereof pursuant to Section 18 (the "Claims Notice") to Monsanto to provide indemnification. 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 Scotts.

With respect to 13.1(a) and 13.1(b), thereafter, the following procedures shall apply:

- 13.1.1 The Indemnifying Party may elect to compromise or defend, at its own expense by its own counsel, any Asserted Liability;
- 13.1.2 If the Indemnifying Party elects to compromise or defend such Asserted Liability, it shall within thirty (30) days (or sooner if the nature of the Asserted Liability so requires) notify the Non-Indemnifying Party of its intent to do so, and the Non-Indemnifying Party shall cooperate, at the expense of the Indemnifying Party, in the compromise of, or defense against, such Asserted Liability, and shall make available to the Indemnifying Party any books, records or other documents within its control that are necessary or appropriate for such defense;
- 13.1.3 If the Indemnifying Party has elected to defend the Asserted Liability, any offer to compromise or settle transmitted to the Indemnifying Party shall thereafter be transmitted in writing to the Non-Indemnifying Party. If, after a reasonable period of time to consider such offer, which time shall be deemed to be ten (10) days from the date of transmittal of such offer using the notice procedures set forth in Section 13.1 unless the circumstances otherwise require, the Non-Indemnifying Party refuses to give consent to the settlement or compromise of the Asserted Liability, then the liability of the Indemnifying Party with respect to such Asserted Liability shall be thereafter limited to the amount of the offer of settlement or compromise. This cap on liability shall not be applicable (i) if the Indemnifying Party does not elect to defend the Non-Indemnifying Party against the Asserted Liability or (ii) unless such offer to compromise or settle (a) contains an unconditional release of the Non-Indemnifying Party from all liability related to the Asserted Liability, (b) does not contain any admission or statement suggesting any wrongdoing or liability on behalf of the Non-Indemnifying Party and (c) does not contain any equitable order, judgment or term that in any manner affects, restrains or interferes with the business of the Non-Indemnifying Party;
- 13.1.4 Notwithstanding the foregoing, neither Party may settle or compromise any claim over the objection of the other, provided however, that consent to settlement or compromise shall not be unreasonably withheld;
- 13.1.5 If the Indemnifying Party elects not to compromise or defend the Asserted Liability, fails to notify the Non-Indemnifying Party of its election as herein provided, or contests its obligation to indemnify under this Agreement, the Non-Indemnifying Party may pay, compromise or defend such Asserted Liability, with a reservation of all rights to seek indemnification hereunder against the Indemnifying Party; and
- 13.1.6 Notwithstanding the foregoing, either Party may participate, in all instances, and at its own expense, in the defense of any Asserted Liability.
- 13.2 The Non-Indemnifying Party shall, at the Indemnifying Party's reasonable expense, provide all reasonable assistance in defending any action or claim.
- 13.3 Neither failure to comply nor compliance with the insurance provision of this Agreement shall limit or relieve Scotts from holding Monsanto harmless under this Section 13 or elsewhere in this Agreement.
- 13.4 Scotts expressly recognizes that the Licensed Marks possess a special unique and extraordinary character which makes it difficult to assess the amount of monetary damages which Monsanto would sustain by unauthorized use. Scotts expressly recognizes and agrees that an irreparable injury would be caused to Monsanto by unauthorized use and agrees that

preliminary and permanent injunctive and other equitable relief would be appropriate in the event of a breach of this Agreement by Scotts, provided that such remedy shall be cumulative to and in no way exclusive of any other remedies, legal, equitable or otherwise available.

14. INFRINGEMENTS

- 14.1 Scotts shall promptly notify Monsanto in writing of any infringements, dilutions or imitations by any Third Party of any of the Licensed Marks once Scotts becomes aware of any such infringements, dilutions or imitations. Monsanto shall have the sole right to determine whether or not any action shall be taken on account of any such infringements, dilutions or imitations of the Licensed Marks. Monsanto, if it so desires, may commence or prosecute any claims or suits in its own name or in the name of Scotts or join Scotts as a party thereto, but it is understood and agreed that Monsanto is under no obligation whatsoever to institute suit or take any other action on account of such infringements.
- 14.2 In the event Monsanto elects not to take any action pursuant to Section 14.1, Scotts shall not institute any suit or take any action on account of any such infringement, dilution or imitation without first obtaining the written consent of Monsanto. If Monsanto provides its written consent, Scotts may institute and prosecute or defend (as applicable) proceedings with respect to the actions on its own in its own name and at its cost, in which case Scotts must give Monsanto reasonable notice and keep Monsanto advised of the progress of such proceedings, provided that nothing in this Agreement compels Monsanto to institute, prosecute or defend any proceedings. In the event any jurisdiction or country does not allow Scotts to bring an action under this Section as a licensee, Monsanto shall not unreasonably refuse to be named as a party; subject to Monsanto's reasonable objections, Scotts shall hire counsel and shall control the litigation. Scotts will reimburse Monsanto for all reasonable expenses relating to cooperating in the litigation, except that if Monsanto retains its own counsel, Scotts shall not reimbursement such counsel's costs or fees, including attorney's fees.

15. INSURANCE

- 15.1 Scotts shall, during the term of this Agreement, maintain full insurance against the risk of loss or damages related to Scotts' use of the Licensed Marks pursuant to the Agreement and, upon request, shall furnish Monsanto with satisfactory evidence of the maintenance of said insurance.

16. DISPUTE RESOLUTION

- 16.1 The Parties recognize that bona fide disputes may arise from time to time in connection with this Agreement. The Parties shall use reasonable good faith efforts to resolve such disputes in a prompt and amicable manner. If the Parties are unable to resolve promptly any such dispute, either Party may, by written notice to the other, refer the dispute to senior executives of each Party. The written notice must contain a description of the dispute, including the factual and legal basis of the noticing Party's position and the relief sought. Each Party shall promptly nominate a senior executive with authority to settle the dispute in question. The senior executives shall act in good faith and attempt to reach a resolution of the dispute, including, if they deem it necessary, by meeting in person.
- 16.2 If the senior executives are unable, within thirty (30) days of the notice of dispute, to resolve the dispute then either Party may request that the dispute proceed to non-binding mediation. The Parties shall select a mediator through the Center for Public Resources to aid them in attempting to resolve the dispute. The Parties shall participate in good faith in the mediation

- process, including by sending a representative to the mediation proceedings who has authority to settle the dispute in question.
- 16.3 If, after such good faith participation in the mediation process, the Parties are unable to resolve the dispute, either Party may elect to have the dispute resolved through the initiation of litigation or through binding arbitration, as applicable to the dispute and as set forth below.
- 16.4 With regard to a dispute in connection with this Agreement that involves (a) allegations of a Material Breach (and at the complaining Party's option all related claims arising out of the same set of operative facts involved in the allegations of Material Breach), (b) the validity, enforceability or infringement of intellectual property rights, or (c) claims of significant damage to the Roundup brand, any suit or action must be brought in the United States District Court for the District of Delaware, and Scotts and Monsanto hereby irrevocably submit to the jurisdiction of such court for the purpose of such suit or action. If such court does not have jurisdiction over the subject matter of such suit or action or, if such jurisdiction is otherwise not available, then such suit or action shall be brought in the Court of Chancery of the State of Delaware, County of New Castle, and Scotts and Monsanto hereby irrevocably submit to the jurisdiction of such court for the purpose of such suit or action. Scotts and Monsanto irrevocably waive any objection to either of the venues set forth above in connection with such suit or action and further irrevocably waive any claim that any such suit or action 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 subsection.
- 16.5 With regard to any dispute in connection with this Agreement that is not within the scope of Section 16.4 (an "Arbitral Matter"), either Party may submit such Arbitral Matter to binding arbitration in accordance with the CPR Rules for Non-Administered Arbitration (2007 Rev.) (the "CPR Rules") by providing the other Party written notice specifying the subject of the requested arbitration.
- 16.6 All Arbitral Matters shall be referred to and fully and finally decided by an Arbitral Tribunal consisting of three (3) independent arbitrators selected by the Parties in accordance with the terms hereof (the "Arbitral Tribunal"). The arbitrators will be selected in accordance with Rule 6 of the CPR Rules in effect as of the Effective Date (attached hereto as Schedule F). All members of the Arbitral Tribunal shall be attorneys, at least one of whom has substantial experience in the area of trademark law or other related intellectual property law.
- 16.7 As used herein, and in addition to any requirements of Rule 6 of the CPR Rules, an "independent" arbitrator must have no personal or financial interest in either Party or in the outcome of the matter in dispute. Without limiting the generality of the foregoing, an "independent" arbitrator is not, directly or indirectly:
- 16.7.1 a current employee, contractor or consultant of either Party, or someone who has been engaged in any such capacity within the forty-eight (48) month period prior to selection hereunder;
 - 16.7.2 a person who currently or at any time within the forty-eight (48) month period prior to selection hereunder is or has been retained as counsel to either Party;
 - 16.7.3 a person who is or has been a member, employee or affiliate of a law firm that currently or at any time within the forty-eight (48) month period prior to selection hereunder has been retained as counsel to either Party;
 - 16.7.4 a current shareholder of either Party, unless such shares are owned through a mutual fund or other similar pooled investment vehicle or brokerage account in respect of which the individual is not permitted to exercise any control regarding the purchase or sale of debt or equity;

- 16.7.5 a current lender to either Party; or
- 16.7.6 a current customer of or vendor to either Party, or someone who has engaged in trade or business with a Party in the prior twenty-four (24) months having an aggregate value in excess of twenty-five thousand dollars (\$25,000).
- 16.8 All Arbitral Proceedings shall be held in Chicago, Illinois. English shall be the language used in the Arbitral Proceeding; all notices, written communications, written statements, briefs and similar documents submitted or exchanged in the proceedings shall be in English and all oral proceedings shall be conducted in English. Any exhibit, item or documentary evidence originally created in a language other than English and submitted in the course of the proceedings shall be accompanied by an accurate translation into English, and statements of representatives or witnesses made during oral proceedings in a language other than English shall be simultaneously translated into English. To the extent not addressed by the foregoing, detailed requirements for translations into English shall be established by the Arbitral Tribunal.
- 16.9 The Arbitral Tribunal shall fully consider the Arbitral Matter, including the issues and evidence presented and the relief requested. Subject to any limitations imposed under this Agreement in respect of the particular Arbitral Matter, the Arbitral Tribunal shall determine the appropriate relief and award to be made. All final arbitral awards shall state the relief or remedies being granted, the claim or claims being decided, and the basis or bases for the decisions being made. The arbitral award may be enforced in any court of competent jurisdiction and the Parties shall be bound thereby and shall comply therewith.
- 16.10 The arbitration provisions in this Agreement shall be governed by, and all rights and obligations specifically enforceable under and pursuant to, the Federal Arbitration Act (9 U.S.C. § 1 et seq.) and the laws of the State of Delaware, without reference to the choice of law principles thereof.
- 16.11 Within thirty (30) days after appointment of the Arbitral Tribunal, the Arbitral Tribunal shall hold a pre-hearing conference with the Parties to establish the scope of and schedules for completion of discovery, exchange of exhibit and witness lists, filing of arbitration briefs, setting the hearing, and to address other procedural matters and any other appropriate questions that may be presented.
- 16.12 The arbitral hearing shall be conducted to allow reasonable procedural due process. Rules of evidence need not be strictly followed, and the hearing shall be streamlined as follows:
- 16.12.1 Documents shall be self-authenticating, subject to valid objection by the opposing party;
- 16.12.2 Expert reports, witness biographies, depositions, and affidavits may be utilized, subject to the opponent's right of a live cross-examination of the witness, although in the Arbitral Tribunal's discretion a video-recorded cross-examination at deposition may be sufficient under this section;
- 16.12.3 Charts, graphs, and summaries may be utilized to present voluminous data, provided that the underlying data was made available to the opposing party thirty (30) days prior to the hearing, and that the preparer of each chart, graph, or summary is available for explanation and live cross-examination in person;
- 16.12.4 The hearing should be held on consecutive Business Days without interruption to the maximum extent practicable;
- 16.12.5 A record shall be maintained that includes all proceedings which take place at the arbitral hearing and all evidence (including exhibits, deposition transcripts, affidavits or declarations admitted by the Arbitral Tribunal into evidence) presented at the hearing; and
- 16.12.6 The Arbitral Tribunal shall establish all other procedural rules for the conduct of the arbitration in accordance with the CPR Rules.

- 16.13 The nature, extent and control of document discovery, depositions, and other discovery shall be within the discretion of the Arbitral Tribunal. The Arbitral Tribunal shall permit and facilitate such discovery as it determines is appropriate under the circumstances and in light of the issues raised in the proceeding. The Arbitral Tribunal is empowered to issue subpoenas or otherwise compel pre-hearing document discovery or deposition discovery, to enforce the discovery rights and obligations of the Parties, and to otherwise control the scheduling and conduct of the proceedings. The Arbitral Tribunal shall have the power and authority to tailor or limit discovery in a manner that is fair to all Parties while expediting the arbitration proceeding so as to be able to render a final decision within nine (9) months after the pre-hearing conference (or such other time as the Parties mutually agree in writing).
- 16.14 The determination, award or other action of the Arbitral Tribunal will be considered the valid action of the Arbitral Tribunal if supported by the affirmative vote of at least two (2) of the three (3) arbitrators. The costs of arbitration (exclusive of a Party's expenses in obtaining and presenting evidence, attending the arbitration, and retaining legal counsel and expert witnesses, all of which will be borne by such Party) will be shared equally by the Parties, unless the arbitrators determine that the non-prevailing Party did not act in good faith in referring the dispute for arbitration.
- 16.15 The Arbitral Proceedings will be conducted in private. The Parties will maintain the substance of any proceedings hereunder in confidence under Section 17 of this Agreement, and make disclosures to others only to the extent necessary to properly conduct the proceedings or to enforce or challenge the award (to the extent permitted by Law), or as otherwise required by Law.
- 16.16 Nothing herein shall be deemed as waiving or affecting, or intending to waive or affect, the right of any Party to challenge the enforceability of an arbitral award based upon the provisions of the Federal Arbitration Act or any other applicable statute, treaty, law or convention.
- 16.17 Nothing in this Section 16 or otherwise in this Agreement shall limit either Party's right to seek immediate injunctive or other equitable relief in any court of competent jurisdiction. The Parties hereby agree that a Party who seeks only such injunctive or equitable relief in a court of competent jurisdiction in connection with an Arbitral Matter shall not be precluded from proceeding with the Arbitral Matter with respect to relief not sought in the court proceeding. The opposing Party shall not assert that resolution of such court proceeding operates as a bar to proceeding with the Arbitral Matter in connection with the additional relief sought in the Arbitral Proceeding.

17. CONFIDENTIALITY

- 17.1 Confidential Information: It is anticipated that it may be necessary, in connection with their obligations under this Agreement, for the Parties to disclose to each other Confidential Information. For purposes of this Agreement, "Confidential Information" shall mean any and all proprietary information (including without limitation, information related to technical, safety, business, sales, marketing and intellectual property matters), know-how, data, intellectual property, trade secrets, and other physical materials owned or held by either Party to this Agreement, now and in the future, which is disclosed by either Party to the other Party in connection with this Agreement. The Confidential Information shall include proprietary information disclosed orally, in writing or other tangible form, including samples of materials. Information will be considered to be Confidential Information and protected under this Agreement if it is disclosed as "confidential" or "proprietary" (or an obvious equivalent at the time of disclosure), or if the information is summarized in a document provided to recipient within thirty (30) days of the disclosure.

17.2 Confidentiality and Limited Use:

- 17.2.1 With respect to all Confidential Information, both Parties agree as follows, it being understood that "recipient" indicates the Party receiving the confidential, proprietary information from the other "disclosing" Party. Each Party receiving Confidential Information from the other Party, or any of its Affiliates, shall be free to disclose such Confidential Information to its Affiliates and its and their officers, directors, employees, agents, representatives, contractors and consultants who have a reasonable need to know the same in furtherance of such recipient's duties or exercise of such recipient's rights under this Agreement. Confidential Information provided or disclosed to the recipient shall remain the property of the disclosing Party and shall be maintained in confidence by the recipient and shall not be provided or disclosed to Third Parties by the recipient and, further, shall not be used except for purposes contemplated in this Agreement. All confidentiality and limited use obligations with respect to the Confidential Information shall terminate five (5) years after the termination or expiration of this Agreement, whichever occurs first.
- 17.2.2 Notwithstanding any provision to the contrary, a Party may disclose the Confidential Information of the other Party: (i) as deemed advisable by the Party, together with its legal counsel or accounting advisors, to comply with any law or regulation; rules of any stock exchange on which shares of a Party or its Affiliate are listed; or in conformity with accounting principles generally accepted in the United States of America; (ii) in connection with an order or inquiry of a court or other government body, provided that the disclosing Party provides the other Party with notice and takes reasonable measures to obtain confidential treatment thereof; (iii) in confidence to recipient's Affiliates, attorneys, accountants, banks and financial sources and its advisors; or (iv) in confidence, in connection with the sale or assignment of substantially all the business assets to which this Agreement relates, so long as, in each case, the entity to which disclosure is made is bound to confidentiality on terms commensurate with those set forth herein.
- 17.3 Exceptions: The obligations of confidentiality and limited use shall not apply to any of the Confidential Information which:
- 17.3.1 is publicly available by publication or other documented means or later becomes likewise publicly available through no act or fault of recipient; or
- 17.3.2 is already lawfully known to recipient, having been obtained by legal means and free from restrictions on disclosure, before receipt from the disclosing Party, as demonstrated by recipient's written records; or
- 17.3.3 is made known to recipient, having been obtained by legal means and free from restrictions on disclosure, by a Third Party who did not obtain it directly or indirectly from the disclosing Party and who does not obligate recipient to hold it in confidence; or
- 17.3.4 is independently developed by the recipient, not in breach of this Agreement, as evidenced by credible written research records of recipient's employees or agents who did not have access to the disclosing Party's Confidential Information. Specific information should not be deemed to be within any of these exclusions merely because it is embraced by more general information falling within these exclusions.
- 17.4 Upon termination or expiration of this Agreement, originals and copies of Confidential Information in written or other tangible form shall be returned to the disclosing Party by recipient or destroyed by recipient. One copy of each document may be retained in the custody of the recipient's legal counsel solely to provide a record of what disclosures were made.

- 17.5 Confidential Status of Agreement: The terms (but not the existence) of this Agreement shall be deemed to be Confidential Information and shall be dealt with according to the confidentiality requirements of this Section 17. Except as otherwise permitted herein, neither Party will make public disclosures concerning terms of this Agreement without obtaining the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- 17.6 The Parties agree to confer and consult with each other regarding the contents of any press release(s) announcing the execution of this Agreement, the Agency Agreement and that certain Commercialization and Technology Agreement between the Parties effective as of the date hereof. Each Party shall have the right to review and provide comments to any such press release(s), which comments shall be given due consideration by the other Party.

18. NOTICES

- 18.1 All notices, requests, approvals, disapprovals, consents and statements to be given and all payments to be made hereunder shall be given or made at the respective addresses of Monsanto and Scotts set forth below unless notification of a change of address is given in writing. All such notices shall be sufficiently given when the same shall be deposited so addressed, postage prepaid, in the United States mail and/or when the same shall have been delivered, so addressed, by facsimile or by overnight delivery service and the date of transmission by facsimile, receipt of overnight delivery service or two Business Days after mailing shall be the date of the giving of such notice.

As to Monsanto:
Attention: Lawn and Garden Commercial Lead
Monsanto Company
800 North Lindbergh Blvd.
St. Louis, MO 63167

With a copy to:
Monsanto:
Attention: Deputy General Counsel
Monsanto Company
800 North Lindbergh Blvd.
St. Louis, MO 63167

As to Scotts:
Attention: Office of the General Counsel
The Scotts Company LLC
14111 Scottslawn Rd.
Marysville, OH 43041

With a Copy to:
Attention: Legal Department
The Scotts Company LLC
14111 Scottslawn Rd.
Marysville, OH 43041

19. FAILURE TO PERFORM

19.1 In the event of strike, lockout, or other labor trouble, riot, war, rebellion, fire, earthquake, accident, or act of God, or any act of governmental or military authorities (foreign or domestic), acts of terrorism, or any other similar occurrence beyond the control of either Party, which shall prevent or hinder performance hereunder, no default or liability for non-compliance occasioned thereby during the continuance thereof shall exist or arise. The Party prevented or hindered from performance hereunder shall give immediate notice to the other Party of the event.

20. RESERVED.

21. NO WAIVER: MODIFICATION: SEVERABILITY

21.1 None of the terms of this Agreement can be waived or modified except expressly in writing signed by both Parties. The failure of either Party to insist on compliance with any provision hereof shall not constitute a waiver or modification of such provision or any other provision. If any provision hereof is held to be invalid or unenforceable by any court of competent jurisdiction or any other authority vested with jurisdiction, such holding shall not affect the validity or enforceability of any other provision hereto.

22. WHOLE AGREEMENT: CONSTRUCTION

22.1 Upon execution, this Agreement cancels, terminates and supersedes any prior Agreement or understanding relating to the subject matter hereof between Monsanto and Scotts. This Agreement includes the entire understanding between the Parties as to its subject matter, and there are no representations, promises, warranties, covenants, or undertakings other than those contained herein.

23. GOVERNING LAW

23.1 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.

23.2 Any suit, action or proceeding against any Party hereto with respect to the subject matter of this Agreement, or any judgment entered by any court in respect thereof, 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 such suit, action, proceeding or judgment. If such court does not have jurisdiction over the subject matter of such proceeding or, if such jurisdiction is not available, then such 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 suit, action, proceeding or judgment. 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 this Agreement brought as provided in this subsection, 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 subsection. Except as otherwise provided

herein, the Parties hereto agree that exclusive jurisdiction of all disputes, suits, actions or proceedings 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. Scotts hereby irrevocably appoints CT Corporation, having an address at 1209 Orange Street, Wilmington, Delaware 19801 and Monsanto hereby irrevocably appoints Corporation Service Company, 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 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.

24. SURVIVABILITY

24.1 The respective obligations of the Parties under this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, including, but not limited to, indemnification, insurance, and audits, shall survive the Agreement's termination, cancellation or expiration.

25. MISCELLANEOUS

25.1 This Agreement shall bind and inure to the benefit of the Parties and their permitted successors and assigns.

25.2 The captions and headings contained in this Agreement are used for convenience only and shall not be deemed or construed to have any substantive content in interpreting the meaning of any of the provisions of this Agreement.

25.3 The Parties to this Agreement are independent contractors. There is no relationship of agency, partnership, joint venture, employment or franchise between the Parties. Neither Party has the authority to bind the other or to incur any obligation on the other's behalf.

26. COUNTERPARTS

26.1 The Parties agree that this Agreement may be signed in multiple, identical counterparts.

[INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

THE SCOTTS COMPANY LLC

MONSANTO COMPANY

By: /s/ JAMES HAGEDORN

By: /s/ HUGH GRANT

Title: President and Chief Executive Officer

Title: Chairman and Chief Executive Officer

Guaranty of Scotts' Obligations

The Scotts Miracle-Gro Company, an Ohio corporation ("Scotts Miracle-Gro") and parent of The Scotts Company LLC, acknowledges the obligations of Scotts under this Agreement (for the avoidance of doubt, all references to "Agreement" in this Guaranty refer to this Agreement as it may be amended by the parties from time to time) and agrees to take all necessary or appropriate action to cause and enable Scotts to perform all of its covenants, agreements and obligations under this Agreement. In addition, Scotts Miracle-Gro hereby irrevocably and unconditionally guarantees to Monsanto the prompt and full discharge by Scotts of all of Scotts' covenants, agreements, obligations and liabilities under this Agreement, including, but not limited to, the due and punctual payment of all amounts that are or may become due and payable by Scotts hereunder when and as the same may become due and payable, subject to, and in accordance with, the terms of this Agreement as they apply to such obligations.

IN WITNESS WHEREOF, Scotts Miracle-Gro has caused this Agreement to be signed by its duly authorized representative as of the date first above written.

THE SCOTTS MIRACLE-GRO COMPANY


By: /s/ JAMES HAGEDORN

Name: James Hagedorn

Title: Chairman and Chief Executive Officer

SCHEDULE A
Licensed Marks

1. UNITED STATES OF AMERICA

MARK	APP./REG. NO.	GOODS	COMMENTS
ROUNDUP	Reg. No. 847249	IC5: herbicide	
ROUNDUP & Design 	Reg. No. 2,662,000	IC5: herbicide for domestic and agricultural use	
ROUNDUP	<i>To be provided upon filing</i>	IC5: insecticides for domestic use	<i>Intent-to-use application to be filed upon execution of this Agreement</i>
ROUNDUP	<i>To be provided upon filing</i>	IC5: fungicides for domestic use	<i>Intent-to-use application to be filed upon execution of this Agreement</i>
ROUNDUP	<i>To be provided upon filing</i>	IC1: fertilizers for domestic use	<i>Intent-to-use application to be filed upon execution of this Agreement</i>
ROUNDUP	<i>To be provided upon filing</i>	IC31: mulch	<i>Intent-to-use application to be filed upon execution of this Agreement</i>

All logos and trade dress, some of which may be also trademarked and/or copyrighted works, related to the above trademarks, as provided in writing by Monsanto to Scotts from time to time, are included in the definition of "LICENSED MARKS".

Additional marks to be identified at a later date.

SCHEDULE B

FTO Cleared Products

1. Fertilizers for domestic use
2. Fungicides for domestic use
3. Insecticides for domestic use
4. Mulch for domestic use
5. Selective herbicides for domestic use
6. Weed preventers for domestic use

SCHEDULE C

FTO Review Products & Services

Products & services to be added after passing Monsanto's FTO Review Process.

SCHEDULE D

Roundup – Stewardship Requirements

These requirements may be reasonably modified by Monsanto from time to time to protect Monsanto and the Roundup Brand.

Stewardship Requirements

1. **Product Performance, Efficacy, Safety and Stewardship**
 - a. Claims, efficacy, safety, and stewardship must be in the top 10% of their competitive class and positioned as a premium product.
 - b. Products must be free of defects and fit for their intended purposes.
2. **Toxicology**
 - a. The ingredients in the formulated product do not pose a significant risk to human or animal health.
 - i. No ingredient in the formulated product is a known or presumed carcinogen, mutagen, teratogen, endocrine disruptor, reproductive toxin, or neurotoxin, according to conclusions of any of the following leading regulatory bodies: United States Environmental Protection Agency (“EPA”), Canadian Pest Management Regulatory Agency (“PMRA”), Australian Pesticides and Veterinary Medicines Authority (“APVMA”); European Food Safety Authority (“EFSA”); European Chemicals Agency (“EChA”).
 - ii. No ingredient in the formulated product is included on Annex III of the Rotterdam Convention (PIC list) or listed in the Stockholm Convention.
 - b. The formulated product does not pose a significant acute toxicity/irritation hazard and has no novel acute toxicological effects.
 - i. Formulated product must be EPA category III or IV for acute oral, dermal and inhalation toxicity and eye/skin irritation (a maximum of ‘CAUTION’ signal word in the US). For countries outside the US, may not be classified in acute toxicity categories 1-4 for acute oral, dermal and inhalation toxicity under the Globally Harmonized System of Classification and Labeling of Chemicals (GHS) (i.e., must be GHS Categories 5, with maximum ‘WARNING’ signal word based on acute toxicity) and may not be not be classified as skin corrosive or eye/skin irritant.
3. **Environmental Profile**
 - a. Formulated product will not cause unreasonable adverse effects to the environment (including, but not limited to, air, soil, and water quality) when used in accordance with label instructions and widespread and commonly recognized practice.
4. **Eco-toxicology**
 - a. The formulated product may not be in GHS Category 1 for acute toxicity (i.e., “very toxic to aquatic life”) or GHS Category 1 or 2 for chronic toxicity (i.e., “very toxic to aquatic life” or “toxic to aquatic life”), or equivalent classifications for terrestrial life when those guidelines are developed under the GHS. No substantiated correlation between active ingredient and species population decline.

5. Medical Treatment Information and Medical Management
 - a. The immediate medical treatment information for all products is made available to Poison Control Centers and Safety Data Sheets are made available to customers.
 - b. Medical Management - Product does not require early product identification by Poison Control Center
 - i. Symptomatic treatment regime
 - ii. No need for specific antidotal treatment
 - iii. No need for early preventative therapy
6. Use of Raw Materials
 - a. Inert ingredients (co-formulants) in the formulation must be included on the EPA's "Approved Inert Ingredient" list (or equivalent outside of the U.S.) and not specifically excluded by competent authorities.
 - b. Product must not be subject to a carcinogenicity warning under California's Prop 65 or similar law or regulation in the relevant jurisdiction.
7. Packaging/claims
 - a. Product labels must not be false, misleading or inadequate.
 - b. Child Resistant Packaging – products must be packaged in accordance with FAO International Code of Conduct on Pesticide Management, as may be modified from time-to-time.
(http://www.fao.org/fileadmin/templates/agphome/documents/Pests_Pesticides/Code/CODE_2014Sep_ENG.pdf)
 - c. Labeling must encourage proper storage and disposal.

SCHEDULE E

ROUNDUP® TRADEMARK USAGE RULES

North America Territories

When referring to any ROUNDUP™ branded product, it is important to clearly communicate in order to avoid consumer confusion or claims of false or misleading advertising, and to protect Monsanto's valuable trademarks. The following guidelines must be followed to ensure that Scotts' communications are clear and accurate and do not raise stewardship concerns or put Monsanto's valuable trademarks at risk.

All Scotts ROUNDUP Branded Licensed Products packaging, communications, including advertising, marketing and promotional materials, or other sales communications, as well as presentations, press releases, annual reports, and other Scotts corporate communications shall be consistent with these Rules.

-
- I. **GENERAL ROUNDUP TRADEMARK USAGE** - "ROUNDUP Word Mark" refers to the *ROUNDUP* trademark without any accompanying logo or design element.
- A. **DISTINCTIVE:** The *ROUNDUP* Word Mark shall always appear distinctive from surrounding text. Examples of proper treatment include the following.
1. ALL CAPS: ROUNDUP® Ready-To-Use Selective Weed Killer or ROUNDUP™ branded insecticides for lawn and garden
 2. First Letter Capitalized: Roundup® Ready-To-Use Selective Weed Killer or Roundup™ branded insecticides for lawn and garden
 3. Bold: **Roundup**® Ready-To-Use Selective Weed Killer or **Roundup**™ branded insecticides for lawn and garden
 4. Italics: *Roundup*® Ready-To-Use Selective Weed Killer or *Roundup*™ branded insecticides for lawn and garden
- B. **NOTICE:** The first use of the *ROUNDUP* Word Mark in running text shall be immediately followed by the ™ symbol, until the mark is registered for the particular product(s) in the relevant jurisdiction, in which case the ™ shall be replaced by the ® symbol.
- C. **APPROPRIATE USE OF THE ROUNDUP TRADEMARK**
1. Do not use the *ROUNDUP* Word Mark as a noun. Do not use the *ROUNDUP* Word Mark as a possessive, in a possessive form or as a verb.

Acceptable: ROUNDUP® Insecticides
Not Acceptable: Roundup insects with the new **Roundup**™ branded insecticides.
 2. Do not make statements or claims about the *ROUNDUP* brand generally. All statements, claims, images or other representations of or about a Licensed Product must be specific to the Licensed Product.

D. DO NOT USE THE *ROUNDUP* TRADEMARK (WORD MARK OR LOGO) BY ITSELF

1. Product Packaging & Labeling: If the Licensed Product name lacks sufficient description of the product function, Scotts shall include a statement identifying the function immediately following, adjacent to or in very close proximity to the *ROUNDUP* trademark (e.g., “Roundup Pest Killer Insecticide”).
2. Advertising, Marketing And Promotional Materials (Print, Broadcast, Electronic, Online):
 - a. The *ROUNDUP* trademark shall always be followed by:
 - i. A Product Name
Acceptable: *ROUNDUP*™ Wasp & Hornet Killer; *Roundup*® Lawn Weed Killer
 - ii. A Product Category
Acceptable: **Roundup**™ Insecticides; *ROUNDUP*® Lawn & Garden selective herbicides
 - iii. A Product Sub-Brand
Acceptable: *ROUNDUP*™ Insect-Away
 - b. If the product name, product category or sub-brand is not descriptive as to the function and field of use (lawn & garden) of the product(s), the accompanying and surrounding imagery, text, voice-over and/or context must clearly communicate to the average consumer the function and field of use of the product(s) to avoid confusion.
Acceptable: *ROUNDUP*® Max Control - Television commercial imagery shall clearly communicate to the average viewer that the product is, for example, a selective herbicide, e.g., depicts targeted weed(s) in the lawn and garden environment in which the product(s) is intended to be used.
 - c. Wherever feasible, use the term “brand” or “branded” in conjunction with the *ROUNDUP* trademark.
 - d. Scotts shall not qualify or define “Roundup®” for purposes of a particular publication; e.g., do not use “Roundup” as a noun and include a footnote that states: “In this brochure, “Roundup®” refers to **Roundup**® Branded Lawn & Garden Products.” Scotts must use the entire phrase, “**Roundup**® Branded Lawn & Garden Products” throughout the brochure.
 - e. Don’t use umbrella terms that are overly broad. Statements about an umbrella group of products must be truthful and accurate with regard to ***all*** products that make up the group.
 - f. Don’t use “Roundup™” to refer to products that are not **Roundup**™ Licensed Products.

E. *ROUNDUP* TRADEMARK ATTRIBUTION STATEMENT: The following statement must be legible and placed in appropriate locations for applications in which the *ROUNDUP* trademark appears or is used as follows:

Roundup® and the Roundup Logo are trademarks of their registered owner; used under license by The Scotts Company LLC, or substantially equivalent language.

(Appropriate use of ® or ™ shall be provided by Monsanto to Scotts with respect to the individual products for the relevant country.)

II. **ROUNDUP LOGO USAGE – THE SAME RULES FOR THE WORD MARK APPLY TO THE LOGO**



- A. **BLACK & WHITE *ROUNDUP* LOGO(S):** should only be used when it is not feasible to print the logo(s) in color.
- B. **COLOR *ROUNDUP* LOGO(S):** used on product packaging; used primarily in advertising, marketing or promotional materials.
- C. **WITH SCOTTS' TRADEMARKS & LOGOS:** the *ROUNDUP* trademark may also be used with a Scotts' trademark or trademark logo.
- D. **DO NOT ALTER:** Do not change the colors, the proportions, the shape or the words of the *ROUNDUP* logo(s). Do not place the logo(s) at an angle, place any other words within the logo, crop the logo, or make the logo(s) transparent.
- E. **BACKGROUND/SEPARATION:** The *ROUNDUP* logo(s) should always appear on a plain background and should be placed with sufficient clearance from other elements where space allows.
- F. **REPRODUCTION & SIZE:** The *ROUNDUP* logo(s) should always be reproduced from digital files. The *ROUNDUP* logo(s) should never be smaller than 5/8 (.625) inch on any material in process color where space reasonably allows. The *ROUNDUP* Logo(s) should never be smaller than 131 pixels wide.
- G. ***ROUNDUP* LOGO USAGE ON PACKAGING:** The *ROUNDUP* logo must appear on the front of the Licensed Product packaging.

III. **CHANGES IN *ROUNDUP* TRADEMARK USE**

- A. **AGREE TO CHANGE:** Scotts agrees to change the manner in which it uses or identifies the *ROUNDUP* trademark or *ROUNDUP* logo(s) in its materials as may be reasonably be requested by Monsanto; provided, however, that Scotts shall have a reasonable period of time to implement such changes and to deplete existing inventories of Licensed Products bearing the *ROUNDUP* trademark(s) or advertising, marketing or promotional materials containing the *ROUNDUP* trademark.
- B. **NOTIFICATION OF A CHANGE:** Monsanto will notify Scotts of any changes to the *ROUNDUP* logo(s) as described in this Schedule E no less than six (6) months prior to the use of a new *ROUNDUP* logo by Monsanto. At such time, this Schedule may be amended to permit such modifications to a new logo.

SCHEDULE F
CPR Rules

Rule 6: Selection Of Arbitrator(s) By CPR

6.1 Whenever (i) a party has failed to appoint the arbitrator to be appointed by it; (ii) the parties have failed to appoint the arbitrator(s) to be appointed by them acting jointly; (iii) the party-appointed arbitrators have failed to appoint the third arbitrator; (iv) the parties have provided that one or more arbitrators shall be appointed by CPR; or (v) the multi-party nature of the dispute calls for CPR to appoint all members of a three-member Tribunal pursuant to Rule 5.5, the arbitrator(s) required to complete the Tribunal shall be selected as provided in this Rule 6, and either party may request CPR in writing, with copy to the other party, to proceed pursuant to this Rule 6.

6.2 The written request may be made as follows:

a. If a party has failed to appoint the arbitrator to be appointed by it, or the parties have failed to appoint the arbitrator(s) to be appointed by them through agreement, at any time after such failure has occurred.

b. If the party-appointed arbitrators have failed to appoint the third arbitrator, as soon as the procedure contemplated by Rule 5.2 has been completed.

c. If the arbitrator(s) are to be appointed by CPR, as soon as the notice of defense is due.

6.3 The written request shall include complete copies of the notice of arbitration and the notice of defense or, if the dispute is submitted under a submission agreement, a copy of the agreement supplemented by the notice of arbitration and notice of defense if they are not part of the agreement.

6.4 Except where a party has failed to appoint the arbitrator to be appointed by it, CPR shall proceed as follows:

a. Promptly following receipt by it of the request provided for in Rule 6.3, CPR shall

deliver the list so marked to CPR, which, on agreement of the parties, shall circulate the delivered lists to the parties. Any party failing without good cause to return the candidate list so marked within 10 days after receipt shall be deemed to have assented to all candidates listed thereon. CPR shall designate as arbitrator(s) the nominee(s) willing to serve for whom the parties collectively have indicated the highest preference and who appear to meet the standards set forth in Rule 7. If a tie should result between two candidates, CPR may designate either candidate.

If this procedure for any reason should fail to result in designation of the required number of arbitrators or if a party fails to participate in this procedure, CPR shall appoint a person or persons whom it deems qualified to fill any remaining vacancy.

6.5 Where a party has failed to appoint the arbitrator to be appointed by it, CPR shall appoint a person whom it deems qualified to serve as such arbitrator.

convene the parties in person or by telephone to attempt to select the arbitrator(s) by agreement of the parties.

b. If the procedure provided for in (a) does not result in the selection of the required number of arbitrators, CPR shall submit to the parties a list, from the CPR Panels, of not less than five candidates if one arbitrator remains to be selected, and of not less than seven candidates if two or three arbitrators are to be selected. Such list shall include a brief statement of each candidate's qualifications. Each party shall number the candidates in order of preference, shall note any objection it may have to any candidate, and shall

SCHEDULE G

STANDARDS OF MANUFACTURING PRACTICES

Scotts and Contract Manufacturers (individually or collectively "LICENSEE") shall take reasonable measures to ensure that all manufacturing, shipping, advertising and marketing and merchandising of the FTO Cleared Products and FTO Review Products are in compliance with the following requirements:

No Forced Labor

LICENSEE certifies that it does not use and shall not use any forced or involuntary labor - prison, indentured, bonded or otherwise.

No Child Labor

LICENSEE will not use child labor in the manufacturing of or any other activity relating to the FTO Cleared Products and FTO Review Products & Services or related packaging, advertising and marketing materials.

No Harassment or Abuse

LICENSEE certifies every employee shall be treated with respect and dignity. No employee shall be subject to any physical, sexual, psychological or verbal harassment or abuse or other inappropriate conduct.

Nondiscrimination

LICENSEE certifies that no person shall be subject to any discrimination in employment, including hiring, salary, benefits, advancement, discipline, termination or retirement, on the basis of race, religion, gender, age, disability, sexual orientation, nationality, political opinion, or social or ethnic origin.

Health and Safety

LICENSEE certifies that workers will be provided a safe and healthy working environment to prevent accidents and injury to health arising out of, linked with, or occurring in the course of work or as a result of the operation of LICENSEE'S facilities.

Freedom of Association and Collective Bargaining

LICENSEE certifies that employees' rights to freedom of association and collective bargaining will be recognized and respected.

Wages and Benefits

LICENSEE certifies that employees will be paid at least the minimum wage required by local Law, or the prevailing industry wage, whichever is higher.

Hours of Work/Overtime

LICENSEE certifies that it complies with regulations concerning work hours mandated by local laws and uses overtime only when employees are compensated according to local law. LICENSEE further certifies that it will not allow employees to exceed the maximum number of overtime hours provided by local law.

Benefits

LICENSEE certifies that it complies with all provisions for legally-mandated benefits, including but not limited to health care; child care; sick leave; contributions for social security; life, health, worker's compensation and other insurance mandated by local law.

Environment

LICENSEE shall comply with all applicable environmental laws, rules, regulations, and industry standards relating to the manufacture, sale and distribution of the FTO Cleared Products and FTO Review Products & Services.

Commercialization and Technology Agreement

THIS COMMERCIALIZATION AND TECHNOLOGY AGREEMENT (this “Agreement”) is entered into as of this 15th day of May, 2015 (the “Effective Date”) between The Scotts Company LLC, an Ohio limited liability company, with its principal place of business at 14111 Scottslawn Road, Marysville, Ohio 43041, and Monsanto Company, a Delaware corporation, with its principal place of business at 800 N. Lindbergh Blvd., St. Louis, Missouri 63167.

RECITALS:

- A. Whereas, the Parties are contemporaneously entering into that certain Lawn and Garden Brand Extension Agreement (the “License Agreement”) pursuant to which Monsanto shall license certain rights to Scotts within the Residential Lawn & Garden Field (as defined in the License Agreement).
- B. Whereas, Scotts wishes to receive the right, under certain circumstances, to discuss the possible acquisition of additional rights from Monsanto within the Residential Lawn & Garden Field (as defined below) and Monsanto is willing to discuss granting such rights, subject to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. **DEFINITIONS.** Capitalized terms used herein without definition shall have the meanings assigned to them in the License Agreement. In addition to terms defined elsewhere in this Agreement, the following terms shall have the following meanings and may be used interchangeably in the singular or plural context:
- 1.1 “Agency Agreement” means that certain Amended and Restated Exclusive Agency and Marketing Agreement by and between Monsanto Company and The Scotts Company LLC, effective as of September 30, 1998, and amended and restated as of November 11, 1998, and as such agreement has been amended from time to time.
- 1.2 “Agricultural Uses” means the cultivation, maintenance, or harvest of plants, animals, or other organisms for the sale or other commercial use of such organisms or products made with or derived from those organisms.
- 1.3 “Commercialize” means offering to sell or selling a product or service for commercial purposes in combination with marketing, promotional, or advertising activities directed to selling or offering to sell such product or service. For the avoidance of doubt, “Commercialize” does not include providing or selling a product or service for research or development purposes. “Commercialized” and “Commercialization” shall be similarly defined.
- 1.4 “Controlled,” when used in connection with the term Monsanto Technology, means the ownership, contractual right, or other legal authority or right of Monsanto to, as applicable, grant a license or sublicense of rights in such Monsanto Technology to another Person, or to disclose or provide such Monsanto Technology to another Person, in either case without breaching the terms of any agreement with a Third Party.
- 1.5 “Intellectual Property” means any and all: (a) know-how, formulas, inventions, improvements, manufacturing and production processes and techniques, and other confidential, proprietary, or trade secret technical information; (b) Patents; and (c) computer software, firmware, and programs and copyrights therein and copyrights in other technical tangible works of expression.

- 1.6 “ITO” means industrial, turf and ornamental.
- 1.7 “ITO Uses” means the use of products or services in, on, or around a property by a Person who is not the owner or a resident of the property and who has been hired, employed, or otherwise commercially engaged, directly or indirectly, by the owner or a resident of such property to use such products in, on, or around such property and services commercially applying such products.
- 1.8 “L&G Product” is defined in Section 2.1.
- 1.9 “L&G Service” is defined in Section 2.1.
- 1.10 “Monsanto” means Monsanto Company and its Affiliates.
- 1.11 “Monsanto Technology” means Intellectual Property that is Controlled by Monsanto, determined as of the date of the applicable Technology License Notice (as defined below).
- 1.12 “Party” means either Monsanto or Scotts, and the term “Parties” means collectively Monsanto and Scotts.
- 1.13 “Patent(s)” means (a) all patents and patent applications and any patents issuing therefrom worldwide, (b) any substitutions, divisions, continuations, continuations-in-part, reissues, renewals, registrations, confirmations, re-examinations, patents resulting from any U.S. post-grant review or inter partes review proceedings, extensions, supplementary protection certificates, term extensions (under applicable patent law or other applicable law and regulation), certificates of invention and the like, and any provisional applications of any such patents or patent application, and (c) any foreign or international equivalent of any of the foregoing.
- 1.14 “Professional Residential Service Uses” means the subset of ITO Uses where the Person(s) hired, employed, or otherwise commercially engaged provides services to cultivate, maintain and control lawns, gardens or plants, and to control pests associated with such lawns, gardens or plants only or substantially only to private residential customers in, on or around those residential customers’ personal residential properties (such services being “Professional Residential Services” and Persons providing such services being “Professional Residential Service Providers”).
- 1.15 “Related Product” means, in reference to a particular L&G Product or an L&G Service Product (as defined below), any L&G Product that is an improvement or a modification to, derived from, a derivative work of or a replacement of or in the same or similar product class or family as that L&G Product or L&G Service Product such that such L&G Product is in the same market category or accomplishes the same or similar function in the same or similar manner as that L&G Product or L&G Service Product.
- 1.16 “Related Product or Service” means, as applicable, and in reference to a particular L&G Product or L&G Service, a Related Product or a Related Service.
- 1.17 “Related Service” is defined in reference to a particular L&G Service and means, in reference to that L&G Service, any L&G Service that will use and employ, as a primary component of such L&G Service, L&G Products or Related Products as all or a majority of the L&G Products identified in respect of such L&G Service in the applicable Commercialization Notice (the “L&G Service Products”) and/or their respective Related Products.

- 1.18 “Residential Lawn & Garden Field” means (a) packaged goods marketed to, promoted or positioned solely for use by customers in, on, or around their personal residential properties to cultivate, maintain and control residential lawns, gardens, or house plants, or to control household pests or pests associated with such lawns, gardens or house plants, (b) packaged goods marketed, promoted or positioned solely for use by Professional Residential Service Providers in, on or around personal residential properties to cultivate, maintain and control residential lawns, gardens or house plants, or to control household pests or pests associated with such lawns, gardens or house plants and only when marketed, promoted and sold to consumers through DIY Superstores (i.e., stores ranging from 40,000 square feet to more than 100,000 square feet with expanded building materials with garden/landscaping centers outside of the stores such as Lowe’s and The Home Depot), and (c) Professional Residential Services provided by Professional Service Providers; but provided that notwithstanding the foregoing, the “Residential Lawn & Garden Field” excludes:
- (a) all products and services promoted or positioned for ITO Uses other than Professional Residential Service Uses; and
 - (b) all products and services promoted or positioned for Agricultural Uses.
- 1.19 “Scotts” means The Scotts Company LLC and its Affiliates.
- 1.20 “Superior Commercialization Offer” means a bona fide written offer with respect to Commercialization of an L&G Product or L&G Service, which contains terms and conditions that support a similar or alternate system of Commercialization that Monsanto determines in its reasonable discretion and taking into account all relevant legal, financial, commercial and regulatory aspects, to be more favorable to Monsanto, taken as a whole, than those set forth in the Commercialization Proposal (as defined below) provided by Scotts with respect to such L&G Product or L&G Service. By way of example and not limitation, in making such determination, Monsanto may consider differences in the type and level of proposed services, territorial differences, Monsanto’s preference for exclusivity or non-exclusivity, the opportunity for aggregation of non-exclusive arrangements, business synergies and other commercial aspects.
- 1.21 “Superior License Offer” means a bona fide written offer with respect to a license of the Monsanto Technology identified in a particular Technology License Notice, which contains terms and conditions that support a similar or alternate license arrangement that Monsanto determines in its reasonable discretion and taking into account all relevant legal, financial, commercial and regulatory aspects, to be more favorable to Monsanto, taken as a whole, than those set forth in the Technology License Proposal (as defined below) provided by Scotts with respect to the license of such Monsanto Technology. By way of example and not limitation, in making such determination, Monsanto may consider differences in the level of proposed services, territorial differences, Monsanto’s preference for exclusivity or non-exclusivity, the opportunity for aggregation of non-exclusive arrangements, business synergies and other commercial aspects.

2. COMMERCIALIZATION AND TECHNOLOGY LICENSE OPPORTUNITIES

- 2.1 Commercialization. If, during the term of this Agreement, Monsanto elects to Commercialize in the United States any product in the Residential Lawn & Garden Field (an “L&G Product”) or any services in the Residential Lawn & Garden Field that will use and employ, as the primary component of such services, any L&G Product (an “L&G Service”), then prior to engaging in such Commercialization, Monsanto shall give written notice to Scotts of such intent, which notice shall identify the L&G Product

or L&G Service (the “Commercialization Notice”). Scotts shall have sixty (60) days after the date of the Commercialization Notice to provide a written proposal to Monsanto to participate in the Commercialization of such L&G Product or L&G Service (the “Commercialization Proposal”). Any such Commercialization Proposal shall contain material terms for an agreement for such participation, including: (i) Scotts’ proposed role in such Commercialization (e.g., as a licensee, distributor, service provider, acquirer, collaborator, co-developer or other participant and whether such proposed participation role is exclusive or non-exclusive) (the “Commercialization Role”); (ii) material financial terms, including royalty payments, upfront payments, and milestone payments; (iii) the proposed term of the participation (including a description of proposed termination rights); (iv) whether any territories other than the United States are proposed for such agreement; (v) any proposed on-going service, development or other obligations Monsanto would have under such agreement; and (vi) a reasonable timeline for completing such transaction.

- (a) If the Commercialization Proposal is not received within the sixty (60) day response period or if Scotts notifies Monsanto in writing that Scotts declines to extend such an offer, Monsanto shall thereafter have the right, without further notice or obligation to Scotts, to Commercialize (directly or via one or more Third Parties) the L&G Product or the L&G Service identified in the Commercialization Notice and/or any Related Product or Service. Except that if, within eighteen (18) months of the end of the response period, Monsanto has not entered into an agreement with a Third Party regarding Commercialization of such L&G Product or L&G Service or Related Product or Service, then, Monsanto shall not Commercialize the L&G Product or L&G Service until Scotts has an opportunity to evaluate such L&G Product or L&G Service pursuant to this Section 2.1.
- (b) If Scotts does provide a Commercialization Proposal within the sixty (60) day response period, then Monsanto and Scotts shall have a further thirty (30) days to negotiate exclusively and in good faith the terms of Scotts’ participation in such Commercialization; provided that neither Party shall have an obligation to enter into a definitive agreement regarding a Commercialization Proposal. If Monsanto and Scotts fail to enter into a definitive agreement for Scotts’ proposed participation in such Commercialization during such further thirty (30) day period, then, subject to Section 2.1(c) below, Monsanto shall thereafter have the right to Commercialize (directly or via one or more Third Parties) the L&G Product or the L&G Service identified in the Commercialization Notice and/or any Related Product or Related Service.
- (c) If Scotts has timely provided a Commercialization Proposal in response to a Commercialization Notice for Commercialization of a particular L&G Product or L&G Service and the Parties have failed to enter into a definitive agreement with respect to such Commercialization within ninety (90) days of the date of the Commercialization Notice, then Monsanto may thereafter directly Commercialize the L&G Product or L&G Service and/or any Related Product or Service. Monsanto may engage one or more Third Parties to participate in such Commercialization in any capacity other than the Commercialization Role proposed by Scotts in the applicable Commercialization Notice (or a substantially similar role) at any time or from time to time in such manner and upon such terms as Monsanto, in its discretion, deems appropriate. In addition, Monsanto may thereafter consummate any agreement with a Third Party to participate in the Commercialization of the L&G Product or L&G Service and/or any Related Product or Service in the Commercialization Role proposed by Scotts in the applicable Commercialization Proposal if such agreement is made pursuant to the acceptance of a Superior Commercialization Offer. If an offer by such Third Party for participation in the Commercialization of the L&G Product or L&G Service and/or any Related Product or Service in the Commercialization Role proposed by Scotts

in the applicable Commercialization Proposal that Monsanto intends to accept is not a Superior Commercialization Offer, then Monsanto may give written notice thereof to Scotts and Scotts shall have twenty (20) days thereafter to match the terms and conditions of such offer by giving written notice to Monsanto. If Scotts does match the terms and conditions of such offer, then Monsanto and Scotts shall, within ten (10) days thereafter, execute one or more binding agreements with respect to such transaction. If Scotts does not match the terms and conditions of such offer or enter into such binding agreement(s) with Monsanto in such timeframe, then Monsanto may thereafter engage one or more Third Parties to participate in such Commercialization in any capacity at any time or from time to time in such manner and upon such terms as Monsanto, in its discretion, deems appropriate.

- (d) With respect to any time periods set forth in this Section, the Parties may agree to extend such periods and Monsanto's consent to such extension shall not be unreasonably withheld, and for the avoidance of doubt, it would be reasonable to decline to grant such an extension if the extension would delay Monsanto's planned Commercialization or its ability to negotiate with Third Parties that may have an interest in participating in Commercialization.

2.2 Technology License. If, during the term of this Agreement, Monsanto elects to grant a license in the United States to any Third Party to any Monsanto Technology for commercial uses entirely or substantially entirely (wherein the determination of substantially entirely is based the anticipated value of such rights and Monsanto's reasonable business judgment regarding such anticipated value) within the Residential Lawn & Garden Field, Monsanto shall give written notice to Scotts of such intent, which notice shall identify the Monsanto Technology to be licensed, the proposed commercial uses for such technology, and whether such license will be exclusive or non-exclusive (the "Technology License Notice"). Scotts shall have sixty (60) days after the date of the Technology License Notice to provide a written proposal to Monsanto to license such Monsanto Technology from Monsanto for such commercial uses and whether such proposal is on an exclusive or non-exclusive basis (the "Technology License Proposal"). Any such Technology License Proposal shall contain material terms for a technology license agreement including: (i) material financial terms, including royalty payments, upfront payments, and milestone payments; (ii) the proposed term of the license (including a description of proposed termination rights); (iii) whether any territories other than the United States are proposed for such agreement; (iv) any proposed on-going service, development or other obligations Monsanto would have under such agreement; and (v) a reasonable timeline for completing such transaction.

- (a) If the Technology License Proposal is not received within the sixty (60) day response period or if Scotts notifies Monsanto in writing that Scotts declines to extend such an offer, Monsanto shall thereafter have the right, without further notice or obligation to Scotts, to license the Monsanto Technology identified in the Technology License Notice along with any other reasonably related technology for any or all of the uses identified and on the basis (e.g., exclusive or non-exclusive) identified and reasonably related uses in the Technology License Notice. Except that if, within eighteen (18) months of the end of the response period, Monsanto has not entered into an agreement with a Third Party regarding licensing of such Monsanto Technology or other reasonably related technology, then, Monsanto shall not license such Monsanto Technology for commercial uses entirely or substantially entirely within the Residential Lawn & Garden Field until Scotts has an opportunity to evaluate such Monsanto Technology pursuant to this Section 2.2.
- (b) If Scotts does provide a Technology License Proposal within the sixty (60) day response period, then Monsanto and Scotts shall have a further thirty (30) days to negotiate exclusively and in

good faith the terms of such license agreement; provided that neither Party shall have an obligation to enter into a definitive license agreement regarding a Technology License Proposal. If Monsanto and Scotts fail to enter into a definitive license agreement during such further thirty (30) day period, then, subject to Section 2.2(c) below, Monsanto shall thereafter have the right to license the Monsanto Technology identified in the Technology License Notice along with any other reasonably related technology for any or all of the uses identified and on the basis (e.g., exclusive or non-exclusive) identified and reasonably related uses in the Technology License Notice.

- (c) If Scotts has timely provided a Technology License Proposal in response to a Technology License Notice and the Parties have failed to enter into a definitive license agreement within ninety (90) days of the date of the Technology License Notice, then Monsanto may thereafter enter into any agreement to license the Monsanto Technology identified in the Technology License Notice along with any other reasonably related technology to a Third Party for any or all of the uses identified and reasonably related uses and on the basis (e.g., exclusive or non-exclusive) identified in the Technology License Notice if such license agreement is made pursuant to the acceptance of a Superior License Offer. If the offer of such Third Party is not a Superior License Offer but Monsanto wishes to accept such offer, then Monsanto may give written notice thereof to Scotts and Scotts shall have twenty (20) days thereafter to match the terms and conditions of such offer by giving written notice to Monsanto. If Scotts does match the terms and conditions of such offer, then Monsanto and Scotts shall, within ten (10) days thereafter execute one or more binding agreements with respect to such transaction. If Scotts does not match the terms and conditions of such offer or enter into such binding agreement(s) with Monsanto in such timeframe, then Monsanto shall thereafter have the right, without further notice or obligation to Scotts, to license to one or more Third Parties the Monsanto Technology identified in the Technology License Notice along with any other reasonably related technology for any or all of the uses.
- (d) With respect to any time periods set forth in this Section, the Parties may agree to extend such time periods and Monsanto's consent to such extension shall not be unreasonably withheld, and for the avoidance of doubt, it would be reasonable to decline to grant such an extension if the extension would delay Monsanto's planned licensing or its ability to negotiate with Third Parties that may have an interest in participating in such licensing.

2.3 Limitations on Rights. Nothing in this Agreement shall preclude Monsanto from: (a) pursuing or continuing any Commercialization activities in which it is engaged or committed (or which are subject to contractual obligations with respect to future commercialization with a Third Party that may preclude Scotts from having the first option under Section 2.1 and 2.2) as of the Effective Date, including any Related Product or Service, or to require Monsanto to grant Scotts the option to participate in any such activities; or (b) continuing any licensing arrangements for any Monsanto Technology in existence as of the Effective Date, including any reasonably related technology, or to require Monsanto to grant Scotts the option to license such Monsanto Technology under the same or similar terms as such existing licensing arrangements. Furthermore, in no event shall any of the following trigger any obligations of Monsanto or rights of Scotts under this Agreement: (x) (i) any Change of Control of Monsanto or any transaction that occurs pursuant to, in connection with or arises out of such a transaction; (ii) Monsanto's divestiture of any business, line of business, assets or investments (whether through a sale of assets or equity, merger, spin off or other similar transaction); (iii) any acquisition or investment by Monsanto of, or in, any Third Party's business or line of business, assets, intellectual property or other rights (whether through a sale of assets or equity, merger, license, financing or other similar transaction); or (iv) any intercompany activities of Monsanto (including, without limitation, with respect to the transfer of any

Commercialization activities among Monsanto Company and its Affiliates); (y) activities in which a Third Party acquired by Monsanto or involved in a Change of Control of Monsanto was or is engaged at the time of such acquisition or Change of Control; or (z) the continuation of any such Third Party's business and any related extensions thereof. Furthermore, for the avoidance of doubt, the provisions of this Agreement shall not apply to any grant of license (or intent to grant a license) to Monsanto Technology for uses that are not entirely or substantially entirely within the Residential Lawn & Garden Field or if Monsanto does not have the legal or contractual right to enter into an agreement with Scotts. For further avoidance of doubt, in the event of subsequent transactions with Monsanto described in 2.3(x)(iii), 2.3(y), and 2.3(z), the lack of obligations of Monsanto or rights of Scotts shall apply to L&G Product or L&G Service Commercialization activities and any technology licensing within the Residential Lawn & Garden Field in which the entity involved in such transaction, its business or assets, or any acquired business or assets are engaged in or committed to with a Third Party (or which are subject to contractual obligations with respect to future commercialization with a Third Party that may preclude Scotts from having the first option under Section 2.1 and 2.2) as of the date of such transaction (including subsequent Commercialization of Related Products and Services and licensing of any reasonably related technology), but Commercialization of other L&G Products and L&G Services and licensing of other Monsanto Technology acquired in such transaction are subject to Sections 2.1 and 2.2.

2.4 L&G Technology Showcase. Beginning in 2015 and occurring not less than once per calendar year, a Technology Review Team (hereinafter "TRT") consisting of Monsanto and Scotts representatives shall convene, preferably in person, to review Monsanto's pipeline of products and technologies that Monsanto deems to have potential applicability to the Residential Lawn & Garden Field and about which Monsanto is willing to discuss possible Commercialization. The intent of the L&G Technology Showcase is to demonstrate a preferred commercialization partnership and maximize opportunities for Commercialization of L&G Products/Services. Monsanto and Scotts shall each appoint a TRT leader to coordinate and Monsanto shall distribute a non-confidential version of the agenda in advance of the meeting, providing an abstract of the products and technologies to be discussed. At Scotts' request, any agenda items may be removed from the agenda.

3. TERM

3.1 The term of this Agreement shall be from the Effective Date to the thirtieth (30th) anniversary of the Effective Date, unless terminated earlier pursuant to the terms of this Agreement.

3.2 This Agreement shall terminate immediately, without further notice or action by either Party, upon termination of the License Agreement or the Agency Agreement, in their entirety or as they apply to any individual country or group of countries due to a material breach of either of those agreements by Scotts. In addition, this Agreement shall terminate thirty (30) days after Scotts' receipt of Monsanto's written notice of Scotts' breach of any material term of this Agreement, the License Agreement or the Agency Agreement unless Scotts cures such breach and notifies Monsanto in writing of such cure during such thirty (30) day period. For the avoidance of doubt, (a) this Agreement may be terminated as a result of Scotts' uncured material breach of the License Agreement or the Agency Agreement even if the License Agreement or the Agency Agreement, as applicable, is not terminated or does not terminate and (b) for purposes of this Section 3.2, a material breach of the License Agreement shall include, in addition to the Material Breaches as defined in the License Agreement, any other material breach of such agreement.

4. ASSIGNMENT. 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 4, 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, Change of Control or otherwise) without the prior written consent of the other Party. Notwithstanding the foregoing, (i) Monsanto Company shall have the right to transfer and assign all, but not less than all, of Monsanto's rights, interests and obligations hereunder to any of its Affiliates; provided, that Monsanto Company shall remain liable for the performance of Monsanto's 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 4; (ii) The Scotts Company LLC shall have the right to transfer and assign all, but not less than all, of Scotts' rights, interests and obligations hereunder to any of its Affiliates; provided, that The Scotts Company LLC shall remain liable for the performance of Scotts' 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 4; and (iii) The Scotts Company LLC shall be entitled to transfer and assign all, but not less than all, of Scotts' rights, interests and obligations hereunder to (A) any Third Party to whom The Scotts Company LLC or any of its Affiliates transfers and assigns (or has previously transferred and assigned) all, but not less than all, of Scotts' rights, interests and obligations under the Agency Agreement and the License Agreement (by operation of law, Change of Control or otherwise) as expressly permitted by the terms of such agreements or (B) any Third Party to whom The Scotts Company LLC or any of its Affiliates transfers and assigns (or has previously transferred and assigned) all, but not less than all, of Scotts' rights, interests and obligations under the Agency Agreement and the License Agreement with respect to the North America Territories as expressly permitted by the terms of such agreements. For the avoidance of doubt, this Agreement and the rights, interests and obligations hereunder may only be transferred and assigned (by operation of law, Change of Control or otherwise) to another party in their entirety and not in part.

5. REPRESENTATIONS AND WARRANTIES

5.1 SCOTTS' REPRESENTATION AND WARRANTIES:

- 5.1.1 The Scotts Company LLC is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Ohio and has all requisite company power and authority to carry on and conduct its business as it is now being conducted.
- 5.1.2 The Scotts Company LLC has the company power and authority to execute and deliver this Agreement, to perform its obligations hereunder, to obligate its Affiliates to perform hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized, approved and ratified by all necessary action on the part of The Scotts Company LLC. This Agreement is a legal, valid and binding obligation of Scotts enforceable in accordance with its terms.
- 5.1.3 Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (i) contravene, conflict with or result in a violation of any applicable Laws; (ii) conflict with any of the provisions of The Scotts Company LLC's organizational documents; (iii) violate in any material respect the terms of any other material agreement, contract or other instrument to which The Scotts Company LLC is a party; or (iv) give rise to any consent or authorization of any other Person.

5.2 MONSANTO'S REPRESENTATION AND WARRANTIES:

- 5.2.1 Monsanto Company is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware and has all requisite corporate power and authority to carry on and conduct its business as it is now being conducted.
- 5.2.2 Monsanto Company has the corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder, to obligate its Affiliates to perform hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized, approved and ratified by all necessary action on the part of Monsanto Company. This Agreement is a legal, valid and binding obligation of Monsanto, enforceable in accordance with its terms.
- 5.2.3 Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (i) contravene, conflict with or result in a violation of any applicable Laws; (ii) conflict with any of the provisions of Monsanto Company's organizational documents; (iii) violate in any material respect the terms of any other material agreement, contract or other instrument to which Monsanto Company is a party; or (iv) give rise to any consent or authorization of any other Person.

- 6. DISPUTE RESOLUTION. The Parties agree to resolve any disputes that may arise from time to time in connection with this Agreement in connection with the dispute resolution procedures set forth in Section 16 of the License Agreement; provided, however, that no breach or alleged breach of this Agreement shall be deemed to be a Material Breach for purposes of Section 16.4 of the License Agreement.
- 7. CONFIDENTIALITY. The provisions of Section 17 of the License Agreement shall apply to and govern any Confidential Information disclosed by a "disclosing" Party to a "receiving" Party in connection with their obligations under this Agreement. However, if Monsanto reasonably requests additional confidentiality undertakings in connection with any proposed Commercialization Notice or Technology License Notice, and Scotts declines to enter into such additional confidentiality undertakings, then Monsanto shall have no obligation to Scotts with regard to any such proposed Commercialization Notice or Technology License Notice.
- 8. NOTICES. All notices, requests, approvals, disapprovals, consents and statements to be given hereunder shall be given or made in accordance with the notice provisions in Section 18 of the License Agreement.
- 9. NO WAIVER; MODIFICATION; SEVERABILITY. None of the terms of this Agreement can be waived or modified except expressly in writing signed by both Parties. The failure of either Party to insist on compliance with any provision hereof shall not constitute a waiver or modification of such provision or any other provision. If any provision hereof is held to be invalid or unenforceable by any court of competent jurisdiction or any other authority vested with jurisdiction, such holding shall not affect the validity or enforceability of any other provision hereto.
- 10. WHOLE AGREEMENT; CONSTRUCTION. Upon execution, this Agreement cancels, terminates and supersedes any prior Agreement or understanding relating to the subject matter hereof between Monsanto and Scotts. This Agreement includes the entire understanding between the Parties as to its subject matter, and there are no representations, promises, warranties, covenants, or undertakings other than those contained herein.

11. GOVERNING LAW. The governing law and venue provisions of Section 23 of the License Agreement shall apply to this Agreement.
12. SURVIVABILITY. The respective obligations of the Parties under this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement shall survive the Agreement's termination, cancellation or expiration.
13. MISCELLANEOUS
 - 13.1 This Agreement shall bind and inure to the benefit of the Parties and their permitted successors and assigns.
 - 13.2 The captions and headings contained in this Agreement are used for convenience only and shall not be deemed or construed to have any substantive content in interpreting the meaning of any of the provisions of this Agreement.
 - 13.3 The Parties to this Agreement are independent contractors. This Agreement does not create a relationship of agency, partnership, joint venture, employment or franchise between the Parties. This Agreement does not give either Party the authority to bind the other or to incur any obligation on the other's behalf.
14. COUNTERPARTS. The Parties agree that this Agreement may be signed in multiple, identical counterparts.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

THE SCOTTS COMPANY LLC
By: /s/ JAMES HAGEDORN
Title: President and Chief Executive Officer

MONSANTO COMPANY
By: /s/ HUGH GRANT
Title: Chairman and Chief Executive Officer