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

Form 10-K

(Mark One)

☑ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the fiscal year ended September 30, 2017

OR

o **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from to

Commission file number 1-11593

The Scotts Miracle-Gro Company

(Exact name of registrant as specified in its charter)

Ohio	**31-1414921**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
14111 Scottslawn Road, Marysville, Ohio	**43041**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code:
937-644-0011

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

Title of Each Class	**Name of Each Exchange on Which Registered**
Common Shares, without par value	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:
None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☑ No o

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes o No ☑

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

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. o

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

Large accelerated filer	☑	Accelerated filer	o
Non-accelerated filer	o (Do not check if a smaller reporting company)	Smaller reporting company	o
		Emerging growth company	o

If an emerging growth company, indicate by check mark if the Registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. o

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes o No ☑

The aggregate market value of Common Shares (the only common equity of the registrant) held by non-affiliates (for this purpose, executive officers and directors of the registrant are considered affiliates) as of March 31, 2017 (the last business day of the most recently completed second quarter) was approximately $4,062,003,467.

There were 57,530,125 Common Shares of the registrant outstanding as of November 24, 2017.

DOCUMENTS INCORPORATED BY REFERENCE:

Portions of the definitive Proxy Statement for the registrant's 2018 Annual Meeting of Shareholders are incorporated by reference into Part III of this Annual Report on Form 10-K. Such Proxy Statement will be filed with the Securities and Exchange Commission within 120 days of the registrant's fiscal year ended September 30, 2017.

PART I

ITEM 1. *BUSINESS*

Company Description and Development of the Business

The discussion below provides a brief description of the business conducted by The Scotts Miracle-Gro Company ("Scotts Miracle-Gro" and, together with its subsidiaries, the "Company," "we" or "us"), including general developments in the Company's business during the fiscal year ended September 30, 2017 ("fiscal 2017"). For additional information on recent business developments, see "ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS" of this Annual Report on Form 10-K.

We are a leading manufacturer and marketer of branded consumer lawn and garden products. Our products are marketed under some of the most recognized brand names in the industry. Our key brands include Scotts® and Turf Builder® lawn and grass seed products; Miracle-Gro®, Nature's Care®, Scotts®, LiquaFeed® and Osmocote®[1] gardening and landscape products; and Ortho®, Roundup®[2], Home Defense® and Tomcat® branded insect control, weed control and rodent control products. We are the exclusive agent of the Monsanto Company ("Monsanto") for the marketing and distribution of consumer Roundup® non-selective weedkiller products within the United States and certain other specified countries. We have a presence in similar branded consumer products in China and Latin America. In addition, with our acquisitions of Gavita Holdings B.V. ("Gavita"), General Hydroponics, Inc. ("General Hydroponics"), Bio-Organic Solutions, Inc. ("Vermicrop"), American Agritech, L.L.C. ("Botanicare"), Agrolux Holding B.V. ("Agrolux"), AeroGrow International, Inc. ("AeroGrow") and Can-Filters Group Inc. ("Can-Filters"), we are a leading producer of liquid plant food products, growing media, advanced indoor garden, lighting and ventilation systems and accessories for hydroponic gardening.

Prior to August 31, 2017, we operated consumer lawn and garden businesses located in Australia, Austria, Belgium, Luxembourg, Czech Republic, France, Germany, Poland and the United Kingdom (the "International Business"). On April 29, 2017, the Company received a binding and irrevocable conditional offer (the "Offer") from Exponent Private Equity LLP ("Exponent") to purchase the International Business. On July 5, 2017, the Company accepted the Offer and entered into the Share and Business Sale Agreement (the "Purchase and Sale Agreement") contemplated by the Offer. Pursuant to the Purchase and Sale Agreement, Scotts-Sierra Investments LLC, an indirect wholly-owned subsidiary of the Company, and certain of its direct and indirect subsidiaries entered into separate stock or asset sale transactions with respect to the International Business. The Company's sale of the International Business to Exponent closed on August 31, 2017.

Prior to April 13, 2016, we operated the Scotts LawnService® business (the "SLS Business"), which provided residential and commercial lawn care, tree and shrub care and pest control services in the United States. On April 13, 2016, pursuant to the terms of the Contribution and Distribution Agreement (the "Contribution Agreement") between the Company and TruGreen Holding Corporation ("TruGreen Holdings"), we completed the contribution of the SLS Business to a newly formed subsidiary of TruGreen Holdings (the "TruGreen Joint Venture") in exchange for a minority equity interest of approximately 30% in the TruGreen Joint Venture. We now participate in the residential and commercial lawn care, tree and shrub care and pest control services segments in the United States and Canada through our interest in the TruGreen Joint Venture.

Scotts Miracle-Gro, an Ohio corporation, traces its heritage back to a company founded by O.M. Scott in Marysville, Ohio in 1868. In the mid-1900s, we became widely known for the development of quality lawn fertilizers and grass seeds that led to the creation of a new industry-consumer lawn care. In the 1990s, we significantly expanded our product offering with three powerful leading brands in the U.S. home lawn and garden industry. First, in fiscal 1995, through a merger with Stern's Miracle-Gro Products, Inc., which was founded by Horace Hagedorn and Otto Stern in Long Island, New York in 1951, we acquired the Miracle-Gro® brand, the industry leader in water-soluble garden plant foods. Second and third, in 1998, we acquired the Ortho® brand in the United States and obtained exclusive rights to market the consumer Roundup® brand within the United States and other contractually specified countries, thereby adding industry-leading weed, pest and disease control products to our portfolio. Today, we believe that Scotts®, Turf Builder®, Miracle-Gro®, Ortho® and Roundup® are among the most widely recognized brands in the consumer lawn and garden industry in the United States.

Our strategy is focused on (i) growing our core branded business, primarily in North America where we can leverage our competitive advantages in emerging areas of growth including organics, hydroponics, live goods, water positive landscapes, and internet-enabled technology, (ii) maximizing the value of non-core-assets including the divestiture of Scotts LawnService® and

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[1] Osmocote® is a registered trademark of Everris International B.V., a subsidiary of Israel Chemicals Ltd.

[2] Roundup® is a registered trademark of Monsanto Technology LLC, a company affiliated with Monsanto Company.

the International Business, and (iii) cash flow including near-term investments that will drive long-term growth, a natural mid-term shift to integration of acquired businesses, and a long-term plan to return increasing amounts of cash to shareholders.

Business Segments

We divide our business into the following reportable segments:

- U.S. Consumer
- Hawthorne
- Other

This division of reportable segments is consistent with how the segments report to and are managed by our Chief Executive Officer (the chief operating decision-maker of the Company). Financial information about these segments for each of the three fiscal years ended September 30, 2017, 2016 and 2015 is presented in "NOTE 22. SEGMENT INFORMATION" of the Notes to Consolidated Financial Statements included in this Annual Report on Form 10-K.

These segments differ from those used in prior periods due to the change in our internal organization structure resulting from our divestiture of the International Business, which closed on August 31, 2017. As a result, effective in our fourth quarter of fiscal 2017, we classified our results of operations for all periods presented to reflect the International Business as a discontinued operation and classified the assets and liabilities of the International Business as held for sale. See "NOTE 2. DISCONTINUED OPERATIONS" for further discussion. Prior to being reported as a discontinued operation, the International Business comprised a substantial proportion of the Europe Consumer and Other reportable segments. Refer to "NOTE 22. SEGMENT INFORMATION" for discussion of our new reportable segments effective in the fourth quarter of fiscal 2017.

Principal Products and Services

In our reportable segments, we manufacture, market and sell lawn and garden products in the following categories:

Lawn Care: The lawn care category is designed to help users obtain and enjoy the lawn they want. Products within this category include lawn fertilizer products under the Scotts® and Turf Builder® brand names; grass seed products under the Scotts®, Turf Builder®, EZ Seed®, Water Smart® and PatchMaster® brand names; and lawn-related weed, pest and disease control products primarily under the Scotts® brand name, including sub-brands such as GrubEx®. The lawn care category also includes spreaders and other durables under the Scotts® brand name, including Turf Builder® EdgeGuard® spreaders, Snap® spreaders and Handy Green® II handheld spreaders. In addition, we market outdoor cleaners under the Scotts® OxiClean™[3] brand name.

Gardening and Landscape: The gardening and landscape category is designed to help consumers grow and enjoy flower and vegetable gardens and beautify landscaped areas. Products within this category include a complete line of water-soluble plant foods under the Miracle-Gro® brand and sub-brands such as LiquaFeed®, continuous-release plant foods under the Miracle-Gro®, Scotts® and Osmocote® brands and sub-brands of Miracle-Gro® such as Shake 'N Feed®; potting mixes and garden soils under the Miracle-Gro®, Scotts®, Hyponex®, Earthgro®, SuperSoil® and Fafard® brand names; mulch and decorative groundcover products under the Scotts® brand, including the sub-brands Nature Scapes®, Earthgro® and Hyponex®; plant-related pest and disease control products under the Ortho® brand; organic garden products under the Miracle-Gro® Organic Choice®, Nature's Care®, Scotts®, Whitney Farms® and EcoScraps® brand names; and live goods and seeding solutions under the Miracle-Gro® brand and Gro-ables® sub-brand. In the second quarter of fiscal 2016, we entered into a Marketing, R&D and Ancillary Services Agreement (the "Services Agreement") and a Term Loan Agreement (the "Term Loan Agreement") with Bonnie Plants, Inc. ("Bonnie") and its sole shareholder, Alabama Farmers Cooperative, Inc. ("AFC"), pursuant to which we provide financing and certain services to Bonnie's business of planting, growing, developing, manufacturing, distributing, marketing, and selling to retail stores throughout the United States live plants, plant food, fertilizer and potting soil (the "Bonnie Business"). See "Acquisitions" for further discussion.

Hydroponics: This category is designed to help users grow plants, flowers and vegetables in an indoor or urban environment using little or no soil. Products within this category include nutrients, substrates, systems, growing media, lighting and plastics and are marketed under the General Hydroponics®, Gavita®, Botanicare®, Vermicrop®, Agrolux®, Can-Filters® and AeroGarden® brand names.

[3] OxiClean™ is a registered trademark of Church & Dwight Co., Inc.

Controls: The controls category is designed to help consumers protect their homes from pests and maintain external home areas. Insect control products are marketed under the Ortho® brand name, including Ortho Max®, Home Defense Max® and Bug B Gon Max® sub-brands; rodent control products are marketed under the Tomcat® and Ortho® brands; selective weed control products are marketed under the Ortho® Weed B Gon® and Roundup® for Lawns sub-brands; and non-selective weed control products are marketed under the Roundup® and Groundclear® brand names.

Marketing Agreement: We are Monsanto's exclusive marketing agent for consumer Roundup® non-selective weedkiller products in the United States and certain other specified countries. On May 15, 2015, we entered into an amendment to the Amended and Restated Exclusive Agency and Marketing Agreement (the "Original Marketing Agreement") with Monsanto and also entered into a lawn and garden brand extension agreement (the "Brand Extension Agreement") and a commercialization and technology agreement (the "Commercialization and Technology Agreement") with Monsanto. On August 31, 2017, in connection with the sale of the International Business, we entered into the Second Amended and Restated Agency and Marketing Agreement (the "Restated Marketing Agreement") and the Amended and Restated Lawn and Garden Brand Extension Agreement - Americas (the "Restated Brand Extension Agreement") to reflect the Company's transfer and assignment to Exponent of the Company's rights and responsibilities under the Original Marketing Agreement, as amended, and the Brand Extension Agreement relating to those countries and territories subject to the sale.

Under the terms of the Restated Marketing Agreement, we are jointly responsible with Monsanto for developing consumer and trade marketing programs for consumer Roundup® non-selective weedkiller products in the countries where we serve as agent. We also provide sales, merchandising, warehousing and other selling and marketing support for these products. The Company performs other services, including manufacturing conversion services, pursuant to ancillary agreements. The Restated Brand Extension Agreement provides the Company an exclusive license in each country throughout the North American continent, South American continent, Central America, the Caribbean, Israel and China to use the Roundup® brand on additional products offered by the Company outside of the non-selective weedkiller category within the residential lawn and garden market. The application of the Roundup® brand to these additional products is subject to a product review and approval process developed between the Company and Monsanto. For additional details regarding the Restated Marketing Agreement, the Restated Brand Extension Agreement and the Commercialization and Technology Agreement, see "ITEM 1A. RISK FACTORS — In the event the Restated Marketing Agreement for consumer Roundup® products terminates, we would lose a substantial source of future earnings and overhead expense absorption" of this Annual Report on Form 10-K and "NOTE 6. MARKETING AGREEMENT" of the Notes to Consolidated Financial Statements included in this Annual Report on Form 10-K.

Acquisitions

2018

On October 11, 2017, our Hawthorne segment completed the acquisition of substantially all of the United States and Canadian assets of Can-Filters for $72.2 million. Based in Nelson, British Columbia, Can-Filters is a leading wholesaler of ventilation products for indoor and hydroponic gardening and industrial markets worldwide.

2017

On October 3, 2016, our Hawthorne segment completed the acquisition of Botanicare, an Arizona-based leading producer of plant nutrients, plant supplements and growing systems used for hydroponic gardening, for $92.6 million.

On November 29, 2016, our wholly-owned subsidiary SMG Growing Media, Inc. fully exercised its outstanding warrants to acquire additional shares of common stock of AeroGrow for $8.1 million, which increased our percentage ownership of AeroGrow's outstanding shares of common stock (on a fully diluted basis) from 45% to 80%. AeroGrow is a developer, marketer, direct-seller, and wholesaler of advanced indoor garden systems designed for consumer use in gardening, and home and office décor markets. AeroGrow operates primarily in the United States and Canada, as well as select countries in Europe, Asia and Australia.

During the first quarter of fiscal 2017, our U.S. Consumer segment also completed two acquisitions of companies whose products support our focus on the emerging areas of water positive landscapes and internet-enabled technology for an aggregate purchase price of $3.2 million.

On May 26, 2017, our majority-owned subsidiary Gavita completed the acquisition of Agrolux and its subsidiaries for $21.8 million. Agrolux, based in the Netherlands, is a worldwide supplier of horticultural lighting.

During the third quarter of fiscal 2017, our Hawthorne segment also completed the acquisition of a company focused on the technology supporting hydroponic growing systems for an aggregate purchase price of $3.5 million.

On August 11, 2017, our Hawthorne segment completed the acquisition of substantially all of the assets of the exclusive manufacturer and formulator of branded Botanicare products for $32.0 million.

During the fourth quarter of fiscal 2017, we also made a $29.4 million investment in an unconsolidated subsidiary whose products support the professional U.S. industrial, turf and ornamental market.

2016

In the second quarter of fiscal 2016, we entered into the Services Agreement and the Term Loan Agreement with Bonnie and AFC providing for our participation in the Bonnie Business. The Term Loan Agreement provides a loan from us to AFC, with Bonnie as guarantor, in the amount of $72.0 million with a fixed coupon rate of 6.95% (the "Term Loan"). Under the Services Agreement, we provide marketing, research and development and certain ancillary services to the Bonnie Business for a commission fee based on the profits of the Bonnie Business and the reimbursement of certain costs.

On May 26, 2016, our Hawthorne segment acquired majority control and a 75% economic interest in Gavita for $136.2 million. Gavita's former ownership group retained a 25% noncontrolling interest in Gavita consisting of ownership of 5% of the outstanding shares of Gavita and a loan with interest payable based on distributions by Gavita. Gavita, which is based in the Netherlands, is a leading producer and marketer of indoor lighting used in the greenhouse and hydroponic markets, predominately in the United States and Europe. On October 2, 2017, our Hawthorne segment acquired the remaining 25% noncontrolling interest in Gavita and its subsidiaries, including Agrolux, for $72.2 million.

In the third quarter of fiscal 2016, our Other segment completed an acquisition to expand our Canadian growing media operations for an estimated purchase price of $33.9 million, which was adjusted down by $4.3 million during fiscal 2017 based on resolution of contingent consideration.

2015

On March 30, 2015, our Hawthorne segment acquired the assets of General Hydroponics and Vermicrop for $120.0 million and $15.0 million, respectively. The Vermicrop purchase price was paid in common shares of Scotts Miracle-Gro ("Common Shares") based on the average share price at the time of payment. General Hydroponics and Vermicrop are leading producers of liquid plant food products, growing media and accessories for hydroponic gardening.

On May 15, 2015, we amended our Marketing Agreement with Monsanto and entered into a lawn and garden brand extension agreement, and a commercialization and technology agreement with Monsanto gaining certain rights and protections pursuant to the agreements. We paid Monsanto $300.0 million in consideration for these agreements on August 14, 2015.

2014

On October 14, 2013, our U.S. Consumer segment acquired the Tomcat® consumer rodent control business from Bell Laboratories, Inc., located in Madison, Wisconsin, for $60.0 million. The acquisition included the Tomcat® brand and other intellectual property, as well as a long-term partnership to bring innovative technologies to the consumer rodent control market. Tomcat® consumer products are sold at home centers, mass retailers, and grocery, drug and general merchandise stores across the United States, Canada, Europe and Australia.

On September 30, 2014, our Other segment acquired Fafard & Brothers Ltd. ("Fafard") for $59.8 million. In continuous operation since 1940 and based in Saint-Bonaventure, Quebec, Canada, Fafard is a producer of peat moss and growing media products for consumer and professional markets including peat-based and bark-based mixes, composts and premium soils. Fafard serves customers primarily across Ontario, Quebec, New Brunswick and the eastern United States.

We have also completed several smaller acquisitions within our controls and growing media businesses over the past five years.

Divestitures

On August 31, 2017, we completed the sale of the International Business to Exponent. This transaction included the sale of our consumer lawn and garden businesses located in Australia, Austria, Belgium, Luxembourg, Czech Republic, France, Germany, Poland and the United Kingdom. On August 31, 2017, in connection with, and as a condition to, the consummation of the sale of the International Business, we entered into the Restated Marketing Agreement and Restated Brand Extension Agreement with Monsanto reflecting our transfer and assignment, to the purchaser of the International Business, of the rights and responsibilities under the Original Marketing Agreement, as amended, and the Brand Extension Agreement relating to those countries and territories subject to the sale.

On April 13, 2016, we contributed the SLS Business to the TruGreen Joint Venture in exchange for a minority equity interest of approximately 30% in the TruGreen Joint Venture, and received a tax-deferred cash distribution of $196.2 million, partially offset by an investment of $18.0 million in second lien term loan financing provided by us to the TruGreen Joint Venture.

In the second quarter of fiscal 2014, we completed the sale of our wild bird food business in the United States and Canada for $4.1 million in cash and $1.0 million in earn-out payments.

We have classified our results of operations for all periods presented in this Annual Report on Form 10-K to reflect these businesses as discontinued operations during the applicable periods. See “NOTE 2. DISCONTINUED OPERATIONS” of the Notes to Consolidated Financial Statements included in this Annual Report on Form 10-K for additional information.

Principal Markets and Methods of Distribution

We sell our products primarily to home centers, mass merchandisers, warehouse clubs, large hardware chains, independent hardware stores, nurseries, garden centers, food and drug stores, indoor gardening and hydroponic product distributors and retailers through both a direct sales force and our network of brokers and distributors. In addition, during fiscal 2017, we employed approximately 2,700 full-time and seasonal in-store associates within the United States to help our retail partners merchandise their lawn and garden departments directly to consumers of our products.

The majority of our shipments to customers are made via common carriers or through distributors in the United States. We primarily utilize third parties to manage the key distribution centers for our consumer business in North America, which are strategically located across the United States and Canada. Growing media products are generally shipped direct-to-store without passing through a distribution center.

Raw Materials

We purchase raw materials for our products from various sources. We are subject to market risk as a result of the fluctuating prices of raw materials such as urea and other fertilizer inputs, resins, diesel, gasoline, natural gas, sphagnum peat, bark and grass seed. Our objectives surrounding the procurement of these materials are to ensure continuous supply, minimize costs and improve predictability. We seek to achieve these objectives through negotiation of contracts with favorable terms directly with vendors. When appropriate, we commit to purchase a certain percentage of our needs in advance of the lawn and garden season to secure pre-determined prices. We also hedge certain commodities, particularly diesel, gasoline and urea, to improve cost predictability and control. Sufficient raw materials were available during fiscal 2017.

Trademarks, Patents and Licenses

We consider our trademarks, patents and licenses to be key competitive advantages. We pursue a vigorous trademark protection strategy consisting of registration, renewal and maintenance of key trademarks and proactive monitoring and enforcement activities to protect against infringement. The Scotts®, Miracle-Gro®, Ortho®, Tomcat®, Hyponex®, Earthgro®, General Hydroponics®, Vermicrop®, Gavita®, Botanicare®, Agrolux® and Can-Filters® brand names and logos, as well as a number of product trademarks, including Turf Builder®, EZ Seed®, Snap®, Organic Choice®, Nature’s Care®, Home Defense Max®, Nature Scapes®, Weed B Gon® and Roundup® for Lawns are registered in the United States and/or internationally and are considered material to our business.

In addition, we actively develop and maintain an extensive portfolio of utility and design patents covering subject matters such as fertilizer, chemical and growing media compositions and processes; grass seed varieties; and mechanical dispensing devices such as applicators, spreaders and sprayers. Our utility patents provide protection generally extending to 20 years from the date of filing, and many of our patents will continue well into the next decade. We also hold exclusive and non-exclusive patent licenses and supply arrangements, permitting the use and sale of additional patented fertilizers, pesticides and mechanical devices. Although our portfolio of patents and patent licenses is important to our success, no single patent or group of related patents is considered significant to any of our business segments or the business as a whole.

Seasonality and Backlog

Our business is highly seasonal, with more than 75% of our annual net sales occurring in our second and third fiscal quarters combined. Our annual sales are further concentrated in our second and third fiscal quarters by retailers who rely on our ability to deliver products closer to when consumers buy our products, thereby reducing retailers’ pre-season inventories.

We anticipate significant orders for the upcoming spring season will start to be received late in the winter and continue through the spring season. Historically, substantially all orders have been received and shipped within the same fiscal year with minimal carryover of open orders at the end of the fiscal year.

Significant Customers

We sell our products primarily to home centers, mass merchandisers, warehouse clubs, large hardware chains, independent hardware stores, nurseries, garden centers, food and drug stores, distributors, indoor gardening and hydroponic product distributors and retailers. Our three largest customers are Home Depot, Lowe’s and Walmart, which are reported within the U.S. Consumer segment and are the only customers that individually represent more than 10% of reported consolidated net sales. For additional

details regarding significant customers, see “ITEM 1A. RISK FACTORS — Because of the concentration of our sales to a small number of retail customers, the loss of one or more of, or a significant reduction in orders from, our top customers could adversely affect our financial results” of this Annual Report on Form 10-K and “NOTE 20. CONCENTRATIONS OF CREDIT RISK” of the Notes to Consolidated Financial Statements included in this Annual Report on Form 10-K.

Competitive Marketplace

The markets in which we sell our products are highly competitive. We compete primarily on the basis of product innovation, product quality, product performance, value, brand strength, supply chain competency, field sales support, in-store sales support, the strength of our relationships with major retailers, distributors and advertising.

In the lawn and garden, pest control and indoor gardening and hydroponic markets, our products compete against private-label as well as branded products. Primary competitors include Spectrum Brands Holdings, Inc., Bayer AG, Central Garden & Pet Company, Enforcer Products, Inc., Kellogg Garden Products, Oldcastle Retail, Inc., Lebanon Seaboard Corporation, Reckitt Benckiser Group plc, FoxFarm Soil & Fertilizer Company, Nanolux Technology, Inc., Sun Gro Horticulture, Inc. and Advanced Nutrients, Ltd. In addition, we face competition from smaller regional competitors who operate in many of the areas where we compete.

In Canada, we face competition in the lawn and garden market from Premier Tech Ltd. and a variety of local companies including private label brands.

Research and Development

We continually invest in research and development, both in the laboratory and at the consumer level, to improve our products, manufacturing processes, packaging and delivery systems. Spending on research and development was $39.9 million, $36.0 million and $36.5 million in fiscal 2017, fiscal 2016 and fiscal 2015, respectively, including product registration costs of $10.6 million, $10.6 million and $10.4 million, respectively. In addition to the benefits of our own research and development, we actively seek ways to leverage the research and development activities of our suppliers and other business partners.

Regulatory Considerations

Local, state, federal and foreign laws and regulations affect the manufacture, sale, distribution and application of our products in several ways. For example, in the United States, all products containing pesticides must comply with the Federal Insecticide, Fungicide, and Rodenticide Act of 1947, as amended (“FIFRA”), and most require registration with the U.S. Environmental Protection Agency (the “U.S. EPA”) and similar state agencies before they can be sold or distributed. Fertilizer and growing media products are subject to state and foreign labeling regulations. In addition to the regulations already described, federal, state and foreign agencies regulate the disposal, transport, handling and storage of waste, remediation of contaminated sites, air and water discharges from our facilities, and workplace health and safety. Our grass seed products are regulated by the Federal Seed Act and various state regulations.

In addition, the use of certain pesticide and fertilizer products is regulated by various local, state, federal and foreign environmental and public health agencies. These regulations may include requirements that only certified or professional users apply the product or that certain products be used only on certain types of locations (such as “not for use on sod farms or golf courses”), may require users to post notices on properties to which products have been or will be applied, may require notification to individuals in the vicinity that products will be applied in the future or may ban the use of certain ingredients.

State, federal and foreign authorities generally require growing media facilities to obtain permits (sometimes on an annual basis) in order to harvest peat and to discharge storm water run-off or water pumped from peat deposits. The permits typically specify the condition in which the property must be left after the peat is fully harvested, with the residual use typically being natural wetland habitats combined with open water areas. We are generally required by these permits to limit our harvesting and to restore the property consistent with the intended residual use. In some locations, these facilities have been required to create water retention ponds to control the sediment content of discharged water.

For more information regarding how compliance with local, state, federal and foreign laws and regulations may affect us, see “ITEM 1A. RISK FACTORS — Compliance with environmental and other public health regulations or changes in such regulations or regulatory enforcement priorities could increase our costs of doing business or limit our ability to market all of our products” of this Annual Report on Form 10-K.

Regulatory Matters

We are subject to various environmental proceedings, the majority of which are for site remediation. At September 30, 2017, $4.8 million was accrued for such environmental matters. During fiscal 2017, fiscal 2016 and fiscal 2015, we expensed $1.1 million, $0.3 million and $0.5 million, respectively, for such environmental matters. We had no material capital expenditures during the last three fiscal years related to environmental or regulatory matters.

Employees

As of September 30, 2017, we employed approximately 4,700 employees. During peak sales and production periods, we employ approximately 5,900 employees, including seasonal and temporary labor.

Financial Information About Geographic Areas

For certain information concerning our international revenues and long-lived assets, see "NOTE 22. SEGMENT INFORMATION" of the Notes to Consolidated Financial Statements included in this Annual Report on Form 10-K.

General Information

We maintain a website at http://investor.scotts.com (this uniform resource locator, or URL, is an inactive textual reference only and is not intended to incorporate our website into this Annual Report on Form 10-K). We file reports with the Securities and Exchange Commission (the "SEC") and make available, free of charge, on or through our website, our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, as well as our proxy and information statements, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. The SEC maintains a website that contains electronic filings by Scotts Miracle-Gro and other issuers at www.sec.gov. In addition, the public may read and copy any materials Scotts Miracle-Gro files with the SEC at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330.

ITEM 1A. *RISK FACTORS*

Cautionary Note Regarding Forward-Looking Statements

This Annual Report on Form 10-K, including the exhibits hereto and the information incorporated by reference herein, as well as our 2017 Annual Report to Shareholders (our "2017 Annual Report"), contain "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, which are subject to risks and uncertainties. Information regarding activities, events and developments that we expect or anticipate will or may occur in the future, including, but not limited to, information relating to our future growth and profitability targets and strategies designed to increase total shareholder value, are forward-looking statements based on management's estimates, assumptions and projections. Forward-looking statements also include, but are not limited to, statements regarding our future economic and financial condition and results of operations, the plans and objectives of management and our assumptions regarding our performance and such plans and objectives, as well as the amount and timing of repurchases of our Common Shares or other uses of cash flows. Forward-looking statements generally can be identified through the use of words such as "guidance," "outlook," "projected," "believe," "target," "predict," "estimate," "forecast," "strategy," "may," "goal," "expect," "anticipate," "intend," "plan," "foresee," "likely," "will," "should" and other similar words and variations.

Forward-looking statements contained in this Annual Report on Form 10-K and our 2017 Annual Report are predictions only and actual results could differ materially from management's expectations due to a variety of factors, including those described below. All forward-looking statements attributable to us or persons working on our behalf are expressly qualified in their entirety by such risk factors.

The forward-looking statements that we make in this Annual Report on Form 10-K and our 2017 Annual Report are based on management's current views and assumptions regarding future events and speak only as of their dates. We disclaim any obligation to update developments of these risk factors or to announce publicly any revisions to any of the forward-looking statements that we make, or to make corrections to reflect future events or developments, except as required by the federal securities laws.

Compliance with environmental and other public health regulations or changes in such regulations or regulatory enforcement priorities could increase our costs of doing business or limit our ability to market all of our products.

Local, state, federal and foreign laws and regulations relating to environmental matters affect us in several ways. In the United States, all products containing pesticides must comply with FIFRA and most must be registered with the U.S. EPA and

similar state agencies before they can be sold or distributed. Our inability to obtain or maintain such compliance, or the cancellation of any such registration of our products, could have an adverse effect on our business, the severity of which would depend on such matters as the products involved, whether another product could be substituted and whether our competitors were similarly affected. We attempt to anticipate regulatory developments and maintain registrations of, and access to, substitute active ingredients, but there can be no assurance that we will be able to avoid or reduce these risks. In addition, in Canada, regulations have been adopted by several provinces that substantially restrict our ability to market and sell certain of our consumer pesticide products.

Under the Food Quality Protection Act, enacted by the U.S. Congress in 1996, food-use pesticides are evaluated to determine whether there is reasonable certainty that no harm will result from the cumulative effects of pesticide exposures. Under this Act, the U.S. EPA is evaluating the cumulative and aggregate risks from dietary and non-dietary exposures to pesticides. The pesticides in our products, certain of which may be used on crops processed into various food products, are typically manufactured by independent third parties and continue to be evaluated by the U.S. EPA as part of this exposure risk assessment. The U.S. EPA or the third-party registrant may decide that a pesticide we use in our products will be limited or made unavailable to us. We cannot predict the outcome or the severity of the effect of these continuing evaluations.

In addition, the use of certain pesticide and fertilizer products is regulated by various local, state, federal and foreign environmental and public health agencies. These regulations may, among other things, ban the use of certain ingredients or require (i) that only certified or professional users apply the product, (ii) that certain products be used only on certain types of locations, (iii) users to post notices on properties to which products have been or will be applied, and (iv) notification to individuals in the vicinity that products will be applied in the future. Even if we are able to comply with all such regulations and obtain all necessary registrations and licenses, we cannot provide assurance that our products, particularly pesticide products, will not cause injury to the environment or to people under all circumstances. The costs of compliance, remediation or products liability have adversely affected operating results in the past and could materially adversely affect future quarterly or annual operating results.

Our products and operations may be subject to increased regulatory and environmental scrutiny in jurisdictions in which we do business. For example, we are subject to regulations relating to our harvesting of peat for our growing media business which has come under increasing regulatory and environmental scrutiny. In the United States, state regulations frequently require us to limit our harvesting and to restore the property to an agreed-upon condition. In some locations, we have been required to create water retention ponds to control the sediment content of discharged water. In Canada, our peat extraction efforts are also the subject of regulation.

In addition to the regulations already described, local, state, federal and foreign agencies regulate the disposal, transport, handling and storage of waste, remediation of contaminated sites, air and water discharges from our facilities, and workplace health and safety.

Under certain environmental laws, we may be liable for the costs of investigation and remediation of the presence of certain regulated materials, as well as related costs of investigation and remediation of damage to natural resources, at various properties, including our current and former properties as well as offsite waste handling or disposal sites that we have used. Liability may be imposed upon us without regard to whether we knew of or caused the presence of such materials and, under certain circumstances, on a joint and several basis. There can be no assurances that the presence of such regulated materials at any such locations, or locations that we may acquire in the future, will not result in liability to us under such laws or expose us to third-party actions such as tort suits based on alleged conduct or environmental conditions.

The adequacy of our current non-FIFRA compliance-related environmental accruals and future provisions depends upon our operating in substantial compliance with applicable environmental and public health laws and regulations, as well as the assumptions that we have both identified all of the significant sites that must be remediated and that there are no significant conditions of potential contamination that are unknown to us. A significant change in the facts and circumstances surrounding these assumptions or in current enforcement policies or requirements, or a finding that we are not in substantial compliance with applicable environmental and public health laws and regulations, could have a material adverse effect on future environmental capital expenditures and other environmental expenses, as well as our financial condition, results of operations and cash flows.

Damage to our reputation could have an adverse effect on our business.

Maintaining our strong reputation with both consumers and our retail customers is a key component in our success. Product recalls, our inability to ship, sell or transport affected products and governmental investigations may harm our reputation and acceptance of our products by consumers and our retail customers, which may materially and adversely affect our business operations, decrease sales and increase costs.

In addition, perceptions that the products we produce and market are not safe could adversely affect us and contribute to the risk we will be subjected to legal action. We manufacture and market a variety of products, such as fertilizers, growing media, herbicides and pesticides. On occasion, allegations are made that some of these products have failed to perform up to expectations or have caused damage or injury to individuals or property. For example, public commentary by media agencies, non-governmental organizations and/or litigation-related assertions, even if inaccurate, may lead consumers to believe that certain products we manufacture or market may be unsafe. Further, based on reports of contamination at a third-party supplier's vermiculite mine, the public may perceive that some of our products manufactured in the past using vermiculite are or may be contaminated. Public perception that the products we manufacture or market are not safe, whether justified or not, could impair our reputation, involve us in litigation, damage our brand names and have a material adverse effect on our business.

Certain of our products may be purchased for use in new and emerging industries or segments and/or be subject to varying, inconsistent, and rapidly changing laws, regulations, administrative practices, enforcement approaches, judicial interpretations, and consumer perceptions.

We sell products, including hydroponic gardening products, that end users may purchase for use in new and emerging industries or segments, including the growing of cannabis, that may not grow or achieve market acceptance in a manner that we can predict. The demand for these products is dependent on the growth of these industries or segments, which is uncertain.

In addition, we sell products that end users may purchase for use in industries or segments, including the growing of cannabis, that are subject to varying, inconsistent, and rapidly changing laws, regulations, administrative practices, enforcement approaches, judicial interpretations, and consumer perceptions. For example, certain countries and 29 U.S. states have adopted frameworks that authorize, regulate, and tax the cultivation, processing, sale, and use of cannabis for medicinal and/or non-medicinal use, while the U.S. Controlled Substances Act and the laws of other U.S. states prohibit growing cannabis.

Our gardening products, including our hydroponic gardening products, are multi-purpose products designed and intended for growing a wide range of plants and are generally purchased from retailers by end users who may grow any variety of plants, including cannabis. Although the demand for our products may be negatively impacted depending on how laws, regulations, administrative practices, enforcement approaches, judicial interpretations, and consumer perceptions develop, we cannot reasonably predict the nature of such developments or the effect, if any, that such developments could have on our business.

Our marketing activities may not be successful.

We invest substantial resources in advertising, consumer promotions and other marketing activities to maintain, extend and expand our brand image. There can be no assurances that our marketing strategies will be effective or that the amount we invest in advertising activities will result in a corresponding increase in sales of our products. If our marketing initiatives are not successful, we will have incurred significant expenses without the benefit of higher revenues.

Our success depends upon the retention and availability of key personnel and the effective succession of senior management.

Our success largely depends on the performance of our management team and other key personnel. Our future operations could be harmed if we are unable to attract and retain talented, highly qualified senior executives and other key personnel. In addition, if we are unable to effectively provide for the succession of senior management, including our chief executive officer, our business, prospects, results of operations, financial condition and cash flows may be materially adversely affected.

Disruptions in availability or increases in the prices of raw materials or fuel could adversely affect our results of operations.

We source many of our commodities and other raw materials on a global basis. The general availability and price of those raw materials can be affected by numerous forces beyond our control, including political instability, trade restrictions and other government regulations, duties and tariffs, price controls, changes in currency exchange rates and weather.

A significant disruption in the availability of any of our key raw materials could negatively impact our business. In addition, increases in the prices of key commodities and other raw materials could adversely affect our ability to manage our cost structure. Market conditions may limit our ability to raise selling prices to offset increases in our raw material costs. Our proprietary technologies can limit our ability to locate or utilize alternative inputs for certain products. For certain inputs, new sources of supply may have to be qualified under regulatory standards, which can require additional investment and delay bringing a product to market.

We utilize hedge agreements periodically to fix the prices of a portion of our urea and fuel needs. The hedge agreements are designed to mitigate the earnings and cash flow fluctuations associated with the costs of urea and fuel. In periods of declining urea and fuel prices, utilizing hedge agreements may effectively increase our expenditures for these raw materials.

Our hedging arrangements expose us to certain counterparty risks.

In addition to commodity hedge agreements, we utilize interest rate swap agreements to manage the net interest rate risk inherent in our sources of borrowing as well as foreign currency forward contracts to hedge the exchange rate risk associated with certain balances denominated in foreign currencies. Utilizing these hedge agreements exposes us to certain counterparty risks. The failure of one or more of the counterparties to fulfill their obligations under the hedge agreements, whether as a result of weakening financial stability or otherwise, could adversely affect our financial condition, results of operations or cash flows.

Economic conditions could adversely affect our business.

Uncertain global economic conditions could adversely affect our business. Negative global economic trends, such as decreased consumer and business spending, high unemployment levels, reduced rates of home ownership and housing starts, high foreclosure rates and declining consumer and business confidence, pose challenges to our business and could result in declining revenues, profitability and cash flow. Although we continue to devote significant resources to support our brands, unfavorable economic conditions may negatively affect consumer demand for our products. Consumers may reduce discretionary spending during periods of economic uncertainty, which could reduce sales volumes of our products or result in a shift in our product mix from higher margin to lower margin products.

The highly competitive nature of our markets could adversely affect our ability to maintain or grow revenues.

Each of our operating segments participates in markets that are highly competitive. Our products compete against national and regional products and private label products produced by various suppliers. Many of our competitors sell their products at prices lower than ours. Our most price sensitive customers may trade down to lower priced products during challenging economic times or if current economic conditions worsen. We compete primarily on the basis of product innovation, product quality, product performance, value, brand strength, supply chain competency, field sales support, in-store sales support, the strength of our relationships with major retailers and advertising. Some of our competitors have significant financial resources. The strong competition that we face in all of our markets may prevent us from achieving our revenue goals, which may have a material adverse effect on our financial condition, results of operations and cash flows. Our inability to continue to develop and grow brands with leading market positions, maintain our relationships with key retailers and deliver high quality products on a reliable basis at competitive prices could have a material adverse effect on our business.

We may not successfully develop new product lines and products or improve existing product lines and products or maintain our effectiveness in reaching consumers through rapidly evolving communication vehicles.

Our future success depends, in part, upon our ability to improve our existing product lines and products and to develop, manufacture and market new product lines and products to meet evolving consumer needs, as well as our ability to leverage new media such as digital media and social networks to reach existing and potential consumers. We cannot be certain that we will be successful in developing, manufacturing and marketing new product lines and products or product innovations which satisfy consumer needs or achieve market acceptance, or that we will develop, manufacture and market new product lines and products or product innovations in a timely manner. If we fail to successfully develop, manufacture and market new product lines and products or product innovations, or if we fail to reach existing and potential consumers, our ability to maintain or grow our market share may be adversely affected, which in turn could materially adversely affect our business, financial condition and results of operations. In addition, the development and introduction of new product lines and products and product innovations require substantial research, development and marketing expenditures, which we may be unable to recoup if such new product lines, products or innovations do not achieve market acceptance.

Many of the products we manufacture and market contain active ingredients that are subject to regulatory approval. The need to obtain such approval could delay the launch of new products or product innovations that contain active ingredients or otherwise prevent us from developing and manufacturing certain products and product innovations.

Our ongoing investment in new product lines and products and technologies is inherently risky and could disrupt our ongoing businesses.

We have invested and expect to continue to invest in new product lines, products, and technologies. Such endeavors may involve significant risks and uncertainties, including distraction of management from current operations, insufficient revenues to offset liabilities assumed and expenses associated with these new investments, inadequate return of capital on our investments, and unidentified issues not discovered in our due diligence of such strategies and offerings. Because these new ventures are inherently risky, no assurance can be given that such strategies and offerings will be successful and will not adversely affect our reputation, financial condition, and operating results.

Because of the concentration of our sales to a small number of retail customers, the loss of one or more of, or a significant reduction in orders from, our top customers could adversely affect our financial results.

Our top three retail customers together accounted for 61% of our fiscal 2017 net sales and 60% of our outstanding accounts receivable as of September 30, 2017. The loss of, or reduction in orders from, our top three retail customers, Home Depot, Lowe's, and Walmart, or any other significant customer could have a material adverse effect on our business, financial condition, results of operations and cash flows, as could customer disputes regarding shipments, fees, merchandise condition or related matters. Our inability to collect accounts receivable from one of our major customers, or a significant deterioration in the financial condition of one of these customers, including a bankruptcy filing or a liquidation, could also have a material adverse effect on our financial condition, results of operations and cash flows.

We do not have long-term sales agreements with, or other contractual assurances as to future sales to, any of our major retail customers. In addition, continued consolidation in the retail industry has resulted in an increasingly concentrated retail base, and as a result, we are significantly dependent upon sales to key retailers who have significant bargaining strength. To the extent such concentration continues to occur, our net sales and income from operations may be increasingly sensitive to deterioration in the financial condition of, or other adverse developments involving our relationship with, one or more of our key customers. In addition, our business may be negatively affected by changes in the policies of our retailers, such as inventory destocking, limitations on access to shelf space, price demands and other conditions.

Our reliance on third-party manufacturers could harm our business.

We rely on third-party service providers to manufacture certain of our products. This reliance generates a number of risks, including decreased control over the production process, which could lead to production delays or interruptions and inferior product quality control. In addition, performance problems at these third-party providers could lead to cost overruns, shortages or other problems, which could increase our costs of production or result in delivery delays to our customers.

If one or more of our third-party manufacturers becomes insolvent or unwilling to continue to manufacture products of acceptable quality, at acceptable costs and in a timely manner, our ability to deliver products to our retail customers could be significantly impaired. Substitute manufacturers might not be available or, if available, might be unwilling or unable to manufacture the products we need on acceptable terms. Moreover, if customer demand for our products increases, we may be unable to secure sufficient additional capacity from our current third-party manufacturers, or others, on commercially reasonable terms, or at all.

Our reliance on a limited base of suppliers may result in disruptions to our business and adversely affect our financial results.

Although we continue to implement risk-mitigation strategies for single-source suppliers, we rely on a limited number of suppliers for certain of our raw materials, product components and other necessary supplies, including certain active ingredients used in our products. If we are unable to maintain supplier arrangements and relationships, if we are unable to contract with suppliers at the quantity and quality levels needed for our business, or if any of our key suppliers becomes insolvent or experience other financial distress, we could experience disruptions in production, which could have a material adverse effect on our financial condition, results of operations and cash flows.

A significant interruption in the operation of our or our suppliers' facilities could impact our capacity to produce products and service our customers, which could adversely affect revenues and earnings.

Operations at our and our suppliers' facilities are subject to disruption for a variety of reasons, including fire, flooding or other natural disasters, disease outbreaks or pandemics, acts of war, terrorism, government shut-downs and work stoppages. A significant interruption in the operation of our or our suppliers' facilities could significantly impact our capacity to produce products and service our customers in a timely manner, which could have a material adverse effect on our revenues, earnings and financial position. This is especially true for those products that we manufacture at a limited number of facilities, such as our fertilizer and liquid products.

Climate change and unfavorable weather conditions could adversely impact financial results.

The issue of climate change is receiving ever increasing attention worldwide. The possible effects, as described in various public accounts, could include changes in rainfall patterns, water shortages, changing storm patterns and intensities, and changing temperature levels that could adversely impact our costs and business operations and the supply and demand for our fertilizer, garden soils and pesticide products. In addition, fluctuating climatic conditions may result in unpredictable modifications in the manner in which consumers garden or their attitudes towards gardening, making it more difficult for us to provide appropriate products to appropriate markets in time to meet consumer demand.

Because of the uncertainty of weather volatility related to climate change and any resulting unfavorable weather conditions, we cannot predict its potential impact on our financial condition, results of operations and cash flows.

Our indebtedness could limit our flexibility and adversely affect our financial condition.

As of September 30, 2017, we had $1.4 billion of debt and $1.3 billion was available to be borrowed under our credit agreement. Our inability to meet restrictive financial and non-financial covenants associated with that debt, or to generate sufficient cash flow to repay maturing debt, could adversely affect our financial condition.

For example, our debt level could:

- make it more difficult for us to satisfy our obligations with respect to our indebtedness;
- make us more vulnerable to general adverse economic and industry conditions;
- require us to dedicate a substantial portion of cash flows from operating activities to payments on our indebtedness, which would reduce the cash flows available to fund working capital, capital expenditures, advertising, research and development efforts and other general corporate requirements;
- limit our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate;
- limit our ability to borrow additional funds;
- expose us to risks inherent in interest rate fluctuations because some of our borrowings are at variable rates of interest, which could result in higher interest expense in the event of increases in interest rates; and
- place us at a competitive disadvantage compared to our competitors that have less debt.

Our ability to make payments on or refinance our indebtedness, fund planned capital expenditures and acquisitions, pay dividends and make repurchases of our Common Shares will depend on our ability to generate cash in the future. This, to some extent, is subject to general economic, financial, competitive, legislative, regulatory and other factors that are beyond our control. We cannot provide any assurance that our business will generate sufficient cash flow from operating activities or that future borrowings will be available to us under our credit facility in amounts sufficient to enable us to pay our indebtedness or to fund our other liquidity needs.

In addition, our credit facility and the indentures governing our 6.000% Senior Notes due 2023 (the “6.000% Senior Notes”) and our 5.250% Senior Notes due 2026 (the “5.250% Senior Notes”) contain restrictive covenants and cross-default provisions. Our credit facility also requires us to maintain specified financial ratios. Our ability to comply with those covenants and satisfy those financial ratios can be affected by events beyond our control including prevailing economic, financial and industry conditions. A breach of any of those financial ratio covenants or other covenants could result in a default. In the event of such default, the holders of such indebtedness could elect to declare all the funds borrowed thereunder to be due and payable, together with accrued and unpaid interest, and could cease making further loans and institute foreclosure proceedings against our assets. We cannot provide any assurance that the holders of such indebtedness would waive a default or that we could pay the indebtedness in full if it were accelerated.

Subject to compliance with certain covenants under our credit facility and the indentures governing the 6.000% Senior Notes and the 5.250% Senior Notes, we may incur additional debt in the future. If we incur additional debt, the risks described above could intensify.

Our lending activities may adversely impact our business and results of operations.

As part of our strategic initiatives, we have provided financing to buyers of certain business assets we have sold and to certain strategic partners. Our exposure to credit losses on these financing balances will depend on the financial condition of these counterparties and macroeconomic factors beyond our control, such as deteriorating conditions in the world economy or in the industries served by the borrowers. While we monitor our exposure, there can be no guarantee we will be able to successfully mitigate all of these risks. Credit losses, if significant, could have a material adverse effect on our business, financial condition, results of operations and cash flows.

Changes in credit ratings issued by nationally recognized statistical rating organizations (NRSROs) could adversely affect our cost of financing and the market price of our 6.000% Senior Notes and 5.250% Senior Notes.

NRSROs rate the 6.000% Senior Notes, the 5.250% Senior Notes and the Company based on factors that include our operating results, actions that we take, their view of the general outlook for our industry and their view of the general outlook for the economy. Actions taken by the NRSROs can include maintaining, upgrading or downgrading the current rating or placing us on a watch list for possible future downgrading. Downgrading the credit rating of the 6.000% Senior Notes or the 5.250% Senior Notes or placing us on a watch list for possible future downgrading could increase our cost of financing, limit our access to the capital markets and have an adverse effect on the market price of the 6.000% Senior Notes and the 5.250% Senior Notes.

Our postretirement-related costs and funding requirements could increase as a result of volatility in the financial markets, changes in interest rates and actuarial assumptions.

We sponsor a number of defined benefit pension plans associated with our U.S. and international businesses, as well as a postretirement medical plan in the United States for certain retired associates and their dependents. The performance of the financial markets and changes in interest rates impact the funded status of these plans and cause volatility in our postretirement-related costs and future funding requirements. If the financial markets do not provide the expected long-term returns on invested assets, we could be required to make significant pension contributions. Additionally, changes in interest rates and legislation enacted by governmental authorities can impact the timing and amounts of contribution requirements.

We utilize third-party actuaries to evaluate assumptions used in determining projected benefit obligations and the fair value of plan assets for our pension and other postretirement benefit plans. In the event we determine that our assumptions should be revised, such as the discount rate, the expected long-term rate or expected return on assets, our future pension and postretirement benefit expenses could increase or decrease. The assumptions we use may differ from actual results, which could have a significant impact on our pension and postretirement liabilities and related costs and funding requirements.

Our international operations make us susceptible to the costs and risks associated with operating internationally.

Despite the sale of the International Business in August 2017, we continue to operate manufacturing, sales and service facilities outside of the United States, particularly in Canada, Mexico, China, Norway and The Netherlands. Accordingly, we are subject to risks associated with operating in foreign countries, including:

- fluctuations in currency exchange rates;
- limitations on the remittance of dividends and other payments by foreign subsidiaries;
- additional costs of compliance with local regulations;
- historically, in certain countries, higher rates of inflation than in the United States;
- changes in the economic conditions or consumer preferences or demand for our products in these markets;
- restrictive actions by multi-national governing bodies, foreign governments or subdivisions thereof;
- changes in foreign labor laws and regulations affecting our ability to hire and retain employees;
- changes in U.S. and foreign laws regarding trade and investment;
- less robust protection of our intellectual property under foreign laws; and
- difficulty in obtaining distribution and support for our products.

In addition, our operations outside the United States are subject to the risk of new and different legal and regulatory requirements in local jurisdictions, potential difficulties in staffing and managing local operations and potentially adverse tax consequences. The costs associated with operating our continuing international business could adversely affect our results of operations, financial condition and cash flows in the future.

Unanticipated changes in our tax provisions, the adoption of new tax legislation or exposure to additional tax liabilities could affect our profitability and cash flows.

We are subject to income and other taxes in the United States federal jurisdiction and various local, state and foreign jurisdictions. Our effective tax rate in the future could be adversely affected by changes to our operating structure, changes in the mix of earnings in countries with differing statutory tax rates, changes in the valuation of deferred tax assets (such as net operating losses and tax credits) and liabilities, changes in tax laws and the discovery of new information in the course of our tax return preparation process. In particular, the carrying value of deferred tax assets, which are predominantly related to our operations in the United States, is dependent on our ability to generate future taxable income of the appropriate character in the relevant jurisdiction.

From time to time, tax proposals are introduced or considered by the U.S. Congress or the legislative bodies in local, state and foreign jurisdictions that could also affect our tax rate, the carrying value of our deferred tax assets, or our tax liabilities. Our tax liabilities are also affected by the amounts we charge for inventory, services, licenses, funding and other items in intercompany transactions. We are subject to ongoing tax audits in various jurisdictions. In connection with these audits (or future audits), tax authorities may disagree with our intercompany charges, cross-jurisdictional transfer pricing or other matters and assess additional taxes. We regularly assess the likely outcomes of our audits in order to determine the appropriateness of our tax provision. As a result, the ultimate resolution of our tax audits, changes in tax laws or tax rates, and the ability to utilize our deferred tax assets could materially affect our tax provision, net income and cash flows in future periods.

Our operations may be impaired if our information technology systems fail to perform adequately or if we are the subject of a data breach or cyber attack.

We rely on information technology systems in order to conduct business, including communicating with employees and our key retail customers, ordering and managing materials from suppliers, shipping products to retail customers and analyzing and reporting results of operations. While we have taken steps to ensure the security of our information technology systems, our systems may nevertheless be vulnerable to computer viruses, security breaches and other disruptions from unauthorized users. If our information technology systems are damaged or cease to function properly for an extended period of time, whether as a result of a significant cyber incident or otherwise, our ability to communicate internally as well as with our retail customers could be significantly impaired, which may adversely impact our business. Additionally, an operational failure or breach of security from increasingly sophisticated cyber threats could lead to the loss or disclosure of both our and our retail customers' financial, product, and other confidential information, as well as personally identifiable information about our employees or customers, result in regulatory or other legal proceedings, and have a material adverse effect on our business and reputation.

We may not be able to adequately protect our intellectual property and other proprietary rights that are material to our business.

Our ability to compete effectively depends in part on our rights to service marks, trademarks, tradenames and other intellectual property rights we own or license, particularly our registered brand names and issued patents. We have not sought to register every one of our marks either in the United States or in every country in which such mark is used. Furthermore, because of the differences in foreign trademark, patent and other intellectual property or proprietary rights laws, we may not receive the same protection in other countries as we would in the United States with respect to the registered brand names and issued patents we hold. If we are unable to protect our intellectual property, proprietary information and/or brand names, we could suffer a material adverse effect on our business, financial condition and results of operations.

Litigation may be necessary to enforce our intellectual property rights and protect our proprietary information, or to defend against claims by third parties that our products or services infringe their intellectual property rights. Any litigation or claims brought by or against us could result in substantial costs and diversion of our resources. A successful claim of trademark, patent or other intellectual property infringement against us, or any other successful challenge to the use of our intellectual property, could subject us to damages or prevent us from providing certain products or services, or using certain of our recognized brand names, which could have a material adverse effect on our business, financial condition and results of operations.

In the event the Restated Marketing Agreement for consumer Roundup® products terminates, we would lose a substantial source of future earnings and overhead expense absorption.

If we (i) become insolvent, (ii) commit a material breach, material fraud or material misconduct under the Restated Marketing Agreement, (iii) experience a change of control of the Company (subject to certain exceptions), or (iv) impermissibly assign our rights or delegate our obligations under the Restated Marketing Agreement, Monsanto may terminate the Restated Marketing Agreement without paying a termination fee to the Company. Monsanto may also terminate the Restated Marketing Agreement in the event of a change of control of Monsanto or a sale of the Roundup® business effective at the end of the fifth full year after providing notice of termination, but would have to pay a termination fee to the Company. In the event the Restated Marketing

Agreement terminates, we would lose all, or a substantial portion, of the significant source of earnings and overhead expense absorption the Restated Marketing Agreement provides.

For additional information regarding the Restated Marketing Agreement, see “NOTE 6. MARKETING AGREEMENT” of the Notes to Consolidated Financial Statements included in this Annual Report on Form 10-K.

Hagedorn Partnership, L.P. beneficially owns approximately 26% of our Common Shares and can significantly influence decisions that require the approval of shareholders.

Hagedorn Partnership, L.P. beneficially owned approximately 26% of our outstanding Common Shares on a fully diluted basis as of November 24, 2017. As a result, it has sufficient voting power to significantly influence the election of directors and the approval of other actions requiring the approval of our shareholders, including the entering into of certain business combination transactions. In addition, because of the percentage of ownership and voting concentration in Hagedorn Partnership, L.P., elections of our board of directors will generally be within the control of Hagedorn Partnership, L.P. While all of our shareholders are entitled to vote on matters submitted to our shareholders for approval, the concentration of our Common Shares and voting control presently lies with Hagedorn Partnership, L.P. As such, it would be difficult for shareholders to propose and have approved proposals not supported by Hagedorn Partnership, L.P. Hagedorn Partnership, L.P.’s interests could differ from, or be in conflict with, the interests of other shareholders.

While we have, over the past few years, increased the rate of cash dividends on, and engaged in repurchases of, our Common Shares, any future decisions to reduce or discontinue paying cash dividends to our shareholders or repurchasing our Common Shares pursuant to our previously announced repurchase program could cause the market price for our Common Shares to decline.

Our payment of quarterly cash dividends on and repurchase of our Common Shares pursuant to our stock repurchase program are subject to, among other things, our financial position and results of operations, available cash and cash flow, capital requirements, and other factors. We have, over the past few years, increased the rate of cash dividends on, and repurchases of, our Common Shares. In the fourth quarter of fiscal 2017, we increased the amount of our quarterly cash dividend by 6% to $0.53 per share. The total remaining share repurchase authorization as of September 30, 2017 is $608.5 million.

We may further increase or decrease the rate of cash dividends on, and the amount of repurchases of, our Common Shares in the future. Any reduction or discontinuance by us of the payment of quarterly cash dividends or repurchases of our Common Shares pursuant to our current share repurchase authorization program could cause the market price of our Common Shares to decline. Moreover, in the event our payment of quarterly cash dividends on or repurchases of our Common Shares are reduced or discontinued, our failure or inability to resume paying cash dividends or repurchasing Common Shares at historical levels could result in a lower market valuation of our Common Shares.

Acquisitions, other strategic alliances and investments could result in operating difficulties, dilution, and other harmful consequences that may adversely impact our business and results of operations.

Acquisitions are an important element of our overall corporate strategy and use of capital, and these transactions could be material to our financial condition and results of operations. We expect to continue to evaluate and enter into discussions regarding a wide array of potential strategic transactions. The process of integrating an acquired company, business, or product has created, and will continue to create, unforeseen operating difficulties and expenditures. The areas where we face risks include:

- Diversion of management time and focus from operating our business to acquisition integration challenges.
- Failure to successfully further develop the acquired business or product lines.
- Implementation or remediation of controls, procedures and policies at the acquired company.
- Integration of the acquired company’s accounting, human resources and other administrative systems, and coordination of product, engineering and sales and marketing functions.
- Transition of operations, users and customers onto our existing platforms.
- Reliance on the expertise of our strategic partners with respect to market development, sales, local regulatory compliance and other operational matters.
- Failure to obtain required approvals on a timely basis, if at all, from governmental authorities, or conditions placed upon approval, under competition and antitrust laws which could, among other things, delay or prevent us from

completing a transaction, or otherwise restrict our ability to realize the expected financial or strategic goals of an acquisition.

- In the case of foreign acquisitions, the need to integrate operations across different cultures and languages and to address the particular economic, currency, political and regulatory risks associated with specific countries.

- Cultural challenges associated with integrating employees from the acquired company into our organization, and retention of employees from the businesses we acquire.

- Liability for or reputational harm from activities of the acquired company before the acquisition or from our strategic partners, including patent and trademark infringement claims, violations of laws, commercial disputes, tax liabilities and other known and unknown liabilities.

- Litigation or other claims in connection with the acquired company, including claims from terminated employees, customers, former shareholders or other third parties.

Our failure to address these risks or other problems encountered in connection with our past or future acquisitions and investments or strategic alliances could cause us to fail to realize the anticipated benefits of such acquisitions, investments or alliances, incur unanticipated liabilities, and harm our business generally.

Our acquisitions could also result in dilutive issuances of our equity securities, the incurrence of debt, contingent liabilities or amortization expenses, or impairment of goodwill and purchased long-lived assets, and restructuring charges, any of which could harm our financial condition or results of operations and cash flows. Also, the anticipated benefits of many of our acquisitions may not materialize.

A failure to dispose of assets or businesses in a timely manner may cause the results of the Company to suffer.

We evaluate as necessary the potential disposition of assets and businesses that may no longer help meet our objectives. When we decide to sell assets or a business, we may encounter difficulty in finding buyers or alternative exit strategies on acceptable terms in a timely manner, which could delay the accomplishment of our strategic objectives. Alternatively, we may dispose of a business at a price or on terms that are less than we had anticipated. After reaching an agreement with a buyer for the disposition of a business, we are subject to the satisfaction of pre-closing conditions, which may prevent us from completing the transaction. Dispositions may also involve continued financial involvement in the divested business, such as through continuing equity ownership, guarantees, indemnities or other financial obligations. Under these arrangements, performance by the divested businesses or other conditions outside our control could affect future financial results.

We are involved in a number of legal proceedings and, while we cannot predict the outcomes of such proceedings and other contingencies with certainty, some of these outcomes could adversely affect our business, financial condition, results of operations and cash flows.

We are involved in legal proceedings and are subject to investigations, inspections, audits, inquiries and similar actions by governmental authorities, arising in the course of our business (see the discussion of Legal Proceedings in Part I, Item 3 of this Annual Report on Form 10-K). Legal proceedings, in general, can be expensive and disruptive. Some of these suits may purport or may be determined to be class actions and/or involve parties seeking large and/or indeterminate amounts of damages, including punitive or exemplary damages, and may remain unresolved for several years. For example, product liability claims challenging the safety of our products may also result in a decline in sales for a particular product and could damage the reputation or the value of related brands.

From time to time, we are also involved in legal proceedings as a plaintiff involving contract, intellectual property and other matters. We cannot predict with certainty the outcomes of these legal proceedings and other contingencies, and the costs incurred in litigation can be substantial, regardless of the outcome. Substantial unanticipated verdicts, fines and rulings do sometimes occur. As a result, we could from time to time incur judgments, enter into settlements or revise our expectations regarding the outcome of certain matters, and such developments could have a material adverse effect on our results of operations in the period in which the amounts are accrued and/or our cash flows in the period in which the amounts are paid. The outcome of some of these legal proceedings and other contingencies could require us to take, or refrain from taking, actions which could negatively affect our operations and, depending on the nature of the allegations, could negatively impact our reputation. Additionally, defending against these legal proceedings may involve significant expense and diversion of management's attention and resources.

ITEM 1B. *UNRESOLVED STAFF COMMENTS*

None.

ITEM 2. *PROPERTIES*

Our corporate headquarters are located in Marysville, Ohio, where we own approximately 706 acres of land and lease approximately 24 acres of land. In addition, we own and lease numerous industrial, commercial and office properties located in North America, Europe and Asia that support the management, manufacturing, distribution and research and development of our products and services. We believe our properties are suitable and adequate to serve the needs of our business and that our leased properties are subject to appropriate lease agreements.

The Company has 45 owned properties and 89 leased properties. These properties are located in the following countries:

Location	Owned	Leased
United States	36	65
Mexico	—	1
Canada	9	14
China	—	4
The Netherlands	—	4
Norway	—	1
Total	45	89

We own or lease 76 manufacturing properties, four distribution properties and three research and development properties in the United States. We own or lease twenty manufacturing properties in Canada, one manufacturing property in Norway, one manufacturing property in the Netherlands and one manufacturing property in China. We also lease one distribution property in Mexico and one research and development property in Canada. Most of the manufacturing properties, which include growing media properties and peat harvesting properties, have production lines, warehouses, offices and field processing areas.

ITEM 3. *LEGAL PROCEEDINGS*

As noted in the discussion in "ITEM 1. BUSINESS — Regulatory Considerations — *Regulatory Matters*" of this Annual Report on Form 10-K, we are involved in several pending environmental and regulatory matters. We believe that our assessment of contingencies is reasonable and that the related accruals, in the aggregate, are adequate; however, there can be no assurance that the final resolution of these matters will not have a material effect on our financial condition, results of operations or cash flows.

We have been named as a defendant in a number of cases alleging injuries that the lawsuits claim resulted from exposure to asbestos-containing products, apparently based on our historic use of vermiculite in certain of our products. In many of these cases, the complaints are not specific about the plaintiffs' contacts with us or our products. The cases vary, but complaints in these cases generally seek unspecified monetary damages (actual, compensatory, consequential and punitive) from multiple defendants. We believe that the claims against us are without merit and are vigorously defending against them. It is not currently possible to reasonably estimate a probable loss, if any, associated with the cases and, accordingly, no accruals have been recorded in our consolidated financial statements. We are reviewing agreements and policies that may provide insurance coverage or indemnity as to these claims and are pursuing coverage under some of these agreements and policies, although there can be no assurance of the results of these efforts. There can be no assurance that these cases, whether as a result of adverse outcomes or as a result of significant defense costs, will not have a material adverse effect on our financial condition, results of operations or cash flows.

In connection with the sale of wild bird food products that were the subject of a voluntary recall in 2008, the Company, along with its Chief Executive Officer, have been named as defendants in four actions filed on and after June 27, 2012, which have been consolidated and, on March 31, 2017, certified as a class action in the United States District Court for the Southern District of California as *In re Morning Song Bird Food Litigation*, Lead Case No. 3:12-cv-01592-JAH-AGS. The plaintiffs allege various statutory and common law claims associated with the Company's sale of wild bird food products and a plea agreement entered into in previously pending government proceedings associated with such sales. The plaintiffs allege, among other things, a class action on behalf of all persons and entities in the United States who purchased certain bird food products. The plaintiffs assert: (i) hundreds of millions of dollars in monetary damages (actual, compensatory, consequential, and restitution); (ii) punitive and treble damages; (iii) injunctive and declaratory relief; (iv) pre-judgment and post-judgment interest; and (v) costs and attorneys' fees. The Company and its Chief Executive Officer dispute the plaintiffs' assertions and intend to vigorously defend the consolidated action. At this point in the proceedings, it is not currently possible to reasonably estimate a probable loss, if any, associated with the action and, accordingly, no accruals have been recorded in the consolidated financial statements with respect to the action. There can be no assurance that this action, whether as a result of an adverse outcome or as a result of significant defense costs, will not have a material adverse effect on the Company's financial condition, results of operations or cash flows.

We are involved in other lawsuits and claims which arise in the normal course of our business including the initiation and defense of proceedings to protect intellectual property rights, advertising claims and employment disputes. In our opinion, these claims individually and in the aggregate are not expected to have a material adverse effect on our financial condition, results of operations or cash flows.

ITEM 4. ***MINE SAFETY DISCLOSURE***

Not Applicable.

SUPPLEMENTAL ITEM. ***EXECUTIVE OFFICERS OF THE REGISTRANT***

The executive officers of Scotts Miracle-Gro, their positions and, as of November 24, 2017, their ages and years with Scotts Miracle-Gro (and its predecessors) are set forth below.

Name	Age	Position(s) Held	Years with Company
James Hagedorn	62	Chief Executive Officer and Chairman of the Board	30
Michael C. Lukemire	59	President and Chief Operating Officer	21
Thomas R. Coleman	48	Executive Vice President and Chief Financial Officer	18
Ivan C. Smith	48	Executive Vice President, General Counsel, Corporate Secretary and Chief Compliance Officer	14
Denise S. Stump	63	Executive Vice President, Global Human Resources and Chief Ethics Officer	17

Executive officers serve at the discretion of the Board of Directors of Scotts Miracle-Gro and pursuant to executive severance agreements or other arrangements. The business experience of each of the individuals listed above during at least the past five years is as follows:

Mr. Hagedorn was named Chairman of the Board of Scotts Miracle-Gro's predecessor in January 2003 and Chief Executive Officer of Scotts Miracle-Gro's predecessor in May 2001. He also served as President of Scotts Miracle-Gro (or its predecessor) from October 2015 until February 2016. Mr. Hagedorn serves on Scotts Miracle-Gro's Board of Directors, a position he has held with Scotts Miracle-Gro (or its predecessor) since 1995. Mr. Hagedorn is the brother of Katherine Hagedorn Littlefield, a director of Scotts Miracle-Gro. Prior to 2012, Mr. Hagedorn held various managerial roles at the Company.

Mr. Lukemire was named President and Chief Operating Officer of Scotts Miracle-Gro in February 2016. He served as Executive Vice President and Chief Operating Officer of Scotts Miracle-Gro from December 2014 until February 2016. Prior to this appointment, Mr. Lukemire had served as Executive Vice President, North American Operations of Scotts Miracle-Gro from April 2014 until December 2014, as Executive Vice President, Business Execution of Scotts Miracle-Gro from May 2013 until April 2014 and as President, U.S. Consumer Regions of Scotts Miracle-Gro from October 2011 until May 2013. Prior to 2012, Mr. Lukemire held various managerial roles at the Company.

Mr. Coleman was named Executive Vice President and Chief Financial Officer of Scotts Miracle-Gro in April 2014. Prior to this appointment, Mr. Coleman had served as Senior Vice President, Global Finance Operations and Enterprise Performance Management Analytics for The Scotts Company LLC, a wholly-owned subsidiary of Scotts Miracle-Gro, since January 2011. Previously, Mr. Coleman served as interim principal financial officer of Scotts Miracle-Gro between February 2013 and March 2013. Prior to 2012, Mr. Coleman held various managerial roles at the Company.

Mr. Smith was named Executive Vice President, General Counsel and Corporate Secretary of Scotts Miracle-Gro in July 2013 and Chief Compliance Officer of Scotts Miracle-Gro in October 2013. Prior to July 2013, he had served as Vice President, Global Consumer Legal and Assistant General Counsel of Scotts LLC since October 2011. Prior to 2012, Mr. Smith held various managerial roles at the Company.

Ms. Stump was named Executive Vice President, Global Human Resources of Scotts Miracle-Gro (or its predecessor) in February 2003 and Chief Ethics Officer of Scotts Miracle-Gro in October 2013. Prior to 2012, Ms. Stump held various managerial roles at the Company.

PART II

ITEM 5. ***MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES***

The Common Shares trade on the New York Stock Exchange under the symbol "SMG." The quarterly high and low sale prices for the fiscal years ended September 30, 2017 and 2016 were as follows:

	Sale Prices	
	High	Low
FISCAL 2017		
First quarter	$ 98.82	$ 82.49
Second quarter	$ 96.38	$ 88.61
Third quarter	$ 97.50	$ 81.48
Fourth quarter	$ 99.91	$ 89.60
FISCAL 2016		
First quarter	$ 72.26	$ 60.25
Second quarter	$ 75.13	$ 62.20
Third quarter	$ 73.16	$ 65.80
Fourth quarter	$ 83.73	$ 68.24

On August 3, 2015, Scotts Miracle-Gro announced that its Board of Directors had increased the quarterly cash dividend to $0.47 per Common Share, which was paid in September of fiscal 2015 and December, March and June of fiscal 2016. On August 3, 2016, Scotts Miracle-Gro announced that its Board of Directors had further increased the quarterly cash dividend to $0.50 per Common Share, which was paid in September of fiscal 2016 and December, March and June of fiscal 2017. On August 1, 2017, the Scotts Miracle-Gro Board of Directors approved an increase in the quarterly cash dividend from $0.50 to $0.53 per Common Share, which was paid in September of fiscal 2017.

The payment of future dividends, if any, on the Common Shares will be determined by the Board of Directors in light of conditions then existing, including the Company's earnings, financial condition and capital requirements, restrictions in financing agreements, business conditions and other factors. The credit agreement allows the Company to make unlimited restricted payments (as defined in the credit agreement), including increased or one-time dividend payments and Common Share repurchases, as long as the leverage ratio resulting from the making of such restricted payments is 4.00 or less. Otherwise the Company may only make restricted payments in an aggregate amount for each fiscal year not to exceed the amount set forth for such fiscal year ($200.0 million for fiscal 2018 and each fiscal year thereafter). Our leverage ratio was 3.04 at September 30, 2017. See "NOTE 11. DEBT" of the Notes to Consolidated Financial Statements included in this Annual Report on Form 10-K for further discussion regarding the restrictions on dividend payments.

As of November 24, 2017, there were approximately 87,000 shareholders, including holders of record and our estimate of beneficial holders.

The following table shows the purchases of Common Shares made by or on behalf of Scotts Miracle-Gro or any "affiliated purchaser" (as defined in Rule 10b-18(a)(3) under the Securities Exchange Act of 1934, as amended) of Scotts Miracle-Gro for each of the three fiscal months in the quarter ended September 30, 2017:

Period	Total Number of Common Shares Purchased(1)	Average Price Paid per Common Share(2)	Total Number of Common Shares Purchased as Part of Publicly Announced Plans or Programs(3)	Approximate Dollar Value of Common Shares That May Yet be Purchased Under the Plans or Programs(3)
July 2 through July 29, 2017	241,358	$ 93.02	240,255	$ 656,841,318
July 30 through August 26, 2017	229,054	$ 95.57	229,050	$ 634,951,420
August 27 through September 30, 2017	280,444	$ 95.36	277,650	$ 608,450,394
Total	750,856	$ 94.67	746,955	

(1) All of the Common Shares purchased during the fourth quarter of fiscal 2017 were purchased in open market transactions. The total number of Common Shares purchased during the quarter includes 3,901 Common Shares purchased by the trustee of the rabbi trust established by the Company as permitted pursuant to the terms of The Scotts Company LLC Executive Retirement Plan (the "ERP"). The ERP is an unfunded, non-qualified deferred compensation plan which, among other things, provides eligible employees the opportunity to defer compensation above specified statutory limits applicable to The Scotts Company LLC Retirement Savings Plan and with respect to any Executive Management Incentive Pay (as defined in the ERP), Performance Award (as defined in the ERP) or other bonus awarded to such eligible employees. Pursuant to the terms of the ERP, each eligible employee has the right to elect an investment fund, including a fund consisting of Common Shares (the "Scotts Miracle-Gro Common Stock Fund"), against which amounts allocated to such employee's account under the ERP, including employer contributions, will be benchmarked (all ERP accounts are bookkeeping accounts only and do not represent a claim against specific assets of the Company). Amounts allocated to employee accounts under the ERP represent deferred compensation obligations of the Company. The Company established the rabbi trust in order to assist the Company in discharging such deferred compensation obligations. When an eligible employee elects to benchmark some or all of the amounts allocated to such employee's account against the Scotts Miracle-Gro Common Stock Fund, the trustee of the rabbi trust purchases the number of Common Shares equivalent to the amount so benchmarked. All Common Shares purchased by the trustee are purchased on the open market and are held in the rabbi trust until such time as they are distributed pursuant to the terms of the ERP. All assets of the rabbi trust, including any Common Shares purchased by the trustee, remain, at all times, assets of the Company, subject to the claims of its creditors. The terms of the ERP do not provide for a specified limit on the number of Common Shares that may be purchased by the trustee of the rabbi trust.

(2) The average price paid per Common Share is calculated on a settlement basis and includes commissions.

(3) On August 11, 2014, Scotts Miracle-Gro announced that its Board of Directors authorized the repurchase of up to $500 million of Common Shares over a five-year period (effective November 1, 2014 through September 30, 2019). On August 3, 2016, Scotts Miracle-Gro announced that its Board of Directors increased the then outstanding authorization by an additional $500 million. The amended authorization allows for the repurchases of up to $1.0 billion of Common Shares through September 30, 2019. The dollar amounts in the "Approximate Dollar Value of Common Shares That May Yet be Purchased Under the Plans or Programs" column reflect the remaining amounts that were available for repurchase under the original $500 million and the incremental $500 million authorized repurchase programs.

ITEM 6. ***SELECTED FINANCIAL DATA***

The following table sets forth selected consolidated financial data for the periods indicated. You should read the following summary consolidated financial data in conjunction with our consolidated financial statements and the notes thereto and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in this Annual Report on Form 10-K. The summary consolidated financial data presented below as of and for the fiscal years ended September 30, 2017, 2016, 2015, 2014 and 2013 has been derived from our financial statements.

Five-Year Summary[1]

	Year Ended September 30,				
	2017	2016	2015	2014	2013
	(In millions, except per share amounts)				
GAAP OPERATING RESULTS:					
Net sales	$ 2,642.1	$ 2,506.2	$ 2,371.1	$ 2,189.3	$ 2,166.2
Gross profit	972.6	900.3	810.8	774.2	747.7
Income from operations	433.4	447.6	253.8	263.3	282.0
Income from continuing operations	198.3	246.1	128.7	131.8	142.0
Income from discontinued operations, net of tax	20.5	68.7	30.0	34.4	19.1
Net income	218.8	314.8	158.7	166.2	161.1
Net income attributable to controlling interest	218.3	315.3	159.8	166.5	161.1
NON-GAAP ADJUSTED OPERATING RESULTS[2]:					
Adjusted income from operations	$ 438.3	$ 402.1	$ 334.0	$ 310.8	$ 293.2
Adjusted income from continuing operations	237.4	230.2	180.4	170.0	148.9
Adjusted net income attributable to controlling interest from continuing operations	236.9	230.7	181.5	170.3	148.9
SLS Divestiture adjusted income	236.9	221.7	203.4	190.9	168.1
FINANCIAL POSITION:					
Working capital[3]	$ 337.2	$ 325.8	$ 382.8	$ 256.3	$ 256.9
Current ratio[3]	1.6	1.5	1.8	1.6	1.7
Property, plant and equipment, net	467.7	444.9	413.4	393.5	375.8
Total assets	2,747.0	2,755.8	2,458.3	1,996.0	1,871.2
Total debt to total book capitalization[4]	68.3%	63.0%	63.1%	58.3%	43.7%
Total debt	1,401.1	1,215.9	1,061.1	774.9	552.0
Total equity—controlling interest	648.8	715.2	620.7	553.7	710.5
GAAP CASH FLOWS:					
Cash flows provided by operating activities	$ 354.0	$ 237.4	$ 246.9	$ 240.9	$ 342.0
Investments in property, plant and equipment	69.6	58.3	61.7	87.6	60.1
Investment in marketing and license agreement	—	—	300.0	—	—
Investments in loans receivable	29.7	90.0	—	—	—
Net distributions from unconsolidated affiliates	57.4	194.1	—	—	—
Investments in acquired businesses, net of cash acquired and payments on seller notes	150.4	161.2	181.7	114.8	4.0
Dividends paid	120.3	116.6	111.3	230.8	87.8
Purchases of Common Shares	246.0	130.8	14.8	120.0	—
NON-GAAP CASH FLOWS[2]:					
Free cash flow	284.4	179.1	185.2	153.3	281.9
Free cash flow productivity	130.0%	56.9%	116.7%	92.2%	175.0%
PER SHARE DATA:					
GAAP earnings per common share from continuing operations:					
Basic	$ 3.33	$ 4.04	$ 2.12	$ 2.14	$ 2.30
Diluted	3.29	3.98	2.09	2.11	2.27
Non-GAAP adjusted earnings per common share from continuing operations:					
Adjusted diluted[2]	3.94	3.72	2.92	2.72	2.38
SLS Divestiture adjusted income[2]	3.94	3.58	3.27	3.04	2.69
Dividends per common share[5]	2.030	1.910	1.820	3.763	1.413
Stock price at year-end	97.34	83.27	60.82	55.00	55.03
Stock price range—High	99.91	83.73	68.99	60.30	55.99
Stock price range—Low	81.48	60.25	54.71	50.51	39.64
OTHER:					
Adjusted EBITDA[6]	$ 560.5	$ 517.4	$ 471.8	$ 412.4	$ 390.5
Leverage ratio[6]	3.04	3.10	2.63	2.18	2.05
Interest coverage ratio[6]	7.54	7.88	9.34	9.41	6.59
Weighted average Common Shares outstanding	59.4	61.1	61.1	61.6	61.7
Common shares and dilutive potential common shares used in diluted EPS calculation	60.2	62.0	62.2	62.7	62.6

(1) The Selected Financial Data has been retrospectively updated to recast activity for the following:

Discontinued Operations

In the second quarter of fiscal 2014, we completed the sale of our wild bird food business. As a result, effective in our second quarter of fiscal 2014, we classified the wild bird food business as a discontinued operation in accordance with GAAP.

On April 13, 2016, we completed the contribution of the SLS Business to the TruGreen Joint Venture in exchange for a minority equity interest of approximately 30% in the TruGreen Joint Venture. As a result, effective in our second quarter of fiscal 2016, we classified the SLS Business as a discontinued operation in accordance with GAAP.

On August 31, 2017, we completed the sale of the International Business. As a result, effective in our fourth quarter of fiscal 2017, we classified the International Business as a discontinued operation in accordance with GAAP.

Recent Accounting Pronouncements

In April 2015, the Financial Accounting Standards Board ("FASB") issued an accounting standard update that requires debt issuance costs related to a recognized debt liability to be presented in the balance sheet as a direct deduction from the corresponding debt liability rather than as an asset; however debt issuance costs relating to revolving credit facilities will remain in other assets. We adopted this guidance on a retrospective basis effective October 1, 2016. As a result, debt issuance costs have been presented as a component of the carrying amount of long-term debt in the Consolidated Balance Sheets. These amounts were previously reported within other assets.

In November 2015, the FASB issued an accounting standard update to simplify the presentation of deferred income taxes by requiring that deferred income tax liabilities and assets be classified as noncurrent in a classified statement of financial position. We adopted this guidance on a retrospective basis during the fourth quarter of fiscal 2017. As a result, deferred tax assets have been presented net within other liabilities in the Consolidated Balance Sheets. These amounts were previously reported within prepaid and other current assets.

(2) *Reconciliation of Non-GAAP Measures*

Use of Non-GAAP Measures

To supplement the financial measures prepared in accordance with U.S. generally accepted accounting principles ("GAAP"), we use non-GAAP financial measures. The reconciliations of these non-GAAP financial measures to the most directly comparable financial measures calculated and presented in accordance with GAAP are shown in the tables below.These non-GAAP financial measures should not be considered in isolation from, or as a substitute for or superior to, financial measures reported in accordance with GAAP. Moreover, these non-GAAP financial measures have limitations in that they do not reflect all the items associated with the operations of the business as determined in accordance with GAAP. Other companies may calculate similarly titled non-GAAP financial measures differently than us, limiting the usefulness of those measures for comparative purposes.

In addition to GAAP measures, we use these non-GAAP financial measures to evaluate our performance, engage in financial and operational planning and determine incentive compensation because we believe that these measures provide additional perspective on and, in some circumstances are more closely correlated to, the performance of our underlying, ongoing business.

We believe that these non-GAAP financial measures are useful to investors in their assessment of operating performance and the valuation of the Company. In addition, these non-GAAP financial measures address questions routinely received from analysts and investors and, in order to ensure that all investors have access to the same data, we have determined that it is appropriate to make this data available to all investors. Non-GAAP financial measures exclude the impact of certain items (as further described below) and provide supplemental information regarding operating performance. By disclosing these non-GAAP financial measures, we intend to provide investors with a supplemental comparison of operating results and trends for the periods presented. We believe these measures are also useful to investors as such measures allow investors to evaluate performance using the same metrics that we use to evaluate past performance and prospects for future performance. We view free cash flow as an important measure because it is one factor used in determining the amount of cash available for dividends and discretionary investment. We view free cash flow productivity as a useful measure to help investors understand the Company's ability to generate cash.

Exclusions from Non-GAAP Financial Measures

Non-GAAP financial measures reflect adjustments based on the following items:

- Impairments, which are excluded because they do not occur in or reflect the ordinary course of our ongoing business operations and their exclusion results in a metric that provides supplemental information about the sustainability of operating performance.
- Restructuring and employee severance costs, which include charges for discrete projects or transactions that fundamentally change our operations and are excluded because they are not part of the ongoing operations of our underlying business, which includes normal levels of reinvestment in the business.
- Costs related to refinancing, which are excluded because they do not typically occur in the normal course of business and may obscure analysis of trends and financial performance. Additionally, the amount and frequency of these types of charges is not consistent and is significantly impacted by the timing and size of debt financing transactions.
- Charges or credits incurred by the TruGreen Joint Venture that are apart from and not indicative of the results of its ongoing operations, including transaction related costs, refinancing costs, restructurings and other discrete projects or transactions including a non-cash purchase accounting fair value write down adjustment related to deferred revenue and advertising ("TruGreen Joint Venture non-GAAP adjustments").
- Discontinued operations and other unusual items, which include costs or gains related to discrete projects or transactions and are excluded because they are not comparable from one period to the next and are not part of the ongoing operations of our underlying business.

The tax effect for each of the items listed above is determined using the tax rate and other tax attributes applicable to the item and the jurisdiction(s) in which the item is recorded.

Definitions of Non-GAAP Financial Measures

The reconciliations of non-GAAP disclosure items includes the following financial measures that are not calculated in accordance with GAAP and are utilized by us in evaluating the performance of the business, engaging in financial and operational planning, the determination of incentive compensation, and by investors and analysts in evaluating performance of the business:

Adjusted income (loss) from operations: Income (loss) from operations excluding impairment, restructuring and other charges / recoveries and product registration and recall matters and other charges.
Adjusted income (loss) from continuing operations: Income (loss) from continuing operations excluding impairment, restructuring and other charges / recoveries, costs related to refinancing, product registration and recall matters and other charges and TruGreen Joint Venture non-GAAP adjustments, each net of tax.
Adjusted net income (loss) attributable to controlling interest from continuing operations: Net income (loss) attributable to controlling interest excluding impairment, restructuring and other charges / recoveries, costs related to refinancing, product registration and recall matters and other charges, TruGreen Joint Venture non-GAAP adjustments and discontinued operations, each net of tax.
Adjusted diluted income (loss) per common share from continuing operations: Diluted net income (loss) per common share from continuing operations excluding impairment, restructuring and other charges / recoveries, costs related to refinancing, product registration and recall matters and other charges and TruGreen Joint Venture non-GAAP adjustments, each net of tax.
SLS Divestiture adjusted income (loss): Net income (loss) from continuing operations excluding impairment, restructuring and other charges / recoveries, costs related to refinancing, product registration and recall matters and other charges and TruGreen Joint Venture non-GAAP adjustments, each net of tax. This measure also includes income (loss) from discontinued operations related to the SLS Business; however, excludes the gain on the contribution of the SLS Business to the TruGreen Joint Venture, each net of tax.
SLS Divestiture adjusted income (loss) per common share: Diluted net income (loss) per common share excluding impairment, restructuring and other charges / recoveries, costs related to refinancing, product registration and recall matters and other charges and TruGreen Joint Venture non-GAAP adjustments, each net of tax. This measure also includes income (loss) from discontinued operations related to the SLS Business; however, excludes the gain on the contribution of the SLS Business to the TruGreen Joint Venture, each net of tax.
Free cash flow: Net cash provided by (used in) operating activities reduced by investments in property, plant and equipment.
Free cash flow productivity: Ratio of free cash flow to net income (loss).

Adjusted EBITDA: Net income (loss) before interest, taxes, depreciation and amortization as well as certain other items such as the impact of the cumulative effect of changes in accounting, costs associated with debt refinancing and other non-recurring or non-cash items affecting net income (loss). The presentation of adjusted EBITDA is intended to be consistent with the calculation of that measure as required by our borrowing arrangements, and used to calculate a leverage ratio (maximum of 4.50 at September 30, 2017) and an interest coverage ratio (minimum of 3.00 for the twelve months ended September 30, 2017).

In addition to our GAAP measures, we use these non-GAAP measures to manage the business because we believe that these measures provide additional perspective on and, in some circumstances are more closely correlated to, the performance of our underlying, ongoing business. We believe that disclosure of these non-GAAP financial measures therefore provides useful supplemental information to investors or other users of the financial statements, such as lenders. Non-GAAP financial measures should be viewed in addition to, and not as an alternative for, the Company's reported results prepared in accordance with GAAP.

A reconciliation of the non-GAAP measures to the most directly comparable GAAP measures is presented in the following table:

	Year Ended September 30,				
	2017	2016	2015	2014	2013
	(In millions, except per share data)				
Income from operations (GAAP)	$ 433.4	$ 447.6	$ 253.8	$ 263.3	$ 282.0
Impairment, restructuring and other charges (recoveries)	4.9	(45.5)	80.2	47.5	11.2
Adjusted income from operations (Non-GAAP)	$ 438.3	$ 402.1	$ 334.0	$ 310.8	$ 293.2
Income from continuing operations (GAAP)	$ 198.3	$ 246.1	$ 128.7	$ 131.8	$ 142.0
Impairment, restructuring and other charges (recoveries)	43.5	(33.8)	80.2	47.5	11.2
Costs related to refinancing	—	8.8	—	10.7	—
Adjustment to income tax (expense) benefit from continuing operations	(4.4)	9.1	(28.5)	(20.0)	(4.3)
Adjusted income from continuing operations (Non-GAAP)	$ 237.4	$ 230.2	$ 180.4	$ 170.0	$ 148.9
Net income attributable to controlling interest (GAAP)	$ 218.3	$ 315.3	$ 159.8	$ 166.5	$ 161.1
Discontinued operations	20.5	68.7	30.0	34.4	19.1
Impairment, restructuring and other charges (recoveries)	43.5	(33.8)	80.2	47.5	11.2
Costs related to refinancing	—	8.8	—	10.7	—
Adjustment to income tax (benefit) expense from continuing operations	(4.4)	9.1	(28.5)	(20.0)	(4.3)
Adjusted net income attributable to controlling interest (Non-GAAP)	$ 236.9	$ 230.7	$ 181.5	$ 170.3	$ 148.9
Income from continuing operations (GAAP)	$ 198.3	$ 246.1	$ 128.7	$ 131.8	$ 142.0
Net (income) loss attributable to noncontrolling interest	(0.5)	0.5	1.1	0.3	—
Net income attributable to controlling interest from continuing operations	197.8	246.6	129.8	132.1	142.0
Impairment, restructuring and other charges (recoveries)	43.5	(33.8)	80.2	47.5	11.2
Costs related to refinancing	—	8.8	—	10.7	—
Adjustment to income tax (expense) benefit from continuing operations	(4.4)	9.1	(28.5)	(20.0)	(4.3)
Adjusted income attributable to controlling interest from continuing operations (Non-GAAP)	$ 236.9	$ 230.7	$ 181.5	$ 170.3	$ 148.9
Income (loss) from discontinued operations from SLS Business	(1.8)	102.9	32.5	30.9	30.3
Gain on contribution of SLS Business	—	(131.2)	—	—	—
Adjustment to gain on contribution on SLS Business	1.0	—	—	—	—
Impairment, restructuring and other from SLS Business in discontinued operations	0.8	13.6	1.5	1.0	—
Adjustment to income tax (expense) benefit from discontinued operations	—	5.7	(12.1)	(11.3)	(11.1)
Adjusted income (loss) from SLS Business in discontinued operations, net of tax	—	(9.0)	21.9	20.6	19.2
SLS Divestiture adjusted income (Non-GAAP)	$ 236.9	$ 221.7	$ 203.4	$ 190.9	$ 168.1
Diluted income per share from continuing operations (GAAP)	$ 3.29	$ 3.98	$ 2.09	$ 2.11	$ 2.27
Impairment, restructuring and other charges (recoveries)	0.72	(0.55)	1.29	0.76	0.18
Costs related to refinancing	—	0.14	—	0.17	—
Adjustment to income tax (expense) benefit from continuing operations	(0.07)	0.15	(0.46)	(0.32)	(0.07)
Adjusted diluted income per common share from continuing operations (Non-GAAP)	$ 3.94	$ 3.72	$ 2.92	$ 2.72	$ 2.38
Income (loss) from discontinued operations from SLS Business	$ (0.03)	$ 1.66	$ 0.52	$ 0.49	$ 0.48
Gain on contribution of SLS Business	—	(2.12)	—	—	—
Adjustment to gain on contribution of SLS Business	0.02	—	—	—	—
Impairment, restructuring and other from SLS Business in discontinued operations	0.01	0.22	0.02	0.02	—
Adjustment to income tax (expense) benefit from discontinued operations	—	0.09	(0.19)	(0.18)	(0.18)
Adjusted diluted income (loss) from SLS Business in discontinued operations, net of tax	—	(0.15)	0.35	0.33	0.31
SLS Divestiture adjusted income per common share (Non-GAAP)	$ 3.94	$ 3.58	$ 3.27	$ 3.04	$ 2.69

The sum of the components may not equal the total due to rounding.

	Year Ended September 30,				
	2017	2016	2015	2014	2013
	(In millions, except per share data)				
Net cash provided by operating activities (GAAP)	$ 354.0	$ 237.4	$ 246.9	$ 240.9	$ 342.0
Investments in property, plant and equipment	(69.6)	(58.3)	(61.7)	(87.6)	(60.1)
Free cash flow (Non-GAAP)	$ 284.4	$ 179.1	$ 185.2	$ 153.3	$ 281.9
Free cash flow (Non-GAAP)	$ 284.4	$ 179.1	$ 185.2	$ 153.3	$ 281.9
Net income (GAAP)	218.8	314.8	158.7	166.2	161.1
Free cash flow productivity (Non-GAAP)	130.0%	56.9%	116.7%	92.2%	175.0%

The sum of the components may not equal the total due to rounding.

(3) Working capital is calculated as current assets minus current liabilities. Current ratio is calculated as current assets divided by current liabilities.

(4) The total debt to total book capitalization percentage is calculated by dividing total debt by total debt plus total equity—controlling interest.

(5) Scotts Miracle-Gro pays a quarterly dividend to the holders of its Common Shares. On August 9, 2012, Scotts Miracle-Gro announced that its Board of Directors had increased the quarterly cash dividend to $0.325 per Common Share, which was first paid in the fourth quarter of fiscal 2012. On August 6, 2013, Scotts Miracle-Gro announced that its Board of Directors had increased the quarterly cash dividend to $0.4375 per Common Share, which was first paid in the fourth quarter of fiscal 2013. On August 11, 2014, Scotts Miracle-Gro announced that its Board of Directors had (i) further increased the quarterly cash dividend to $0.45 per Common Share, which was first paid in the fourth quarter of fiscal 2014 and (ii) declared a special one-time cash dividend of $2.00 per Common Share, which was paid on September 17, 2014. On August 3, 2015, Scotts Miracle-Gro announced that its Board of Directors had further increased the quarterly cash dividend to $0.47 per Common Share, which was first paid in the fourth quarter of fiscal 2015. On August 3, 2016, Scotts Miracle-Gro announced that its Board of Directors had further increased the quarterly cash dividend to $0.50 per Common Share, which was first paid in the fourth quarter of fiscal 2016. On August 1, 2017, Scotts Miracle-Gro announced that its Board of Directors had further increased the quarterly cash dividend to $0.53 per Common Share, which was first paid in September 2017.

(6) We view our credit facility as material to our ability to fund operations, particularly in light of our seasonality. Please refer to “ITEM 1A. RISK FACTORS — Our indebtedness could limit our flexibility and adversely affect our financial condition” of this Annual Report on Form 10-K for a more complete discussion of the risks associated with our debt and our credit facility and the restrictive covenants therein. Our ability to generate cash flows sufficient to cover our debt service costs is essential to our ability to maintain our borrowing capacity. We believe that Adjusted EBITDA provides additional information for determining our ability to meet debt service requirements. The presentation of Adjusted EBITDA herein is intended to be consistent with the calculation of that measure as required by our borrowing agreements, and used to calculate a leverage ratio (maximum of 4.50 at September 30, 2017) and an interest coverage ratio (minimum of 3.00 for the twelve months ended September 30, 2017). Leverage ratio is calculated as average total indebtedness, as described in our credit facility, divided by Adjusted EBITDA. Interest coverage ratio is calculated as Adjusted EBITDA divided by interest expense, as described in our credit facility, and excludes costs related to refinancings. Our leverage ratio was 3.04 at September 30, 2017 and our interest coverage ratio was 7.54 for the twelve months ended September 30, 2017. Please refer to “ITEM 7. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS — Liquidity and Capital Resources — *Borrowing Agreements*” of this Annual Report on Form 10-K for a discussion of our credit facility.

In accordance with the terms of our credit facility, Adjusted EBITDA is calculated as net income (loss) before interest, taxes, depreciation and amortization as well as certain other items such as the impact of the cumulative effect of changes in accounting, costs associated with debt refinancing and other non-recurring or non-cash items affecting net income. For the fourth quarter of fiscal 2015, the Company changed its calculation of Adjusted EBITDA to reflect the measure as defined in our fourth amended credit agreement. Prior periods have not been adjusted as they reflect the presentation consistent with the calculation as required by our borrowing agreements in place at that time. The revised calculation adds adjustments for share-based compensation expense, expense on certain leases, and impairment, restructuring and other charges (including cash and non-cash charges) and no longer includes an adjustment for mark-to-market adjustments on derivatives. Our calculation of Adjusted EBITDA does not represent and should not be considered as an alternative to net income or cash flows from operating activities as determined by GAAP. We make no representation or assertion that Adjusted EBITDA is indicative of our cash flows from operating activities or results of operations. We have provided a reconciliation of Adjusted EBITDA to income from continuing operations solely for the purpose of complying with SEC regulations and not as an indication that Adjusted EBITDA is a substitute measure for income from continuing operations.

A numeric reconciliation of net income to Adjusted EBITDA is as follows:

	Year Ended September 30,				
	2017	2016	2015	2014	2013
	(In millions)				
Net income (GAAP)	$ 218.8	$ 314.8	$ 158.7	$ 166.2	$ 161.1
Income tax expense from continuing operations	116.6	137.6	76.3	74.3	82.7
Income tax expense from discontinued operations	11.9	43.2	9.1	17.8	9.9
Gain on sale / contribution of business	(31.7)	(131.2)	—	—	—
Costs related to refinancings	—	8.8	—	10.7	—
Interest expense	76.6	65.6	50.5	47.3	59.2
Depreciation	55.1	53.8	51.4	50.6	54.9
Amortization	25.0	19.7	17.6	13.8	11.2
Gain on investment in unconsolidated affiliate[7]	—	—	—	(3.3)	—
Impairment, restructuring and other from continuing operations	43.5	(33.8)	80.2	31.2	2.1
Impairment, restructuring and other from discontinued operations	15.9	19.7	11.3	2.5	9.1
Mark-to-market adjustments on derivatives	—	—	—	1.3	0.3
Expense on certain leases	3.6	3.6	3.5	—	—
Share-based compensation expense	25.2	15.6	13.2	—	—
Adjusted EBITDA (Non-GAAP)	$ 560.5	$ 517.4	$ 471.8	$ 412.4	$ 390.5

(7) Amount represents a gain on our investment in AeroGrow recognized during the fourth quarter of 2014 as a result of our consolidation of the business. Excluded from this amount is $2.4 million of earnings on AeroGrow's unconsolidated results for fiscal year 2014 recorded within "Other income, net" in the Consolidated Statements of Operations.

ITEM 7. *MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS*

The purpose of this discussion is to provide an understanding of our financial condition and results of operations by focusing on changes in certain key measures from year-to-year. Management's Discussion and Analysis ("MD&A") is divided into the following sections:

- Executive summary
- Results of operations
- Segment results
- Liquidity and capital resources
- Regulatory matters
- Critical accounting policies and estimates

Executive Summary

We are dedicated to delivering strong, long-term financial results and outstanding shareholder returns by providing products of superior quality and value to enhance users growing environments. We are a leading manufacturer and marketer of branded consumer lawn and garden products. We are the exclusive agent of Monsanto for the marketing and distribution of consumer Roundup® non-selective weedkiller products within the United States and certain other specified countries. Through The Hawthorne Gardening Company, our wholly-owned subsidiary, we are a leading producer of liquid plant food products, growing media, advanced indoor garden, lighting and ventilation systems and accessories for hydroponic gardening.

In the first quarter of fiscal 2016, we announced a series of initiatives called Project Focus designed to maximize the value of our non-core assets and focus on emerging categories of the lawn and garden industry in our core U.S. business. On August 31, 2017, we completed the divestiture of our consumer lawn and garden businesses located in Australia, Austria, Belgium, Czech Republic, France, Germany, Luxembourg, Poland and the United Kingdom (the "International Business"). As a result, effective in our fourth quarter of fiscal 2017, we classified our results of operations for all periods presented to reflect the International Business as a discontinued operation and classified the assets and liabilities of the International Business as held for sale. On April 13, 2016, we completed the contribution of the SLS Business to the TruGreen Joint Venture in exchange for a minority equity interest of approximately 30% in the TruGreen Joint Venture. We now participate in the residential and commercial lawn care, tree and shrub care and pest control services segments in the United States and Canada through our interest in the TruGreen Joint Venture. For additional information, see "NOTE 2. DISCONTINUED OPERATIONS" of the Notes to Consolidated Financial Statements included in this Annual Report on Form 10-K.

Our operations are divided into three reportable segments: U.S. Consumer, Hawthorne and Other. U.S. Consumer consists of our consumer lawn and garden business located in the geographic United States. Hawthorne consists of our indoor, urban and hydroponic gardening business. Other consists of our consumer lawn and garden business in geographies other than the U.S. and our product sales to commercial nurseries, greenhouses and other professional customers. Corporate consists of general and administrative expenses and certain other income/expense items not allocated to the business segments. This division of reportable segments is consistent with how the segments report to and are managed by our chief operating decision maker. These segments differ from those used in prior periods due to the change in our internal organization structure resulting from the divestiture of the International Business, which closed on August 31, 2017.

As a leading consumer branded lawn and garden company, our product development and marketing efforts are largely focused on providing innovative and differentiated products and continually increasing brand and product awareness to inspire consumers to create retail demand. We have implemented this model for a number of years by focusing on research and development and investing approximately 4-5% of our annual net sales in advertising to support and promote our products and brands. We continually explore new and innovative ways to communicate with consumers. We believe that we receive a significant benefit from these expenditures and anticipate a similar commitment to research and development, advertising and marketing investments in the future, with the continuing objective of driving category growth and profitably increasing market share.

Our net sales in any one year are susceptible to weather conditions in the markets in which our products are sold and our services are offered. For instance, periods of abnormally wet or dry weather can adversely impact the sale of certain products, while increasing demand for other products, or delay the timing of the provision of certain services. We believe that our diversified product line and our geographic diversification reduce this risk, although to a lesser extent in a year in which unfavorable weather

is geographically widespread and extends across a significant portion of the lawn and garden season. We also believe that weather conditions in any one year, positive or negative, do not materially impact longer-term category growth trends.

Due to the seasonal nature of the lawn and garden business, significant portions of our products ship to our retail customers during our second and third fiscal quarters, as noted in the chart below. Our annual net sales are further concentrated in the second and third fiscal quarters by retailers who rely on our ability to deliver products closer to when consumers buy our products, thereby reducing retailers' pre-season inventories.

	Percent of Net Sales from Continuing Operations by Quarter		
	2017	2016	2015
First Quarter	7.8%	6.1%	5.2%
Second Quarter	41.1%	44.6%	39.8%
Third Quarter	36.8%	35.4%	41.7%
Fourth Quarter	14.3%	13.9%	13.3%

We follow a 13-week quarterly accounting cycle pursuant to which the first three fiscal quarters end on a Saturday and the fiscal year always ends on September 30. This fiscal calendar convention requires us to cycle forward the first three fiscal quarter ends every six years. Fiscal 2016 is the most recent year impacted by this process and, as a result, the first quarter of fiscal 2016 had six additional days and the fourth quarter of fiscal 2016 had five fewer days compared to the corresponding quarters of fiscal 2015.

Management focuses on a variety of key indicators and operating metrics to monitor the financial condition and performance of the continuing operations of our business. These metrics include consumer purchases (point-of-sale data), market share, category growth, net sales (including unit volume, pricing, and foreign exchange movements), gross profit margins, advertising to net sales ratios, income from operations, income from continuing operations, net income and earnings per share. To the extent applicable, these measures are evaluated with and without impairment, restructuring and other charges, which management believes are not indicative of the earnings capabilities of our businesses. We also focus on measures to optimize cash flow and return on invested capital, including the management of working capital and capital expenditures.

In August 2014, the Scotts Miracle-Gro Board of Directors authorized the repurchase of up to $500.0 million of Common Shares over a five-year period (effective November 1, 2014 through September 30, 2019). On August 3, 2016, Scotts Miracle-Gro announced that its Board of Directors authorized a $500.0 million increase to the share repurchase authorization ending on September 30, 2019. The amended authorization allows for the repurchases of up to $1.0 billion of Common Shares through September 30, 2019. From the inception of this share repurchase program in the fourth quarter of fiscal 2014 through September 30, 2017, Scotts Miracle-Gro repurchased approximately 4.8 million Common Shares for $391.5 million. Common Shares held in treasury totaling 0.5 million, 0.6 million and 0.9 million were reissued in support of share-based compensation awards and employee purchases under the employee stock purchase plan during fiscal 2017, fiscal 2016 and fiscal 2015, respectively.

On August 3, 2016, we announced that the Scotts Miracle-Gro Board of Directors approved an increase in our quarterly cash dividend from $0.47 to $0.50 per Common Share. On August 1, 2017, the Scotts Miracle-Gro Board of Directors approved an increase in our quarterly cash dividend from $0.50 to $0.53 per Common Share.

Results of Operations

Effective in our fourth quarter of fiscal 2017, we classified our results of operations for all periods presented to reflect the International Business as a discontinued operation. Effective in our second quarter of fiscal 2016, we classified our results of operations for all periods presented to reflect the SLS Business as a discontinued operation. As a result, and unless specifically stated, all discussions regarding results for the fiscal years ended September 30, 2017, 2016 and 2015 reflect results from our continuing operations.

The following table sets forth the components of income and expense as a percentage of net sales:

	Year Ended September 30,		
	2017	2016	2015
Net sales	100.0 %	100.0 %	100.0 %
Cost of sales	63.2	63.8	65.7
Cost of sales—impairment, restructuring and other	—	0.2	0.1
Gross profit	36.8	35.9	34.2
Operating expenses:			
Selling, general and administrative	20.9	20.7	20.6
Impairment, restructuring and other	0.2	(2.1)	3.0
Other income, net	(0.6)	(0.6)	(0.1)
Income from operations	16.4	17.9	10.7
Equity in (income) loss of unconsolidated affiliates	1.1	(0.3)	—
Costs related to refinancing	—	0.4	—
Interest expense	2.9	2.5	2.1
Other non-operating expense	0.5	—	—
Income from continuing operations before income taxes	11.9	15.3	8.6
Income tax expense from continuing operations	4.4	5.5	3.2
Income from continuing operations	7.5	9.8	5.4
Income from discontinued operations, net of tax	0.8	2.7	1.3
Net income	8.3 %	12.6 %	6.7 %

Net Sales

Net sales for fiscal 2017 increased 5.4% to $2.64 billion from $2.51 billion in fiscal 2016. Net sales for fiscal 2016 increased 5.7% from $2.37 billion in fiscal 2015. The change in net sales was attributable to the following:

	Year Ended September 30,	
	2017	2016
Acquisitions	5.8 %	3.2 %
Pricing	1.1	0.6
Volume	(1.4)	2.8
Foreign exchange rates	(0.1)	(0.9)
Change in net sales	5.4 %	5.7 %

The increase in net sales for fiscal 2017 was primarily driven by:

- the addition of net sales from acquisitions in our Hawthorne segment, primarily from Gavita, Botanicare and Agrolux, as well as the acquisition of a Canadian growing media operation in our Other segment;
- increased pricing in our U.S. Consumer segment primarily driven by lower volume rebates as a result of year-to-date sales volume decline; and
- increased sales of grass seed and Roundup® For Lawns products in our U.S. Consumer segment, and increased sales of hydroponic gardening products in our Hawthorne segment;
- partially offset by decreased sales of mulch products in our U.S. Consumer segment;
- decreased net sales associated with the Marketing Agreement Amendment and the Restated Marketing Agreement for consumer Roundup®; and
- the unfavorable impact of foreign exchange rates as a result of the strengthening of the U.S. dollar relative to the Canadian dollar, partially offset by the weakening of the U.S. dollar relative to the euro.

The increase in net sales for fiscal 2016 was primarily driven by:

- the addition of net sales from acquisitions within our Hawthorne segment, primarily from General Hydroponics, Vermicrop and Gavita, as well as the acquisition of a Canadian growing media operation in our Other segment;

- increased sales volume in our Hawthorne segment driven by increased sales of hydroponic gardening products;
- the impact of the Marketing Agreement Amendment for consumer Roundup®; and
- increased pricing in the U.S. Consumer segment;
- partially offset by the unfavorable impact of foreign exchange rates as a result of the strengthening of the U.S. dollar relative to other currencies including the Canadian dollar and the euro.

Cost of Sales

The following table shows the major components of cost of sales:

	Year Ended September 30,		
	2017	2016	2015
	(In millions)		
Materials	$ 966.9	$ 920.7	$ 907.7
Manufacturing labor and overhead	356.7	323.3	286.6
Distribution and warehousing	289.8	300.2	310.4
Roundup® reimbursements	56.1	55.8	52.6
	1,669.5	1,600.0	1,557.3
Impairment, restructuring and other	—	5.9	3.0
	$ 1,669.5	$ 1,605.9	$ 1,560.3

Factors contributing to the change in cost of sales are outlined in the following table:

	Year Ended September 30,	
	2017	2016
	(In millions)	
Volume and product mix	$ 90.6	$ 64.5
Roundup® reimbursements	0.3	3.2
Foreign exchange rates	(0.9)	(4.3)
Material costs	(20.5)	(20.7)
	69.5	42.7
Impairment, restructuring and other	(5.9)	2.9
Change in cost of sales	$ 63.6	$ 45.6

The increase in cost of sales for fiscal 2017 was primarily driven by:

- $98.2 million in costs related to sales from acquisitions in our Hawthorne segment, primarily from Gavita, Botanicare and Agrolux, as well as $7.5 million in costs related to sales from the acquisition of a Canadian growing media operation in our Other segment;
- partially offset by lower material costs in our U.S. Consumer segment driven by lower commodity costs primarily related to fertilizer inputs;
- lower sales volume in our U.S. Consumer segment, partially offset by increased sales volume in our Hawthorne segment;
- the favorable impact of foreign exchange rates as a result of the strengthening of the U.S. dollar relative to the Canadian dollar, partially offset by weakening of the U.S. dollar relative to the euro; and
- a decrease in other charges of $5.9 million related to costs incurred during fiscal 2016 to address consumer complaints regarding our reformulated Bonus® S product sold during fiscal 2015.

The increase in cost of sales for fiscal 2016 was primarily driven by:

- costs related to increased sales volume in our U.S. Consumer and Hawthorne segments;
- $46.1 million in costs related to sales from acquisitions within our Hawthorne segment, primarily from General Hydroponics, Vermicrop and Gavita, as well as $4.6 million in costs related to sales from the acquisition of a Canadian growing media operation in our Other segment;

- an increase in net sales attributable to reimbursements under the Marketing Agreement Amendment for consumer Roundup®; and
- an increase in other charges of $2.9 million related to addressing the consumer complaints regarding our reformulated Bonus® S product sold during fiscal 2015;
- partially offset by lower material costs in our U.S. Consumer segment driven by lower commodity costs primarily related to fertilizer inputs and resin;
- lower distribution costs within our U.S. Consumer segment due to savings from lower fuel prices and reduced costs from efficiencies in our growing media business; and
- the favorable impact of foreign exchange rates as a result of a strengthening of the U.S. dollar relative to other currencies including the Canadian dollar and the euro.

Gross Profit

As a percentage of net sales, our gross profit rate was 36.8%, 35.9% and 34.2% for fiscal 2017, fiscal 2016 and fiscal 2015, respectively. Factors contributing to the change in gross profit rate are outlined in the following table:

	Year Ended September 30,	
	2017	**2016**
Material costs	0.8 %	0.9 %
Pricing	0.7	0.3
Volume and product mix	—	0.3
Roundup® commissions and reimbursements	(0.3)	0.5
Acquisitions	(0.6)	(0.1)
	0.6	1.9
Impairment, restructuring and other	0.3	(0.2)
Change in gross profit rate	0.9 %	1.7 %

The increase in the gross profit rate for fiscal 2017 was primarily driven by:

- lower material costs in our U.S. Consumer segment driven by lower commodity costs primarily related to fertilizer inputs;
- increased pricing in our U.S. Consumer segment primarily driven by lower volume rebates as a result of year-to-date sales volume decline; and
- a decrease in other charges of $5.9 million related to costs incurred during fiscal 2016 to address consumer complaints regarding our reformulated Bonus® S product sold during fiscal 2015;
- partially offset by an unfavorable net impact from acquisitions in our Hawthorne segment, primarily from Gavita, Botanicare and Agrolux, as well as the acquisition of a Canadian growing media operation in our Other segment; and
- a decrease in net sales associated with the Marketing Agreement Amendment and the Restated Marketing Agreement for consumer Roundup®.

The increase in the gross profit rate for fiscal 2016 was primarily driven by:

- lower material costs in our U.S. Consumer segment driven by lower commodity costs primarily related to fertilizer inputs and resin;
- lower distribution costs within our U.S. Consumer segment due to savings from lower fuel prices and reduced costs from efficiencies in our growing media business;
- an increase in net sales attributable to the Marketing Agreement Amendment for consumer Roundup®; and
- increased pricing in the U.S. Consumer segment;
- partially offset by an unfavorable net impact from acquisitions, primarily from General Hydroponics and Vermicrop within our Hawthorne segment; and
- other charges of $5.9 million primarily related to addressing the consumer complaints regarding our reformulated Bonus® S product sold during fiscal 2015.

Selling, General and Administrative Expenses

The following table sets forth the components of selling, general and administrative expenses ("SG&A"):

	Year Ended September 30,		
	2017	2016	2015
	(In millions, except percentage figures)		
Advertising	$ 123.0	$ 122.3	$ 121.5
Advertising as a percentage of net sales	4.7%	4.9%	5.1%
Share-based compensation	25.2	15.6	13.2
Research and development	39.9	36.0	36.5
Amortization of intangibles	21.9	13.6	8.6
Other selling, general and administrative	340.9	330.5	309.0
	$ 550.9	$ 518.0	$ 488.8

SG&A increased $32.9 million, or 6.4%, during fiscal 2017 compared to fiscal 2016; and increased $29.2 million, or 6.0% during fiscal 2016 compared to fiscal 2015. Share-based compensation expense increased $9.6 million, or 61.5%, to $25.2 million in fiscal 2017 compared to $15.6 million in fiscal 2016 due to the issuance of equity awards as part of the Project Focus initiative. Share-based compensation expense in fiscal 2016 increased $2.4 million, or 18.2%, compared to fiscal 2015, primarily as a result of additional expense associated with fiscal 2016 awards.

Amortization expense increased $8.3 million, or 61.0%, to $21.9 million in fiscal 2017 compared to $13.6 million in fiscal 2016. Amortization expense in fiscal 2016 increased $5.0 million, or 58.1%, compared to fiscal 2015. These increases are due to the impact of recent acquisitions.

Other SG&A increased $10.4 million, or 3.1%, in fiscal 2017 compared to fiscal 2016 due to the impact of recent acquisitions of $14.7 million and increased headcount and integration costs for our hydroponic businesses of $6.9 million, partially offset by lower deal costs related to transaction activity of $5.3 million and decreased variable incentive compensation of $7.7 million. In fiscal 2016, other SG&A increased $21.5 million compared to fiscal 2015 driven by increased variable incentive compensation of $13.7 million and the impact of recent acquisitions and deal costs related to transaction activity of $12.2 million, partially offset by foreign exchange rate impact of $1.9 million as the U.S. dollar has strengthened relative to the Canadian dollar.

Impairment, Restructuring and Other

The following table sets forth the components of impairment, restructuring and other charges (recoveries) recorded within the "Cost of sales—impairment, restructuring and other," "Impairment, restructuring and other" and "Income from discontinued operations, net of tax" lines in the Consolidated Statements of Operations:

	Year Ended September 30,		
	2017	2016	2015
	(In millions)		
Cost of sales—impairment, restructuring and other:			
Restructuring and other charges	$ —	$ 5.9	$ 3.0
Operating expenses:			
Restructuring and other charges (recoveries), net	3.9	(51.5)	70.4
Intangible asset impairment	1.0	—	—
Impairment, restructuring and other charges (recoveries) from continuing operations	$ 4.9	$ (45.6)	$ 73.4
Restructuring and other charges from discontinued operations	15.9	19.7	11.2
Total impairment, restructuring and other charges (recoveries)	$ 20.8	$ (25.9)	$ 84.6

In the first quarter of fiscal 2016, we announced a series of initiatives called Project Focus designed to maximize the value of our non-core assets and focus on emerging categories of the lawn and garden industry in our core U.S. business. During fiscal 2017, we recognized restructuring costs related to termination benefits and facility closure costs of $8.3 million in the "Impairment, restructuring and other" line in the Consolidated Statements of Operations, including $6.7 million for the U.S. Consumer segment, $0.9 million for the Hawthorne segment and $0.7 million for the Other segment. Costs incurred to date since the inception of the

current Project Focus initiatives are $10.1 million for the U.S. Consumer segment, $0.9 million for the Hawthorne segment and $1.2 million for the Other segment, related to transaction activity, termination benefits and facility closure costs.

In the fourth quarter of fiscal 2017, we recognized a recovery of $4.4 million related to the reduction of a contingent consideration liability associated with a historical acquisition and recorded a $1.0 million impairment charge on the write-off of a trademark asset due to recent performance and future growth expectations. These items were recorded in the "Impairment, restructuring and other" line in the Consolidated Statements of Operations.

During the third quarter of fiscal 2015, our U.S. Consumer segment began experiencing an increase in certain consumer complaints related to the reformulated Bonus® S fertilizer product sold in the southeastern United States during fiscal 2015 indicating customers were experiencing damage to their lawns after application. In fiscal 2016, we incurred $6.4 million in costs related to resolving these consumer complaints and the recognition of costs we expected to incur for consumer claims in the "Impairment, restructuring and other" and the "Cost of sales—impairment, restructuring and other" lines in the Consolidated Statements of Operations. Additionally, we recorded offsetting insurance reimbursement recoveries of $55.9 million in fiscal 2016 in the "Impairment, restructuring and other" line in the Consolidated Statements of Operations. Costs incurred to date since the inception of this matter were $73.8 million, partially offset by insurance reimbursement recoveries of $60.8 million.

During fiscal 2016, we recognized restructuring costs related to termination benefits of $3.9 million related to Project Focus in the "Impairment, restructuring and other" line in the Consolidated Statements of Operations.

During fiscal 2015, we recognized $67.3 million in costs related to consumer complaints and claims related to the reformulated Bonus® S fertilizer product sold in the southeastern United States during fiscal 2015, partially offset by insurance reimbursement recoveries recorded of $4.9 million.

During fiscal 2015, we recognized restructuring costs related to termination benefits of $11.0 million as part of our restructuring of our U.S. administrative and overhead functions. The restructuring costs for fiscal 2015 included $4.3 million of costs related to the acceleration of equity compensation expense, and were comprised of $3.7 million related to the U.S. Consumer segment, $0.7 million related to the Other Segment and $6.6 million related to Corporate. These costs were recognized in the "Impairment, restructuring and other" line in the Consolidated Statements of Operations.

Other Income, net

Other income is comprised of activities outside our normal business operations, such as royalty income from the licensing of certain of our brand names, income earned from loans receivable, foreign exchange gains/losses and gains/losses from the disposition of non-inventory assets. Other income, net, was $16.6 million, $13.8 million and $2.2 million in fiscal 2017, fiscal 2016 and fiscal 2015, respectively. The increase in other income for fiscal 2017 was due to an increase in income on loans receivable partially offset by a decrease in royalty income earned from the TruGreen Joint Venture related to its use of brand names. The increase in other income for fiscal 2016 was due to a gain on the sale of a growing media plant whose operations were being relocated, an increase in income on loans receivable and royalty income earned from the TruGreen Joint Venture related to its use of brand names.

Income from Operations

Income from operations in fiscal 2017 was $433.4 million compared to $447.6 million in fiscal 2016, a decrease of $14.2 million, or 3.2%. The decrease was driven by impairment, restructuring and other charges during fiscal 2017 as compared to recoveries during fiscal 2016, and higher SG&A, partially offset by an increase in net sales, gross profit rate and other income.

Income from operations in fiscal 2016 was $447.6 million compared to $253.8 million in fiscal 2015, an increase of $193.8 million, or 76.4%. The increase was driven by impairment, restructuring and other recoveries during fiscal 2016 as compared to charges during fiscal 2015, and an increase in net sales and gross profit rate, partially offset by higher SG&A.

Equity in (Income) Loss of Unconsolidated Affiliates

Equity in (income) loss of unconsolidated affiliates was $29.0 million and $(7.8) million in fiscal 2017 and fiscal 2016, respectively. Included within (income) loss of unconsolidated affiliates for fiscal 2017 and fiscal 2016, respectively, is our $25.2 million and $11.7 million share of restructuring and other charges incurred by the TruGreen Joint Venture. For fiscal 2017, these charges included $1.3 million for transaction costs, $12.1 million for nonrecurring integration and separation costs, $7.2 million of costs associated with the TruGreen Joint Venture's August 2017 debt refinancing and $4.6 million for a non-cash purchase accounting fair value write-down adjustment related to deferred revenue and advertising. For fiscal 2016, these charges included $6.0 million for transaction costs, $4.4 million for nonrecurring integration and separation costs and $1.3 million for a non-cash purchase accounting fair value write-down adjustment related to deferred revenue and advertising.

Costs Related to Refinancing

Costs related to refinancing were $8.8 million for fiscal 2016. The costs incurred were associated with the redemption of our 6.625% Senior Notes on December 15, 2015, and are comprised of $6.6 million of call premium and $2.2 million of unamortized bond discount and issuance costs that were written off.

Interest Expense

Interest expense was $76.1 million in fiscal 2017 compared to $62.9 million in fiscal 2016 and $48.8 million in fiscal 2015. The increase in fiscal 2017 was driven by an increase in average borrowings of $239.4 million, as well as an increase in our weighted average interest rate of 16 basis points. The increase in average borrowings was driven by recent acquisition activity and an increase in repurchases of our Common Shares. The increase in weighted average interest rate was primarily due to the issuance of our 5.250% Senior Notes on December 15, 2016.

The increase in fiscal 2016 was driven by an increase in average borrowings of $297.3 million attributable to recent acquisition and investment activity, primarily related to General Hydroponics, Vermicrop, Bonnie, Gavita, the amendment of our Marketing Agreement with Monsanto and repurchases of our Common Shares.

Other Non-Operating Expense

On October 2, 2017, we acquired the remaining 25% noncontrolling interest in Gavita and its subsidiaries, including Agrolux, for $72.2 million. We recorded a charge of $13.4 million during the fourth quarter of fiscal 2017 to write-up the fair value of the loan to the noncontrolling ownership group of Gavita to the agreed upon buyout value in the “Other non-operating expense” line in the Consolidated Statements of Operations.

Income Tax Expense

A reconciliation of the federal corporate income tax rate and the effective tax rate on income from continuing operations before income taxes is summarized below:

	Year Ended September 30,		
	2017	2016	2015
Statutory income tax rate	35.0 %	35.0 %	35.0 %
Effect of foreign operations	3.1	0.3	0.9
State taxes, net of federal benefit	2.9	2.9	3.4
Domestic production activities deduction permanent difference	(3.1)	(2.5)	(3.1)
Effect of other permanent differences	0.4	0.4	0.1
Research and experimentation and other federal tax credits	(0.4)	(0.3)	(0.3)
Resolution of prior tax contingencies	0.9	(0.1)	0.4
Other	(1.8)	0.2	0.8
Effective income tax rate	37.0 %	35.9 %	37.2 %

In connection with the sale of the International Business during fiscal 2017, we recognized additional tax expense of $7.2 million associated with valuation allowances established in connection with historical foreign tax credits as we do not expect to utilize these prior to their expiration. Through our increased ownership of AeroGrow International, Inc. during fiscal 2017 we may potentially utilize up to $63.2 million in federal net operating losses (NOLs) of AeroGrow International, Inc., subject to limitations under IRC §382 from current and prior ownership changes. We determined that $50.0 million of these NOLs will expire unutilized due to the closing of statutes of limitation and a valuation allowance has been established on these NOLs. We also incurred a $13.4 million charge, which is not tax-deductible, driven by the October 2017 acquisition of the remaining noncontrolling interest in Gavita and subsidiaries, to write-up the fair value of the loan to the noncontrolling ownership group of Gavita to the agreed upon buyout value.

Income from Continuing Operations

Income from continuing operations was $198.3 million, or $3.29 per diluted share, in fiscal 2017 compared to $246.1 million, or $3.98 per diluted share, in fiscal 2016. The decrease was driven by impairment, restructuring and other charges during fiscal 2017 as compared to recoveries during fiscal 2016, as well as higher SG&A, equity in loss of unconsolidated affiliates, interest expense and other non-operating expense, partially offset by an increase in net sales, gross profit rate and other income and a decrease in costs related to refinancing. Diluted average common shares used in the diluted income per common share calculation were 60.2 million for fiscal 2017 compared to 62.0 million for fiscal 2016. The decrease was primarily the result of Common

Share repurchase activity, partially offset by the exercise and issuance of share-based compensation awards. Dilutive equivalent shares for fiscal 2017 and fiscal 2016 were 0.8 million and 0.9 million, respectively.

Income from continuing operations was $246.1 million, or $3.98 per diluted share, in fiscal 2016 compared to $128.7 million, or $2.09 per diluted share, in fiscal 2015. The increase was driven by impairment, restructuring and other recoveries during fiscal 2016 as compared to charges during fiscal 2015, and an increase in net sales, gross profit rate and equity in income of unconsolidated affiliates, partially offset by increases in interest expense, costs related to refinancing and SG&A. Diluted average common shares used in the diluted income per common share calculation were 62.0 million in fiscal 2016 compared to 62.2 million in fiscal 2015. The decrease was primarily driven by repurchases of Common Shares, partially offset by the exercise of stock options and the issuance of share-based compensation awards and the payment of contingent consideration in Common Shares in connection with the Vermicrop acquisition. Dilutive equivalent shares for fiscal 2016 and fiscal 2015 were 0.9 million and 1.1 million, respectively.

Income from Discontinued Operations

On August 31, 2017, we completed the divestiture of the International Business. As a result, effective in our fourth quarter of fiscal 2017, we classified our results of operations for all periods presented to reflect the International Business as a discontinued operation and classified the assets and liabilities of the International Business as held for sale. On April 13, 2016, we completed the contribution of the SLS Business to the TruGreen Joint Venture in exchange for a minority equity interest of approximately 30% in the TruGreen Joint Venture. As a result of this transaction, effective in our second quarter of fiscal 2016, we classified our results of operations for all periods presented to reflect the SLS Business as a discontinued operation and classified the assets and liabilities of the SLS Business as held for sale.

We recorded a gain on the sale of the International Business of $32.7 million, partially offset by the provision for income taxes of $12.0 million, during fiscal 2017. During fiscal 2017 and fiscal 2016, we recognized $15.5 million and $2.5 million, respectively, in transaction related costs associated with the sale of the International Business as well as termination benefits and facility closure costs of $(0.4) million and $3.6 million, respectively, within the “Income from discontinued operations, net of tax” line in the Consolidated Statements of Operations.

We recorded a gain on the contribution of the SLS Business of $131.2 million, partially offset by the provision for deferred income taxes of $51.9 million, during fiscal 2016. During fiscal 2017, we recorded an adjustment to reduce the pre-tax gain by $1.0 million related to post-closing working capital adjustments. During fiscal 2017 and fiscal 2016, we recognized $0.8 million and $4.6 million, respectively, in transaction related costs associated with the divestiture of the SLS Business in the “Income from discontinued operations, net of tax” line in the Consolidated Statements of Operations. During fiscal 2016, we recognized a charge of $9.0 million for the resolution of a prior SLS Business litigation matter within the “Income from discontinued operations, net of tax” line in the Consolidated Statements of Operations.

Segment Results

We divide our business into three reportable segments: U.S. Consumer, Hawthorne and Other. U.S. Consumer consists of our consumer lawn and garden business located in the geographic United States. Hawthorne consists of our indoor, urban and hydroponic gardening business. Other consists of our consumer lawn and garden business in geographies other than the U.S. and our product sales to commercial nurseries, greenhouses and other professional customers. Corporate consists of general and administrative expenses and certain other income/expense items not allocated to the business segments. This identification of reportable segments is consistent with how the segments report to and are managed by our chief operating decision maker. These segments differ from those used in prior periods due to the change in our internal organization structure resulting from the divestiture of the International Business, which closed on August 31, 2017.

Segment performance is evaluated based on several factors, including income (loss) from continuing operations before income taxes, amortization, impairment, restructuring and other charges (“Segment Profit (Loss)”), which is a non-GAAP financial measure. Senior management uses this measure of profit (loss) to evaluate segment performance because they believe this measure is indicative of performance trends and the overall earnings potential of each segment.

The following table sets forth net sales by segment:

	Year Ended September 30,		
	2017	2016	2015
	(In millions)		
U.S. Consumer	$ 2,160.5	$ 2,204.4	$ 2,144.8
Hawthorne	287.2	121.2	48.0
Other	194.4	180.6	178.3
Consolidated	$ 2,642.1	$ 2,506.2	$ 2,371.1

The following table sets forth Segment Profit as well as a reconciliation to the most directly comparable GAAP measure:

	Year Ended September 30,		
	2017	2016	2015
	(In millions)		
U.S. Consumer	$ 521.5	$ 493.7	$ 436.1
Hawthorne	35.5	11.8	0.1
Other	13.4	10.4	10.8
Total Segment Profit (Non-GAAP)	570.4	515.9	447.0
Corporate	(109.6)	(98.9)	(102.5)
Intangible asset amortization	(22.5)	(14.9)	(10.5)
Impairment, restructuring and other	(4.9)	33.8	(80.2)
Equity in income (loss) of unconsolidated affiliates [(a)]	(29.0)	19.5	—
Costs related to refinancing	—	(8.8)	—
Interest expense	(76.1)	(62.9)	(48.8)
Other non-operating expense	(13.4)	—	—
Income from continuing operations before income taxes (GAAP)	$ 314.9	$ 383.7	$ 205.0

(a) Included within equity in income (loss) of unconsolidated affiliates for fiscal 2017 are charges of $25.2 million, which represent our share of restructuring and other charges incurred by the TruGreen Joint Venture, including a charge of $7.2 million related to costs associated with TruGreen's August 2017 refinancing. For fiscal 2016, our share of restructuring and other charges incurred by the TruGreen Joint Venture of $11.7 million was included within impairment, restructuring and other above.

U.S. Consumer

U.S. Consumer segment net sales were $2.16 billion in fiscal 2017, a decrease of 2.0% from fiscal 2016 net sales of $2.20 billion. The decrease was driven by the unfavorable impact of volume of 3.3%, partially offset by the favorable impact of pricing of 1.2%. Decreased sales volume for fiscal 2017 was driven by decreased sales of mulch products, partially offset by increased sales of grass seed and Roundup® For Lawns products. Increased pricing for fiscal 2017 was primarily driven by lower volume rebates as a result of year-to-date sales volume decline.

U.S. Consumer Segment Profit increased $27.8 million, or 5.6%, in fiscal 2017 as compared to fiscal 2016. The increase for fiscal 2017 was primarily due to an increase in gross profit rate, higher other income and lower SG&A, partially offset by decreased net sales.

U.S. Consumer segment net sales were $2.20 billion in fiscal 2016, an increase of 2.8% from fiscal 2015 net sales of $2.14 billion. The increase was driven by the favorable impact of volume, pricing and acquisitions of 1.9%, 0.7% and 0.2%, respectively. Increased sales volume in fiscal 2016 was driven by increased sales of growing media and grass seed products, as well as the favorable impact of net sales attributable to the Marketing Agreement Amendment for consumer Roundup®, partially offset by decreased sales of fertilizer products.

U.S. Consumer Segment Profit increased $57.6 million, or 13.2%, in fiscal 2016 as compared to fiscal 2015. The increase was driven by increased sales and improvements in gross profit rate due to lower material costs driven by commodities and lower distribution costs due to savings from lower fuel prices and reduced costs from efficiencies in our growing media business, partially offset by higher SG&A.

Hawthorne

Hawthorne segment net sales were $287.2 million in fiscal 2017, an increase of 137.0% from fiscal 2016 net sales of $121.2 million. The increase was driven by the favorable impacts of acquisitions, volume and changes in foreign exchange rates of 112.4%, 23.2% and 1.5%, respectively.

Hawthorne Segment Profit increased $23.7 million, or 200.8%, in fiscal 2017 as compared to fiscal 2016. The increase for fiscal 2017 was primarily due to an increase in net sales and a decrease in transaction costs related to acquisition activity, partially offset by a decrease in gross profit rate and higher SG&A from acquired businesses.

Hawthorne segment net sales were $121.2 million in fiscal 2016, an increase of 152.5% from fiscal 2015 net sales of $48.0 million. The increase was driven by the favorable impacts of acquisitions and volume of 134.5% and 17.8%, respectively.

Hawthorne Segment Profit increased $11.7 million in fiscal 2016 as compared to fiscal 2015. The increase for fiscal 2016 was primarily due to an increase in net sales, partially offset by a decrease in gross profit rate and higher SG&A from acquired businesses and transaction costs related to acquisition activity.

Other

Other segment net sales were $194.4 million in fiscal 2017, an increase of 7.6% from fiscal 2016 net sales of $180.6 million. The increase was driven by the favorable impact of volume and acquisitions of 4.8% and 4.7%, respectively, partially offset by the unfavorable impact of changes in foreign exchange rates of 2.1%.

Other Segment Profit increased $3.0 million, or 28.8%, in fiscal 2017 as compared to fiscal 2016. The increase was due to an increase in net sales and other income, partially offset by a decrease in gross profit rate and higher SG&A.

Other segment net sales were $180.6 million in fiscal 2016, an increase of 1.3% from fiscal 2015 net sales of $178.3 million. The increase was driven by the favorable impact of volume and acquisitions of 9.5% and 3.7%, respectively, partially offset by the unfavorable impact of changes in foreign exchange rates of 12.1%.

Other Segment Profit decreased $0.4 million, or 3.7%, in fiscal 2016 as compared to fiscal 2015. The decrease was driven by increased SG&A from acquired businesses, transaction costs related to acquisition activity and a decrease in gross profit rate, partially offset by increased sales.

Corporate

Corporate expenses were $109.6 million in fiscal 2017, an increase of 10.8% from fiscal 2016 expenses of $98.9 million. The change was primarily driven by higher share-based compensation expense due to the issuance of equity awards as part of the Project Focus initiative and a decrease in royalty income earned from the TruGreen Joint Venture related to its use of brand names, partially offset by an increase in income on loans receivable and lower variable incentive compensation.

Corporate expenses were $98.9 million in fiscal 2016, a decrease of 3.5% from fiscal 2015 expenses of $102.5 million. The change was primarily due to an increase in income on loans receivable and royalty income earned from the TruGreen Joint Venture related to its use of brand names, partially offset by increased variable incentive compensation.

Liquidity and Capital Resources

Operating Activities

Cash provided by operating activities totaled $354.0 million for fiscal 2017, an increase of $116.6 million as compared to cash provided by operating activities of $237.4 million for fiscal 2016. This increase was driven by a decrease in cash used for working capital resulting from Company-wide efforts to improve inventory management and reduce inventory levels, improved timing of customer receipts and a decrease in accounts receivable from the TruGreen Joint Venture for expenses incurred pursuant to a short-term transition services agreement and an employee leasing agreement, partially offset by insurance reimbursement recoveries during fiscal 2016 related to the Bonus® S consumer complaint matter and lower customer volume rebates due to lower sales volume.

Cash provided by operating activities totaled $237.4 million for fiscal 2016, a decrease of $9.5 million as compared to cash provided by operating activities of $246.9 million for fiscal 2015. The change was driven by an increase in cash used for working capital related to increased inventory, timing of customer receipts as compared to payment of current liabilities and an increase in accounts receivable from the TruGreen Joint Venture of $14.9 million for expenses incurred pursuant to a transition services agreement and an employee leasing agreement, partially offset by insurance reimbursement recoveries of $40.9 million related to the Bonus® S consumer complaint matter.

The seasonal nature of our operations generally requires cash to fund significant increases in inventories during the first half of the fiscal year. Receivables and payables also build substantially in our second quarter of the fiscal year in line with the timing of sales to support our retailers' spring selling season. These balances liquidate during the June through September period as the lawn and garden season unwinds.

Investing Activities

Cash provided by investing activities totaled $22.4 million for fiscal 2017, a change of $156.8 million as compared to cash used in investing activities of $134.4 million for fiscal 2016.

On August 31, 2017, we completed the divestiture of the International Business for cash proceeds at closing of $150.6 million, which is net of seller financing provided by us in the form of a $29.7 million loan. We received distributions of $87.1 million from the TruGreen Joint Venture, partially offset by a $29.4 million investment in an unconsolidated subsidiary whose products support the professional U.S. industrial, turf and ornamental market. These net cash inflows were partially offset by cash used for investments in property, plant and equipment during fiscal 2017 of $69.6 million. Additionally, we completed the acquisitions of Botanicare, Agrolux, the exclusive manufacturer and formulator of branded Botanicare products and three other acquisitions which included aggregate cash payments of $121.7 million. Significant capital projects during fiscal 2017 included investments in our growing media production and packaging facilities, additional capital for supply chain optimization projects, investments in information technology, facility improvement and maintenance, and the rebuild of a plant and related equipment after a fire.

Cash used in investing activities totaled $134.4 million for fiscal 2016, a decrease of $402.0 million as compared to cash used in investing activities of $536.4 million for fiscal 2015. During fiscal 2016 we made an investment in Bonnie in the amount of $72.0 million, made an investment in an unconsolidated subsidiary of $2.0 million, provided a working capital contribution of $24.2 million and an $18.0 million investment in second lien term loan financing to the TruGreen Joint Venture and completed the acquisitions of Gavita and a Canadian growing media operation which included aggregate cash payments of $158.4 million. Cash used for investments in property, plant and equipment during fiscal 2016 was $58.3 million. These cash outflows were partially offset by a distribution of $196.2 million from the TruGreen Joint Venture. Significant capital projects during fiscal 2016 included investments in our growing media production and packaging facilities, additional capital for supply chain optimization projects, investments in information technology and facility improvement and maintenance.

For the three fiscal years ended September 30, 2017, our capital spending was allocated as follows: 67% for expansion and maintenance of existing productive assets; 16% for new productive assets; 8% to expand our information technology and transformation and integration capabilities; and 9% for Corporate assets. We expect fiscal 2018 capital expenditures to be consistent with our recent capital spending amounts and allocations.

Financing Activities

Financing activities used cash of $307.6 million and $122.2 million in fiscal 2017 and fiscal 2016, respectively. The increase in fiscal 2017 was the result of an increase in repurchases of our Common Shares of $115.2 million, an increase in net repayments under our credit facilities of $87.7 million, an increase in payments on seller notes of $25.9 million, and an $8.1 million distribution paid by AeroGrow to its noncontrolling interest holders, partially offset by the issuance of $250.0 million aggregate principal amount of 5.250% Senior Notes during fiscal 2017 as compared to a net issuance of $200.0 million aggregate principal amount of Senior Notes during fiscal 2016 and a decrease in financing and issuance fees paid of $6.8 million.

Financing activities used cash of $122.2 million in fiscal 2016 and provided cash of $278.9 million in fiscal 2015. This change related to financing activities was the result of the repayment of $200.0 million aggregate principal amount of 6.625% Senior Notes, net repayments of $81.3 million under our credit facilities in fiscal 2016 compared to net borrowings of $378.0 million in fiscal 2015, payment of financing and issuance fees of $11.2 million related to our credit agreement and the 6.000% Senior Notes, an increase in repurchases of our Common Shares of $116.0 million and a decrease in cash received from the exercise of stock options of $9.6 million, partially offset by the issuance of $400.0 million aggregate principal amount of 6.000% Senior Notes.

Cash and Cash Equivalents

Our cash and cash equivalents were held in cash depository accounts with major financial institutions around the world or invested in high quality, short-term liquid investments having original maturities of three months or less. The cash and cash equivalents balances, including cash and cash equivalents classified within assets held for sale, of $120.5 million and $50.1 million at September 30, 2017 and 2016, respectively, included $39.3 million and $39.9 million, respectively, held by controlled foreign corporations. Our current plans do not demonstrate a need to, nor do we have plans to, repatriate the retained earnings from these foreign corporations as the earnings are indefinitely reinvested. However, in the future, if we determine it is necessary to repatriate these funds, or we sell or liquidate any of these foreign corporations, we may be required to pay associated taxes on the repatriation, sale or liquidation.

Borrowing Agreements

Our primary sources of liquidity are cash generated by operations and borrowings under our credit facilities, which are guaranteed by substantially all of Scotts Miracle-Gro's domestic subsidiaries. On December 20, 2013, we entered into the third amended and restated credit agreement, providing us with a five-year senior secured revolving loan facility in the aggregate principal amount of up to $1.7 billion (the "former credit facility"). On October 29, 2015, we entered into the fourth amended and restated credit agreement (the "credit agreement"), providing us with five-year senior secured loan facilities in the aggregate principal amount of $1.9 billion, comprised of a revolving credit facility of $1.6 billion and a term loan in the original principal amount of $300.0 million (the "credit facilities"). The credit agreement also provides us with the right to seek additional committed credit under the agreement in an aggregate amount of up to $500.0 million plus an unlimited additional amount, subject to certain specified financial and other conditions. Under the credit agreement, we have the ability to obtain letters of credit up to $100.0 million. Borrowings on the revolving credit facility may be made in various currencies, including U.S. dollars, euro, British pounds, Australian dollars and Canadian dollars.

At September 30, 2017, we had letters of credit outstanding in the aggregate principal amount of $23.5 million, and $1.3 billion of availability under the credit agreement, subject to our continued compliance with the covenants discussed below. The weighted average interest rates on average borrowings under the credit agreement and the former credit facility were 3.9% and 3.5% for fiscal 2017 and fiscal 2016, respectively.

We maintained a Master Accounts Receivable Purchase Agreement (as amended, "MARP Agreement"), which provided for the discretionary sale by us, and the discretionary purchase by the participating banks, on a revolving basis, of accounts receivable generated by sales to three specified debtors in an aggregate amount not to exceed $400.0 million as of September 30, 2016.

The MARP Agreement terminated effective October 14, 2016 in accordance with its terms upon our repayment of its outstanding obligations thereunder using $133.5 million borrowed under the credit agreement. There were $138.6 million in borrowings or receivables pledged as collateral under the MARP Agreement at September 30, 2016. The carrying value of the receivables pledged as collateral was $174.7 million at September 30, 2016.

On April 7, 2017, we entered into a Master Repurchase Agreement (including the annexes thereto, the "Repurchase Agreement") and a Master Framework Agreement (the "Framework Agreement" and, together with the Repurchase Agreement, the "Receivables Facility"). Under the Receivables Facility, we may sell a portfolio of available and eligible outstanding customer accounts receivable to the purchasers and simultaneously agree to repurchase the receivables on a weekly basis. The eligible accounts receivable consist of up to $250.0 million in accounts receivable generated by sales to three specified customers. The Receivables Facility is considered a secured financing with the customer accounts receivable, related contract rights and proceeds thereof (and the collection accounts into which the same are deposited) constituting the collateral therefor. The repurchase price for customer accounts receivable bears interest at LIBOR (with a zero floor) plus 0.90%.

On August 25, 2017, we entered into Amendment No. 1 to Master Framework Agreement (the "Amendment"). The Amendment (i) extends the expiration date of the Receivables Facility from August 25, 2017 to August 24, 2018, (ii) defines the seasonal commitment period of the Receivables Facility as beginning on February 23, 2018 and ending on June 15, 2018, (iii) increases the eligible amount of customer accounts receivable which may be sold from up to $250 million to up to $400 million and (iv) increases the commitment amount of the Receivables Facility during the seasonal commitment period from up to $100 million to up to $160 million. There were $80.0 million in borrowings or receivables pledged as collateral under the Receivables Facility as of September 30, 2017. The carrying value of the receivables pledged as collateral was $88.9 million as of September 30, 2017. As of September 30, 2017, there was $11.1 million of availability under the Receivables Facility.

On December 15, 2016, we issued $250.0 million aggregate principal amount of 5.250% senior notes due 2026 (the "5.250% Senior Notes"). The net proceeds of the offering were used to repay outstanding borrowings under our credit facilities. The 5.250% Senior Notes represent general unsecured senior obligations and rank equal in right of payment with our existing and future unsecured senior debt. The 5.250% Senior Notes have interest payment dates of June 15 and December 15 of each year. The 5.250% Senior Notes may be redeemed, in whole or in part, on or after December 15, 2021 at applicable redemption premiums. The 5.250% Senior Notes contain customary covenants and events of default and mature on December 15, 2026. Substantially all of our domestic subsidiaries serve as guarantors of the 5.250% Senior Notes.

On December 15, 2015, we used a portion of our available credit facility borrowings to redeem all $200.0 million aggregate principal amount of our outstanding 6.625% senior notes due 2020 (the "6.625% Senior Notes") paying a redemption price of $213.2 million, comprised of $6.6 million of accrued and unpaid interest, $6.6 million of call premium and $200.0 million for outstanding principal amount. The $6.6 million call premium charge was recognized within the "Costs related to refinancing" line on the Consolidated Statement of Operations in the first quarter of fiscal 2016. Additionally, we had $2.2 million in unamortized bond discount and issuance costs associated with the 6.625% Senior Notes that were written off and recognized in the "Costs related to refinancing" line on the Consolidated Statement of Operations in the first quarter of fiscal 2016.

On October 13, 2015, we issued $400.0 million aggregate principal amount of 6.000% senior notes due 2023 (the "6.000% Senior Notes"). The net proceeds of the offering were used to repay outstanding borrowings under our former credit facility. The 6.000% Senior Notes represent general unsecured senior obligations and rank equal in right of payment with our existing and future unsecured senior debt. The 6.000% Senior Notes have interest payment dates of April 15 and October 15 of each year. The 6.000% Senior Notes may be redeemed, in whole or in part, on or after October 15, 2018 at applicable redemption premiums. The 6.000% Senior Notes contain customary covenants and events of default and mature on October 15, 2023. Substantially all of our domestic subsidiaries serve as guarantors of the 6.000% Senior Notes.

We were in compliance with all debt covenants as of September 30, 2017. Our credit agreement contains, among other obligations, an affirmative covenant regarding our leverage ratio on the last day of each quarter, calculated as average total indebtedness, divided by the Company's earnings before interest, taxes, depreciation and amortization ("EBITDA"), as adjusted pursuant to the terms of the credit agreement ("Adjusted EBITDA"). The maximum leverage ratio was 4.50 as of September 30, 2017. Our leverage ratio was 3.04 at September 30, 2017. Our credit agreement also includes an affirmative covenant regarding our interest coverage ratio, calculated as Adjusted EBITDA divided by interest expense, as described in the credit agreement, and excludes costs related to refinancings. The minimum interest coverage ratio was 3.00 for the twelve months ended September 30, 2017. Our interest coverage ratio was 7.54 for the twelve months ended September 30, 2017. The credit agreement allows us to make unlimited restricted payments (as defined in the credit agreement), including increased or one-time dividend payments and Common Share repurchases, as long as the leverage ratio resulting from the making of such restricted payments is 4.00 or less. Otherwise we may only make restricted payments in an aggregate amount for each fiscal year not to exceed the amount set forth in the credit agreement for such fiscal year ($200.0 million for fiscal 2018 and each fiscal year thereafter). Please see "ITEM 6. SELECTED FINANCIAL DATA" of this Annual Report on Form 10-K for further details pertaining to the calculations of the foregoing ratios.

We continue to monitor our compliance with the leverage ratio, interest coverage ratio and other covenants contained in the credit agreement and, based upon our current operating assumptions, we expect to remain in compliance with the permissible leverage ratio and interest coverage ratio throughout fiscal 2018. However, an unanticipated shortfall in earnings, an increase in net indebtedness or other factors could materially affect our ability to remain in compliance with the financial or other covenants of our credit agreement, potentially causing us to have to seek an amendment or waiver from our lending group which could result in repricing of our credit facilities. While we believe we have good relationships with our lending group, we can provide no assurance that such a request would result in a modified or replacement credit agreement on reasonable terms, if at all.

At September 30, 2017, we had outstanding interest rate swap agreements with major financial institutions that effectively converted the LIBOR index portion of variable-rate debt denominated in U.S. dollars to a fixed rate. The swap agreements had a total U.S. dollar notional amount of $1,100.0 million at September 30, 2017. Interest payments made between the effective date and expiration date are hedged by the swap agreements, except as noted below.

The notional amount, effective date, expiration date and rate of each of these swap agreements outstanding at September 30, 2017 are shown in the table below:

Notional Amount (in millions)		Effective Date (a)	Expiration Date	Fixed Rate
$ 200		2/7/2014	11/7/2017	1.28%
300	(b)	11/21/2016	6/20/2018	0.83%
200	(b)	11/7/2016	8/7/2018	0.84%
150	(c)	2/7/2017	5/7/2019	2.12%
50	(c)	2/7/2017	5/7/2019	2.25%
200	(d)	12/20/2016	6/20/2019	2.12%

(a) The effective date refers to the date on which interest payments were, or will be, first hedged by the applicable swap agreement.
(b) Notional amount adjusts in accordance with a specified seasonal schedule. This represents the maximum notional amount at any point in time.
(c) Interest payments made during the three-month period of each year that begins with the month and day of the effective date are hedged by the swap agreement.
(d) Interest payments made during the six-month period of each year that begins with the month and day of the effective date are hedged by the swap agreement.

We believe that our cash flows from operations and borrowings under our agreements described herein will be sufficient to meet debt service, capital expenditures and working capital needs for the foreseeable future. However, we cannot ensure that our business will generate sufficient cash flow from operations or that future borrowings will be available under our borrowing agreements in amounts sufficient to pay indebtedness or fund other liquidity needs. Actual results of operations will depend on

numerous factors, many of which are beyond our control as further discussed in “Item 1A. RISK FACTORS — Our indebtedness could limit our flexibility and adversely affect our financial condition” of this Annual Report on Form 10-K.

Judicial and Administrative Proceedings

We are party to various pending judicial and administrative proceedings arising in the ordinary course of business, including, among others, proceedings based on accidents or product liability claims and alleged violations of environmental laws. We have reviewed these pending judicial and administrative proceedings, including the probable outcomes, reasonably anticipated costs and expenses, and the availability and limits of our insurance coverage, and have established what we believe to be appropriate accruals. We believe that our assessment of contingencies is reasonable and that the related accruals, in the aggregate, are adequate; however, there can be no assurance that future quarterly or annual operating results will not be materially affected by these proceedings, whether as a result of adverse outcomes or as a result of significant defense costs.

Contractual Obligations

The following table summarizes our future cash outflows for contractual obligations as of September 30, 2017:

		Payments Due by Period			
Contractual Cash Obligations	**Total**	**Less Than 1 Year**	**1-3 Years**	**3-5 Years**	**More Than 5 Years**
			(In millions)		
Debt obligations	$ 1,409.7	$ 143.1	$ 31.6	$ 529.3	$ 705.7
Interest expense on debt obligations	359.4	69.4	119.1	75.8	95.1
Operating lease obligations	147.5	40.3	64.4	33.0	9.8
Purchase obligations	307.2	157.2	114.9	33.0	2.1
Other, primarily retirement plan obligations	167.1	9.7	23.3	27.5	106.6
Total contractual cash obligations	$ 2,390.9	$ 419.7	$ 353.3	$ 698.6	$ 919.3

We have long-term debt obligations and interest payments due primarily under the 5.250% Senior Notes and 6.000% Senior Notes and our credit facilities. Amounts in the table represent scheduled future maturities of long-term debt principal for the periods indicated.

The interest payments for our credit facilities are based on outstanding borrowings as of September 30, 2017. Actual interest expense will likely be higher due to the seasonality of our business and associated higher average borrowings.

Purchase obligations primarily represent commitments for materials used in our manufacturing processes, as well as commitments for warehouse services, grass seed and outsourced information services which comprise the unconditional purchase obligations disclosed in “NOTE 18. COMMITMENTS” of the Notes to Consolidated Financial Statements included in this Annual Report on Form 10-K.

Other obligations include actuarially determined retiree benefit payments and pension funding to comply with local funding requirements. Pension funding requirements beyond fiscal 2017 are based on preliminary estimates using actuarial assumptions determined as of September 30, 2017. The above table excludes liabilities for unrecognized tax benefits and insurance accruals as we are unable to estimate the timing of payments for these items.

Off-Balance Sheet Arrangements

At September 30, 2017, we have letters of credit in the aggregate face amount of $23.5 million outstanding. Further, we have a residual value guarantee on our corporate aircraft as disclosed in “NOTE 17. OPERATING LEASES” of the Notes to Consolidated Financial Statements included in this Annual Report on Form 10-K.

Regulatory Matters

We are subject to local, state, federal and foreign environmental protection laws and regulations with respect to our business operations and believe we are operating in substantial compliance with, or taking actions aimed at ensuring compliance with, such laws and regulations. We are involved in several legal actions with various governmental agencies related to environmental matters. While it is difficult to quantify the potential financial impact of actions involving these environmental matters, particularly remediation costs at waste disposal sites and future capital expenditures for environmental control equipment, in the opinion of management, the ultimate liability arising from such environmental matters, taking into account established accruals, should not have a material effect on our financial condition, results of operations or cash flows. However, there can be no assurance that the resolution of these matters will not materially affect our future quarterly or annual results of operations, financial condition or cash flows. Additional information on environmental matters affecting us is provided in "ITEM 1. BUSINESS — Regulatory Considerations" and "ITEM 3. LEGAL PROCEEDINGS" of this Annual Report on Form 10-K.

Critical Accounting Policies and Estimates

Our discussion and analysis of financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with GAAP. Certain accounting policies are particularly significant, including those related to revenue recognition, goodwill and intangibles, certain associate benefits and income taxes. We believe these accounting policies, and others set forth in "NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES" of the Notes to Consolidated Financial Statements included in this Annual Report on Form 10-K, should be reviewed as they are integral to understanding our results of operations and financial position. Our critical accounting policies are reviewed periodically with the Audit Committee of the Board of Directors of Scotts Miracle-Gro.

The preparation of financial statements requires management to use judgment and make estimates that affect the reported amounts of assets, liabilities, revenues and expenses and related disclosures of contingent assets and liabilities. On an ongoing basis, we evaluate our estimates, including those related to customer programs and incentives, product returns, bad debts, inventories, intangible assets, income taxes, restructuring, environmental matters, contingencies and litigation. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Although actual results historically have not deviated significantly from those determined using our estimates, our results of operations or financial condition could differ, perhaps materially, from these estimates under different assumptions or conditions.

Revenue Recognition and Promotional Allowances

Most of our revenue is derived from the sale of inventory, and we recognize revenue when title and risk of loss transfer, generally when products are received by the customer. Provisions for payment discounts, product returns and allowances are recorded as a reduction of sales at the time revenue is recognized based on historical trends and adjusted periodically as circumstances warrant. Similarly, accruals for uncollectible receivables due from customers are established based on management's judgment as to the ultimate collectability of these balances. We offer sales incentives through various programs, consisting principally of volume rebates, cooperative advertising, consumer coupons and other trade programs. The cost of these programs is recorded as a reduction of sales. The recognition of revenues, receivables and trade programs requires the use of estimates. While we believe these estimates to be reasonable based on the then current facts and circumstances, there can be no assurance that actual amounts realized will not differ materially from estimated amounts recorded.

Income Taxes

Our annual effective tax rate is established based on our pre-tax income (loss), statutory tax rates and the tax impacts of items treated differently for tax purposes than for financial reporting purposes. We record income tax liabilities utilizing known obligations and estimates of potential obligations. A deferred tax asset or liability is recognized whenever there are future tax effects from existing temporary differences and operating loss and tax credit carryforwards. Valuation allowances are used to reduce deferred tax assets to the balances that are more likely than not to be realized. We must make estimates and judgments on future taxable income, considering feasible tax planning strategies and taking into account existing facts and circumstances, to determine the proper valuation allowances. When we determine that deferred tax assets could be realized in greater or lesser amounts than recorded, the asset balance and Consolidated Statements of Operations reflect the change in the period such determination is made. Due to changes in facts and circumstances and the estimates and judgments that are involved in determining the proper valuation allowances, differences between actual future events and prior estimates and judgments could result in adjustments to these valuation allowances. We use an estimate of our annual effective tax rate at each interim period based on the facts and circumstances available at that time, while the actual effective tax rate is calculated at year-end.

Inventories

Inventories are stated at the lower of cost or market, principally determined by the first-in, first-out method of accounting. Inventories include the cost of raw materials, labor, manufacturing overhead and freight and in-bound handling costs incurred to pre-position goods in our warehouse network. Adjustments to net realizable value for excess and obsolete inventory are based on a variety of factors, including product changes and improvements, changes in active ingredient availability and regulatory acceptance, new product introductions and estimated future demand. The adequacy of our adjustments could be materially affected by changes in the demand for our products or regulatory actions.

Long-lived Assets, including Property, Plant and Equipment

Property, plant and equipment are stated at cost. Depreciation of property, plant and equipment is provided on the straight-line method and is based on the estimated useful economic lives of the assets. Intangible assets with finite lives, and therefore subject to amortization, include technology (e.g., patents), customer relationships and certain tradenames. These intangible assets are being amortized over their estimated useful economic lives typically ranging from 3 to 25 years. We review long-lived assets whenever circumstances change such that the recorded value of an asset may not be recoverable and therefore impaired.

Goodwill and Indefinite-lived Intangible Assets

We have significant investments in intangible assets and goodwill. Our annual goodwill and indefinite-lived intangible asset testing is performed as of the first day of our fiscal fourth quarter or more frequently if circumstances indicate potential impairment. In our evaluation of goodwill and indefinite-lived intangible assets impairment, we perform either an initial qualitative or quantitative evaluation for each of our reporting units and indefinite-lived intangible assets. Factors considered in the qualitative test include operating results as well as new events and circumstances impacting the operations or cash flows of the reporting unit and indefinite-lived intangible assets. For the quantitative test, the review for impairment of goodwill and indefinite-lived intangible assets is primarily based on our estimates of discounted future cash flows, which are based upon annual budgets and longer-range strategic plans. These budgets and plans are used for internal purposes and are also the basis for communication with outside parties about future business trends. While we believe the assumptions we use to estimate future cash flows are reasonable, there can be no assurance that the expected future cash flows will be realized. As a result, impairment charges that possibly would have been recognized in earlier periods may not be recognized until later periods if actual results deviate unfavorably from earlier estimates. An asset's value is deemed impaired if the discounted cash flows or earnings projections generated do not substantiate the carrying value of the asset. The estimation of such amounts requires management to exercise judgment with respect to revenue and expense growth rates, changes in working capital, future capital expenditure requirements and selection of an appropriate discount rate, as applicable. The use of different assumptions would increase or decrease discounted future operating cash flows or earnings projections and could, therefore, change impairment determinations.

Fair value estimates employed in our annual impairment review of indefinite-lived intangible assets and goodwill were determined using discounted cash flow models involving several assumptions. Changes in our assumptions could materially impact our fair value estimates. Assumptions critical to our fair value estimates were: (i) discount rates used in determining the fair value of the reporting units and intangible assets; (ii) royalty rates used in our intangible asset valuations; (iii) projected revenue and operating profit growth rates used in the reporting unit and intangible asset models; and (iv) projected long-term growth rates used in the derivation of terminal year values. These and other assumptions are impacted by economic conditions and expectations of management and may change in the future based on period specific facts and circumstances.

At September 30, 2017, goodwill totaled $441.6 million, with $228.1 million, $202.3 million and $11.2 million of goodwill for the U.S. Consumer, Hawthorne and Other segments, respectively. No goodwill impairment was recognized as a result of the annual evaluation performed as of July 2, 2017. The estimated fair value of each reporting unit with a significant goodwill balance was substantially in excess of its carrying value as of the annual test date. If we were to alter our impairment testing by increasing the discount rate in the discounted cash flow analysis by 100 basis points, there still would not be any impairment indicated for any reporting units. At September 30, 2017, indefinite-lived intangible assets consisted of tradenames of $168.2 million, as well as the Marketing Agreement Amendment of $155.7 million and the Brand Extension Agreement of $111.7 million which were both acquired during fiscal 2015. With the exception of the Ortho® tradename, each of the tradenames had an estimated fair value substantially in excess of its carrying value as of the annual test date. The fair value of the Ortho® tradename was calculated based upon the evaluation of historical performance and future growth expectations. As a result of the annual impairment review in the fourth quarter of fiscal 2017, we concluded that the fair value of the Ortho® tradename exceeded the carrying value of the intangible asset and no impairment was necessary. If we were to increase the discount rate in the Ortho® brand fair value calculation by 100 basis points, the impairment charge for a non-recurring fair value adjustment would have been $10.2 million.

Associate Benefits

We sponsor various post-employment benefit plans, including pension plans, both defined contribution plans and defined benefit plans, and other post-employment benefit ("OPEB") plans, consisting primarily of health care for retirees. For accounting purposes, the defined benefit pension and OPEB plans are dependent on a variety of assumptions to estimate the projected and accumulated benefit obligations and annual expense determined by actuarial valuations. These assumptions include the following: discount rate; expected salary increases; certain employee-related factors, such as turnover, retirement age and mortality; expected return on plan assets; and health care cost trend rates.

Assumptions are reviewed annually for appropriateness and updated as necessary. We base the discount rate assumption on investment yields available at fiscal year-end on high-quality corporate bonds that could be purchased to effectively settle the pension liabilities. The salary growth assumption reflects our long-term actual experience, the near-term outlook and assumed inflation. The expected return on plan assets assumption reflects asset allocation, investment strategy and the views of investment managers regarding the market. Retirement and mortality rates are based primarily on actual and expected plan experience. The effects of actual results that differ from our assumptions are accumulated and amortized over future periods.

Changes in the discount rate and investment returns can have a significant effect on the funded status of our pension plans and shareholders' equity. We cannot predict discount rates or investment returns with certainty and, therefore, cannot determine whether adjustments to our shareholders' equity for pension-related activity in subsequent years will be significant. We also cannot predict future investment returns, and therefore cannot determine whether future pension plan funding requirements could materially affect our financial condition, results of operations or cash flows. A 100 basis point change in the discount rate would have an immaterial effect on fiscal 2018 pension expense. A 100 basis point change in the discount rate would have a $52.0 million change in our projected benefit obligations as of September 30, 2017.

Insurance and Self-Insurance

We maintain insurance for certain risks, including workers' compensation, general liability and vehicle liability, and are self-insured for employee-related health care benefits up to a specified level for individual claims. We establish accruals for losses based on our claims experience and industry actuarial estimates of the ultimate loss amount inherent in the claims, including losses for claims incurred but not reported. Our estimate of self-insured liabilities is subject to change as new events or circumstances develop which might materially impact the ultimate cost to settle these losses.

Derivative Instruments

In the normal course of business, we are exposed to fluctuations in interest rates, the value of foreign currencies and the cost of commodities. A variety of financial instruments, including forward and swap contracts, are used to manage these exposures. Our objective in managing these exposures is to better control these elements of cost and mitigate the earnings and cash flow volatility associated with changes in the applicable rates and prices. We have established policies and procedures that encompass risk-management philosophy and objectives, guidelines for derivative-instrument usage, counterparty credit approval, and the monitoring and reporting of derivative activity. We do not enter into derivative instruments for the purpose of speculation.

Contingencies

As described more fully in "NOTE 19. CONTINGENCIES" of the Notes to Consolidated Financial Statements included in this Annual Report on Form 10-K, we are involved in environmental and legal proceedings which have a high degree of uncertainty associated with them. We continually assess the likely outcome of these proceedings and the adequacy of accruals, if any, provided for their resolution. There can be no assurance that the ultimate outcomes of these proceedings will not differ materially from our current assessment of them, nor that all proceedings that may currently be brought against us are known by us at this time.

Other Significant Accounting Policies

Other significant accounting policies, primarily those with lower levels of uncertainty than those discussed above, are also critical to understanding the consolidated financial statements. The Notes to Consolidated Financial Statements included in this Annual Report on Form 10-K contain additional information related to our accounting policies, including recent accounting pronouncements, and should be read in conjunction with this discussion.

ITEM 7A. *QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK*

As part of our ongoing business, we are exposed to certain market risks, including fluctuations in interest rates, foreign currency exchange rates and commodity prices. Financial derivative and other instruments are used to manage these risks. These instruments are not used for speculative purposes.

Interest Rate Risk

We had variable rate debt instruments outstanding at September 30, 2017 and 2016 that are impacted by changes in interest rates. As a means of managing our interest rate risk on these debt instruments, we entered into interest rate swap agreements with major financial institutions to effectively fix the LIBOR index on certain variable-rate debt obligations.

At September 30, 2017 and 2016, we had outstanding interest rate swap agreements with a total U.S. dollar equivalent notional value of $1,100.0 million and $650.0 million, respectively. The weighted average fixed rate of swap agreements outstanding at September 30, 2017 was 1.6%.

The following table summarizes information about our derivative financial instruments and debt instruments that are sensitive to changes in interest rates as of September 30, 2017 and 2016. For debt instruments, the table presents principal cash flows and related weighted-average interest rates by expected maturity dates. For interest rate swap agreements, the table presents expected cash flows based on notional amounts and weighted-average interest rates by contractual maturity dates. Weighted-average variable rates are based on rates in effect at September 30, 2017 and 2016. A change in our variable interest rate of 100 basis points for a full twelve-month period would have a $2.5 million impact on interest expense assuming approximately $250 million of our average fiscal 2017 variable-rate debt had not been hedged via an interest rate swap agreement. The information is presented in U.S. dollars (in millions):

	Expected Maturity Date							
2017	2018	2019	2020	2021	2022	After	Total	Fair Value
Long-term debt:								
Fixed rate debt	$ —	$ —	$ —	$ 273.8	$ —	$ 650.0	$ 923.8	$ 965.2
Average rate	—	—	—	3.3%	—	5.7%	5.0%	—
Variable rate debt	$ 80.0	$ —	$ —	$ 300.5	$ —	$ —	$ 380.5	$ 380.5
Average rate	2.1%	—	—	2.9%	—	—	2.8%	—
Interest rate derivatives:								
Interest rate swaps	$ 1.3	$ (1.2)	$ —	$ —	$ —	$ —	$ 0.1	$ 0.1
Average rate	0.9%	2.1%	—	—	—	—	1.6%	—

	Expected Maturity Date							
2016	2017	2018	2019	2020	2021	After	Total	Fair Value
Long-term debt:								
Fixed rate debt	$ —	$ —	$ —	$ —	$ 288.8	$ 400.0	$ 688.8	$ 715.8
Average rate	—	—	—	—	2.6%	6.0%	4.6%	—
Variable rate debt	$ 138.6	$ —	$ —	$ —	$ 323.2	$ —	$ 461.8	$ 461.8
Average rate	1.4%	—	—	—	2.2%	—	2.0%	—
Interest rate derivatives:								
Interest rate swaps	$ (0.8)	$ (0.9)	$ (4.8)	$ —	$ —	$ —	$ (6.5)	$ (6.5)
Average rate	3.0%	1.3%	2.1%	—	—	—	1.9%	—

Excluded from the information provided above are $105.4 million and $71.3 million at September 30, 2017 and 2016, respectively, of miscellaneous debt instruments.

Other Market Risks

Through fiscal 2017, we had transactions that were denominated in currencies other than the currency of the country of origin. We use currency forward contracts to manage the exchange rate risk associated with intercompany loans and certain other

balances denominated in foreign currencies. At September 30, 2017, the notional amount of outstanding currency forward contracts was $268.3 million with a fair value of $1.8 million. At September 30, 2016, the notional amount of outstanding currency forward contracts was $165.8 million with a negative fair value of $0.4 million. The outstanding contracts will mature over the next fiscal quarter.

We are subject to market risk from fluctuating prices of certain raw materials, including urea and other fertilizer inputs, resins, diesel, gasoline, natural gas, sphagnum peat, bark and grass seed. Our objectives surrounding the procurement of these materials are to ensure continuous supply and to control costs. We seek to achieve these objectives through negotiation of contracts with favorable terms directly with vendors. In addition, we use derivatives to partially mitigate the effect of fluctuating diesel and gasoline costs on our businesses. We had outstanding derivative contracts for 6,972,000 and 8,106,000 gallons of fuel at September 30, 2017 and 2016, respectively. The outstanding derivative contracts had a positive fair value of $0.6 million at September 30, 2017, compared to a negative fair value of $0.1 million at September 30, 2016. We also enter into hedging arrangements designed to fix the price of a portion of our projected future urea requirements of our business. We had outstanding derivative contracts for 76,500 and 40,500 aggregate tons of urea at September 30, 2017 and 2016, respectively. The outstanding derivative contracts had a positive fair value of $3.2 million at September 30, 2017, compared to a negative fair value of $0.3 million at September 30, 2016.

ITEM 8. *FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA*

The financial statements and other information required by this Item are contained in the Consolidated Financial Statements, Notes to Consolidated Financial Statements and Schedules Supporting the Consolidated Financial Statements listed in the "Index to Consolidated Financial Statements and Financial Statement Schedules" on page 55 of this Annual Report on Form 10-K.

ITEM 9. *CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE*

None.

ITEM 9A. *CONTROLS AND PROCEDURES*

Evaluation of Disclosure Controls and Procedures

With the participation of the principal executive officer and the principal financial officer of The Scotts Miracle-Gro Company (the "Registrant"), the Registrant's management has evaluated the effectiveness of the Registrant's disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934), as of the end of the fiscal year covered by this Annual Report on Form 10-K. Based upon that evaluation, the Registrant's principal executive officer and principal financial officer have concluded that the Registrant's disclosure controls and procedures were effective as of the end of the fiscal year covered by this Annual Report on Form 10-K.

Management's Annual Report on Internal Control Over Financial Reporting

The "Annual Report of Management on Internal Control Over Financial Reporting" required by Item 308(a) of SEC Regulation S-K is included on page 56 of this Annual Report on Form 10-K.

Attestation Report of Independent Registered Public Accounting Firm

The "Report of Independent Registered Public Accounting Firm" required by Item 308(b) of SEC Regulation S-K is included on page 57 of this Annual Report on Form 10-K.

Changes in Internal Control Over Financial Reporting

No changes in the Registrant's internal control over financial reporting (as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934) occurred during the Registrant's fiscal quarter ended September 30, 2017, that have materially affected, or are reasonably likely to materially affect, the Registrant's internal control over financial reporting.

ITEM 9B. *OTHER INFORMATION*

None.

PART III

ITEM 10. *DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE*

Directors, Executive Officers and Persons Nominated or Chosen to Become Directors or Executive Officers

The information required by Item 401 of SEC Regulation S-K concerning the directors of Scotts Miracle-Gro and the nominees for election or re-election as directors of Scotts Miracle-Gro at the Annual Meeting of Shareholders to be held on January 26, 2018 (the "2018 Annual Meeting") is incorporated herein by reference from the disclosure which will be included under the caption "PROPOSAL NUMBER 1 — ELECTION OF DIRECTORS" in Scotts Miracle-Gro's definitive Proxy Statement relating to the 2018 Annual Meeting ("Scotts Miracle-Gro's Definitive Proxy Statement"), which will be filed pursuant to SEC Regulation 14A not later than 120 days after the end of Scotts Miracle-Gro's fiscal year ended September 30, 2017.

The information required by Item 401 of SEC Regulation S-K concerning the executive officers of Scotts Miracle-Gro is incorporated herein by reference from the disclosure included under the caption "SUPPLEMENTAL ITEM. EXECUTIVE OFFICERS OF THE REGISTRANT" in Part I of this Annual Report on Form 10-K.

Compliance with Section 16(a) of the Securities Exchange Act of 1934

The information required by Item 405 of SEC Regulation S-K is incorporated herein by reference from the disclosure which will be included under the caption "SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE" in Scotts Miracle-Gro's Definitive Proxy Statement.

Procedures for Recommending Director Nominees

Information concerning the procedures by which shareholders of Scotts Miracle-Gro may recommend nominees to Scotts Miracle-Gro's Board of Directors is incorporated herein by reference from the disclosures which will be included under the captions "CORPORATE GOVERNANCE — Nominations of Directors" and "MEETINGS AND COMMITTEES OF THE BOARD — Committees of the Board — Nominating and Governance Committee" in Scotts Miracle-Gro's Definitive Proxy Statement. These procedures have not materially changed from those described in Scotts Miracle-Gro's definitive Proxy Statement for the 2017 Annual Meeting of Shareholders held on January 27, 2017.

Audit Committee

The information required by Items 407(d)(4) and 407(d)(5) of SEC Regulation S-K is incorporated herein by reference from the disclosure which will be included under the caption "MEETINGS AND COMMITTEES OF THE BOARD — Committees of the Board" in Scotts Miracle-Gro's Definitive Proxy Statement.

Committee Charters; Code of Business Conduct & Ethics; Corporate Governance Guidelines

The Board of Directors of Scotts Miracle-Gro has adopted charters for each of the Audit Committee, the Nominating and Governance Committee, the Compensation and Organization Committee, the Innovation and Technology Committee and the Finance Committee, as well as Corporate Governance Guidelines, as contemplated by the applicable sections of the New York Stock Exchange Listed Company Manual.

In accordance with the requirements of Section 303A.10 of the New York Stock Exchange Listed Company Manual and Item 406 of SEC Regulation S-K, the Board of Directors of Scotts Miracle-Gro has adopted a Code of Business Conduct & Ethics covering the members of Scotts Miracle-Gro's Board of Directors and associates (employees) of Scotts Miracle-Gro and its subsidiaries, including, without limitation, Scotts Miracle-Gro's principal executive officer, principal financial officer and principal accounting officer. Scotts Miracle-Gro intends to disclose the following events, if they occur, on its Internet website located at http://investor.scotts.com within four business days following their occurrence: (A) the date and nature of any amendment to a provision of Scotts Miracle-Gro's Code of Business Conduct & Ethics that (i) applies to Scotts Miracle-Gro's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, (ii) relates to any element of the code of ethics definition enumerated in Item 406(b) of SEC Regulation S-K, and (iii) is not a technical, administrative or other non-substantive amendment; and (B) a description of any waiver (including the nature of the waiver, the name of the person to whom the waiver was granted and the date of the waiver), including an implicit waiver, from a provision of the Code of Business Conduct & Ethics granted to Scotts Miracle-Gro's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, that relates to one or more of the elements of the code of ethics definition enumerated in Item 406(b) of SEC Regulation S-K. In addition, Scotts Miracle-Gro will disclose any waivers from the provisions of the Code of Business Conduct & Ethics granted to an executive officer or a director of Scotts

Miracle-Gro on Scotts Miracle-Gro's Internet website located at http://investor.scotts.com within four business days of the determination to grant any such waiver.

The text of Scotts Miracle-Gro's Code of Business Conduct & Ethics, Scotts Miracle-Gro's Corporate Governance Guidelines, the Audit Committee charter, the Nominating and Governance Committee charter, the Compensation and Organization Committee charter, the Innovation and Technology Committee charter and the Finance Committee charter are posted under the "Corporate Governance" link on Scotts Miracle-Gro's Internet website located at http://investor.scotts.com. Interested persons and shareholders of Scotts Miracle-Gro may also obtain copies of each of these documents without charge by writing to The Scotts Miracle-Gro Company, Attention: Corporate Secretary, 14111 Scottslawn Road, Marysville, Ohio 43041.

ITEM 11. *EXECUTIVE COMPENSATION*

The information required by Item 402 of SEC Regulation S-K is incorporated herein by reference from the disclosures which will be included under the captions "EXECUTIVE COMPENSATION," "NON-EMPLOYEE DIRECTOR COMPENSATION," "EXECUTIVE COMPENSATION TABLES," "SEVERANCE AND CHANGE IN CONTROL (CIC) ARRANGEMENTS," and "PAYMENTS ON TERMINATION OF EMPLOYMENT AND/OR CHANGE IN CONTROL" in Scotts Miracle-Gro's Definitive Proxy Statement.

The information required by Item 407(e)(4) of SEC Regulation S-K is incorporated herein by reference from the disclosure which will be included under the caption "MEETINGS AND COMMITTEES OF THE BOARD — Compensation and Organization Committee Interlocks and Insider Participation" in Scotts Miracle-Gro's Definitive Proxy Statement.

The information required by Item 407(e)(5) of SEC Regulation S-K is incorporated herein by reference from the disclosure which will be included under the caption "COMPENSATION COMMITTEE REPORT" in Scotts Miracle-Gro's Definitive Proxy Statement.

ITEM 12. *SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS*

Ownership of Common Shares of Scotts Miracle-Gro

The information required by Item 403 of SEC Regulation S-K is incorporated herein by reference from the disclosure which will be included under the caption "SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT" in Scotts Miracle-Gro's Definitive Proxy Statement.

Equity Compensation Plan Information

The information required by Item 201(d) of SEC Regulation S-K is incorporated herein by reference from the disclosure which will be included under the caption "EQUITY COMPENSATION PLAN INFORMATION" in Scotts Miracle-Gro's Definitive Proxy Statement.

ITEM 13. *CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE*

Certain Relationships and Related Person Transactions

The information required by Item 404 of SEC Regulation S-K is incorporated herein by reference from the disclosures which will be included under the caption "CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS" in Scotts Miracle-Gro's Definitive Proxy Statement.

Director Independence

The information required by Item 407(a) of SEC Regulation S-K is incorporated herein by reference from the disclosures which will be included under the captions "CORPORATE GOVERNANCE — Director Independence" and "MEETINGS AND COMMITTEES OF THE BOARD" in Scotts Miracle-Gro's Definitive Proxy Statement.

ITEM 14. *PRINCIPAL ACCOUNTING FEES AND SERVICES*

The information required by this Item 14 is incorporated herein by reference from the disclosures which will be included under the captions "AUDIT COMMITTEE MATTERS — Fees of the Independent Registered Public Accounting Firm" and "AUDIT COMMITTEE MATTERS — Pre-Approval of Services Performed by the Independent Registered Public Accounting Firm" in Scotts Miracle-Gro's Definitive Proxy Statement.

PART IV

ITEM 15. ***EXHIBITS, FINANCIAL STATEMENT SCHEDULES***

(a) *LIST OF DOCUMENTS FILED AS PART OF THIS REPORT*

1 and 2. Financial Statements and Financial Statement Schedules:

The response to this portion of Item 15 is submitted as a separate section of this Annual Report on Form 10-K. Reference is made to the "Index to Consolidated Financial Statements and Financial Statement Schedules" on page 55 of this Annual Report on Form 10-K.

(b) *EXHIBITS*

The exhibits listed on the "Index to Exhibits" beginning on page 129 of this Annual Report on Form 10-K are filed or furnished with this Annual Report on Form 10-K or incorporated herein by reference as noted in the "Index to Exhibits."

(c) *FINANCIAL STATEMENT SCHEDULES*

The financial statement schedule filed with this Annual Report on Form 10-K is submitted in a separate section hereof. For a description of such financial statement schedules, see "Index to Consolidated Financial Statements and Financial Statement Schedules" on page 55 of this Annual Report on Form 10-K.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

THE SCOTTS MIRACLE-GRO COMPANY

By: /s/ JAMES HAGEDORN
James Hagedorn, Chief Executive Officer and Chairman of the Board

Dated: November 28, 2017

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ THOMAS RANDAL COLEMAN Thomas Randal Coleman	Chief Financial Officer and Executive Vice President (Principal Financial Officer and Principal Accounting Officer)	November 28, 2017
/s/ JAMES HAGEDORN James Hagedorn	Chief Executive Officer, Chairman of the Board and Director (Principal Executive Officer)	November 28, 2017
/s/ BRIAN D. FINN* Brian D. Finn	Director	November 28, 2017
/s/ ADAM HANFT* Adam Hanft	Director	November 28, 2017
/s/ MICHELLE A. JOHNSON* Michelle A. Johnson	Director	November 28, 2017
/s/ STEPHEN L. JOHNSON* Stephen L. Johnson	Director	November 28, 2017
/s/ THOMAS N. KELLY JR.* Thomas N. Kelly Jr.	Director	November 28, 2017
/s/ KATHERINE HAGEDORN LITTLEFIELD* Katherine Hagedorn Littlefield	Director	November 28, 2017

Signature	Title	Date
/s/ JAMES F. MCCANN* James F. McCann	Director	November 28, 2017
/s/ NANCY G. MISTRETTA* Nancy G. Mistretta	Director	November 28, 2017
/s/ PETER E. SHUMLIN* Peter E. Shumlin	Director	November 28, 2017
/s/ JOHN R. VINES* John R. Vines	Director	November 28, 2017

* The undersigned, by signing his name hereto, does hereby sign this Report on behalf of each of the directors of the Registrant identified above pursuant to Powers of Attorney executed by the directors identified above, which Powers of Attorney are filed with this Report as exhibits.

By: /s/ THOMAS RANDAL COLEMAN
Thomas Randal Coleman, Attorney-in-Fact

THE SCOTTS MIRACLE-GRO COMPANY
INDEX TO CONSOLIDATED FINANCIAL STATEMENTS
AND FINANCIAL STATEMENT SCHEDULES

All other financial statement schedules for which provision is made in the applicable accounting regulations of the Securities and Exchange Commission are omitted because they are not required or are not applicable, or the required information has been presented in the Consolidated Financial Statements or Notes thereto.

ANNUAL REPORT OF MANAGEMENT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

Management is responsible for establishing and maintaining adequate internal control over financial reporting to provide reasonable assurance regarding the reliability of our financial reporting and the preparation of financial statements for external purposes in accordance with accounting principles generally accepted in the United States of America. Internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of The Scotts Miracle-Gro Company and our consolidated subsidiaries; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with accounting principles generally accepted in the United States of America, and that receipts and expenditures of The Scotts Miracle-Gro Company and our consolidated subsidiaries are being made only in accordance with authorizations of management and directors of The Scotts Miracle-Gro Company and our consolidated subsidiaries, as appropriate; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of The Scotts Miracle-Gro Company and our consolidated subsidiaries that could have a material effect on our consolidated financial statements.

Management, with the participation of our principal executive officer and principal financial officer, assessed the effectiveness of our internal control over financial reporting as of September 30, 2017, the end of our fiscal year. Management based its assessment on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Management's assessment included evaluation of such elements as the design and operating effectiveness of key financial reporting controls, process documentation, accounting policies and our overall control environment. This assessment is supported by testing and monitoring performed under the direction of management. As allowed by the SEC guidance, management excluded from the assessment the internal control over financial reporting at American Agritech, L.L.C., Natural Science, Inc. and Agrolux Holding B.V. and its subsidiaries, which were acquired in fiscal 2017. These acquisitions constituted 6.8% of total assets, 2.3% and 3.1% of revenues and net income, respectively, included in our consolidated financial statements as of and for the fiscal year ended September 30, 2017.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluations of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. Accordingly, even an effective system of internal control over financial reporting will provide only reasonable assurance with respect to financial statement preparation.

Based on our assessment, management has concluded that our internal control over financial reporting was effective as of September 30, 2017, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with accounting principles generally accepted in the United States of America. We reviewed the results of management's assessment with the Audit Committee of the Board of Directors of The Scotts Miracle-Gro Company.

Our independent registered public accounting firm, Deloitte & Touche LLP, independently audited our internal control over financial reporting as of September 30, 2017 and has issued their attestation report which appears herein.

/s/ JAMES HAGEDORN	/s/ THOMAS RANDAL COLEMAN
James Hagedorn	Thomas Randal Coleman
Chief Executive Officer and Chairman of the Board	Executive Vice President and Chief Financial Officer
Dated: November 28, 2017	Dated: November 28, 2017

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of
The Scotts Miracle-Gro Company
Marysville, Ohio

We have audited the accompanying consolidated balance sheets of The Scotts Miracle-Gro Company and subsidiaries (the "Company") as of September 30, 2017 and 2016, and the related consolidated statements of operations, comprehensive income, shareholders' equity, and cash flows for each of the three years in the period ended September 30, 2017. Our audits also included the financial statement schedules listed in the Index at Item 15. These financial statements and financial statement schedules are the responsibility of the Company's management. Our responsibility is to express an opinion on the financial statements and financial statement schedules based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of the Company at September 30, 2017 and 2016, and the results of their operations and their cash flows for each of the three years in the period ended September 30, 2017, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, such financial statement schedules, when considered in relation to the basic consolidated financial statements taken as a whole, present fairly, in all material respects, the information set forth therein.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of September 30, 2017, based on the criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated November 28, 2017 expressed an unqualified opinion on the Company's internal control over financial reporting.

/s/ DELOITTE & TOUCHE LLP

Columbus, Ohio
November 28, 2017

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of
The Scotts Miracle-Gro Company
Marysville, Ohio

We have audited the internal control over financial reporting of The Scotts Miracle-Gro Company and subsidiaries (the "Company") as of September 30, 2017, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. As described in Annual Report of Management on Internal Control Over Financial Reporting, management excluded from its assessment the internal control over financial reporting at American Agritech, L.L.C., Natural Science, Inc. and Agrolux Holding B.V. and its subsidiaries which were acquired in fiscal 2017. These acquisitions constituted 6.8% of total assets, 2.3% and 3.1% of revenues and net income, respectively, included in the consolidated financial statements as of and for the fiscal year ended September 30, 2017. Accordingly, our audit did not include the internal control over financial reporting at American Agritech, L.L.C., Natural Science, Inc. and Agrolux Holding B.V. and its subsidiaries. The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Annual Report of Management on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed by, or under the supervision of, the company's principal executive and principal financial officers, or persons performing similar functions, and effected by the company's board of directors, management, and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis. Also, projections of any evaluation of the effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of September 30, 2017, based on the criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements and financial statement schedules as of and for the year ended September 30, 2017 of the Company and our report dated November 28, 2017 expressed an unqualified opinion on those financial statements and financial statement schedules.

/s/ DELOITTE & TOUCHE LLP

Columbus, Ohio
November 28, 2017

THE SCOTTS MIRACLE-GRO COMPANY

Consolidated Statements of Operations
(In millions, except per share data)

	Year Ended September 30,		
	2017	**2016**	**2015**
Net sales	$ 2,642.1	$ 2,506.2	$ 2,371.1
Cost of sales	1,669.5	1,600.0	1,557.3
Cost of sales—impairment, restructuring and other	—	5.9	3.0
Gross profit	972.6	900.3	810.8
Operating expenses:			
Selling, general and administrative	550.9	518.0	488.8
Impairment, restructuring and other	4.9	(51.5)	70.4
Other income, net	(16.6)	(13.8)	(2.2)
Income from operations	433.4	447.6	253.8
Equity in (income) loss of unconsolidated affiliates	29.0	(7.8)	—
Costs related to refinancing	—	8.8	—
Interest expense	76.1	62.9	48.8
Other non-operating expense	13.4	—	—
Income from continuing operations before income taxes	314.9	383.7	205.0
Income tax expense from continuing operations	116.6	137.6	76.3
Income from continuing operations	198.3	246.1	128.7
Income from discontinued operations, net of tax	20.5	68.7	30.0
Net income	$ 218.8	$ 314.8	$ 158.7
Net (income) loss attributable to noncontrolling interest	(0.5)	0.5	1.1
Net income attributable to controlling interest	$ 218.3	$ 315.3	$ 159.8
Basic income per common share:			
Income from continuing operations	$ 3.33	$ 4.04	$ 2.12
Income from discontinued operations	0.35	1.12	0.50
Basic net income per common share	$ 3.68	$ 5.16	$ 2.62
Diluted income per common share:			
Income from continuing operations	$ 3.29	$ 3.98	$ 2.09
Income from discontinued operations	0.34	1.11	0.48
Diluted net income per common share	$ 3.63	$ 5.09	$ 2.57

See Notes to Consolidated Financial Statements.

THE SCOTTS MIRACLE-GRO COMPANY

Consolidated Statements of Comprehensive Income (Loss)
(In millions)

	Year Ended September 30,		
	2017	**2016**	**2015**
Net income	$ 218.8	$ 314.8	$ 158.7
Other comprehensive income (loss):			
Net foreign currency translation adjustment	28.2	(6.2)	(14.2)
Net unrealized gain (loss) on derivative instruments, net of tax of $3.1, $0.9 and $5.3 for fiscal 2017, fiscal 2016 and fiscal 2015, respectively	4.9	(1.5)	(8.6)
Reclassification of net unrealized losses on derivatives to net income, net of tax of $1.1, $3.6 and $4.0 for fiscal 2017, fiscal 2016 and fiscal 2015, respectively	1.8	5.8	6.5
Net unrealized gain (loss) in pension and other post-retirement benefits, net of tax of $6.0, $6.2 and $4.6 for fiscal 2017, fiscal 2016 and fiscal 2015, respectively	9.6	(10.0)	(7.4)
Reclassification of net pension and post-retirement benefit losses to net income, net of tax of $2.3, $1.1 and $1.9 for fiscal 2017, fiscal 2016 and fiscal 2015, respectively	3.6	1.8	3.1
Total other comprehensive income (loss)	48.1	(10.1)	(20.6)
Comprehensive income	266.9	304.7	138.1
Comprehensive (income) loss attributable to noncontrolling interest	(0.9)	0.5	1.1
Comprehensive income attributable to controlling interest	$ 266.0	$ 305.2	$ 139.2

See Notes to Consolidated Financial Statements.

THE SCOTTS MIRACLE-GRO COMPANY

Consolidated Statements of Cash Flows
(In millions)

	Year Ended September 30,		
	2017	**2016**	**2015**
OPERATING ACTIVITIES			
Net income	$ 218.8	$ 314.8	$ 158.7
Adjustments to reconcile net income to net cash provided by operating activities:			
Impairment, restructuring and other	1.2	0.2	4.3
Costs related to refinancing	—	2.2	—
Share-based compensation expense	25.2	15.6	13.2
Depreciation	55.1	53.8	51.4
Amortization	25.0	19.7	17.6
Deferred taxes	(17.4)	83.6	1.3
Gain on long-lived assets	(3.3)	(0.8)	—
Gain on sale / contribution of business	(31.7)	(131.2)	—
Equity in (income) loss and distributions from unconsolidated affiliates	32.6	(0.3)	—
Changes in assets and liabilities, net of acquired businesses:			
Accounts receivable	48.6	(29.8)	(12.5)
Inventories	3.6	(29.4)	(17.5)
Prepaid and other assets	(12.2)	(9.3)	1.8
Accounts payable	9.0	(45.3)	6.9
Other current liabilities	26.9	22.9	12.9
Restructuring	(8.7)	(7.3)	12.1
Other non-current items	(19.6)	(18.4)	(3.4)
Other, net	0.9	(3.6)	0.1
Net cash provided by operating activities	354.0	237.4	246.9
INVESTING ACTIVITIES			
Proceeds from sale of long-lived assets	5.7	2.4	5.5
Proceeds from sale of business, net of cash disposed of	180.3	—	—
Investments in property, plant and equipment	(69.6)	(58.3)	(61.7)
Investments in loans receivable	(29.7)	(90.0)	—
Cash contributed to TruGreen Joint Venture	—	(24.2)	—
Net distributions from unconsolidated affiliates	57.4	194.1	—
Investment in marketing and license agreement	—	—	(300.0)
Investments in acquired businesses, net of cash acquired	(121.7)	(158.4)	(180.2)
Net cash (used in) provided by investing activities	22.4	(134.4)	(536.4)
FINANCING ACTIVITIES			
Borrowings under revolving and bank lines of credit and term loans	1,449.3	2,069.1	1,836.0
Repayments under revolving and bank lines of credit and term loans	(1,618.3)	(2,150.4)	(1,458.0)
Proceeds from issuance of 5.250% Senior Notes	250.0	—	—
Proceeds from issuance of 6.000% Senior Notes	—	400.0	—
Repayment of 6.625% Senior Notes	—	(200.0)	—
Financing and issuance fees	(4.4)	(11.2)	(0.5)
Dividends paid	(120.3)	(116.6)	(111.3)
Distribution paid by AeroGrow to noncontrolling interest	(8.1)	—	—
Purchase of Common Shares	(246.0)	(130.8)	(14.8)
Payments on sellers notes	(28.7)	(2.8)	(1.5)
Excess tax benefits from share-based payment arrangements	7.9	5.8	4.7
Cash received from exercise of stock options	11.0	14.7	24.3
Net cash (used in) provided by financing activities	(307.6)	(122.2)	278.9
Effect of exchange rate changes on cash	1.6	(2.1)	(7.3)
Net increase (decrease) in cash and cash equivalents	70.4	(21.3)	(17.9)
Cash and cash equivalents at beginning of year excluding cash classified within assets held for sale	28.6	50.8	64.9
Cash and cash equivalents at beginning of year classified within assets held for sale	21.5	20.6	24.4
Cash and cash equivalents at beginning of year	50.1	71.4	89.3
Cash and cash equivalents at end of year	$ 120.5	$ 50.1	$ 71.4

See Notes to Consolidated Financial Statements.

THE SCOTTS MIRACLE-GRO COMPANY

Consolidated Balance Sheets
(In millions, except stated value per share)

	September 30,	
	2017	**2016**
ASSETS		
Current assets:		
Cash and cash equivalents	$ 120.5	$ 28.6
Accounts receivable, less allowances of $3.1 in 2017 and $4.8 in 2016	197.7	127.0
Accounts receivable pledged	88.9	174.7
Inventories	407.5	394.7
Assets held for sale	—	256.2
Prepaid and other current assets	67.1	51.7
Total current assets	881.7	1,032.9
Investment in unconsolidated affiliates	31.1	101.0
Property, plant and equipment, net	467.7	444.9
Goodwill	441.6	371.9
Intangible assets, net	748.9	690.0
Other assets	176.0	115.1
Total assets	$ 2,747.0	$ 2,755.8
LIABILITIES AND EQUITY		
Current liabilities:		
Current portion of debt	$ 143.1	$ 185.0
Accounts payable	153.1	131.2
Liabilities held for sale	—	213.0
Other current liabilities	248.3	177.9
Total current liabilities	544.5	707.1
Long-term debt	1,258.0	1,030.9
Distributions in excess of investment in unconsolidated affiliate	21.9	—
Other liabilities	260.9	283.5
Total liabilities	2,085.3	2,021.5
Commitments and contingencies (Notes 17, 18 and 19)		
Equity:		
Common shares and capital in excess of $.01 stated value per share; shares outstanding of 58.1 in 2017 and 60.3 in 2016	407.6	401.7
Retained earnings	978.2	881.8
Treasury shares, at cost; 10.0 shares in 2017 and 7.8 shares in 2016	(667.8)	(451.4)
Accumulated other comprehensive loss	(69.2)	(116.9)
Total equity—controlling interest	648.8	715.2
Noncontrolling interest	12.9	19.1
Total equity	661.7	734.3
Total liabilities and equity	$ 2,747.0	$ 2,755.8

See Notes to Consolidated Financial Statements.

THE SCOTTS MIRACLE-GRO COMPANY

Consolidated Statements of Shareholders' Equity
(In millions, except per share data)

	Common Shares		Capital in Excess of Stated Value	Retained Earnings	Treasury Shares		Accumulated Other Comprehensive Income (Loss)	Total	Non-controlling Interest	Total
	Shares	Amount			Shares	Amount				
Balance at September 30, 2014	68.1	$ 0.3	$ 395.0	$ 636.9	7.4	$ (392.3)	$ (86.2)	$ 553.7	$ 13.5	$ 567.2
Net income (loss)	—	—	—	159.8	—	—	—	159.8	(1.1)	158.7
Other comprehensive loss	—	—	—	—	—	—	(20.6)	(20.6)	—	(20.6)
Share-based compensation	—	—	17.5	—	—	—	—	17.5	—	17.5
Dividends declared ($1.8200 per share)	—	—	—	(112.5)	—	—	—	(112.5)	—	(112.5)
Treasury share purchases	—	—	—	—	0.2	(14.8)	—	(14.8)	—	(14.8)
Treasury share issuances	—	—	(12.4)	—	(0.9)	50.0	—	37.6	—	37.6
Balance at September 30, 2015	68.1	0.3	400.1	684.2	6.7	(357.1)	(106.8)	620.7	12.4	633.1
Net income (loss)	—	—	—	315.3	—	—	—	315.3	(0.5)	314.8
Other comprehensive loss	—	—	—	—	—	—	(10.1)	(10.1)	—	(10.1)
Share-based compensation	—	—	21.6	—	—	—	—	21.6	—	21.6
Dividends declared ($1.9100 per share)	—	—	—	(117.7)	—	—	—	(117.7)	—	(117.7)
Treasury share purchases	—	—	—	—	1.8	(130.8)	—	(130.8)	—	(130.8)
Treasury share issuances	—	—	(20.3)	—	(0.7)	36.5	—	16.2	—	16.2
Investment in noncontrolling interest	—	—	—	—	—	—	—	—	7.2	7.2
Balance at September 30, 2016	68.1	0.3	401.4	881.8	7.8	(451.4)	(116.9)	715.2	19.1	734.3
Net income	—	—	—	218.3	—	—	—	218.3	0.5	218.8
Other comprehensive income	—	—	—	—	—	—	47.7	47.7	0.4	48.1
Share-based compensation	—	—	33.4	—	—	—	—	33.4	—	33.4
Dividends declared ($2.0300 per share)	—	—	—	(121.9)	—	—	—	(121.9)	—	(121.9)
Treasury share purchases	—	—	—	—	2.7	(245.8)	—	(245.8)	—	(245.8)
Treasury share issuances	—	—	(26.5)	—	(0.5)	29.4	—	2.9	—	2.9
Adjustment to noncontrolling interest due to ownership change	—	—	(1.0)	—	—	—	—	(1.0)	1.0	—
Distribution declared by AeroGrow	—	—	—	—	—	—	—	—	(8.1)	(8.1)
Balance at September 30, 2017	68.1	$ 0.3	$ 407.3	$ 978.2	10.0	$ (667.8)	$ (69.2)	$ 648.8	$ 12.9	$ 661.7

See Notes to Consolidated Financial Statements.

NOTE 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Nature of Operations

The Scotts Miracle-Gro Company ("Scotts Miracle-Gro" or "Parent") and its subsidiaries (collectively, together with Scotts Miracle-Gro, the "Company") are engaged in the manufacturing, marketing and sale of branded products for lawn and garden care and indoor and hydroponic gardening. The Company's primary customers include home centers, mass merchandisers, warehouse clubs, large hardware chains, independent hardware stores, nurseries, garden centers, food and drug stores, indoor gardening and hydroponic product distributors and retailers. The Company's products are sold primarily in North America, Europe and Asia.

Prior to August 31, 2017, the Company operated consumer lawn and garden businesses located in Australia, Austria, Belgium, Luxembourg, Czech Republic, France, Germany, Poland and the United Kingdom (the "International Business"). On April 29, 2017, the Company received a binding and irrevocable conditional offer (the "Offer") from Exponent Private Equity LLP ("Exponent") to purchase the International Business. On July 5, 2017, the Company accepted the Offer and entered into the Share and Business Sale Agreement (the "Agreement") contemplated by the Offer. Pursuant to the Agreement, Scotts-Sierra Investments LLC, an indirect wholly-owned subsidiary of the Company ("Sierra") and certain of its direct and indirect subsidiaries, entered into separate stock or asset sale transactions with respect to the the International Business. As a result, effective in its fourth quarter of fiscal 2017, the Company classified its results of operations for all periods presented to reflect the International Business as a discontinued operation and classified the assets and liabilities of the International Business as held for sale. See "NOTE 2. DISCONTINUED OPERATIONS" for further discussion. Refer to "NOTE 22. SEGMENT INFORMATION" for discussion of the Company's new reportable segments effective in the fourth quarter of fiscal 2017.

Prior to April 13, 2016, the Company operated the Scotts LawnService® business (the "SLS Business"), which provided residential and commercial lawn care, tree and shrub care and pest control services in the United States. On April 13, 2016, pursuant to the terms of the Contribution and Distribution Agreement (the "Contribution Agreement") between the Company and TruGreen Holding Corporation ("TruGreen Holdings"), the Company completed the contribution of the SLS Business to a newly formed subsidiary of TruGreen Holdings (the "TruGreen Joint Venture") in exchange for a minority equity interest of approximately 30% in the TruGreen Joint Venture. As a result, effective in its second quarter of fiscal 2016, the Company classified its results of operations for all periods presented to reflect the SLS Business as a discontinued operation and classified the assets and liabilities of the SLS Business as held for sale. See "NOTE 2. DISCONTINUED OPERATIONS" and "NOTE 8. INVESTMENT IN UNCONSOLIDATED AFFILIATES" for further discussion.

Due to the nature of the consumer lawn and garden business, the majority of the Company's sales to customers occur in the Company's second and third fiscal quarters. On a combined basis, net sales for the second and third quarters of the last three fiscal years represented in excess of 75% of the Company's annual net sales.

Organization and Basis of Presentation

The Company's consolidated financial statements are presented in accordance with accounting principles generally accepted in the United States of America ("GAAP"). The consolidated financial statements include the accounts of Scotts Miracle-Gro and its subsidiaries. All intercompany transactions and accounts have been eliminated in consolidation. The Company's consolidation criteria are based on majority ownership (as evidenced by a majority voting interest in the entity) and an objective evaluation and determination of effective management control. AeroGrow International, Inc. ("AeroGrow") and Gavita Holdings B.V., and its subsidiaries (collectively, "Gavita"), in which the Company has controlling interests, are consolidated, with the equity owned by other shareholders shown as noncontrolling interest in the Consolidated Balance Sheets, and the other shareholders' portion of net earnings and other comprehensive income shown as net income (loss) or comprehensive (income) loss attributable to noncontrolling interest in the Consolidated Statements of Operations and Consolidated Statements of Comprehensive Income (Loss), respectively.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes and related disclosures. Although these estimates are based on management's best knowledge of current events and actions the Company may undertake in the future, actual results ultimately may differ from the estimates.

Revenue Recognition

Revenue is recognized when title and risk of loss transfer, which generally occurs when products or services are received by the customer. Provisions for estimated returns and allowances are recorded at the time revenue is recognized based on historical

rates and are periodically adjusted for known changes in return levels. Outbound shipping and handling costs are included in cost of sales.

Under the terms of the Amended and Restated Exclusive Agency and Marketing Agreement (the "Original Marketing Agreement") and the Second Amended and Restated Agency and Marketing Agreement (the "Restated Marketing Agreement"), pursuant to which the Company has served, since its 1998 fiscal year, as the exclusive agent of Monsanto Company ("Monsanto") for the marketing and distribution of consumer Roundup® non-selective weedkiller products in the United States and certain other specified countries, the Company performs certain functions, primarily sales, merchandising, warehousing and other selling and marketing services, on behalf of Monsanto in the conduct of the consumer Roundup® business. The Company performs other services, including manufacturing conversion services, pursuant to ancillary agreements. The actual costs incurred for these activities are charged to and reimbursed by Monsanto. The Company records costs incurred for which the Company is the primary obligor on a gross basis, recognizing such costs in the "Cost of sales" line and the reimbursement of these costs in the "Net sales" line in the Consolidated Statements of Operations, with no effect on gross profit dollars or net income.

Under the terms of the Marketing, R&D and Ancillary Services Agreement (the "Services Agreement") with Bonnie Plants, Inc. ("Bonnie") and its sole shareholder, Alabama Farmers Cooperative, Inc. ("AFC"), entered into in the second quarter of fiscal 2016, the Company provides marketing, research and development and certain ancillary services to Bonnie for reimbursement of certain costs and a commission fee earned based on a percentage of the growth in earnings before interest, income taxes and amortization of Bonnie's business of planting, growing, developing, manufacturing, distributing, marketing, and selling live plants, plant food, fertilizer and potting soil (the "Bonnie Business"). The commission earned under the Services Agreement is included in the "Net sales" line in the Consolidated Statements of Operations. Additionally, the Company records costs incurred under the Services Agreement for which the Company is the primary obligor on a gross basis, recognizing such costs in the "Cost of sales" line and the reimbursement of these costs in the "Net sales" line, with no effect on gross profit dollars or net income.

Promotional Allowances

The Company promotes its branded products through, among other things, cooperative advertising programs with retailers. Retailers may also be offered in-store promotional allowances and rebates based on sales volumes. Certain products are promoted with direct consumer rebate programs and special purchasing incentives. Promotion costs (including allowances and rebates) incurred during the year are expensed to interim periods in relation to revenues and are recorded as a reduction of net sales. Accruals for expected payouts under these programs are included in the "Other current liabilities" line in the Consolidated Balance Sheets.

Advertising

Advertising costs incurred during the year are expensed to interim periods in relation to revenues. All advertising costs, except for external production costs, are expensed within the fiscal year in which such costs are incurred. External production costs for advertising programs are deferred until the period in which the advertising is first aired. The costs deferred at September 30, 2017 and 2016 were $0.4 million and $0.1 million, respectively.

Advertising expenses were $123.0 million in fiscal 2017, $122.3 million in fiscal 2016 and $121.5 million in fiscal 2015.

Research and Development

All costs associated with research and development are charged to expense as incurred. Expenses for fiscal 2017, fiscal 2016 and fiscal 2015 were $39.9 million, $36.0 million and $36.5 million, respectively, including product registration costs of $10.6 million, $10.6 million and $10.4 million, respectively.

Environmental Costs

The Company recognizes environmental liabilities when conditions requiring remediation are probable and the amounts can be reasonably estimated. Expenditures which extend the life of the related property or mitigate or prevent future environmental contamination are capitalized. Environmental liabilities are not discounted or reduced for possible recoveries from insurance carriers.

Share-Based Compensation Awards

The fair value of awards is expensed over the requisite service period which is typically the vesting period, generally three years, except in cases where employees are eligible for accelerated vesting based on having satisfied retirement requirements relating to age and years of service. Performance-based awards are expensed over the requisite service period based on achievement of performance criteria. The Company uses a binomial model to determine the fair value of its option grants. The Company classifies share-based compensation expense within selling, general and administrative expenses to correspond with the same line item as cash compensation paid to employees.

Other Non-Operating Expense

Other non-operating expense includes a $13.4 million non tax-deductible charge, driven by the October 2017 acquisition of the remaining noncontrolling interest in Gavita and its subsidiaries, to write-up the fair value of the loan to the noncontrolling ownership group to the agreed upon buyout value.

Earnings per Common Share

Basic earnings per Common Share is computed based on the weighted-average number of Common Shares outstanding each period. Diluted earnings per Common Share is computed based on the weighted-average number of Common Shares and dilutive potential Common Shares (stock options, stock appreciation rights, performance shares and restricted stock unit awards) outstanding each period.

Cash and Cash Equivalents

The Company considers all highly liquid financial instruments with original maturities of three months or less to be cash equivalents. The Company maintains cash deposits in banks which from time to time exceed the amount of deposit insurance available. Management periodically assesses the financial condition of the Company's banks and believes that the risk of any potential credit loss is minimal.

Accounts Receivable and Allowances

Trade accounts receivable are recorded at the invoiced amount and do not bear interest. Allowances for doubtful accounts reflect the Company's estimate of amounts in its existing accounts receivable that may not be collected due to customer claims or customer inability or unwillingness to pay. The allowance is determined based on a combination of factors, including the Company's risk assessment regarding the credit worthiness of its customers, historical collection experience and length of time the receivables are past due. Account balances are charged off against the allowance when the Company believes it is probable the receivable will not be recovered.

Inventories

Inventories are stated at the lower of cost or market, principally determined by the first in, first out method of accounting. Inventories include the cost of raw materials, labor, manufacturing overhead and freight and in-bound handling costs incurred to pre-position goods in the Company's warehouse network. The Company makes provisions for obsolete or slow-moving inventories as necessary to properly reflect inventory at the lower of cost or market value. Adjustments to reflect inventories at net realizable values were $10.5 million and $6.0 million at September 30, 2017 and 2016, respectively.

Loans Receivable

Loans receivable are carried at outstanding principal amount, and are recognized in the "Other assets" line in the Consolidated Balance Sheets. Loans receivable are impaired when, based on current information and events, it is probable that the Company will be unable to collect all amounts due according to the contractual terms of the loan agreement. If it is determined that an impairment has occurred, an impairment loss is recognized for the amount by which the carrying value of the asset exceeds the present value of expected future cash flows and recorded within "Operating expenses" in the Consolidated Statements of Operations. Interest income is recorded on an accrual basis, and is recognized in the "Other income, net" line in the Consolidated Statements of Operations. Interest income was $10.0 million for fiscal 2017, $3.9 million for fiscal 2016 and zero for fiscal 2015.

At September 30, 2017, the carrying value and estimated fair value of loans receivable was $110.4 million and $125.6 million, respectively. The estimated fair value was determined using an income-based approach, which includes market participant expectations of cash flows over the remaining useful life discounted to present value using an appropriate discount rate. The estimate requires subjective assumptions to be made, including those related to credit risk and discount rates. The fair value measurement is based on significant inputs unobservable in the market and thus represents a Level 3 measurement.

Long-Lived Assets

Property, plant and equipment are stated at cost. Interest capitalized in property, plant and equipment amounted to $0.1 million, $0.3 million and $0.4 million during fiscal 2017, fiscal 2016 and fiscal 2015, respectively. Expenditures for maintenance and repairs are charged to expense as incurred. When properties are retired or otherwise disposed of, the cost of the asset and the related accumulated depreciation are removed from the accounts with the resulting gain or loss being reflected in income from operations.

Depreciation of property, plant and equipment is provided on the straight-line method and is based on the estimated useful economic lives of the assets as follows:

Land improvements	10 – 25 years
Buildings	10 – 40 years
Machinery and equipment	3 – 15 years
Furniture and fixtures	6 – 10 years
Software	3 – 8 years

Intangible assets subject to amortization include technology, such as patents, customer relationships, non-compete agreements and certain tradenames. These intangible assets are being amortized over their estimated useful economic lives, which typically range from 3 to 25 years. The Company's fixed assets and intangible assets subject to amortization are required to be tested for recoverability whenever events or changes in circumstances indicate that carrying amounts may not be recoverable. If an evaluation of recoverability was required, the estimated undiscounted future cash flows associated with the asset would be compared to the asset's carrying amount to determine if a write-down is required. If the undiscounted cash flows are less than the carrying amount, an impairment loss is recorded to the extent that the carrying amount exceeds fair value and classified as "Impairment, restructuring and other charges" within "Operating expenses" in the Consolidated Statements of Operations.

The Company had non-cash investing activities of $16.1 million, $12.4 million and $8.5 million during fiscal 2017, fiscal 2016 and fiscal 2015, respectively, representing unpaid liabilities incurred during each fiscal year to acquire property, plant and equipment.

Statements of Cash Flows

Supplemental cash flow information was as follows for fiscal 2017, fiscal 2016 and fiscal 2015:

	Year Ended September 30,		
	2017	2016	2015
	(In millions)		
Interest paid	$ (69.8)	$ (54.1)	$ (47.6)
Call premium on 6.625% Senior Notes	—	(6.6)	—
Property and equipment acquired under capital leases	(0.9)	—	—
Income taxes paid	(111.9)	(80.9)	(108.3)

During fiscal 2017, the Company paid contingent consideration of $6.7 million, $6.5 million and $15.5 million related to the fiscal 2014 acquisition of Fafard & Brothers Ltd. ("Fafard"), the fiscal 2016 acquisition of a Canadian growing media operation and the fiscal 2017 acquisition of American Agritech, L.L.C., d/b/a Botanicare ("Botanicare"), respectively.

The Company uses the "cumulative earnings" approach for determining cash flow presentation of distributions from unconsolidated affiliates. Distributions received are included in the Consolidated Statements of Cash Flows as operating activities, unless the cumulative distributions exceed the portion of the cumulative equity in the net earnings of the unconsolidated affiliate, in which case the excess distributions are deemed to be returns of the investment and are classified as investing activities in the Consolidated Statements of Cash Flows.

Internal Use Software

The costs of internal use software are expensed or capitalized depending on whether they are incurred in the preliminary project stage, application development stage or the post-implementation/operation stage. As of September 30, 2017 and 2016, the Company had $10.6 million and $10.9 million, respectively, in unamortized capitalized internal use computer software costs. Amortization of these costs was $5.1 million, $6.1 million and $6.4 million during fiscal 2017, fiscal 2016 and fiscal 2015, respectively.

Goodwill and Indefinite-lived Intangible Assets

Goodwill and indefinite-lived intangible assets are not subject to amortization. Goodwill and indefinite-lived intangible assets are reviewed for impairment by applying a fair-value based test on an annual basis, as of the first day of the Company's fiscal fourth quarter, or more frequently if circumstances indicate impairment may have occurred. With respect to goodwill, the Company performs either a qualitative or quantitative evaluation for each of its reporting units. Factors considered in the qualitative test include reporting unit specific operating results as well as new events and circumstances impacting the operations of the reporting units. For the quantitative test, the Company assesses goodwill for impairment by comparing the carrying value of its reporting units to their respective fair values and reviewing the Company's market value of invested capital. A reporting unit is defined as an operating segment or one level below an operating segment. The Company has identified seven reporting units. The Company determines the fair value of its reporting units under the income-based approach utilizing discounted cash flows and incorporates assumptions it believes marketplace participants would utilize. The Company also uses a comparative market-based approach using market multiples and other factors to corroborate the discounted cash flow results.

With respect to indefinite-lived intangible assets, the Company performs either a qualitative or quantitative evaluation for each of its indefinite-lived intangible assets. Factors considered in the qualitative test include indefinite-lived intangible asset specific operating results as well as new events and circumstances impacting the cash flows of the indefinite-lived intangible assets. For the quantitative test, the value of all indefinite-lived intangible assets is determined under the income-based approach utilizing discounted cash flows and incorporating assumptions the Company believes marketplace participants would utilize. For tradenames, value was determined using a royalty savings methodology similar to that employed when the associated businesses were acquired but using updated estimates of sales, cash flow and profitability. If it is determined that an impairment has occurred, an impairment loss is recognized for the amount by which the carrying value of the asset exceeds its estimated fair value and classified as "Impairment, restructuring and other charges" within "Operating expenses" in the Consolidated Statements of Operations.

Insurance and Self-Insurance

The Company maintains insurance for certain risks, including workers' compensation, general liability and vehicle liability, and is self-insured for employee-related health care benefits up to a specified level for individual claims. The Company accrues for the expected costs associated with these risks by considering historical claims experience, demographic factors, severity factors and other relevant information. Costs are recognized in the period the claim is incurred, and accruals include an actuarially determined estimate of claims incurred but not yet reported.

Income Taxes

The Company uses the asset and liability method to account for income taxes. Deferred tax assets and liabilities are recognized for the anticipated future tax consequences attributable to differences between financial statement amounts and their respective tax bases. Management reviews the Company's deferred tax assets to determine whether their value can be realized based upon available evidence. A valuation allowance is established when management believes that it is more likely than not that some portion of its deferred tax assets will not be realized. Changes in valuation allowances from period to period are included in the Company's tax provision in the period of change.

The Company establishes a liability for tax return positions in which there is uncertainty as to whether or not the position will ultimately be sustained. Amounts for uncertain tax positions are adjusted in quarters when new information becomes available or when positions are effectively settled. The Company recognizes interest expense and penalties related to these unrecognized tax benefits within income tax expense. GAAP provides that a tax benefit from an uncertain tax position may be recognized when it is more likely than not that the position will be sustained upon examination, including resolutions of any related appeals or litigation processes, based on the technical merits of the position. The amount recognized is measured as the largest amount of tax benefit that is greater than 50% likely of being realized upon settlement.

U.S. income tax expense and foreign withholding taxes are provided on unremitted foreign earnings that are not indefinitely reinvested at the time the earnings are generated. Where foreign earnings are indefinitely reinvested, no provision for U.S. income

or foreign withholding taxes is made. When circumstances change and the Company determines that some or all of the undistributed earnings will be remitted in the foreseeable future, the Company accrues an expense in the current period for U.S. income taxes and foreign withholding taxes attributable to the anticipated remittance.

Translation of Foreign Currencies

The functional currency for each Scotts Miracle-Gro subsidiary is generally its local currency. Assets and liabilities of these subsidiaries are translated at the exchange rate in effect at each fiscal year-end. Income and expense accounts are translated at the average rate of exchange prevailing during the year. Translation gains and losses arising from the use of differing exchange rates from period to period are included in accumulated other comprehensive income (loss) within shareholders' equity. Foreign currency transaction gains and losses are included in the determination of net income and classified as "Other income, net" in the Consolidated Statements of Operations.

Derivative Instruments

The Company is exposed to market risks, such as changes in interest rates, currency exchange rates and commodity prices. A variety of financial instruments, including forward and swap contracts, are used to manage these exposures. These financial instruments are recognized at fair value on the Consolidated Balance Sheets, and all changes in fair value are recognized in net income or shareholders' equity through accumulated other comprehensive income (loss). The Company's objective in managing these exposures is to better control these elements of cost and mitigate the earnings and cash flow volatility associated with changes in the applicable rates and prices.

The Company has established policies and procedures that encompass risk-management philosophy and objectives, guidelines for derivative-instrument usage, counterparty credit approval, and the monitoring and reporting of derivative activity. The Company does not enter into derivative instruments for the purpose of speculation.

The Company formally designates and documents instruments at inception that qualify for hedge accounting of underlying exposures in accordance with GAAP. The Company formally assesses, both at inception and at least quarterly, whether the financial instruments used in hedging transactions are effective at offsetting changes in cash flows of the related underlying exposure. Fluctuations in the value of these instruments generally are offset by changes in the cash flows of the underlying exposures being hedged. This offset is driven by the high degree of effectiveness between the exposure being hedged and the hedging instrument. GAAP requires all derivative instruments to be recognized as either assets or liabilities at fair value in the Consolidated Balance Sheets. The Company designates commodity hedges as cash flow hedges of forecasted purchases of commodities and interest rate swap agreements as cash flow hedges of interest payments on variable rate borrowings. Any ineffective portion of a change in the fair value of a qualifying instrument is immediately recognized in earnings.

RECENT ACCOUNTING PRONOUNCEMENTS

Debt Issuance Costs

In April 2015, the Financial Accounting Standards Board ("FASB") issued an accounting standard update that requires debt issuance costs related to a recognized debt liability to be presented in the balance sheet as a direct deduction from the corresponding debt liability rather than as an asset; however debt issuance costs relating to revolving credit facilities will remain in other assets. The Company adopted this guidance on a retrospective basis effective October 1, 2016. As a result, debt issuance costs totaling $6.0 million have been presented as a component of the carrying amount of long-term debt in the Consolidated Balance Sheets as of September 30, 2016. This amount was previously reported within other assets.

Income Taxes

In November 2015, the FASB issued an accounting standard update to simplify the presentation of deferred income taxes by requiring that deferred income tax liabilities and assets be classified as noncurrent in a classified statement of financial position. The Company adopted this guidance on a retrospective basis during the fourth quarter of fiscal 2017. As a result, deferred tax assets totaling $43.7 million have been presented net within other liabilities in the Consolidated Balance Sheets as of September 30, 2016. This amount was previously reported within prepaid and other current assets.

Going Concern

In April 2014, the FASB issued a new accounting standard that requires management to assess if there is substantial doubt about an entity's ability to continue as a going concern for each annual and interim period. If conditions or events give rise to

substantial doubt, disclosures are required. The Company adopted this guidance on a prospective basis effective October 1, 2016. The adoption of this guidance did not impact the Company's financial statement disclosures.

Cloud Computing Arrangements

In April 2015, the FASB issued an accounting standard update that clarifies how customers in cloud computing arrangements should determine whether the arrangement includes a software license, and requires acquired software licenses to be accounted for as licenses of intangible assets. The Company adopted the provisions effective October 1, 2016. The adoption of this guidance did not have a significant impact on the Company's consolidated financial position, results of operations or cash flows.

Business Combinations

In September 2015, the FASB issued an accounting standard update to simplify the accounting for measurement-period adjustments by requiring an acquirer to recognize adjustments to provisional amounts that are identified during the measurement period in the reporting period in which the adjustment amounts are determined, and requiring disclosure of the portion of the amount recorded in current period earnings by line item that would have been recorded in previous reporting periods if the adjustment to the provisional amounts had been recognized as of the acquisition date. The Company adopted this guidance on a prospective basis effective October 1, 2016. The adoption of this guidance did not impact the Company's consolidated financial position, results of operations or cash flows.

Share-Based Compensation

In March 2016, the FASB issued an accounting standard update that simplifies several aspects of the accounting for employee share-based payment transactions, including the accounting for income taxes, forfeitures, and statutory tax withholding requirements, as well as classification in the statement of cash flows. The provisions are effective, using a combination of retrospective, modified retrospective and prospective transition methods, for the Company's financial statements no later than the fiscal year beginning October 1, 2017. The Company expects to adopt this amended accounting guidance during the first quarter of fiscal 2018, which will result in the prospective recognition of all excess tax benefits and tax deficiencies associated with share-based compensation as income tax benefit or expense in the Consolidated Statement of Operations. Excess tax benefits of $7.9 million, $5.8 million and $4.7 million for fiscal 2017, fiscal 2016 and fiscal 2015, respectively, have been recognized in the "Capital in excess of stated value" line in the Consolidated Statements of Shareholders' Equity.

Revenue Recognition from Contracts with Customers

In May 2014, the FASB issued amended accounting guidance that replaces most existing revenue recognition guidance under GAAP. This guidance requires companies to recognize revenue in a manner that depicts the transfer of promised goods or services to customers in amounts that reflect the consideration to which a company expects to be entitled in exchange for those goods or services. The standard involves a five-step process that includes identifying the contract with the customer, identifying the performance obligations in the contract, determining the transaction price, allocating the transaction price to the performance obligations in the contract and recognizing revenue when the entity satisfies the performance obligations. The new standard also will result in enhanced disclosures about the nature, amount, timing and uncertainty of revenue and cash flows arising from contracts with customers. Subsequently, additional guidance was issued on several areas including guidance intended to improve the operability and understandability of the implementation of principal versus agent considerations and clarifications on the identification of performance obligations and implementation of guidance related to licensing.

The Company has made progress on its evaluation of the amended guidance, including identification of revenue streams and customer contract reviews. The Company has begun the process of applying the five-step model to those contracts and revenue streams to evaluate the quantitative and qualitative impacts the new standard will have on its business and reported revenues. The provisions are effective for the Company in the first quarter of fiscal 2019 and permit adoption under either the full retrospective approach (recognize effects of the amended guidance in each prior reporting period presented) or the modified retrospective approach (recognize the cumulative effect of adoption as an adjustment to retained earnings at the date of initial application). The Company is still evaluating its method of adoption and the impact of this standard on its consolidated results of operations and financial position.

Inventory

In July 2015, the FASB issued an accounting standard update that requires inventory to be measured "at the lower of cost and net realizable value," thereby simplifying the current guidance that requires inventory to be measured at the lower of cost or market (market in this context is defined as one of three different measures, one of which is net realizable value). The provisions

are effective prospectively for the Company's financial statements for the fiscal year beginning October 1, 2017, and are not expected to have a significant impact on the Company's consolidated financial position, results of operations or cash flows.

Leases

In February 2016, the FASB issued an accounting standard update which significantly changes the accounting for leases. This guidance requires lessees to recognize a lease liability for the obligation to make lease payments and a right-of-use asset for the right to use the underlying asset for the lease term. The provisions are effective for the Company's financial statements no later than the fiscal year beginning October 1, 2019 and require a modified retrospective transition approach for leases that exist as of or are entered into after the beginning of the earliest comparative period presented in the financial statements. The Company is currently evaluating the impact of this standard on its consolidated results of operations, financial position and cash flows. The Company has made progress on its evaluation of the amended guidance, including identification of the population of leases affected including the $147.5 million of future minimum lease payments related to various operating lease agreements with third parties for property and equipment (see "NOTE 17. OPERATING LEASES" for further discussion), determining the information required to calculate the lease liability and right-of-use asset and evaluating models to assist in future reporting.

Cash Flow Presentation

In August 2016, the FASB issued an accounting standard update that amends the guidance on the classification of certain cash receipts and payments in the statement of cash flows. The provisions are effective retrospectively for the Company's financial statements no later than the fiscal year beginning October 1, 2018, and are not expected to have a significant impact on the Company's consolidated cash flows.

Business Combinations

In January 2017, the FASB issued an accounting standard update that clarifies the definition of a business to provide additional guidance to assist in evaluating whether transactions should be accounted for as an acquisition (or disposal) of either an asset or business. The provisions are effective prospectively for the Company's financial statements no later than the fiscal year beginning October 1, 2018, and are not expected to have a significant impact on the Company's consolidated financial position, results of operations or cash flows.

Goodwill

In January 2017, the FASB issued an accounting standard update which removes the requirement to compare the implied fair value of goodwill with its carrying amount as part of step 2 of the goodwill impairment test. Goodwill impairment will now be the amount by which a reporting unit's carrying value exceeds its fair value, not to exceed the carrying amount of the goodwill. The provisions are effective prospectively for the Company's financial statements no later than the fiscal year beginning October 1, 2020, and are not expected to have a significant impact on the Company's consolidated financial position, results of operations or cash flows.

Employee Benefit Plans

In March 2017, the FASB issued an accounting standard update which requires entities to (1) disaggregate the current-service-cost component from the other components of net benefit cost (the "other components") and present it with other current compensation costs for related employees in the income statement, (2) present the other components elsewhere in the income statement and outside of income from operations if that subtotal is presented and (3) limit the amount of costs eligible for capitalization (e.g., as part of inventory or property, plant, and equipment) to only the service-cost component of net benefit cost. The provisions are effective for the Company's financial statements no later than the fiscal year beginning October 1, 2018, and are required to be applied retrospectively for the presentation of cost components in the income statement and prospectively for the capitalization of cost components. The provisions are not expected to have a significant impact on the Company's consolidated financial position, results of operations or cash flows.

Derivatives and Hedging

In August 2017, the FASB issued an accounting standard update that modifies hedge accounting by making more hedge strategies eligible for hedge accounting, amending presentation and disclosure requirements, and changing how companies assess effectiveness. The intent is to simplify application of hedge accounting and increase transparency of information about an entity's risk management activities. The provisions are effective for the Company's financial statements no later than the fiscal year

beginning October 1, 2019. The Company is currently evaluating the impact of this standard on its consolidated results of operations, financial position and cash flows.

NOTE 2. DISCONTINUED OPERATIONS

International Business

On August 31, 2017, the Company completed the divestiture of the International Business for cash proceeds at closing of $150.6 million, which is net of seller financing provided by the Company in the form of a $29.7 million loan for 7 years bearing interest at 5% for the first three years, with annual 2.5% increases thereafter. The transaction also includes contingent consideration, a non-cash investing activity, with a maximum payout of $23.8 million and a fair value of $18.2 million, the payment of which will depend on the achievement of certain performance criteria by the International Business following the closing of the transaction through fiscal 2020. The seller financing loan and the contingent consideration receivable are recorded in the “Other assets” line in the Consolidated Balance Sheets. The cash proceeds are subject to post-closing adjustments that are expected to be finalized during the first quarter of fiscal 2018, and the Company has accrued $27.8 million in the “Other current liabilities” line in the Consolidated Balance Sheets related to working capital adjustments in respect of the actual closing date financial position of the International Business. The Company recorded a pre-tax gain on the sale of the International Business of $32.7 million, partially offset by the provision for income taxes of $12.0 million, during fiscal 2017. The pre-tax gain included a write-off of accumulated foreign currency translation adjustments of $18.5 million.

In connection with the transaction, the Company entered into certain ancillary agreements including a transition services agreement and a material supply agreement, which are not material, as well as a licensing agreement for the use of certain of the Company’s brand names with a fair value of $14.1 million.

During fiscal 2017 and fiscal 2016, the Company recognized $15.5 million and $2.5 million, respectively, in transaction related costs associated with the sale of the International Business as well as termination benefits and facility closure costs of $(0.4) million and $3.6 million, respectively, in the “Income from discontinued operations, net of tax” line in the Consolidated Statements of Operations.

Scotts LawnService®

On April 13, 2016, pursuant to the terms of the Contribution Agreement, the Company completed the contribution of the SLS Business to the TruGreen Joint Venture in exchange for a minority equity interest of approximately 30% in the TruGreen Joint Venture. As a result, effective in its second quarter of fiscal 2016, the Company classified its results of operations for all periods presented to reflect the SLS Business as a discontinued operation and classified the assets and liabilities of the SLS Business as held for sale.

The Company recorded a gain on the contribution of $131.2 million, partially offset by the provision for deferred income taxes of $51.9 million, during fiscal 2016. During fiscal 2017, the Company recorded an adjustment to reduce the pre-tax gain by $1.0 million related to post-closing working capital adjustments.

During fiscal 2017 and fiscal 2016, the Company recognized $0.8 million and $4.6 million, respectively, in transaction related costs associated with the divestiture of the SLS Business in the “Income from discontinued operations, net of tax” line in the Consolidated Statements of Operations. During fiscal 2016, the Company recognized a charge of $9.0 million for the resolution of a prior SLS Business litigation matter within the “Income from discontinued operations, net of tax” line in the Consolidated Statements of Operations.

The following table summarizes the results of the International Business and SLS Business within discontinued operations for each of the periods presented:

	Year Ended September 30,		
	2017	2016	2015
	(In millions)		
Net sales	$ 294.1	$ 431.1	$ 645.4
Operating costs	275.9	429.5	597.3
Impairment, restructuring and other	15.9	19.7	11.2
Other (income) expense, net	1.2	(1.5)	(3.9)
Gain on sale / contribution of business	(31.7)	(131.2)	—
Interest expense	0.4	2.7	1.7
Income from discontinued operations before income taxes	32.4	111.9	39.1
Income tax expense from discontinued operations	11.9	43.2	9.1
Income from discontinued operations, net of tax	$ 20.5	$ 68.7	$ 30.0

The following table summarizes the major classes of assets and liabilities held for sale:

	September 30, 2016
	(In millions)
Cash and cash equivalents	$ 21.5
Accounts receivable, net	69.4
Inventories	53.5
Prepaid and other assets	9.5
Property, plant and equipment, net	25.9
Goodwill and intangible assets, net	62.2
Other assets	14.2
Assets held for sale	$ 256.2
Accounts payable	$ 34.7
Other current liabilities	64.3
Long-term debt	94.2
Other liabilities	19.8
Liabilities held for sale	$ 213.0

The Consolidated Statements of Cash Flows do not present the cash flows from discontinued operations separately from cash flows from continuing operations. Cash provided by (used in) operating activities related to discontinued operations totaled $(11.6) million, $18.8 million and $31.5 million for fiscal 2017, fiscal 2016 and fiscal 2015, respectively. Cash provided by (used in) investing activities related to discontinued operations totaled $148.1 million, $(5.3) million and $(32.5) million for fiscal 2017, fiscal 2016 and fiscal 2015, respectively.

NOTE 3. IMPAIRMENT, RESTRUCTURING AND OTHER

Activity described herein is classified within the “Cost of sales—impairment, restructuring and other,” “Impairment, restructuring and other” and “Income from discontinued operations, net of tax” lines in the Consolidated Statements of Operations. The following table details impairment, restructuring and other charges (recoveries) during fiscal 2017, fiscal 2016 and fiscal 2015:

	Year Ended September 30,		
	2017	2016	2015
	(In millions)		
Cost of sales—impairment, restructuring and other:			
Restructuring and other charges	$ —	$ 5.9	$ 3.0
Operating expenses:			
Restructuring and other charges (recoveries), net	3.9	(51.5)	70.4
Intangible asset impairment	1.0	—	—
Impairment, restructuring and other charges (recoveries) from continuing operations	$ 4.9	$ (45.6)	$ 73.4
Restructuring and other charges from discontinued operations	15.9	19.7	11.2
Total impairment, restructuring and other charges (recoveries)	$ 20.8	$ (25.9)	$ 84.6

The following table summarizes the activity related to liabilities associated with restructuring and other, excluding insurance reimbursement recoveries, during fiscal 2017, fiscal 2016 and fiscal 2015:

	Year Ended September 30,		
	2017	2016	2015
	(In millions)		
Amounts accrued for restructuring and other at beginning of year	$ 20.8	$ 28.1	$ 16.0
Restructuring and other charges from continuing operations	8.3	10.3	73.4
Restructuring and other charges from discontinued operations	15.9	19.7	11.2
Payments and other	(32.9)	(37.3)	(72.5)
Amounts accrued for restructuring and other at end of year	$ 12.1	$ 20.8	$ 28.1

Included in restructuring accruals, as of September 30, 2017, is $1.7 million that is classified as long-term. Payments against the long-term accruals will be incurred as the employees covered by the restructuring plan retire or through the passage of time. The remaining amounts accrued will continue to be paid out over the course of the next twelve months.

Fiscal 2017

In the first quarter of fiscal 2016, the Company announced a series of initiatives called Project Focus designed to maximize the value of its non-core assets and focus on emerging categories of the lawn and garden industry in its core U.S. business. During fiscal 2017, the Company recognized restructuring costs related to termination benefits and facility closure costs of $8.3 million in the “Impairment, restructuring and other” line in the Consolidated Statements of Operations, including $6.7 million for the U.S. Consumer segment, $0.9 million for the Hawthorne segment and $0.7 million for the Other segment. Costs incurred to date since the inception of the current Project Focus initiatives are $10.1 million for the U.S. Consumer segment, $0.9 million for the Hawthorne segment and $1.2 million for the Other segment, related to transaction activity, termination benefits and facility closure costs.

In the fourth quarter of fiscal 2017, the Company recognized a recovery of $4.4 million related to the reduction of a contingent consideration liability associated with a historical acquisition and recorded a $1.0 million impairment charge on the write-off of a trademark asset due to recent performance and future growth expectations. These items were recorded in the “Impairment, restructuring and other” line in the Consolidated Statements of Operations.

On April 13, 2016, the Company completed the contribution of the SLS Business to the TruGreen Joint Venture. As a result, effective in its second quarter of fiscal 2016, the Company classified its results of operations for all periods presented to reflect the SLS Business as a discontinued operation and classified the assets and liabilities of the SLS Business as held for sale. Refer to “NOTE 2. DISCONTINUED OPERATIONS” for more information. During fiscal 2017, the Company recognized $0.8 million in transaction related costs associated with the divestiture of the SLS Business in the “Income from discontinued operations, net of tax” line in the Consolidated Statements of Operations.

On August 31, 2017, the Company completed the sale of the International Business. As a result, effective in its fourth quarter of fiscal 2017, the Company classified its results of operations for all periods presented to reflect the International Business as a discontinued operation and classified the assets and liabilities of the International Business as held for sale. Refer to “NOTE 2. DISCONTINUED OPERATIONS” for more information. During fiscal 2017, the Company recognized $15.5 million in transaction

related costs associated with the sale of the International Business as well as adjustments to termination benefits of $(0.4) million in the "Income from discontinued operations, net of tax" line in the Consolidated Statements of Operations.

Fiscal 2016

During the third quarter of fiscal 2015, the Company's U.S. Consumer segment began experiencing an increase in certain consumer complaints related to the reformulated Bonus® S fertilizer product sold in the southeastern United States during fiscal 2015 indicating customers were experiencing damage to their lawns after application. In fiscal 2016, the Company incurred $6.4 million in costs related to resolving these consumer complaints and the recognition of costs the Company expected to incur for consumer claims in the "Impairment, restructuring and other" and the "Cost of sales—impairment, restructuring and other" lines in the Consolidated Statements of Operations. Additionally, the Company recorded offsetting insurance reimbursement recoveries of $55.9 million in fiscal 2016 in the "Impairment, restructuring and other" line in the Consolidated Statements of Operations. Costs incurred to date since the inception of this matter were $73.8 million, partially offset by insurance reimbursement recoveries of $60.8 million.

During fiscal 2016, the Company recognized restructuring costs related to termination benefits of $3.9 million related to Project Focus in the "Impairment, restructuring and other" line in the Consolidated Statements of Operations.

During fiscal 2016, the Company recognized a charge of $9.0 million for the resolution of a prior SLS Business litigation matter, as well as $4.6 million in transaction related costs associated with the divestiture of the SLS Business in the "Income from discontinued operations, net of tax" line in the Consolidated Statements of Operations.

During fiscal 2016, the Company recognized $2.5 million in transaction related costs associated with the sale of the International Business as well as $3.6 million in restructuring costs related to termination benefits and facility closure costs in the "Income from discontinued operations, net of tax" line in the Consolidated Statements of Operations.

Fiscal 2015

During fiscal 2015, the Company recognized $67.3 million in costs related to consumer complaints and claims related to the reformulated Bonus® S fertilizer product sold in the southeastern United States during fiscal 2015, partially offset by insurance reimbursement recoveries recorded of $4.9 million.

During fiscal 2015, the Company recognized restructuring costs related to termination benefits of $11.0 million as part of the Company's restructuring of its U.S. administrative and overhead functions. The restructuring costs for fiscal 2015 included $4.3 million of costs related to the acceleration of equity compensation expense, and were comprised of $3.7 million related to the U.S. Consumer segment, $0.7 million related to the Other Segment and $6.6 million related to Corporate. These costs were recognized in the "Impairment, restructuring and other" line in the Consolidated Statements of Operations.

During fiscal 2015, the Company recognized restructuring costs related to termination benefits as part of the Company's restructuring of its administrative and overhead functions, continuation of the international profitability improvement initiative and the liquidation and exit from the U.K. Solus business. Costs of $1.4 million related to the SLS Business and $9.8 million related to the International Business were recognized in the "Income from discontinued operations, net of tax" line in the Consolidated Statements of Operations.

NOTE 4. GOODWILL AND INTANGIBLE ASSETS, NET

The following table displays a rollforward of the carrying amount of goodwill by reportable segment:

	U.S. Consumer	Hawthorne	Other	Total
		(In millions)		
Goodwill	$ 213.1	$ 63.4	$ 7.8	$ 284.3
Accumulated impairment losses	(1.8)	—	—	(1.8)
Balance at September 30, 2015	211.3	63.4	7.8	282.5
Acquisitions, net of purchase price adjustments	0.6	83.0	4.7	88.3
Foreign currency translation	—	0.9	0.2	1.1
Goodwill	$ 213.7	$ 147.3	$ 12.7	$ 373.7
Accumulated impairment losses	(1.8)	—	—	(1.8)
Balance at September 30, 2016	211.9	147.3	12.7	371.9
Acquisitions, net of purchase price adjustments	(1.1)	67.6	(2.1)	64.4
Foreign currency translation	—	4.7	0.6	5.3
Reallocation	17.3	(17.3)	—	—
Goodwill	$ 229.9	$ 202.3	$ 11.2	$ 443.4
Accumulated impairment losses	(1.8)	—	—	(1.8)
Balance at September 30, 2017	$ 228.1	$ 202.3	$ 11.2	$ 441.6

As discussed in “NOTE 22. SEGMENT INFORMATION,” the Company’s reportable segments differ from those used in prior periods due to the change in the Company’s internal organization structure resulting from the Company’s divestiture of the International Business. This change in organization structure resulted in a change in the Company’s operating segments and reporting units. The Company allocated goodwill to the new reporting units using a relative fair value approach, resulting in $17.3 million of goodwill reallocated from the Hawthorne segment to the U.S. Consumer segment during fiscal 2017. In addition, the Company completed an assessment of any potential goodwill impairment immediately prior to the allocation and determined that no impairment existed.

The following table presents intangible assets, net:

	September 30, 2017			September 30, 2016		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
	(In millions)					
Finite-lived intangible assets:						
Technology	$ 69.7	$ (52.8)	$ 16.9	$ 61.1	$ (51.4)	$ 9.7
Customer accounts	157.7	(28.0)	129.7	113.7	(15.8)	97.9
Tradenames	176.7	(28.4)	148.3	145.4	(19.8)	125.6
Other	59.5	(41.1)	18.4	59.8	(38.6)	21.2
Total finite-lived intangible assets, net			313.3			254.4
Indefinite-lived intangible assets:						
Indefinite-lived tradenames			168.2			168.2
Marketing Agreement Amendment			155.7			155.7
Brand Extension Agreement			111.7			111.7
Total indefinite-lived intangible assets			435.6			435.6
Total intangible assets, net			$ 748.9			$ 690.0

Fiscal 2017

As a result of the sale of the International Business during the fourth quarter of fiscal 2017, the Company included $32.6 million of the carrying amount of the Marketing Agreement Amendment intangible asset with the International Business disposal unit on the basis of the asset's historical carrying amount, and classified this amount in the "Assets held for sale" line in the Consolidated Balance Sheets.

During the fourth quarter of fiscal 2017, the Company completed its annual impairment review and recognized an impairment charge for a non-recurring fair value adjustment of $1.0 million within the U.S. Consumer segment related to a trademark asset. The fair vale was calculated based upon the evaluation of the historical performance and future growth expectations of the trademark. The impact of the fair value adjustment was to reduce the carrying value of the definite-lived brand from $1.0 million to zero. No impairment of goodwill or other intangible assets were required.

Fiscal 2016

As a result of the annual impairment review in the fourth quarter of fiscal 2016, the Company determined that no charges for impairment of goodwill or intangible assets were required.

Fiscal 2015

As a result of the annual impairment review, in the fourth quarter of fiscal 2015, the Company determined that no charges for impairment of goodwill or intangible assets were required.

Total amortization expense for the years ended September 30, 2017, 2016, and 2015 was $23.3 million, $15.7 million and $11.4 million, respectively. Amortization expense is estimated to be as follows for the years ending September 30 (in millions):

2018	$ 23.2
2019	21.4
2020	20.2
2021	19.3
2022	18.3

NOTE 5. DETAIL OF CERTAIN FINANCIAL STATEMENT ACCOUNTS

The following is detail of certain financial statement accounts:

	September 30,	
	2017	2016
	(In millions)	
INVENTORIES:		
Finished goods	$ 210.6	$ 221.4
Work-in-progress	57.6	48.9
Raw materials	139.3	124.4
	$ 407.5	$ 394.7

	September 30,	
	2017	2016
	(In millions)	
PROPERTY, PLANT AND EQUIPMENT, NET:		
Land and improvements	$ 109.4	$ 105.3
Buildings	209.7	227.3
Machinery and equipment	546.8	491.2
Furniture and fixtures	37.2	35.5
Software	106.0	104.2
Aircraft	8.3	6.7
Construction in progress	41.4	28.0
	1,058.8	998.2
Less: accumulated depreciation	(591.1)	(553.3)
	$ 467.7	$ 444.9
OTHER ASSETS:		
Unamortized debt issuance costs	$ 8.2	$ 10.8
Loans receivable	110.4	79.1
Contingent consideration receivable	18.1	—
Bonnie Option	11.8	10.9
Other	27.5	14.3
	$ 176.0	$ 115.1

	September 30,	
	2017	2016
	(In millions)	
OTHER CURRENT LIABILITIES:		
Payroll and other compensation accruals	$ 55.9	$ 59.9
Accrued restructuring and other	10.4	19.3
Advertising and promotional accruals	23.8	26.8
Accrued interest	16.4	13.8
International Business divestiture accrual	27.8	—
Other	114.0	58.1
	$ 248.3	$ 177.9
OTHER NON-CURRENT LIABILITIES:		
Accrued pension, postretirement and executive retirement liabilities	$ 78.6	$ 93.5
Deferred tax liabilities	157.5	172.0
Deferred licensing revenue	12.6	0.2
Other	12.2	17.8
	$ 260.9	$ 283.5

	September 30,		
	2017	2016	2015
	(In millions)		
ACCUMULATED OTHER COMPREHENSIVE LOSS:			
Unrecognized loss on derivatives, net of tax of $1.3, $2.8 and $5.6	$ 2.0	$ (4.7)	$ (9.0)
Pension and other postretirement liabilities, net of tax of $33.4, $41.2 and $39.3	(54.5)	(66.9)	(63.7)
Foreign currency translation adjustment	(16.7)	(45.3)	(34.1)
	$ (69.2)	$ (116.9)	$ (106.8)

NOTE 6. MARKETING AGREEMENT

The Scotts Company LLC (“Scotts LLC”) is the exclusive agent of Monsanto for the marketing and distribution of consumer Roundup® non-selective weedkiller products in the consumer lawn and garden market in certain countries pursuant to an Amended and Restated Exclusive Agency and Marketing Agreement (the “Original Marketing Agreement”). In consideration for the rights granted to the Company under the Original Marketing Agreement in 1998, the Company paid a marketing fee of $32.0 million to Monsanto. The Company deferred this amount on the basis that the payment will provide a future benefit through commissions that will be earned under the Marketing Agreement. The economic useful life over which the marketing fee is being amortized is 20 years, with a remaining unamortized amount of $0.8 million and remaining amortization period of one year. On May 15, 2015, the Company and Monsanto entered into an Amendment to the Original Marketing Agreement (the “Marketing Agreement Amendment”), a Lawn and Garden Brand Extension Agreement (the “Brand Extension Agreement”) and a Commercialization and Technology Agreement (the “Commercialization and Technology Agreement”). In consideration for these agreements, the Company paid $300.0 million to Monsanto and recorded this amount as intangible assets for which the related economic useful life is indefinite.

On August 31, 2017, in connection with and as a condition to the consummation of the Company’s sale of its International Business, the Company entered into the Second Amended and Restated Agency and Marketing Agreement (the “Restated Marketing Agreement”) and the Amended and Restated Lawn and Garden Brand Extension Agreement - Americas (the “Restated Brand Extension Agreement”) to reflect the Company’s transfer and assignment to the purchaser of such business of the Company’s rights and responsibilities under the Original Marketing Agreement, as amended, and the Brand Extension Agreement relating to those countries subject to the sale. The Company included $32.6 million of the carrying amount of the intangible asset associated with the Marketing Agreement Amendment with the International Business disposal unit on the basis of the asset’s historical carrying amount and this amount was disposed of as part of the sale of the International Business.

From 1998 until May 15, 2015, the Original Marketing Agreement covered the United States and other specified countries, including Australia, Austria, Belgium, Canada, France, Germany, the Netherlands and the United Kingdom. The Marketing Agreement Amendment expanded the covered territories and countries 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 Restated Marketing Agreement further revised the covered territories and countries to only include Israel, China and every country throughout the Caribbean and the continents of North America and South America that is not subject to a comprehensive U.S. trade embargo or certain other embargoes and trade restrictions.

Under the terms of the Restated Marketing Agreement, the Company is entitled to receive an annual commission from Monsanto as consideration for the performance of the Company's duties as agent. The annual commission payable under the Restated Marketing Agreement is equal to (1) 50% of the actual earnings before interest and income taxes of the consumer Roundup® business in the markets covered by the Restated Marketing Agreement for program years 2017 and 2018 and (2) 50% of the actual earnings before interest and income taxes of the consumer Roundup® business in the markets covered by the Restated Marketing Agreement in excess of $40 million for program years 2019 and thereafter. The Restated Marketing Agreement also requires the Company to make annual payments of $18.0 million to Monsanto as a contribution against the overall expenses of the consumer Roundup® business. Unless Monsanto terminates the Restated Marketing Agreement due to an event of default by the Company, the Restated Marketing Agreement requires a termination fee payable to the Company equal to the greater of (1) $175.0 million or (2) four times (A) the average of the program earnings before interest and income taxes for the three trailing program years prior to the year of termination, minus (B) $186.4 million. The term of the Restated Marketing Agreement will continue indefinitely for all included markets unless and until otherwise terminated in accordance therewith.

The Restated Brand Extension Agreement provides the Company an exclusive license in every country throughout the North American continent, South American continent, Central America, the Caribbean, Israel and China (in each case that is not subject to a comprehensive U.S. trade embargo or certain other embargoes and trade restrictions) to use the Roundup® brand on additional products offered by the Company outside of the non-selective weed category within the residential lawn and garden market. The application of the Roundup® brand to these additional products is subject to a product review and approval process developed between the Company and Monsanto. 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. The Restated Brand Extension Agreement has a term of twenty years, which will automatically renew for additional successive twenty year terms, at the Company's sole option, for no additional monetary consideration.

The Commercialization and Technology Agreement provides for the Company and Monsanto to further develop and commercialize new products and technology developed at Monsanto and intended for introduction into the residential lawn and garden market. Under the Commercialization and Technology Agreement, the Company receives an exclusive first look at new Monsanto technology and products and an annual review of Monsanto's developing products and technologies. The Commercialization and Technology Agreement has a term of thirty years (subject to early termination upon a termination event under the Restated Marketing Agreement or the Restated Brand Extension Agreement).

Under the terms of the Restated Marketing Agreement, the Company performs sales, merchandising, warehousing and other selling and marketing services, on behalf of Monsanto in the conduct of the consumer Roundup® business. The Company performs other services, including manufacturing conversion services, pursuant to ancillary agreements. The actual costs incurred for these activities are charged to and reimbursed by Monsanto. The Company records costs incurred for which the Company is the primary obligor on a gross basis, recognizing such costs in the "Cost of sales" line and the reimbursement of these costs in the "Net sales" line in the Consolidated Statements of Operations, with no effect on gross profit dollars or net income.

The gross commission earned under the Restated Marketing Agreement, the contribution payments to Monsanto and the amortization of the initial marketing fee paid to Monsanto in 1998 are included in the calculation of net sales in the Company's Consolidated Statements of Operations. The elements of the net commission and reimbursements earned under the Marketing Agreement and included in "Net sales" are as follows:

	Year Ended September 30		
	2017	2016	2015
	(In millions)		
Gross commission	$ 87.7	$ 97.9	$ 78.4
Contribution expenses	(18.0)	(18.0)	(18.0)
Amortization of marketing fee	(0.8)	(0.8)	(0.8)
Net commission	68.9	79.1	59.6
Reimbursements associated with Marketing Agreement	56.1	55.8	52.6
Total net sales associated with Marketing Agreement	$ 125.0	$ 134.9	$ 112.2

NOTE 7. ACQUISITIONS AND INVESTMENTS

Fiscal 2018

On October 2, 2017, the Company's Hawthorne segment acquired the remaining 25% noncontrolling interest in Gavita and its subsidiaries, including Agrolux, for $72.2 million. The Company recorded a charge of $13.4 million during the fourth quarter of fiscal 2017 to write-up the fair value of the loan to the noncontrolling ownership group of Gavita to the agreed upon buyout value in the "Other non-operating expense" line in the Consolidated Statements of Operations.

On October 11, 2017, the Company's Hawthorne segment completed the acquisition of substantially all of the United States and Canadian assets of Can-Filters Group Inc. ("Can-Filters") for $72.2 million. Based in Nelson, British Columbia, Can-Filters is a leading wholesaler of ventilation products for indoor and hydroponic gardening and industrial markets worldwide.

Fiscal 2017

On August 11, 2017, the Company's Hawthorne segment completed the acquisition of substantially all of the assets of the exclusive manufacturer and formulator of branded Botanicare products for $32.0 million. The preliminary valuation of the acquired assets included (i) $0.3 million of inventory, (ii) $5.0 million of finite-lived identifiable intangible assets, and (iii) $26.7 million of tax-deductible goodwill. Identifiable intangible assets included manufacturing know-how and non-compete agreements with useful lives ranging between 5 and 10 years. The estimated fair values of the identifiable intangible assets were determined using an income-based approach, which includes market participant expectations of cash flows that an asset will generate over the remaining useful life discounted to present value using an appropriate discount rate.

On May 26, 2017, the Company's majority-owned subsidiary Gavita completed the acquisition of Agrolux Holding B.V., and its subsidiaries (collectively, "Agrolux"), for $21.8 million. Based in the Netherlands, Agrolux is a worldwide supplier of horticultural lighting. The purchase price included contingent consideration, a non-cash investing activity, with a maximum payout and estimated fair value of $5.2 million, the payment of which will depend on the performance of the business through calendar year 2017. The preliminary valuation of the acquired assets included (i) $8.0 million of cash, prepaid and other current assets, (ii) $10.1 million of inventory and accounts receivable, (iii) $0.5 million of fixed assets, (iv) $8.6 million of accounts payable and other current liabilities, (v) $6.7 million of short term debt, (vi) $16.1 million of finite-lived identifiable intangible assets, (vii) $6.4 million of non-deductible goodwill, and (viii) $4.0 million of deferred tax liabilities. Identifiable intangible assets included tradenames and customer relationships with useful lives ranging between 10 and 20 years. The estimated fair values of the identifiable intangible assets were determined using an income-based approach, which includes market participant expectations of cash flows that an asset will generate over the remaining useful life discounted to present value using an appropriate discount rate. Net sales for Agrolux included within the Hawthorne segment for fiscal 2017 were $16.4 million.

On October 3, 2016, the Company's Hawthorne segment completed the acquisition of Botanicare, an Arizona-based leading producer of plant nutrients, plant supplements and growing systems used for hydroponic gardening, for $92.6 million. The purchase price included contingent consideration, a non-cash investing activity, with a maximum payout and estimated fair value of $15.5 million, which was paid during the third quarter of fiscal 2017. The preliminary valuation of the acquired assets included (i) $1.2 million of cash, prepaid and other current assets, (ii) $8.4 million of inventory and accounts receivable, (iii) $1.4 million of fixed assets, (iv) $2.3 million of accounts payable and other current liabilities, (v) $53.0 million of finite-lived identifiable intangible assets, and (vi) $30.9 million of tax-deductible goodwill. Identifiable intangible assets included tradenames, customer relationships and non-compete arrangements with useful lives ranging between 5 and 25 years. The estimated fair values of the identifiable intangible assets were determined using an income-based approach, which includes market participant expectations of cash flows that an asset will generate over the remaining useful life discounted to present value using an appropriate discount rate. Net sales for Botanicare included within the Hawthorne segment for fiscal year 2017 were $47.6 million.

During the first quarter of fiscal 2017, the Company's U.S. Consumer segment completed two acquisitions of companies whose products support the Company's focus on the emerging areas of water positive landscapes and internet-enabled technology for an aggregate purchase price of $3.2 million. The valuation of the acquired assets for the transactions included finite-lived identifiable intangible assets and goodwill of $2.8 million. During the third quarter of fiscal 2017, the Company's Hawthorne segment completed the acquisition of a company focused on the technology supporting hydroponic growing systems for an aggregate purchase price of $3.5 million, which included finite-lived identifiable intangible assets of $3.2 million.

Fiscal 2016

On May 26, 2016, the Company's Hawthorne segment acquired majority control and a 75% economic interest in Gavita for $136.2 million. The remaining 25% interest was retained by Gavita's former ownership group. This transaction provided the Company's Hawthorne segment with a presence in the lighting category of indoor and urban gardening, which is a part of the Company's long-term growth strategy. Gavita, which is based in the Netherlands, is a leading producer and marketer of indoor lighting used in the greenhouse and hydroponic markets, predominately in the United States and Europe. The purchase price included contingent consideration, a non-cash investing activity, with an estimated fair value of $2.5 million. The valuation of the acquired assets included (i) $6.4 million of cash, prepaid and other current assets, (ii) $37.9 million of inventory and accounts receivable, (iii) $1.3 million of fixed assets, (iv) $18.7 million of accounts payable and other current liabilities, (v) $5.5 million of short term debt, (vi) $102.6 million of finite-lived identifiable intangible assets, (vii) $83.3 million of non-deductible goodwill, and (viii) $25.7 million of deferred tax liabilities. Identifiable intangible assets included tradenames, customer relationships and non-compete arrangements with useful lives ranging between 5 and 25 years. The estimated fair values of the identifiable intangible assets were determined using an income-based approach, which includes market participant expectations of cash flows that an asset will generate over the remaining useful life discounted to present value using an appropriate discount rate. Gavita's former ownership group initially retained a 25% noncontrolling interest in Gavita consisting of ownership of 5% of the outstanding shares of Gavita and a loan with interest payable based on distributions by Gavita. The loan represented a non-cash financing activity and is recorded at fair value in the "Long-term debt" line in the Consolidated Balance Sheets. The initial valuation of the loan was $37.7 million. The fair value measurement was classified in Level 3 of the fair value hierarchy. Net sales for Gavita included within the Hawthorne segment for fiscal 2017 and fiscal 2016 were $122.3 million and $35.7 million, respectively.

During the third quarter of fiscal 2016, the Company completed an acquisition within the Other segment to expand its Canadian growing media operations for an estimated purchase price of $33.9 million. The estimated purchase price included contingent consideration, a non-cash investing activity, with an estimated fair value of $10.8 million, of which $6.5 million was paid during the first quarter of fiscal 2017, and the remaining $4.3 million has been adjusted and reclassified to the acquired assets as the Company does not expect to pay out any additional consideration. The valuation of the acquired assets included (i) $4.7 million of inventory and accounts receivable, (ii) $18.5 million of fixed assets, (iii) $9.3 million of finite-lived identifiable intangible assets, (iv) $1.2 million of deferred tax liabilities, and (v) an investment in an unconsolidated joint venture of $0.5 million. Identifiable intangible assets included peat bog lease rights, tradenames, customer relationships and non-compete arrangements with useful lives ranging between 5 and 25 years. The estimated fair values of the identifiable intangible assets were determined using an income-based approach, which includes market participant expectations of cash flows that an asset will generate over the remaining useful life discounted to present value using an appropriate discount rate. Net sales related to this acquisition included within the Other segment for fiscal 2017 and fiscal 2016 were $14.6 million and $6.4 million, respectively.

During the second quarter of fiscal 2016, the Company entered into definitive agreements with Bonnie and its sole shareholder AFC, providing for the Company's participation in the Bonnie Business. The Company's participation includes a Term Loan Agreement from the Company to AFC, with Bonnie as guarantor, in the amount of $72.0 million with a fixed coupon rate of 6.95% (the "Term Loan") as well as a Services Agreement pursuant to which the Company provides marketing, research and development and certain ancillary services to Bonnie for a commission fee based on the profits of the Bonnie Business and the reimbursement of certain costs. These agreements also include options beginning in fiscal 2020 that provide for either (i) the Company to increase its economic interest in the Bonnie Business (the "Bonnie Option") or (ii) AFC and Bonnie to repurchase

the Company's economic interest in the Bonnie Business. During fiscal 2017 and fiscal 2016, the Company recognized commission income of $2.2 million and $3.6 million, respectively, and cost reimbursements of $2.6 million and $0.6 million, respectively.

The Bonnie Option is required to be accounted for as a derivative instrument and is recorded at fair value in the "Other assets" line in the Consolidated Balance Sheets, with changes in fair value recognized in the "Other income (loss), net" line in the Consolidated Statements of Operations. The estimated fair value of the Bonnie Option was $11.8 million and $10.9 million as of September 30, 2017 and 2016, respectively, and the fair value measurement was classified in Level 3 of the fair value hierarchy.

Fiscal 2015

On March 30, 2015, the Company's Hawthorne segment acquired the assets of General Hydroponics, Inc. ("General Hydroponics") and Bio-Organic Solutions, Inc. ("Vermicrop") for $120.0 million and $15.0 million, respectively. This transaction provided the Company's Hawthorne segment with an additional entry into the indoor and urban gardening market, which is a part of the Company's long-term growth strategy. General Hydroponics and Vermicrop are leading producers of liquid plant food products, growing media, and accessories for the hydroponic markets. The General Hydroponics purchase price included non-cash investing activity of $1.0 million representing the deferral of a portion of the purchase price, of which $0.5 million was paid in the second quarter of fiscal 2016 and $0.5 million was paid in the second quarter of fiscal 2017. The Vermicrop purchase price included $5.0 million of contingent consideration, which was paid during the third quarter of fiscal 2016. The Vermicrop purchase price and contingent consideration were paid in common shares of Scotts Miracle-Gro ("Common Shares") based on the average share price at the time of payment. The valuation of the acquired assets included (i) $14.2 million of inventory and accounts receivable, (ii) $5.7 million in fixed assets, (iii) $65.0 million of finite-lived identifiable intangible assets, and (iv) $53.9 million of tax-deductible goodwill. Identifiable intangible assets included tradenames, customer relationships and non-compete arrangements with useful lives ranging between 5 and 26 years. The estimated fair values of the identifiable intangible assets were determined using an income-based approach, which includes market participant expectations of cash flows that an asset will generate over the remaining useful life discounted to present value using an appropriate discount rate. Net sales for General Hydroponics and Vermicrop included within the Hawthorne segment for fiscal 2017 and fiscal 2016 were $73.5 million and $64.1 million, respectively.

During fiscal 2015, the Company completed three acquisitions of growing media operations within the U.S. Consumer segment for an aggregate purchase price of $34.0 million. These acquisitions expanded the Company's growing media operations and distribution capabilities. The valuation of the acquired assets for the transactions included (i) $7.4 million in finite-lived identifiable intangible assets, (ii) $10.7 million in fixed assets, (iii) $9.4 million in tax deductible goodwill, and (iv) $7.5 million of inventory and accounts receivable. Identifiable intangible assets include tradenames and customer relationships with useful lives ranging between 7 and 20 years. The estimated fair values of the identifiable intangible assets were determined using an income-based approach, which includes market participant expectations of cash flows that an asset will generate over the remaining useful life discounted to present value using an appropriate discount rate.

The consolidated financial statements include the results of operations for these business combinations from the date of each acquisition. The pro forma results of operations and the results of operations for acquired businesses since the acquisition dates have not been separately disclosed because the effects were not significant compared to the consolidated financial statements, individually or in the aggregate.

NOTE 8. INVESTMENT IN UNCONSOLIDATED AFFILIATES

As of September 30, 2017, the Company held a minority equity interest of approximately 30% in the TruGreen Joint Venture. This interest had an initial fair value of $294.0 million and subsequently is accounted for using the equity method of accounting, with the Company's proportionate share of the TruGreen Joint Venture earnings reflected in the Consolidated Statements of Operations. In addition, the Company and TruGreen Holdings entered into a limited liability company agreement (the "LLC Agreement") governing the management of the TruGreen Joint Venture, as well as certain ancillary agreements including a transition services agreement and an employee leasing agreement. The LLC Agreement provides the Company with minority representation on the board of directors of the TruGreen Joint Venture.

In connection with the closing of the transactions contemplated by the Contribution Agreement on April 13, 2016, the TruGreen Joint Venture obtained debt financing and made a distribution of $196.2 million to the Company and the Company invested $18.0 million in second lien term loan financing to the TruGreen Joint Venture. The second lien term loan receivable had a carrying value of $18.1 million and $18.0 million at September 30, 2017 and 2016, respectively, and is recorded in the "Other assets" line in the Consolidated Balance Sheets. The Company was reimbursed $40.2 million and $52.6 million during fiscal 2017 and fiscal 2016, respectively, and had accounts receivable of $0.4 million and $14.9 million at September 30, 2017 and 2016, respectively, for expenses incurred pursuant to a short-term transition services agreement and an employee leasing agreement. The Company also had an indemnification asset of $4.8 million and $9.6 million at September 30, 2017 and 2016, respectively, for future payments on claims associated with insurance programs. The Company received distributions from unconsolidated

affiliates intended to cover required tax payments of $3.6 million and $7.5 million million during fiscal 2017 and fiscal 2016, respectively. During the fourth quarter of fiscal 2017, the Company received an $87.1 million distribution from the TruGreen Joint Venture in connection with its August 2017 debt refinancing. The Company has received cumulative distributions from the TruGreen Joint Venture in excess of our investment balance, which resulted in an amount recorded in the "Distributions in excess of investment in unconsolidated affiliate" line in the Consolidated Balance Sheets of $21.9 million at September 30, 2017. In accordance with the applicable accounting guidance, the Company reclassified the negative balance to the liability section of the Consolidated Balance Sheet.

During the fourth quarter of fiscal 2017, the Company made a $29.4 million investment in an unconsolidated subsidiary whose products support the professional U.S. industrial, turf and ornamental market.

The following tables present summarized financial information of the Company's unconsolidated affiliates:

	September 30,	
	2017	2016
	(In millions)	
Cash and cash equivalents	$ 26.4	$ 92.3
Other current assets	180.9	159.1
Intangible assets, net	860.7	916.8
Goodwill	184.0	165.3
Other assets	229.5	376.0
Total assets	$ 1,481.5	$ 1,709.5
Current liabilities	$ 221.0	$ 210.9
Current portion of debt	15.5	6.9
Long-term debt	987.5	726.0
Other liabilities	57.9	80.6
Equity	199.6	685.1
Total liabilities and equity	$ 1,481.5	$ 1,709.5

	Year Ended September 30,	
	2017	2016
	(in millions)	
Revenue	$ 1,340.2	$ 808.4
Gross margin	429.7	287.5
Selling and administrative expenses	316.8	167.8
Amortization expense	72.8	27.1
Interest expense	69.9	30.8
Restructuring and other charges	67.5	34.8
Net (loss) income	$ (97.3)	$ 27.0

The summarized financial information for the TruGreen Joint Venture includes activity from the date of formation of the TruGreen Joint Venture on April 13, 2016 through September 30, 2017. Net income does not include income taxes, which are recognized and paid by the partners of the TruGreen Joint Venture. The income taxes associated with the Company's share of net income has been recorded in the "Income tax expense from continuing operations" line in the Consolidated Statement of Operations.

The Company recognized equity in (income) loss of unconsolidated affiliates of $29.0 million and $(7.8) million in fiscal 2017 and fiscal 2016, respectively. Included within (income) loss of unconsolidated affiliates for fiscal 2017 and fiscal 2016, respectively, is the Company's $25.2 million and $11.7 million share of restructuring and other charges, refinancing costs and non-cash purchase accounting fair value adjustments related to deferred revenue and advertising incurred by the TruGreen Joint Venture. For fiscal 2017, these charges included $1.3 million for transaction costs, $12.1 million for nonrecurring integration and separation costs, $7.2 million of costs associated with the TruGreen Joint Venture's August 2017 debt refinancing and $4.6 million for a non-cash purchase accounting fair value write-down adjustment related to deferred revenue and advertising. For fiscal 2016, these

charges included $6.0 million for transaction costs, $4.4 million for nonrecurring integration and separation costs and $1.3 million for a non-cash purchase accounting fair value write-down adjustment related to deferred revenue and advertising.

NOTE 9. RETIREMENT PLANS

The Company sponsors a defined contribution 401(k) plan for substantially all U.S. associates. The Company matches 150% of associates' initial 4% contribution and 50% of their remaining contribution up to 6%. The Company may make additional discretionary profit sharing matching contributions to eligible employees on their initial 4% contribution. The Company recorded charges of $13.9 million, $13.0 million and $11.5 million under the plan in fiscal 2017, fiscal 2016 and fiscal 2015, respectively.

The Company sponsors two defined benefit pension plans for certain U.S. associates. Benefits under these plans have been frozen and closed to new associates since 1997. The benefits under the primary plan are based on years of service and the associates' average final compensation or stated amounts. The Company's funding policy, consistent with statutory requirements and tax considerations, is based on actuarial computations using the Projected Unit Credit method. The second frozen plan is a non-qualified supplemental pension plan. This plan provides for incremental pension payments so that total pension payments equal amounts that would have been payable from the Company's pension plan if it were not for limitations imposed by the income tax regulations.

The Company sponsors defined benefit pension plans associated with its former international businesses in the United Kingdom and Germany. These plans provide retirement benefits primarily based on years of service and compensation levels. On July 1, 2010, the Company froze its two U.K. defined benefit pension plans and transferred participants to an amended defined contribution plan. Prior to August 31, 2017, participants were no longer credited for service; however, salary increases continued to be factored into each participant's final pension benefit. In connection with the sale of the International Business on August 31, 2017, the Company (1) retained all obligations related to the two U.K. defined benefit pension plans provided that future salary increases are no longer factored into each participant's final pension benefit, (2) retained the Germany defined benefit pension obligations associated with inactive participants and (3) disposed of the Germany defined benefit pension obligations associated with active participants and all obligations associated with the France defined benefit pension plans. These changes resulted in a decrease in the projected benefit obligation of $7.1 million during fiscal 2017. The Company recognized a settlement charge of $1.4 million during fiscal 2017 as part of the gain on the sale of the International Business in the "Income from discontinued operations, net of tax" line in the Consolidated Statements of Operations..

The following tables present information about benefit obligations, plan assets, annual expense, assumptions and other information about the Company's defined benefit pension plans. The defined benefit pension plans are valued using a September 30 measurement date.

	U.S. Defined Benefit Pension Plans		International Defined Benefit Pension Plans	
	2017	2016	2017	2016
	(In millions)			
Change in projected benefit obligation:				
Benefit obligation at beginning of year	$ 118.2	$ 117.3	$ 206.2	$ 190.5
Service cost	—	—	0.9	0.9
Interest cost	2.8	4.3	3.7	6.3
Actuarial (gain) loss	(3.8)	3.8	(13.0)	44.0
Benefits paid	(7.2)	(7.2)	(6.0)	(7.7)
Divestiture	—	—	(7.1)	—
Other	—	—	(0.8)	(0.9)
Foreign currency translation	—	—	6.8	(26.9)
Projected benefit obligation at end of year	$ 110.0	$ 118.2	$ 190.7	$ 206.2
Accumulated benefit obligation at end of year	$ 110.0	$ 118.2	$ 190.7	$ 201.9
Change in plan assets:				
Fair value of plan assets at beginning of year	$ 89.4	$ 83.5	$ 173.9	$ 166.0
Actual return on plan assets	5.0	9.9	2.2	37.0
Employer contribution	0.3	3.2	5.6	5.9
Benefits paid	(7.2)	(7.2)	(6.0)	(7.7)
Foreign currency translation	—	—	6.3	(26.4)
Other	—	—	(0.8)	(0.9)
Fair value of plan assets at end of year	$ 87.5	$ 89.4	$ 181.2	$ 173.9
Underfunded status at end of year	$ (22.5)	$ (28.8)	$ (9.5)	$ (32.3)
Information for pension plans with an accumulated benefit obligation in excess of plan assets:				
Projected benefit obligation	$ 110.0	$ 118.2	$ 190.7	$ 206.2
Accumulated benefit obligation	110.0	118.2	190.7	201.9
Fair value of plan assets	87.5	89.4	181.2	173.9
Amounts recognized in the Consolidated Balance Sheets consist of:				
Noncurrent assets	$ —	$ —	$ 9.4	$ 0.5
Current liabilities	(0.2)	(0.2)	(0.9)	(0.8)
Noncurrent liabilities	(22.3)	(28.6)	(17.9)	(32.0)
Total amount accrued	$ (22.5)	$ (28.8)	$ (9.4)	$ (32.3)
Amounts recognized in accumulated other comprehensive loss consist of:				
Actuarial loss	$ 40.7	$ 46.4	$ 50.8	$ 62.2
Total amount recognized	$ 40.7	$ 46.4	$ 50.8	$ 62.2

	U.S. Defined Benefit Pension Plans		International Defined Benefit Pension Plans	
	2017	2016	2017	2016
	(In millions, except percentage figures)			
Total change in other comprehensive loss attributable to:				
Pension benefit (loss) gain during the period	$ 4.0	$ 1.1	$ 9.8	$ (14.5)
Reclassification of pension benefit losses to net income	1.7	1.8	1.9	1.5
Settlement loss during the period	—	—	1.4	—
Foreign currency translation	—	—	(1.7)	7.8
Total change in other comprehensive loss	$ 5.7	$ 2.9	$ 11.4	$ (5.2)
Amounts in accumulated other comprehensive loss expected to be recognized as components of net periodic benefit cost in fiscal 2018 are as follows:				
Actuarial loss	$ 1.5		$ 1.1	
Amount to be amortized into net periodic benefit cost	$ 1.5		$ 1.1	
Weighted average assumptions used in development of projected benefit obligation:				
Discount rate	3.41%	3.07%	2.47%	2.12%
Rate of compensation increase	n/a	n/a	n/a	3.50%

	U.S. Defined Benefit Pension Plans			International Defined Benefit Pension Plans		
	2017	2016	2015	2017	2016	2015
	(In millions, except percentage figures)					
Components of net periodic benefit cost:						
Service cost	$ —	$ —	$ —	$ 0.9	$ 0.9	$ 1.0
Interest cost	2.8	4.3	4.0	3.7	6.3	7.1
Expected return on plan assets	(4.9)	(5.0)	(5.4)	(7.7)	(7.3)	(8.9)
Net amortization	1.7	1.8	3.3	1.8	1.5	1.6
Net periodic benefit (income) cost	(0.4)	1.1	1.9	(1.3)	1.4	0.8
Settlement	—	—	—	1.4	—	—
Total benefit (income) cost	$ (0.4)	$ 1.1	$ 1.9	$ 0.1	$ 1.4	$ 0.8
Weighted average assumptions used in development of net periodic benefit (income) cost:						
Weighted average discount rate	n/a	3.81%	3.81%	n/a	3.58%	3.78%
Weighted average discount rate - service cost	n/a	n/a	n/a	1.37%	n/a	n/a
Weighted average discount rate - interest cost	2.44%	n/a	n/a	1.84%	n/a	n/a
Expected return on plan assets	5.50%	5.50%	6.25%	4.55%	4.75%	5.70%
Rate of compensation increase	n/a	n/a	n/a	3.50%	3.53%	3.70%

	U.S. Defined Benefit Pension Plans	International Defined Benefit Pension Plans
	(In millions, except percentage figures)	
Other information:		
Plan asset allocations:		
Target for September 30, 2018:		
Equity securities	25%	30%
Debt securities	70%	67%
Real estate securities	5%	—%
Cash and cash equivalents	—%	—%
Insurance contracts	—%	3%
September 30, 2017:		
Equity securities	26%	31%
Debt securities	67%	66%
Real estate securities	4%	—%
Cash and cash equivalents	3%	—%
Insurance contracts	—%	3%
September 30, 2016:		
Equity securities	23%	30%
Debt securities	70%	70%
Real estate securities	4%	—%
Cash and cash equivalents	3%	—%
Insurance contracts	—%	—%
Expected company contributions in fiscal 2018	$ 0.2	$ 6.8
Expected future benefit payments:		
2018	$ 7.9	$ 5.3
2019	7.6	5.5
2020	7.6	5.6
2021	7.6	5.9
2022	7.5	6.3
2023 – 2028	35.4	35.8

The following tables set forth the fair value of the Company's pension plan assets, segregated by level within the fair value hierarchy:

	September 30, 2017			
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Unobservable Inputs (Level 3)	Total
	(In millions)			
U.S. Defined Benefit Pension Plan Assets				
Cash and cash equivalents	$ 2.4	$ —	$ —	$ 2.4
Mutual funds—real estate	—	3.7	—	3.7
Mutual funds—equities	—	22.5	—	22.5
Mutual funds—fixed income	—	58.9	—	58.9
Total	$ 2.4	$ 85.1	$ —	$ 87.5
International Defined Benefit Pension Plan Assets				
Cash and cash equivalents	$ 0.4	$ —	$ —	$ 0.4
Insurance contracts	—	4.7	—	4.7
Mutual funds—equities	—	56.7	—	56.7
Mutual funds—fixed income	—	119.4	—	119.4
Total	$ 0.4	$ 180.8	$ —	$ 181.2

	September 30, 2016			
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Unobservable Inputs (Level 3)	Total
	(In millions)			
U.S. Defined Benefit Pension Plan Assets				
Cash and cash equivalents	$ 2.2	$ —	$ —	$ 2.2
Mutual funds—real estate	—	3.8	—	3.8
Mutual funds—equities	—	20.9	—	20.9
Mutual funds—fixed income	—	62.5	—	62.5
Total	$ 2.2	$ 87.2	$ —	$ 89.4
International Defined Benefit Pension Plan Assets				
Cash and cash equivalents	$ 0.7	$ —	$ —	$ 0.7
Mutual funds—equities	—	51.8	—	51.8
Mutual funds—fixed income	—	121.4	—	121.4
Total	$ 0.7	$ 173.2	$ —	$ 173.9

The fair value of the mutual funds are valued at the exchange-listed year end closing price or at the net asset value of shares held by the fund at the end of the year. Insurance contracts are valued by discounting the related cash flows using a current year end market rate or at cash surrender value, which is presumed to equal fair value.

Investment Strategy

Target allocation percentages among various asset classes are maintained based on an individual investment policy established for each of the various pension plans. Asset allocations are designed to achieve long-term objectives of return while mitigating against downside risk and considering expected cash requirements necessary to fund benefit payments. However, the Company cannot predict future investment returns and therefore cannot determine whether future pension plan funding requirements could materially and adversely affect its financial condition, results of operations or cash flows.

Basis for Long-Term Rate of Return on Asset Assumptions

The Company's expected long-term rate of return on asset assumptions are derived from studies conducted by third parties. The studies include a review of anticipated future long-term performance of individual asset classes and consideration of the appropriate asset allocation strategy given the anticipated requirements of the plans to determine the average rate of earnings expected. While the studies give appropriate consideration to recent fund performance and historical returns, the assumptions primarily represent expectations about future rates of return over the long term.

NOTE 10. ASSOCIATE MEDICAL BENEFITS

The Company provides comprehensive major medical benefits to certain of its retired associates and their dependents. Substantially all of the Company's domestic associates who were hired before January 1, 1998 become eligible for these benefits if they retire at age 55 or older with more than 10 years of service. The retiree medical plan requires certain minimum contributions from retired associates and includes provisions to limit the overall cost increases the Company is required to cover. The Company funds its portion of retiree medical benefits on a pay-as-you-go basis.

The following table sets forth information about the retiree medical plan for domestic associates. The retiree medical plan is valued using a September 30 measurement date.

	2017	2016
	(In millions, except percentage figures)	
Change in Accumulated Plan Benefit Obligation (APBO):		
Benefit obligation at beginning of year	$ 26.2	$ 26.0
Service cost	0.3	0.2
Interest cost	0.7	1.0
Plan participants' contributions	0.3	0.5
Actuarial (gain) loss	(1.2)	1.3
Benefits paid	(2.4)	(2.8)
Benefit obligation at end of year	$ 23.9	$ 26.2
Change in plan assets:		
Fair value of plan assets at beginning of year	$ —	$ —
Employer contribution	2.1	2.3
Plan participants' contributions	0.3	0.5
Gross benefits paid	(2.4)	(2.8)
Fair value of plan assets at end of year	$ —	$ —
Unfunded status at end of year	$ (23.9)	$ (26.2)
Amounts recognized in the Consolidated Balance Sheets consist of:		
Current liabilities	$ (1.8)	$ (1.8)
Noncurrent liabilities	(22.1)	(24.4)
Total amount accrued	$ (23.9)	$ (26.2)
Amounts recognized in accumulated other comprehensive loss consist of:		
Actuarial loss	$ 3.2	$ 4.7
Unamortized prior service credit	(5.8)	(6.9)
Total amount recognized	$ (2.6)	$ (2.2)
Total change in other comprehensive loss attributable to:		
Benefit (gain) loss during the period	$ (1.1)	$ 1.5
Net amortization of prior service credit and actuarial loss during the year	0.7	1.0
Total change in other comprehensive loss (income)	$ (0.4)	$ 2.5
Discount rate used in development of APBO	3.56%	3.26%

	2017	2016	2015
Components of net periodic benefit cost			
Service cost	$ 0.3	$ 0.2	$ 0.4
Interest cost	0.7	1.0	1.3
Amortization of actuarial loss	0.4	0.1	—
Amortization of prior service credit	(1.1)	(1.1)	—
Total postretirement benefit cost	$ 0.3	$ 0.2	$ 1.7
Discount rate used in development of net periodic benefit cost	n/a	4.03%	4.08%
Discount rate used in development of service cost	3.44%	n/a	n/a
Discount rate used in development of interest cost	2.56%	n/a	n/a

The estimated actuarial loss and prior service credit that will be amortized from accumulated loss into net periodic benefit cost over the next fiscal year is $0.2 million and $1.1 million, respectively.

For measurement as of September 30, 2017, management has assumed that health care costs will increase at an annual rate of 6.75% in fiscal 2017, and thereafter decreasing 0.25% per year to an ultimate trend rate of 5.00% in 2024. A 1% increase or decrease in health cost trend rate assumptions would not have a material effect on the APBO as of September 30, 2017. A 1% increase or decrease in the health cost trend rate assumptions would not have a material effect on service or interest costs.

The following benefit payments under the plan are expected to be paid by the Company and the retirees for the fiscal years indicated:

	Gross Benefit Payments	Retiree Contributions	Net Company Payments
		(In millions)	
2018	$ 2.3	$ (0.5)	$ 1.8
2019	2.6	(0.7)	1.9
2020	2.7	(0.8)	1.9
2021	2.7	(0.8)	1.9
2022	2.8	(0.9)	1.9
2023 – 2027	12.0	(3.9)	8.1

The Company also provides comprehensive major medical benefits to its associates. The Company is self-insured for certain health benefits up to $0.6 million per occurrence per individual. The cost of such benefits is recognized as expense in the period the claim is incurred. This cost was $33.4 million, $31.8 million and $29.6 million in fiscal 2017, fiscal 2016 and fiscal 2015, respectively.

NOTE 11. DEBT

The components of debt are as follows:

	September 30,	
	2017	2016
	(In millions)	
Credit Facilities:		
Revolving loans	$ 300.5	$ 323.2
Term loans	273.8	288.8
Senior Notes – 5.250%	250.0	—
Senior Notes – 6.000%	400.0	400.0
Receivables facility	80.0	138.6
Other	105.4	71.3
Total debt	1,409.7	1,221.9
Less current portions	143.1	185.0
Less unamortized debt issuance costs	8.6	6.0
Long-term debt	$ 1,258.0	$ 1,030.9

The Company's debt matures as follows for each of the next five fiscal years and thereafter (in millions):

2018	$ 143.1
2019	16.2
2020	15.4
2021	529.3
2022	—
Thereafter	705.7
	$ 1,409.7

Credit Facilities

On December 20, 2013, the Company entered into the third amended and restated credit agreement, providing the Company and certain of its subsidiaries with a five-year senior secured revolving loan facility in the aggregate principal amount of up to $1.7 billion (the "former credit facility"). On October 29, 2015, the Company entered into the fourth amended and restated credit agreement (the "credit agreement"), providing the Company and certain of its subsidiaries with five-year senior secured loan facilities in the aggregate principal amount of $1.9 billion, comprised of a revolving credit facility of $1.6 billion and a term loan in the original principal amount of $300.0 million (the "credit facilities"). The credit agreement also provides the Company with the right to seek additional committed credit under the agreement in an aggregate amount of up to $500.0 million plus an unlimited additional amount, subject to certain specified financial and other conditions. Under the credit agreement, the Company has the ability to obtain letters of credit up to $100.0 million. The credit agreement replaces the former credit facility, and will terminate on October 29, 2020. Borrowings on the revolving credit facility may be made in various currencies, including U.S. dollars, euro, British pounds, Australian dollars and Canadian dollars. The terms of the credit agreement include customary representations and warranties, affirmative and negative covenants, financial covenants and events of default. The proceeds of borrowings on the credit facilities may be used: (i) to finance working capital requirements and other general corporate purposes of the Company and its subsidiaries; and (ii) to refinance the amounts outstanding under the former credit facility.

Under the terms of the credit agreement, loans bear interest, at the Company's election, at a rate per annum equal to either the ABR or Adjusted LIBO Rate (both as defined in the credit agreement) plus the applicable margin. The credit facilities are guaranteed by substantially all of the Company's domestic subsidiaries, and are secured by (i) a perfected first priority security interest in all of the accounts receivable, inventory and equipment of the Company and the Company's domestic subsidiaries that are guarantors and (ii) the pledge of all of the capital stock of the Company's domestic subsidiaries that are guarantors.

At September 30, 2017, the Company had letters of credit outstanding in the aggregate principal amount of $23.5 million, and $1.3 billion of availability under the credit agreement, subject to the Company's continued compliance with the covenants

discussed below. The weighted average interest rates on average borrowings under the credit agreement and the former credit facility were 3.9% and 3.5% for fiscal 2017 and fiscal 2016, respectively.

The credit agreement contains, among other obligations, an affirmative covenant regarding the Company's leverage ratio on the last day of each quarter calculated as average total indebtedness, divided by the Company's earnings before interest, taxes, depreciation and amortization ("EBITDA"), as adjusted pursuant to the terms of the credit agreement ("Adjusted EBITDA"). The maximum leverage ratio was 4.50 as of September 30, 2017. The Company's leverage ratio was 3.04 at September 30, 2017. The credit agreement also includes an affirmative covenant regarding its interest coverage ratio. The interest coverage ratio is calculated as Adjusted EBITDA divided by interest expense, as described in the credit agreement, and excludes costs related to refinancings. The minimum interest coverage ratio was 3.00 for the twelve months ended September 30, 2017. The Company's interest coverage ratio was 7.54 for the twelve months ended September 30, 2017. The credit agreement allows the Company to make unlimited restricted payments (as defined in the credit agreement), including increased or one-time dividend payments and Common Share repurchases, as long as the leverage ratio resulting from the making of such restricted payments is 4.00 or less. Otherwise the Company may only make restricted payments in an aggregate amount for each fiscal year not to exceed the amount set forth in the credit agreement for such fiscal year ($200.0 million for fiscal 2018 and each fiscal year thereafter).

Senior Notes - 5.250%

On December 15, 2016, Scotts Miracle-Gro issued $250.0 million aggregate principal amount of 5.250% senior notes due 2026 (the "5.250% Senior Notes"). The net proceeds of the offering were used to repay outstanding borrowings under the credit facilities. The 5.250% Senior Notes represent general unsecured senior obligations and rank equal in right of payment with the Company's existing and future unsecured senior debt. The 5.250% Senior Notes have interest payment dates of June 15 and December 15 of each year. The 5.250% Senior Notes may be redeemed, in whole or in part, on or after December 15, 2021 at applicable redemption premiums. The 5.250% Senior Notes contain customary covenants and events of default and mature on December 15, 2026. Substantially all of Scotts Miracle-Gro's domestic subsidiaries serve as guarantors of the 5.250% Senior Notes.

Senior Notes - 6.625%

On December 15, 2015, Scotts Miracle-Gro redeemed all $200.0 million aggregate principal amount of its outstanding 6.625% senior notes due 2020 (the "6.625% Senior Notes") paying a redemption price of $213.2 million, comprised of $6.6 million of accrued and unpaid interest, $6.6 million of call premium and $200.0 million for outstanding principal amount. The $6.6 million call premium charge was recognized within the "Costs related to refinancing" line on the Consolidated Statement of Operations in the first quarter of fiscal 2016. Additionally, the Company had $2.2 million in unamortized bond discount and issuance costs associated with the 6.625% Senior Notes that were written off and recognized in the "Costs related to refinancing" line on the Consolidated Statement of Operations in the first quarter of fiscal 2016.

Senior Notes - 6.000%

On October 13, 2015, Scotts Miracle-Gro issued $400.0 million aggregate principal amount of 6.000% senior notes due 2023 (the "6.000% Senior Notes"). The net proceeds of the offering were used to repay outstanding borrowings under the former credit facility. The 6.000% Senior Notes represent general unsecured senior obligations and rank equal in right of payment with the Company's existing and future unsecured senior debt. The 6.000% Senior Notes have interest payment dates of April 15 and October 15 of each year. The 6.000% Senior Notes may be redeemed, in whole or in part, on or after October 15, 2018 at applicable redemption premiums. The 6.000% Senior Notes contain customary covenants and events of default and mature on October 15, 2023. Substantially all of Scotts Miracle-Gro's domestic subsidiaries serve as guarantors of the 6.000% Senior Notes.

Receivables Facility

On September 25, 2015, the Company entered into an amended and restated master accounts receivable purchase agreement (the "MARP Agreement"). The MARP Agreement provided for the discretionary sale by the Company, and the discretionary purchase by the participating banks, on a revolving basis, of accounts receivable generated by sales to three specified debtors in an aggregate amount not to exceed $400.0 million. The MARP Agreement terminated effective October 14, 2016 in accordance with its terms upon the Company's repayment of its outstanding obligations thereunder using $133.5 million borrowed under the credit agreement. There were $138.6 million in borrowings or receivables pledged as collateral under the MARP Agreement as of September 30, 2016. The carrying value of the receivables pledged as collateral was $174.7 million as of September 30, 2016.

On April 7, 2017, the Company entered into a Master Repurchase Agreement (including the annexes thereto, the "Repurchase Agreement") and a Master Framework Agreement (the "Framework Agreement" and, together with the Repurchase Agreement, the "Receivables Facility"). Under the Receivables Facility, the Company may sell a portfolio of available and eligible outstanding customer accounts receivable to the purchasers and simultaneously agrees to repurchase the receivables on a weekly basis. The eligible accounts receivable consist of up to $250.0 million in accounts receivable generated by sales to three specified customers. The Receivables Facility is considered a secured financing with the customer accounts receivable, related contract rights and proceeds thereof (and the collection accounts into which the same are deposited) constituting the collateral therefor. The repurchase price for customer accounts receivable bears interest at LIBOR (with a zero floor), as defined in the Repurchase Agreement, plus 0.90%.

On August 25, 2017, the Company entered into Amendment No. 1 to Master Framework Agreement ("the Amendment"). The Amendment (i) extends the expiration date of the Receivables Facility from August 25, 2017 to August 24, 2018, (ii) defines the seasonal commitment period of the Receivables Facility as beginning on February 23, 2018 and ending on June 15, 2018, (iii) increases the eligible amount of customer accounts receivable which may be sold from up to $250.0 million to up to $400.0 million and (iv) increases the commitment amount of the Receivables Facility during the seasonal commitment period from up to$100.0 million to up to $160.0 million.

The Company accounts for the sale of receivables under the Receivables Facility as short-term debt and continues to carry the receivables on its Consolidated Balance Sheet, primarily as a result of the Company's requirement to repurchase receivables sold. There were $80.0 million in borrowings or receivables pledged as collateral under the Receivables Facility as of September 30, 2017. The carrying value of the receivables pledged as collateral was $88.9 million as of September 30, 2017. As of September 30, 2017, there was $11.1 million of availability under the Receivables Facility.

Other

In connection with the acquisition of a controlling interest in Gavita, the Company recorded a loan to the noncontrolling ownership group of Gavita. The fair value of the loan was $55.6 million and $38.3 million at September 30, 2017 and September 30, 2016, respectively. The Company recorded a charge of $13.4 million during the fourth quarter of fiscal 2017 to write-up the fair value of the loan to the noncontrolling ownership group of Gavita to the agreed upon buyout value in the "Other non-operating expense" line in the Consolidated Statements of Operations.

Interest Rate Swap Agreements

The Company has outstanding interest rate swap agreements with major financial institutions that effectively convert a portion of the Company's variable-rate debt to a fixed rate. The swap agreements had a total U.S. dollar equivalent notional amount of $1,100.0 million and $650.0 million at September 30, 2017 and 2016, respectively. Interest payments made between the effective date and expiration date are hedged by the swap agreements, except as noted below.

The notional amount, effective date, expiration date and rate of each of these swap agreements outstanding at September 30, 2017 are shown in the table below:

Notional Amount (in millions)		Effective Date (a)	Expiration Date	Fixed Rate
$ 200		2/7/2014	11/7/2017	1.28%
300	(b)	11/21/2016	6/20/2018	0.83%
200	(b)	11/7/2016	8/7/2018	0.84%
150	(c)	2/7/2017	5/7/2019	2.12%
50	(c)	2/7/2017	5/7/2019	2.25%
200	(d)	12/20/2016	6/20/2019	2.12%

(a) The effective date refers to the date on which interest payments were first hedged by the applicable swap agreement.
(b) Notional amount adjusts in accordance with a specified seasonal schedule. This represents the maximum notional amount at any point in time.
(c) Interest payments made during the three-month period of each year that begins with the month and day of the effective date are hedged by the swap agreement.
(d) Interest payments made during the six-month period of each year that begins with the month and day of the effective date are hedged by the swap agreement.

Estimated Fair Values

The methods and assumptions used to estimate the fair values of the Company's debt instruments are described below:

Credit Facilities

The interest rate currently available to the Company fluctuates with the applicable LIBO rate, prime rate or Federal Funds Effective Rate and thus the carrying value is a reasonable estimate of fair value. The fair value measurement for the credit facilities was classified in Level 2 of the fair value hierarchy.

5.250% Senior Notes

The fair value of the 5.250% Senior Notes was determined based on the trading of the 5.250% Senior Notes in the open market. The difference between the carrying value and the fair value of the 5.250% Senior Notes represents the premium or discount on that date. The fair value measurement for the 5.250% Senior Notes was classified in Level 1 of the fair value hierarchy.

6.000% Senior Notes

The fair value of the 6.000% Senior Notes was determined based on the trading of the 6.000% Senior Notes in the open market. The difference between the carrying value and the fair value of the 6.000% Senior Notes represents the premium or discount on that date. The fair value measurement for the 6.000% Senior Notes was classified in Level 1 of the fair value hierarchy.

Accounts Receivable Pledged

The interest rate on the short-term debt associated with accounts receivable pledged under the Receivables Facility fluctuated with the applicable LIBOR and thus the carrying value is a reasonable estimate of fair value. The fair value measurement for the Receivables Facility was classified in Level 2 of the fair value hierarchy.

The estimated fair values of the Company's debt instruments are as follows:

	Year Ended September 30,			
	2017		2016	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
	(In millions)			
Revolving loans	$ 300.5	$ 300.5	$ 323.2	$ 323.2
Term loans	273.8	273.8	288.8	288.8
Senior Notes – 5.250%	250.0	264.4	—	—
Senior Notes – 6.000%	400.0	427.0	400.0	427.0
Receivables facility	80.0	80.0	138.6	138.6
Other	105.4	105.4	71.3	71.3

Weighted Average Interest Rate

The weighted average interest rates on the Company's debt were 4.6% and 4.4% for fiscal 2017 and fiscal 2016, respectively.

NOTE 12. EQUITY

Authorized and issued shares consisted of the following:

	September 30,	
	2017	2016
	(In millions)	
Preferred shares, no par value:		
Authorized	0.2 shares	0.2 shares
Issued	0.0 shares	0.0 shares
Common shares, no par value, $.01 stated value per share:		
Authorized	100.0 shares	100.0 shares
Issued	68.1 shares	68.1 shares

In fiscal 1995, The Scotts Company merged with Stern's Miracle-Gro Products, Inc. ("Miracle-Gro"). At September 30, 2017, the former shareholders of Miracle-Gro, including the Hagedorn Partnership L.P., owned approximately 26% of Scotts Miracle-Gro's outstanding Common Shares on a fully diluted basis and, thus, have the ability to significantly influence the election of directors and other actions requiring the approval of Scotts Miracle-Gro's shareholders.

Under the terms of the merger agreement with Miracle-Gro, the former shareholders of Miracle-Gro may not collectively acquire, directly or indirectly, beneficial ownership of Voting Stock (as that term is defined in the Miracle-Gro merger agreement) representing more than 49% of the total voting power of the outstanding Voting Stock, except pursuant to a tender offer for 100% of that total voting power, which tender offer is made at a price per share which is not less than the market price per share on the last trading day before the announcement of the tender offer and is conditioned upon the receipt of at least 50% of the Voting Stock beneficially owned by shareholders of Scotts Miracle-Gro other than the former shareholders of Miracle-Gro and their affiliates and associates.

Share Repurchases

In August 2014, the Scotts Miracle-Gro Board of Directors authorized the repurchase of up to $500.0 million of Common Shares over a five-year period (effective November 1, 2014 through September 30, 2019). On August 3, 2016, Scotts Miracle-Gro announced that its Board of Directors authorized a $500.0 million increase to the share repurchase authorization ending on September 30, 2019. The amended authorization allows for repurchases of Common Shares of up to $1.0 billion through September 30, 2019. The authorization provides the Company with flexibility to purchase Common Shares from time to time in open market purchases or through privately negotiated transactions. All or part of the repurchases may be made under Rule 10b5-1 plans, which the Company may enter into from time to time and which enable the repurchases to occur on a more regular basis, or pursuant to accelerated share repurchases. The share repurchase authorization, which expires September 30, 2019, may be suspended or discontinued at any time, and there can be no guarantee as to the timing or amount of any repurchases. From the inception of this share repurchase program in the fourth quarter of fiscal 2014 through September 30, 2017, Scotts Miracle-Gro repurchased approximately 4.8 million Common Shares for $391.5 million.

Exercise of Outstanding Aerogrow Warrants

On November 29, 2016, the Company's wholly-owned subsidiary SMG Growing Media, Inc. fully exercised its outstanding warrants to acquire additional shares of common stock of AeroGrow for an aggregate warrant exercise price of $47.8 million in exchange for the issuance of 21.6 million shares of common stock of AeroGrow, which increased the Company's percentage ownership of AeroGrow's outstanding shares of common stock (on a fully diluted basis) from 45% to 80%. The financial results of AeroGrow have been consolidated into the Company's consolidated financial statements since the fourth quarter of fiscal 2014, when the Company obtained control of AeroGrow's operations through increased involvement, influence and a working capital loan provided to AeroGrow. Following the exercise of the warrants, the Board of Directors of AeroGrow declared a $40.5 million distribution ($1.21 per share) payable on January 3, 2017 to shareholders of record on December 20, 2016. On January 3, 2017, AeroGrow paid a distribution of $8.1 million to its noncontrolling interest holders.

Share-Based Awards

Scotts Miracle-Gro grants share-based awards annually to officers and certain other employees of the Company and non-employee directors of Scotts Miracle-Gro. The share-based awards have consisted of stock options, restricted stock units, deferred stock units and performance-based awards. All of these share-based awards have been made under plans approved by the shareholders. Generally, employee share-based awards provide for three-year cliff vesting. Vesting for non-employee director awards is generally one year from the time of the award. Vesting of performance-based awards is dependent on service and achievement of specified performance targets. Share-based awards are forfeited if a holder terminates employment or service with the Company prior to the vesting date, except in cases where employees are eligible for accelerated vesting based on having satisfied retirement requirements relating to age and years of service. The Company estimates that 15% to 20% of its share-based awards will be forfeited based on an analysis of historical trends. This assumption is re-evaluated on an annual basis and adjusted as appropriate. Stock options have exercise prices equal to the market price of the underlying Common Shares on the date of grant with a term of 10 years. All of these share-based awards have been made under plans approved by the shareholders. If available, Scotts Miracle-Gro will typically use treasury shares, or if not available, newly-issued Common Shares, in satisfaction of its share-based awards.

On January 30, 2017, the Company issued 0.5 million upfront performance-based award units, covering a five-year performance period, with an estimated fair value of $43.3 million on the date of grant to certain senior executives as part of its Project Focus initiative. These awards provide for a five-year vesting period based on achievement of specific performance goals aligned with the strategic objectives of the Company's Project Focus initiatives. Based on the extent to which the targets are achieved, vested shares may range from 50 to 250 percent of the target award amount. The performance goals include a combination of five year cumulative operating cash flow less capital expenditures; five year average annual non-GAAP diluted EPS growth; and dividend yield. The Company assesses the probability of achievement of performance goals each period and records expense for the awards based on the probable achievement of such metrics. Performance-based award units accrue cash dividend equivalents that are payable upon vesting of the awards.

Subsequent to September 30, 2017, the Company issued 0.2 million upfront performance-based award units, covering a four-year performance period, with an estimated fair value of $20.2 million on the date of grant to certain Hawthorne employees as part of its Project Focus initiative. These awards provide for a vesting period of approximately four years based on achievement of specific performance goals aligned with the strategic objectives of the Company's Project Focus initiatives. Based on the extent to which the targets are achieved, vested shares may range from 50 to 250 percent of the target award amount. The performance goal is based on cumulative Hawthorne non-GAAP adjusted earnings. Performance-based award units accrue cash dividend equivalents that are payable upon vesting of the awards.

A maximum of 7.3 million Common Shares are available for issuance under share-based award plans. At September 30, 2017, approximately 3.9 million Common Shares were not subject to outstanding awards and were available to underlie the grant of new share-based awards. Common Shares held in treasury totaling 0.5 million and 0.6 million were reissued in support of share-based compensation awards and employee purchases under the employee stock purchase plan during fiscal 2017 and fiscal 2016, respectively.

The following is a summary of the share-based awards granted during each of the periods indicated:

	Year Ended September 30,		
	2017	2016	2015
Employees			
Options	—	444,890	440,690
Restricted stock units	109,708	74,467	78,463
Performance units	487,809	56,315	78,352
Board of Directors			
Deferred stock units	24,291	28,621	29,913
Total share-based awards	621,808	604,293	627,418
Aggregate fair value at grant dates (in millions)	$ 57.8	$ 16.4	$ 17.0

Total share-based compensation was as follows for each of the periods indicated:

	Year Ended September 30,		
	2017	2016	2015
		(In millions)	
Share-based compensation	$ 25.2	$ 15.6	$ 13.2
Tax benefit recognized	9.8	6.0	5.1

As of September 30, 2017, total unrecognized compensation cost related to non-vested share-based awards amounted to $41.5 million. This cost is expected to be recognized over a weighted-average period of 3.1 years. The tax benefit realized from the tax deductions associated with the exercise of share-based awards and the vesting of restricted stock totaled $20.5 million for fiscal 2017.

During fiscal 2015, Scotts Miracle-Gro issued 0.2 million Common Shares, which represented a carrying value of $8.3 million, out of its treasury shares for payment of the acquisition of Vermicrop. During fiscal 2016, Scotts Miracle-Gro issued 0.1 million Common Shares, which represented a carrying value of $4.2 million, out of its treasury shares for payment of contingent consideration related to the acquisition of Vermicrop.

Stock Options

Aggregate stock option activity for fiscal 2017 was as follows:

	No. of Options	Wtd. Avg. Exercise Price
Awards outstanding at September 30, 2016	1,801,041	$ 51.38
Granted	—	—
Exercised	(268,943)	40.81
Forfeited	(14,788)	64.31
Awards outstanding at September 30, 2017	1,517,310	53.05
Exercisable	713,399	38.20

At September 30, 2017, the Company expects 0.8 million of the remaining unexercisable stock options (after forfeitures), with a weighted-average exercise price of $66.17, intrinsic value of $24.3 million and average remaining term of 7.8 years, to vest in the future. The following summarizes certain information pertaining to stock option awards outstanding and exercisable at September 30, 2017 (options in millions):

	Awards Outstanding			Awards Exercisable		
Range of Exercise Price	No. of Options	Wtd. Avg. Remaining Life	Wtd. Avg. Exercise Price	No. of Options	Wtd. Avg. Remaining Life	Wtd. Avg. Exercise Price
$20.59 – $20.59	0.2	1.01	$ 20.59	0.2	1.01	$ 20.59
$38.81 – $49.19	0.5	3.45	45.17	0.5	3.45	45.17
$63.43 – $68.68	0.8	7.86	66.24	—	0	—
	1.5	5.47	$ 53.05	0.7	2.77	$ 38.20

The intrinsic values of the stock option awards outstanding and exercisable at September 30, 2017 were as follows (in millions):

	2017
Outstanding	$ 67.2
Exercisable	42.2

The grant date fair value of stock option awards is estimated using a binomial model and the assumptions in the following table. Expected market price volatility is based on implied volatilities from traded options on Common Shares and historical volatility specific to the Common Shares. Historical data, including demographic factors impacting historical exercise behavior, is used to estimate stock option exercises and employee terminations within the valuation model. The risk-free rate for periods within the contractual life (normally ten years) of the stock option is based on the U.S. Treasury yield curve in effect at the time of grant. The expected life of stock options is based on historical experience and expectations for grants outstanding. No stock options were granted in fiscal 2017. The weighted average assumptions for awards granted in fiscal 2016 and 2015 are as follows:

	2016	2015
Expected market price volatility	25.5%	26.6%
Risk-free interest rates	1.5%	1.3%
Expected dividend yield	2.7%	2.8%
Expected life of stock options in years	6.0	6.0
Estimated weighted-average fair value per stock option	$ 12.33	$ 11.51

The total intrinsic value of stock options exercised was $14.5 million, $13.6 million and $16.3 million during fiscal 2017, fiscal 2016 and fiscal 2015, respectively. Cash received from the exercise of stock options for fiscal 2017, fiscal 2016 and fiscal 2015 was $11.0 million, $14.7 million and $24.3 million, respectively.

Restricted share-based awards

Restricted share-based award activity (including restricted stock units and deferred stock units) was as follows:

	No. of Shares	Wtd. Avg. Grant Date Fair Value per Share
Awards outstanding at September 30, 2014	433,892	$ 52.55
Granted	108,376	63.85
Vested	(135,562)	47.33
Forfeited	(25,197)	58.44
Awards outstanding at September 30, 2015	381,509	57.22
Granted	103,088	69.00
Vested	(161,440)	47.21
Forfeited	(17,494)	60.18
Awards outstanding at September 30, 2016	305,663	66.31
Granted	133,999	92.70
Vested	(144,029)	60.66
Forfeited	(4,114)	72.40
Awards outstanding at September 30, 2017	291,519	81.15

The total fair value of restricted stock units and deferred stock units vested was $8.7 million, $7.6 million and $6.2 million during fiscal 2017, fiscal 2016 and fiscal 2015, respectively.

Performance-based awards

Performance-based award activity was as follows (based on target award amounts):

	No. of Units	Wtd. Avg. Grant Date Fair Value per Unit
Awards outstanding at September 30, 2014	311,249	$ 51.21
Granted	78,352	63.36
Vested	(49,467)	47.66
Forfeited	(910)	47.66
Awards outstanding at September 30, 2015	339,224	54.86
Granted	56,315	68.68
Vested	(128,941)	45.06
Forfeited	—	—
Awards outstanding at September 30, 2016	266,598	62.52
Granted	487,809	92.95
Vested	(147,696)	59.82
Forfeited	(9,778)	65.39
Awards outstanding at September 30, 2017	596,933	88.01

NOTE 13. EARNINGS PER COMMON SHARE

Basic income per Common Share is computed by dividing income attributable to controlling interest from continuing operations, income (loss) from discontinued operations or net income attributable to controlling interest by the weighted average number of Common Shares outstanding. Diluted income per Common Share is computed by dividing income attributable to controlling interest from continuing operations, income (loss) from discontinued operations or net income attributable to controlling interest by the weighted average number of Common Shares outstanding plus all potentially dilutive securities outstanding each period. Stock options with exercise prices greater than the average market price of the underlying Common Shares are excluded from the computation of diluted income per Common Share because they are out-of-the-money and the effect of their inclusion would be anti-dilutive. There were no Common Shares covered by out-of-the-money options for the year ended September 30,

2017, and 0.2 million and 0.3 million for the years ended September 30, 2016 and 2015, respectively. The following table presents information necessary to calculate basic and diluted income per Common Share.

	Year Ended September 30,		
	2017	2016	2015
	(In millions, except per share data)		
Income from continuing operations	$ 198.3	$ 246.1	$ 128.7
Net (income) loss attributable to noncontrolling interest	(0.5)	0.5	1.1
Income attributable to controlling interest from continuing operations	197.8	246.6	129.8
Income from discontinued operations	20.5	68.7	30.0
Net income attributable to controlling interest	$ 218.3	$ 315.3	$ 159.8
BASIC INCOME PER COMMON SHARE:			
Weighted-average Common Shares outstanding during the period	59.4	61.1	61.1
Income from continuing operations	$ 3.33	$ 4.04	$ 2.12
Income from discontinued operations	0.35	1.12	0.50
Net income	$ 3.68	$ 5.16	$ 2.62
DILUTED INCOME PER COMMON SHARE:			
Weighted-average Common Shares outstanding during the period	59.4	61.1	61.1
Dilutive potential Common Shares	0.8	0.9	1.1
Weighted-average number of Common Shares outstanding and dilutive potential Common Shares	60.2	62.0	62.2
Income from continuing operations	$ 3.29	$ 3.98	$ 2.09
Income from discontinued operations	0.34	1.11	0.48
Net income	$ 3.63	$ 5.09	$ 2.57

NOTE 14. INCOME TAXES

The provision (benefit) for income taxes allocated to continuing operations consisted of the following:

	Year Ended September 30,		
	2017	2016	2015
	(In millions)		
Current:			
Federal	$ 104.5	$ 89.7	$ 66.9
State	12.4	11.8	8.1
Foreign	8.1	4.3	1.7
Total Current	125.0	105.8	76.7
Deferred:			
Federal	(7.4)	30.7	(1.3)
State	(0.5)	2.5	1.2
Foreign	(0.5)	(1.4)	(0.3)
Total Deferred	(8.4)	31.8	(0.4)
Provision for income taxes	$ 116.6	$ 137.6	$ 76.3

The domestic and foreign components of income from continuing operations before income taxes were as follows:

	Year Ended September 30,		
	2017	2016	2015
	(In millions)		
Domestic	$ 296.0	$ 357.0	$ 173.5
Foreign	18.9	26.7	31.5
Income from continuing operations before income taxes	$ 314.9	$ 383.7	$ 205.0

A reconciliation of the federal corporate income tax rate and the effective tax rate on income from continuing operations before income taxes is summarized below:

	Year Ended September 30,		
	2017	2016	2015
Statutory income tax rate	35.0 %	35.0 %	35.0 %
Effect of foreign operations	3.1	0.3	0.9
State taxes, net of federal benefit	2.9	2.9	3.4
Domestic Production Activities Deduction permanent difference	(3.1)	(2.5)	(3.1)
Effect of other permanent differences	0.4	0.4	0.1
Research and Experimentation and other federal tax credits	(0.4)	(0.3)	(0.3)
Resolution of prior tax contingencies	0.9	(0.1)	0.4
Other	(1.8)	0.2	0.8
Effective income tax rate	37.0 %	35.9 %	37.2 %

Deferred income taxes arise from temporary differences between financial reporting and tax reporting bases of assets and liabilities, and operating loss and tax credit carryforwards for tax purposes. The components of the deferred income tax assets and liabilities were as follows:

	September 30,	
	2017	2016
	(In millions)	
DEFERRED TAX ASSETS		
Inventories	$ 8.0	$ 9.2
Accrued liabilities	58.9	41.8
Postretirement benefits	19.9	28.2
Accounts receivable	5.3	5.9
Federal NOL carryovers	20.3	—
State NOL carryovers	1.3	0.4
Foreign NOL carryovers	3.7	4.6
Foreign tax credit carryovers	7.6	7.4
Interest rate swaps	—	2.4
Other	(1.6)	(0.5)
Gross deferred tax assets	123.4	99.4
Valuation allowance	(29.7)	(4.1)
Total deferred tax assets	93.7	95.3
DEFERRED TAX LIABILITIES		
Property, plant and equipment	(68.5)	(65.5)
Intangible assets	(127.5)	(100.9)
Outside basis difference in equity investments	(47.5)	(83.5)
Other	(7.7)	(17.4)
Total deferred tax liabilities	(251.2)	(267.3)
Net deferred tax liability	$ (157.5)	$ (172.0)

During fiscal 2017, the Company adopted accounting guidance that requires all deferred tax assets and liabilities to be classified as noncurrent on the balance sheet. The Company adopted this guidance on a retrospective basis effective September 30, 2017. As a result, deferred tax assets totaling $43.7 million have been presented as noncurrent and are included in other liabilities on the Consolidated Balance Sheets as of September 30, 2016. These amounts were previously reported within prepaid and other current assets.

GAAP requires that a valuation allowance be recorded against a deferred tax asset if it is more likely than not that the tax benefit associated with the asset will not be realized in the future. As shown in the table above, valuation allowances were recorded against $29.7 million and $4.1 million of deferred tax assets as of September 30, 2017 and 2016, respectively. Most of these valuation allowances relate to certain credits and net operating losses, as explained further below.

Foreign net operating losses of certain controlled foreign corporations were $14.4 million as of September 30, 2017, the majority of which have indefinite carryforward periods. Due to a history of losses in many of these entities, a full valuation allowance has also been placed against the statutory tax benefit associated with all but $2.0 million of these losses at September 30, 2017.

Foreign tax credits were $7.6 million and $7.4 million at September 30, 2017 and 2016, respectively. A valuation allowance in the amount of $7.6 million has been established against those foreign tax credits the Company does not expect to utilize prior to their expiration.

The Company, through increased ownership of AeroGrow International, Inc. during fiscal 2017, may potentially utilize up to $63.2 million in federal net operating losses (NOLs) of AeroGrow International, Inc., subject to limitations under IRC §382 from current and prior ownership changes. The Company determined that $50.0 million of these NOLs will expire unutilized due to the closing of statutes of limitation and a valuation allowance has been established on these NOLs, accordingly. The Company

estimates that $11.4 million of the remaining $13.2 million of NOLs will be utilized as of the tax year ending September 30, 2018 with the remainder utilized gradually through the tax year ending September 30, 2032.

Deferred tax assets related to state net operating losses were $2.8 million as of September 30, 2017, with carryforward periods ranging from 5 to 20 years. Any losses not utilized within a specific state's carryforward period will expire. A valuation allowance was recorded against $1.2 million of deferred tax assets as of September 30, 2017 for state net operating losses that the company does not expect to realize within their respective carryover periods. Tax benefits associated with state tax credits will expire if not utilized and amounted to $1.0 million and $0.7 million at September 30, 2017 and 2016, respectively. A valuation allowance in the amount of $0.2 million has been established related to state credits the Company does not expect to utilize.

Deferred taxes have not been provided on unremitted earnings of $119.0 million for certain foreign subsidiaries and foreign corporate joint ventures as such earnings have been indefinitely reinvested. These foreign entities held cash and cash equivalents of $39.3 million and $39.9 million at September 30, 2017 and 2016, respectively. Our current plans do not demonstrate a need to, nor do we project we will, repatriate the retained earnings from these subsidiaries as the earnings are indefinitely reinvested. In the future, if we determine it is necessary to repatriate these funds, or we sell or liquidate any of these subsidiaries, we may be required to pay associated taxes on the repatriation. We may also be required to withhold foreign taxes depending on the foreign jurisdiction from which the funds are repatriated. The effective rate of tax on such repatriations may materially differ from the federal statutory tax rate and could have a material impact on tax expense in the year of repatriation. As such, the Company cannot reasonably estimate the amount of such a tax event.

The Company had $10.2 million, $5.1 million and $9.2 million of gross unrecognized tax benefits related to uncertain tax positions at September 30, 2017, 2016 and 2015, respectively. Included in the September 30, 2017, 2016 and 2015 balances were $8.5 million, $3.5 million and $6.6 million, respectively, of unrecognized tax benefits that, if recognized, would have an impact on the effective tax rate.

A reconciliation of the unrecognized tax benefits is as follows:

	Year Ended September 30,		
	2017	2016	2015
	(In millions)		
Balance at beginning of year	$ 5.1	$ 9.2	$ 11.2
Additions for tax positions of the current year	1.4	0.3	0.2
Additions for tax positions of prior years	3.9	1.9	4.1
Reductions for tax positions of prior years	(0.2)	(2.6)	(3.2)
Settlements with tax authorities	0.9	(2.7)	(2.7)
Expiration of statutes of limitation	(0.9)	(1.0)	(0.4)
Balance at end of year	$ 10.2	$ 5.1	$ 9.2

The Company continues to recognize accrued interest and penalties related to unrecognized tax benefits as a component of the provision for income taxes. As of September 30, 2017, 2016 and 2015, respectively, the Company had $1.1 million, $1.1 million and $1.8 million accrued for the payment of interest that, if recognized, would impact the effective tax rate. As of September 30, 2017, 2016 and 2015, respectively, the Company had $0.4 million, $0.5 million and $0.7 million accrued for the payment of penalties that, if recognized, would impact the effective tax rate. For the fiscal year ended September 30, 2017, the Company recognized a benefit of $1.7 million for tax interest and tax penalties in its Consolidated Statement of Operations.

The Scotts Miracle-Gro Company or one of its subsidiaries files income tax returns in the U.S. federal jurisdiction and various state, local and foreign jurisdictions. Subject to the following exceptions, the Company is no longer subject to examination by these tax authorities for fiscal years prior to 2014. The Company is currently under examination by the Internal Revenue Service and certain foreign and U.S. state and local tax authorities. The U.S. federal examination is limited to fiscal years 2011 2012, and 2013. With respect to the foreign jurisdictions, a German audit covering fiscal years 2009 through 2012 closed in the third quarter of fiscal 2017 with no material impact to the financial statements. In regard to the multiple U.S. state and local audits, the tax periods under examination are limited to fiscal years 2011 through 2015. In addition to the aforementioned audits, certain other tax deficiency notices and refund claims for previous years remain unresolved.

The Company currently anticipates that few of its open and active audits will be resolved within the next twelve months. The Company is unable to make a reasonably reliable estimate as to when or if cash settlements with taxing authorities may occur. Although audit outcomes and the timing of audit payments are subject to significant uncertainty, the Company does not anticipate

that the resolution of these tax matters or any events related thereto will result in a material change to its consolidated financial position, results of operations or cash flows.

NOTE 15. DERIVATIVE INSTRUMENTS AND HEDGING ACTIVITIES

The Company is exposed to market risks, such as changes in interest rates, currency exchange rates and commodity prices. To manage a portion of the volatility related to these exposures, the Company enters into various financial transactions. The utilization of these financial transactions is governed by policies covering acceptable counterparty exposure, instrument types and other hedging practices. The Company does not hold or issue derivative financial instruments for speculative trading purposes.

Exchange Rate Risk Management

The Company uses currency forward contracts to manage the exchange rate risk associated with intercompany loans with foreign subsidiaries that are denominated in local currencies. At September 30, 2017, the notional amount of outstanding currency forward contracts was $268.3 million, with a fair value of $1.8 million. At September 30, 2016, the notional amount of outstanding currency forward contracts was $165.8 million, with a fair value of $0.4 million. The fair value of currency forward contracts is determined using forward rates in commonly quoted intervals for the full term of the contracts. The outstanding contracts will mature over the next fiscal quarter.

Interest Rate Risk Management

The Company enters into interest rate swap agreements as a means to hedge its variable interest rate risk on debt instruments. Net amounts to be received or paid under the swap agreements are reflected as adjustments to interest expense. Since the interest rate swap agreements have been designated as hedging instruments, unrealized gains or losses resulting from adjusting these swaps to fair value are recorded as elements of accumulated other comprehensive income (loss) (“AOCI”) within the Consolidated Balance Sheets except for any ineffective portion of the change in fair value, which is immediately recorded in interest expense. The fair value of the swap agreements is determined based on the present value of the estimated future net cash flows using implied rates in the applicable yield curve as of the valuation date.

The Company has outstanding interest rate swap agreements with major financial institutions that effectively convert a portion of the Company’s variable-rate debt to a fixed rate. The swap agreements had a total U.S. dollar equivalent notional amount of $1,100.0 million and $650.0 million at September 30, 2017 and 2016, respectively. Refer to “NOTE 11. DEBT” for the terms of the swap agreements outstanding at September 30, 2017. Included in the AOCI balance at September 30, 2017 was a gain of $0.2 million related to interest rate swap agreements that is expected to be reclassified to earnings during the next twelve months, consistent with the timing of the underlying hedged transactions.

Commodity Price Risk Management

The Company enters into hedging arrangements designed to fix the price of a portion of its projected future urea requirements. The contracts are designated as hedges of the Company’s exposure to future cash flow fluctuations associated with the cost of urea. The objective of the hedges is to mitigate the earnings and cash flow volatility attributable to the risk of changing prices. Since the contracts have been designated as hedging instruments, unrealized gains or losses resulting from adjusting these contracts to fair value are recorded as elements of AOCI within the Consolidated Balance Sheets. Realized gains or losses remain as a component of AOCI until the related inventory is sold. Upon sale of the underlying inventory, the gain or loss is reclassified to cost of sales. Included in the AOCI balance at September 30, 2017 was a gain of $1.6 million related to urea derivatives that is expected to be reclassified to earnings during the next twelve months, consistent with the timing of the underlying hedged transactions.

The Company also uses derivatives to partially mitigate the effect of fluctuating diesel costs on operating results. These financial instruments are carried at fair value within the Consolidated Balance Sheets. Changes in the fair value of derivative contracts that qualify for hedge accounting are recorded in AOCI except for any ineffective portion of the change in fair value, which is immediately recorded in earnings. The effective portion of the change in fair value remains as a component of AOCI until the related fuel is consumed, at which time the accumulated gain or loss on the derivative contract is reclassified to cost of sales. Changes in the fair value of derivatives that do not qualify for hedge accounting are recorded as an element of cost of sales. At September 30, 2017, there were no amounts included within AOCI.

The Company had the following outstanding commodity contracts that were entered into to hedge forecasted purchases:

	September 30,	
	2017	2016
Commodity		
Urea	76,500 tons	40,500 tons
Diesel	5,586,000 gallons	6,384,000 gallons
Heating Oil	1,386,000 gallons	1,722,000 gallons

Fair Values of Derivative Instruments

The fair values of the Company's derivative instruments were as follows:

		Assets / (Liabilities)	
		2017	2016
Derivatives Designated As Hedging Instruments	**Balance Sheet Location**	**Fair Value**	
		(In millions)	
Interest rate swap agreements	Prepaid and other current assets	$ 1.3	$ —
	Other current liabilities	(0.8)	(3.3)
	Other liabilities	(0.4)	(3.1)
Commodity hedging instruments	Prepaid and other assets	3.2	—
	Other current liabilities	—	(0.3)
Total derivatives designated as hedging instruments		$ 3.3	$ (6.7)
Derivatives Not Designated As Hedging Instruments	**Balance Sheet Location**		
Currency forward contracts	Prepaid and other current assets	$ 2.0	$ 1.2
	Other current liabilities	(0.2)	(0.8)
Commodity hedging instruments	Prepaid and other current assets	0.6	—
	Other current liabilities	—	(0.1)
Total derivatives not designated as hedging instruments		2.4	0.3
Total derivatives		$ 5.7	$ (6.4)

The effect of derivative instruments on AOCI and the Consolidated Statements of Operations for the years ended September 30 was as follows:

	Amount Of Gain / (Loss) Recognized In AOCI	
Derivatives In Cash Flow Hedging Relationships	2017	2016
	(In millions)	
Interest rate swap agreements	$ 2.2	$ (0.9)
Commodity hedging instruments	2.7	(0.6)
Total	$ 4.9	$ (1.5)

		Amount Of Gain / (Loss)	
Derivatives In Cash Flow Hedging Relationships	**Reclassified From AOCI Into Statement Of Operations**	2017	2016
		(In millions)	
Interest rate swap agreements	Interest expense	$ (1.7)	$ (5.0)
Commodity hedging instruments	Cost of sales	(0.1)	(0.8)
Total		$ (1.8)	$ (5.8)

Derivatives Not Designated As Hedging Instruments	Recognized In Statement of Operations	Amount Of Gain / (Loss) 2017	2016
		(In millions)	
Currency forward contracts	Other income, net	$ 0.1	$ (8.0)
Commodity hedging instruments	Cost of sales	0.7	(2.8)
Total		$ 0.8	$ (10.8)

NOTE 16. FAIR VALUE MEASUREMENTS

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or the most advantageous market for the asset or liability in an orderly transaction between market participants at the measurement date. A three-level fair value hierarchy prioritizes the inputs used to measure fair value. The hierarchy requires entities to maximize the use of observable inputs and minimize the use of unobservable inputs. The three levels of inputs used to measure fair value are as follows:

Level 1 — Quoted prices in active markets for identical assets or liabilities.

Level 2 — Observable inputs other than quoted prices included in Level 1, such as quoted prices for similar assets and liabilities in active markets; quoted prices for similar assets and liabilities in markets that are not active; or other inputs that are observable or can be corroborated by observable market data.

Level 3 — Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. This includes pricing models, discounted cash flow methodologies and similar techniques that use significant unobservable inputs.

The following describes the valuation methodologies used for financial assets and liabilities measured at fair value on a recurring basis, as well as the general classification within the valuation hierarchy.

Derivatives

Derivatives consist of currency, interest rate and commodity derivative instruments. Currency forward contracts are valued using observable forward rates in commonly quoted intervals for the full term of the contracts. Interest rate swap agreements are valued based on the present value of the estimated future net cash flows using implied rates in the applicable yield curve as of the valuation date. Commodity contracts are measured using observable commodity exchange prices in active markets.

These derivative instruments are classified within Level 2 of the valuation hierarchy and are included within other assets and other liabilities in the Company's Consolidated Balance Sheets, except for derivative instruments expected to be settled within the next 12 months, which are included within prepaid and other current assets and other current liabilities.

Cash Equivalents

Cash equivalents consist of highly liquid financial instruments with original maturities of three months or less. The carrying value of these cash equivalents approximates fair value due to their short-term maturities.

Other

Other consists of investment securities in non-qualified retirement plan assets and the Bonnie Option. Investment securities in non-qualified retirement plan assets are valued using observable market prices in active markets and are classified within Level 1 of the valuation hierarchy. The fair value of the Bonnie Option is determined using a simulation approach, whereby the total value of the loan receivable and optional exchange for additional equity was estimated considering a distribution of possible future cash flows discounted to present value using an appropriate discount rate, and is classified in Level 3 of the fair value hierarchy.

Long-Term Debt

Long-term debt consists of a loan provided to the noncontrolling ownership group of Gavita. The Company recorded a charge of $13.4 million during the fourth quarter of fiscal 2017 to write-up the fair value of the loan to the agreed upon buyout value in the "Other non-operating expense" line in the Consolidated Statements of Operations. The estimate requires subjective assumptions to be made, including those related to future business results and discount rates. The fair value measurement is based on significant inputs unobservable in the market and thus represents a Level 3 measurement.

The following table presents the Company's financial assets and liabilities measured at fair value on a recurring basis at September 30, 2017:

	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Unobservable Inputs (Level 3)	Total
		(In millions)		
Assets				
Cash equivalents	$ 26.2	$ —	$ —	$ 26.2
Derivatives				
Interest rate swap agreements	—	1.3	—	1.3
Currency forward contracts	—	2.0	—	2.0
Commodity hedging instruments	—	3.8	—	3.8
Other	15.7	—	11.8	27.5
Total	$ 41.9	$ 7.1	$ 11.8	$ 60.8
Liabilities				
Derivatives				
Interest rate swap agreements	$ —	$ (1.2)	$ —	$ (1.2)
Currency forward contracts	—	(0.2)	—	(0.2)
Long-term debt	—	—	(55.6)	(55.6)
Total	$ —	$ (1.4)	$ (55.6)	$ (57.0)

The following table presents the Company's financial assets and liabilities measured at fair value on a recurring basis at September 30, 2016:

	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Unobservable Inputs (Level 3)	Total
		(In millions)		
Assets				
Cash equivalents	$ 11.5	$ —	$ —	$ 11.5
Derivatives				
Currency forward contracts	—	1.2	—	1.2
Other	11.8	—	10.9	22.7
Total	$ 23.3	$ 1.2	$ 10.9	$ 35.4
Liabilities				
Derivatives				
Interest rate swap agreements	$ —	$ (6.4)	$ —	$ (6.4)
Currency forward contracts	—	(0.8)	—	(0.8)
Commodity hedging instruments	—	(0.4)	—	(0.4)
Long-term debt	—	—	(38.3)	(38.3)
Total	$ —	$ (7.6)	$ (38.3)	$ (45.9)

NOTE 17. OPERATING LEASES

The Company leases certain property and equipment from third parties under various non-cancelable operating lease agreements. Certain lease agreements contain renewal and purchase options. The lease agreements generally require that the Company pay taxes, insurance and maintenance expenses related to the leased assets. Future minimum lease payments for non-cancelable operating leases at September 30, 2017, were as follows (in millions):

2018	$ 40.3
2019	35.7
2020	28.7
2021	21.2
2022	11.8
Thereafter	9.8
Total future minimum lease payments	$ 147.5

The Company also leases certain vehicles (primarily cars and light trucks) under agreements that are cancelable after the first year, but typically continue on a month-to-month basis until canceled by the Company. The vehicle leases and certain other non-cancelable operating leases contain residual value guarantees that create a contingent obligation on the part of the Company to compensate the lessor if the leased asset cannot be sold for an amount in excess of a specified minimum value at the conclusion of the lease term. If all such vehicle leases had been canceled as of September 30, 2017, the Company's residual value guarantee would have approximated $3.6 million.

Other residual value guarantee amounts that apply at the conclusion of non-cancelable lease terms are as follows:

	Amount of Guarantee	Lease Termination Date
	(In millions)	
Corporate aircraft	$ 27.0	2019

Rent expense for fiscal 2017, fiscal 2016 and fiscal 2015 totaled $53.6 million, $51.3 million and $48.3 million, respectively.

NOTE 18. COMMITMENTS

The Company has the following unconditional purchase obligations due during each of the next five fiscal years that have not been recognized in the Consolidated Balance Sheet at September 30, 2017 (in millions):

2018	$ 157.2
2019	83.0
2020	31.9
2021	20.7
2022	12.3
Thereafter	2.1
	$ 307.2

Purchase obligations primarily represent commitments for materials used in the Company's manufacturing processes, as well as commitments for warehouse services, grass seed and out-sourced information services. In addition, the Company leases certain property and equipment from third parties under various non-cancelable operating lease agreements. Future minimum lease payments for non-cancelable operating leases not included above are included in "NOTE 17. OPERATING LEASES."

NOTE 19. CONTINGENCIES

Management regularly evaluates the Company's contingencies, including various lawsuits and claims which arise in the normal course of business, product and general liabilities, workers' compensation, property losses and other liabilities for which the Company is self-insured or retains a high exposure limit. Self-insurance accruals are established based on actuarial loss estimates for specific individual claims plus actuarially estimated amounts for incurred but not reported claims and adverse development factors applied to existing claims. Legal costs incurred in connection with the resolution of claims, lawsuits and other contingencies generally are expensed as incurred. In the opinion of management, the assessment of contingencies is reasonable and related accruals, in the aggregate, are adequate; however, there can be no assurance that final resolution of these matters will not have a material effect on the Company's financial condition, results of operations or cash flows.

Regulatory Matters

At September 30, 2017, $4.8 million was accrued in the "Other liabilities" line in the Consolidated Balance Sheet for environmental actions, the majority of which are for site remediation. The amounts accrued are believed to be adequate to cover such known environmental exposures based on current facts and estimates of likely outcomes. Although it is reasonably possible that the costs to resolve such known environmental exposures will exceed the amounts accrued, any variation from accrued amounts is not expected to be material.

Other

The Company has been named as a defendant in a number of cases alleging injuries that the lawsuits claim resulted from exposure to asbestos-containing products, apparently based on the Company's historic use of vermiculite in certain of its products. In many of these cases, the complaints are not specific about the plaintiffs' contacts with the Company or its products. The cases vary, but complaints in these cases generally seek unspecified monetary damages (actual, compensatory, consequential and punitive) from multiple defendants. The Company believes that the claims against it are without merit and is vigorously defending against them. It is not currently possible to reasonably estimate a probable loss, if any, associated with these cases and, accordingly, no accruals have been recorded in the Company's consolidated financial statements. The Company is reviewing agreements and policies that may provide insurance coverage or indemnity as to these claims and is pursuing coverage under some of these agreements and policies, although there can be no assurance of the results of these efforts. There can be no assurance that these cases, whether as a result of adverse outcomes or as a result of significant defense costs, will not have a material effect on the Company's financial condition, results of operations or cash flows.

In connection with the sale of wild bird food products that were the subject of a voluntary recall in 2008, the Company, along with its Chief Executive Officer, have been named as defendants in four actions filed on and after June 27, 2012, which have been consolidated, and, on March 31, 2017, certified as a class action in the United States District Court for the Southern District of California as *In re Morning Song Bird Food Litigation*, Lead Case No. 3:12-cv-01592-JAH-AGS. The plaintiffs allege various statutory and common law claims associated with the Company's sale of wild bird food products and a plea agreement entered into in previously pending government proceedings associated with such sales. The plaintiffs allege, among other things, a class action on behalf of all persons and entities in the United States who purchased certain bird food products. The plaintiffs assert: (i) hundreds of millions of dollars in monetary damages (actual, compensatory, consequential, and restitution); (ii) punitive and treble damages; (iii) injunctive and declaratory relief; (iv) pre-judgment and post-judgment interest; and (v) costs and attorneys' fees. The Company and its Chief Executive Officer dispute the plaintiffs' assertions and intend to vigorously defend the consolidated action. At this point in the proceedings, it is not currently possible to reasonably estimate a probable loss, if any, associated with the action and, accordingly, no accruals have been recorded in the consolidated financial statements with respect to the action. There can be no assurance that this action, whether as a result of an adverse outcome or as a result of significant defense costs, will not have a material adverse effect on the Company's financial condition, results of operations or cash flows.

The Company is involved in other lawsuits and claims which arise in the normal course of business. These claims individually and in the aggregate are not expected to result in a material effect on the Company's financial condition, results of operations or cash flows.

NOTE 20. CONCENTRATIONS OF CREDIT RISK

The Company maintains cash depository accounts with major financial institutions around the world and invests in high quality, short-term liquid investments. Such investments are made only in investments issued by highly rated institutions. These investments mature within three months and have not historically incurred any losses.

Trade accounts receivable are exposed to a concentration of credit risk with customers principally located in the United States. The Company's customers include home centers, mass merchandisers, warehouse clubs, large hardware chains, independent hardware stores, nurseries, garden centers, food and drug stores, indoor gardening and hydroponic product distributors and retailers. Concentrations of net sales and accounts receivable in the United States as a percentage of consolidated net sales and accounts receivable at September 30 were as follows:

	Percentage of Net Sales			Percentage of Net Accounts Receivable at September 30,	
	2017	2016	2015	2017	2016
Concentration in United States	90%	92%	93%	83%	91%

The remainder of the Company's net sales and accounts receivable at September 30, 2017, 2016 and 2015 were generated from customers located outside of the United States, primarily retailers, distributors and nurseries in Europe and Canada. No concentrations of these customers or individual customers within this group accounted for more than 10% of the Company's net sales or accounts receivable for any period presented above.

The Company's three largest customers are the only customers that individually represent more than 10% of reported consolidated net sales and accounts receivable for each of the last three fiscal years. These three customers accounted for the following percentages of net sales for the fiscal years ended September 30:

	Percentage of Net Sales		
	2017	2016	2015
Home Depot	35%	38%	38%
Lowe's	17%	19%	19%
Walmart	9%	12%	14%

Accounts receivable for these three largest customers as a percentage of consolidated accounts receivable were 60% and 69% for September 30, 2017 and 2016, respectively.

NOTE 21. OTHER INCOME, NET

Other (income) expense consisted of the following:

	Year Ended September 30,		
	2017	2016	2015
	(In millions)		
Royalty income, net	$ (4.8)	$ (5.9)	$ (1.2)
Interest on loans receivable	(10.0)	(3.9)	—
Foreign currency losses	0.8	0.3	1.3
Other	(2.6)	(4.3)	(2.3)
Total	$ (16.6)	$ (13.8)	$ (2.2)

NOTE 22. SEGMENT INFORMATION

The Company divides its business into three reportable segments: U.S. Consumer, Hawthorne and Other. U.S. Consumer consists of the Company's consumer lawn and garden business located in the geographic United States. Hawthorne consists of the Company's indoor, urban and hydroponic gardening business. Other consists of the Company's consumer lawn and garden business in geographies other than the U.S. and the Company's product sales to commercial nurseries, greenhouses and other professional customers. Corporate consists of general and administrative expenses and certain other income/expense items not allocated to the business segments. This identification of reportable segments is consistent with how the segments report to and are managed by the chief operating decision maker of the Company. These segments differ from those used in prior periods due to the change in the Company's internal organization structure resulting from the Company's divestiture of the International Business, which closed on August 31, 2017. As a result, effective in its fourth quarter of fiscal 2017, the Company classified its results of operations for all periods presented to reflect the International Business as a discontinued operation and classified the assets and liabilities of the International Business as held for sale. The prior period amounts have been reclassified to conform with the new segments.

This change in organization structure resulted in a change in the Company's operating segments and reporting units. The Company allocated goodwill to the new reporting units using a relative fair value approach, resulting in $17.3 million of goodwill reallocated from the Hawthorne segment to the U.S. Consumer segment during fiscal 2017. In addition, the Company completed an assessment of any potential goodwill impairment immediately prior to the allocation and determined that no impairment existed.

Segment performance is evaluated based on several factors, including income (loss) from continuing operations before income taxes, amortization, impairment, restructuring and other charges ("Segment Profit (Loss)"). Senior management uses this measure of profit (loss) to evaluate segment performance because the Company believes this measure is indicative of performance trends and the overall earnings potential of each segment.

The following tables present summarized financial information concerning the Company's reportable segments for the periods indicated:

	Year Ended September 30,		
	2017	2016	2015
	(In millions)		
Net sales:			
U.S. Consumer	$ 2,160.5	$ 2,204.4	$ 2,144.8
Hawthorne	287.2	121.2	48.0
Other	194.4	180.6	178.3
Consolidated	$ 2,642.1	$ 2,506.2	$ 2,371.1
Segment Profit (Loss):			
U.S. Consumer	$ 521.5	$ 493.7	$ 436.1
Hawthorne	35.5	11.8	0.1
Other	13.4	10.4	10.8
Total Segment Profit	570.4	515.9	447.0
Corporate	(109.6)	(98.9)	(102.5)
Intangible asset amortization	(22.5)	(14.9)	(10.5)
Impairment, restructuring and other	(4.9)	33.8	(80.2)
Equity in income (loss) of unconsolidated affiliates [(a)]	(29.0)	19.5	—
Costs related to refinancing	—	(8.8)	—
Interest expense	(76.1)	(62.9)	(48.8)
Other non-operating expense	(13.4)	—	—
Income from continuing operations before income taxes	$ 314.9	$ 383.7	$ 205.0
Depreciation and amortization:			
U.S. Consumer	$ 47.9	$ 48.1	$ 45.8
Hawthorne	18.4	9.2	3.6
Other	7.5	5.0	4.1
	$ 73.8	$ 62.3	$ 53.5
Capital expenditures:			
U.S. Consumer	$ 53.4	$ 46.3	$ 52.5
Hawthorne	7.1	1.2	—
Other	5.0	6.3	2.4
	$ 65.5	$ 53.8	$ 54.9

(a) Included within equity in income (loss) of unconsolidated affiliates for fiscal 2017 are charges of $25.2 million, which represent the Company's share of restructuring and other charges incurred by the TruGreen Joint Venture, including a charge of $7.2 million related to costs associated with TruGreen's August 2017 refinancing. For fiscal 2016, the Company's share of restructuring and other charges incurred by the TruGreen Joint Venture of $11.7 million were included within impairment, restructuring and other above.

	September 30,	
	2017	2016
	(In millions)	
Total assets:		
U.S. Consumer	$ 1,650.3	$ 1,672.8
Hawthorne	648.0	393.7
Other	150.7	140.6
Corporate	298.0	292.5
Assets held for sale	—	256.2
Consolidated	$ 2,747.0	$ 2,755.8

The following table presents net sales by product category:

	Year Ended September 30,		
	2017	2016	2015
Net sales:			
Lawn care	30%	31%	33%
Growing media	34	38	39
Controls	13	13	14
Indoor, urban and hydroponic gardening	11	5	2
Roundup® Marketing Agreement	5	5	5
Other, primarily gardening and landscape	7	8	7
Segment total product sales	100%	100%	100%

The following table presents net sales by geographic area:

	Year Ended September 30,		
	2017	2016	2015
	(In millions)		
Net sales:			
United States	$ 2,385.1	$ 2,314.8	$ 2,209.4
International	257.0	191.4	161.7
	$ 2,642.1	$ 2,506.2	$ 2,371.1

The following table presents long-lived assets (property, plant and equipment and finite-lived intangibles) by geographic area:

	September 30,	
	2017	2016
	(In millions)	
Long-lived assets:		
United States	$ 586.2	$ 527.5
International	194.8	171.8
	$ 781.0	$ 699.3

NOTE 23. QUARTERLY CONSOLIDATED FINANCIAL INFORMATION (UNAUDITED)

The following is a summary of the unaudited quarterly results of operations:

	First Quarter	Second Quarter	Third Quarter	Fourth Quarter	Full Year
	(In millions, except per share data)				
FISCAL 2017					
Net sales	$ 207.4	$ 1,084.6	$ 973.4	$ 376.7	$ 2,642.1
Gross profit	36.8	464.3	383.4	88.1	972.6
Income (loss) from continuing operations	(58.1)	154.1	144.6	(42.3)	198.3
Income (loss) from discontinued operations, net of tax	(6.8)	11.1	7.3	8.9	20.5
Net income (loss)	(64.9)	165.2	151.9	(33.4)	218.8
Net income (loss) attributable to controlling interest	(65.3)	165.1	151.9	(33.4)	218.3
Basic income (loss) per Common Share:					
Income (loss) from continuing operations	$ (0.97)	$ 2.58	$ 2.44	$ (0.72)	$ 3.33
Income (loss) from discontinued operations, net of tax	(0.12)	0.18	0.13	0.15	0.35
Basic net income (loss) per Common Share	$ (1.09)	$ 2.76	$ 2.57	$ (0.57)	$ 3.68
Common Shares used in basic EPS calculation	60.1	59.8	59.2	58.4	59.4
Diluted income (loss) per Common Share:					
Income (loss) from continuing operations	$ (0.97)	$ 2.55	$ 2.41	$ (0.72)	$ 3.29
Income (loss) from discontinued operations, net of tax	(0.12)	0.18	0.12	0.15	0.34
Diluted net income (loss) per Common Share	$ (1.09)	$ 2.73	$ 2.53	$ (0.57)	$ 3.63
Common Shares and dilutive potential Common Shares used in diluted EPS calculation	60.1	60.6	60.0	58.4	60.2
FISCAL 2016					
Net sales	$ 153.0	$ 1,117.2	$ 887.1	$ 348.7	$ 2,506.2
Gross profit	7.9	476.1	324.0	92.2	900.3
Income (loss) from continuing operations	(73.4)	213.2	117.7	(11.3)	246.1
Income (loss) from discontinued operations, net of tax	(7.4)	(3.4)	95.0	(15.6)	68.7
Net income (loss)	(80.8)	209.8	212.7	(26.9)	314.8
Net income (loss) attributable to controlling interest	(81.3)	210.1	213.1	(26.6)	315.3
Basic income (loss) per Common Share:					
Income (loss) from continuing operations	$ (1.20)	$ 3.48	$ 1.93	$ (0.18)	$ 4.04
Income (loss) from discontinued operations	(0.12)	(0.06)	1.56	(0.26)	1.12
Basic net income (loss) per Common Share	$ (1.32)	$ 3.42	$ 3.49	$ (0.44)	$ 5.16
Common Shares used in basic EPS calculation	61.5	61.4	61.1	60.6	61.1
Diluted income (loss) per Common Share:					
Income (loss) from continuing operations	$ (1.20)	$ 3.43	$ 1.91	$ (0.18)	$ 3.98
Income (loss) from discontinued operations	(0.12)	(0.05)	1.53	(0.26)	1.11
Diluted net income (loss) per Common Share	$ (1.32)	$ 3.38	$ 3.44	$ (0.44)	$ 5.09
Common Shares and dilutive potential Common Shares used in diluted EPS calculation	61.5	62.2	61.9	60.6	62.0

The sum of the quarters may not equal full year due to rounding.

Common share equivalents, such as share-based awards, are excluded from the diluted loss per Common Share calculation in periods where there is a loss from continuing operations because the effect of their inclusion would be anti-dilutive. The Company's business is highly seasonal, with in excess of 75% of net sales occurring in the second and third fiscal quarters.

Significant impairment, restructuring and other charges / recoveries reflected in the quarterly financial information during fiscal 2017 are as follows: first quarter restructuring costs of $2.0 million from discontinued operations including $0.6 million in transaction related costs associated with the divestiture of the SLS Business and $1.4 million in transaction related costs associated with the sale of the International Business; second quarter restructuring costs of $3.4 million from discontinued operations including $0.1 million in transaction related costs associated with the divestiture of the SLS Business and $3.3 million in transaction related costs associated with the sale of the International Business; third quarter restructuring costs of $4.2 million from discontinued operations including $0.1 million in transaction related costs associated with the divestiture of the SLS Business and $4.1 million in transaction related costs associated with the sale of the International Business; and fourth quarter restructuring costs of $11.2 million including costs of $8.3 million from continuing operations and recoveries of $0.4 million from discontinued operations related to termination benefits and facility closure costs associated with Project Focus, recovery of $4.4 million from continuing operations related to the reduction of a contingent consideration liability associated with a historical acquisition, an impairment charge of $1.0 million from continuing operations on the write-off of a trademark asset due to recent performance and future growth expectations, and costs of $6.7 million from discontinued operations for transaction related costs associated with the sale of the International Business.

Significant impairment, restructuring and other charges / recoveries reflected in the quarterly financial information during fiscal 2016 are as follows: first quarter restructuring costs of $9.3 million including costs of $5.4 million from continuing operations related to consumer complaints and claims related to the reformulated Bonus® S fertilizer product sold in the southeastern United States during fiscal 2015, costs of $3.0 million from discontinued operations in transaction related costs associated with the divestiture of the SLS Business and costs of $0.9 million from discontinued operations in transaction related costs associated with the sale of the International Business; second quarter net recoveries of $36.7 million including net insurance reimbursement recoveries of $49.0 million from continuing operations related to Bonus® S insurance reimbursements, a charge of $9.0 million from discontinued operations for the resolution of a prior SLS Business litigation matter, $1.6 million from discontinued operations in transaction related costs associated with the divestiture of the SLS Business and costs of $1.7 million from discontinued operations in transaction related costs associated with the sale of the International Business; third quarter net recoveries of $6.0 million including net insurance reimbursement recoveries of $5.4 million from continuing operations related to Bonus® S insurance reimbursements, recoveries of $0.3 million from discontinued operations in transaction related costs associated with the sale of the International Business, and recoveries of $0.3 million from continuing operations in net recoveries related to termination benefits and facility closure costs associated with Project Focus; and fourth quarter restructuring costs of $7.5 million including net recoveries of $0.5 million from continuing operations related to Bonus® S insurance reimbursements, costs of $0.2 million from discontinued operations in transaction related costs associated with the sale of the International Business, and costs of $4.2 million from continuing operations and $3.6 million from discontinued operations related to termination benefits and facility closure costs associated with Project Focus.

NOTE 24. FINANCIAL INFORMATION FOR SUBSIDIARY GUARANTORS AND NON-GUARANTORS

The 6.000% and 5.250% Senior Notes were issued on October 13, 2015 and December 15, 2016, respectively, and are guaranteed by certain of the Company's domestic subsidiaries and, therefore, the Company reports condensed consolidating financial information in accordance with SEC Regulation S-X Rule 3-10, *Financial Statements of Guarantors and Issuers of Guaranteed Securities Registered or Being Registered*. On January 15, 2014 and December 15, 2015, Scotts Miracle-Gro redeemed, respectively, all of its outstanding $200.0 million aggregate principal amount of 7.25% Senior Notes and $200.0 million aggregate principal amount of 6.625% Senior Notes, each of which were previously guaranteed by certain of its domestic subsidiaries. The guarantees are "full and unconditional," as those terms are used in Regulation S-X Rule 3-10, except that a subsidiary's guarantee will be released in certain customary circumstances, such as (1) upon any sale or other disposition of all or substantially all of the assets of the subsidiary (including by way of merger or consolidation) to any person other than Scotts Miracle-Gro or any "restricted subsidiary" under the indentures governing the 6.000% and 5.250% Senior Notes; (2) if the subsidiary merges with and into Scotts Miracle-Gro, with Scotts Miracle-Gro surviving such merger; (3) if the subsidiary is designated an "unrestricted subsidiary" in accordance with the indentures governing the 6.000% and 5.250% Senior Notes or otherwise ceases to be a "restricted subsidiary" (including by way of liquidation or dissolution) in a transaction permitted by such indenture; (4) upon legal or covenant defeasance; (5) at the election of Scotts Miracle-Gro following the subsidiary's release as a guarantor under the new credit agreement, except a release by or as a result of the repayment of the new credit agreement; or (6) if the subsidiary ceases to be a "restricted subsidiary" and the subsidiary is not otherwise required to provide a guarantee of the 6.000% and 5.250% Senior Notes pursuant to the indentures governing the 6.000% and 5.250% Senior Notes.

The following 100% directly or indirectly owned subsidiaries fully and unconditionally guarantee at September 30, 2017 the 6.000% and 5.250% Senior Notes on a joint and several basis: Gutwein & Co., Inc.; Hyponex Corporation; Miracle-Gro Lawn Products, Inc.; OMS Investments, Inc.; Rod McLellan Company; Sanford Scientific, Inc.; Scotts Temecula Operations, LLC; Scotts Manufacturing Company; Scotts Products Co.; Scotts Professional Products Co.; Scotts-Sierra Investments LLC; SMG Growing Media, Inc.; Swiss Farms Products, Inc.; SMGM LLC; The Scotts Company LLC; The Hawthorne Gardening Company; Hawthorne Hydroponics LLC; HGCI, Inc.; GenSource, Inc.; and SLS Holdings, Inc. (collectively, the "Guarantors"). Effective in the three-month period ending July 1, 2017, American Agritech, L.L.C. was merged into Hawthorne Hydroponics LLC, and has been classified as a Guarantor for all periods presented. Effective in the three-month period ending July 2, 2016, the SLS Business was contributed to the TruGreen Joint Venture and the Company classified its results of operations for all periods presented to reflect the SLS Business as a discontinued operation and classified the assets and liabilities as held for sale within the financial information of the Guarantors. Subsequent to their contribution to the TruGreen Joint Venture, EG Systems, LLC (formerly known as EG Systems, Inc.) and SLS Franchise Systems LLC are no longer Guarantors of the 6.000% Senior Notes. SLS Holdings, Inc. was added as a Guarantor effective in the three-month period ending July 2, 2016, and HGCI, Inc. and GenSource, Inc. were added as Guarantors effective in the three-month period ending January 2, 2016, and have been classified as Guarantors for all periods presented. SLS Holdings, Inc., HGCI, Inc. and GenSource, Inc. did not have any activity for fiscal 2016.

The following information presents Condensed Consolidating Statements of Operations for each of the three years ended September 30, 2017, 2016 and 2015, Condensed Consolidating Statements of Comprehensive Income (Loss) for each of the three years ended September 30, 2017, 2016 and 2015, Condensed Consolidating Statements of Cash Flows for each of the three years ended September 30, 2017, 2016 and 2015, and Condensed Consolidating Balance Sheets as of September 30, 2017 and 2016. The condensed consolidating financial information presents, in separate columns, financial information for: Scotts Miracle-Gro on a Parent-only basis, carrying its investment in subsidiaries under the equity method; Guarantors on a combined basis, carrying their investments in subsidiaries which do not guarantee the debt (collectively, the "Non-Guarantors") under the equity method; Non-Guarantors on a combined basis; and eliminating entries. The eliminating entries primarily reflect intercompany transactions, such as interest expense, accounts receivable and payable, short and long-term debt, and the elimination of equity investments, return on investments and income in subsidiaries. Because the Parent is obligated to pay the unpaid principal amount and interest on all amounts borrowed by the Guarantors or Non-Guarantors under the credit facility (and was obligated to pay the unpaid principal amount and interest on all amounts borrowed by the Guarantors and Non-Guarantors under the previous senior secured five-year revolving loan facility), the borrowings and related interest expense for the loans outstanding of the Guarantors and Non-Guarantors are also presented in the accompanying Parent-only financial information, and are then eliminated. Included in the Parent Condensed Consolidating Statement of Cash Flows for fiscal 2017 and fiscal 2016 are $909.4 million and $934.4 million, respectively, of dividends paid by the Guarantors and Non-Guarantors to the Parent representing return of investments and as such are classified within cash flows from investing activities. Included in the Parent Condensed Consolidating Statements of Cash Flows for fiscal 2015 are $255.5 million of dividends paid by the Guarantors and Non-Guarantors to the Parent representing return on investments and as such are classified within cash flows from operating activities.

THE SCOTTS MIRACLE-GRO COMPANY
Condensed, Consolidating Statement of Operations
for the fiscal year ended September 30, 2017
(in millions)

	Parent	Subsidiary Guarantors	Non-Guarantors	Eliminations/ Consolidations	Consolidated
Net sales	$ —	$ 2,308.4	$ 333.7	$ —	$ 2,642.1
Cost of sales	—	1,415.8	253.7	—	1,669.5
Gross profit	—	892.6	80.0	—	972.6
Operating expenses:					
Selling, general and administrative	—	480.4	69.1	1.4	550.9
Impairment, restructuring and other	—	4.5	0.4	—	4.9
Other (income) loss, net	(0.8)	(14.2)	(1.6)	—	(16.6)
Income (loss) from operations	0.8	421.9	12.1	(1.4)	433.4
Equity (income) loss in subsidiaries	(250.4)	(15.5)	—	265.9	—
Other non-operating (income) loss	(20.7)	—	(21.4)	42.1	—
Equity in (income) loss of unconsolidated affiliates	—	29.8	(0.8)	—	29.0
Interest expense	70.1	43.8	4.3	(42.1)	76.1
Other non-operating expense	—	—	13.4	—	13.4
Income (loss) from continuing operations before income taxes	201.8	363.8	16.6	(267.3)	314.9
Income tax (benefit) expense from continuing operations	(18.0)	128.5	6.1	—	116.6
Income (loss) from continuing operations	219.8	235.3	10.5	(267.3)	198.3
Income from discontinued operations, net of tax	—	(0.7)	21.2	—	20.5
Net income (loss)	$ 219.8	$ 234.6	$ 31.7	$ (267.3)	$ 218.8
Net (income) loss attributable to noncontrolling interest	—	—	—	(0.5)	(0.5)
Net income (loss) attributable to controlling interest	$ 219.8	$ 234.6	$ 31.7	$ (267.8)	$ 218.3

THE SCOTTS MIRACLE-GRO COMPANY
Condensed, Consolidating Statement of Comprehensive Income (Loss)
for the twelve months ended September 30, 2017
(In millions)

	Parent	Subsidiary Guarantors	Non-Guarantors	Eliminations/ Consolidations	Consolidated
Net income (loss)	$ 219.8	$ 234.6	$ 31.7	$ (267.3)	$ 218.8
Other comprehensive income (loss), net of tax:					
Net foreign currency translation adjustment	28.2	—	28.2	(28.2)	28.2
Net change in derivatives	6.7	2.8	—	(2.8)	6.7
Net change in pension and other post-retirement benefits	13.2	3.7	9.5	(13.2)	13.2
Total other comprehensive income (loss)	48.1	6.5	37.7	(44.2)	48.1
Comprehensive income (loss)	$ 267.9	$ 241.1	$ 69.4	$ (311.5)	$ 266.9
Comprehensive (income) loss attributable to noncontrolling interest	—	—	—	(0.9)	(0.9)
Comprehensive income attributable to controlling interest	$ 267.9	$ 241.1	$ 69.4	$ (312.4)	$ 266.0

THE SCOTTS MIRACLE-GRO COMPANY
Condensed, Consolidating Statement of Cash Flows
for the fiscal year ended September 30, 2017
(in millions)

	Parent	Subsidiary Guarantors	Non-Guarantors	Eliminations/ Consolidations	Consolidated
NET CASH PROVIDED BY (USED IN) OPERATING ACTIVITIES[a]	$ (48.3)	$ 462.2	$ (16.1)	$ (43.8)	$ 354.0
INVESTING ACTIVITIES[a]					
Proceeds from sale of long-lived assets	—	5.6	0.1	—	5.7
Proceeds from sale of business, net of cash disposed of	—	178.6	1.7	—	180.3
Investments in property, plant and equipment	—	(59.5)	(10.1)	—	(69.6)
Investments in loans receivable	—	(29.7)	—	—	(29.7)
Net distributions from (investments in) unconsolidated affiliates	—	87.1	(29.7)	—	57.4
Investments in acquired businesses, net of cash acquired	—	(112.5)	(9.2)	—	(121.7)
Return of investments from affiliates	909.4	32.4	—	(941.8)	—
Investing cash flows from (to) affiliates	(759.9)	(208.6)	—	968.5	—
Net cash provided by (used in) investing activities	149.5	(106.6)	(47.2)	26.7	22.4
FINANCING ACTIVITIES					
Borrowings under revolving and bank lines of credit and term loans	—	1,196.1	253.2	—	1,449.3
Repayments under revolving and bank lines of credit and term loans	—	(1,319.6)	(298.7)	—	(1,618.3)
Proceeds from issuance of 5.250% Senior Notes	250.0	—	—	—	250.0
Financing and issuance fees	(3.8)	(0.6)	—	—	(4.4)
Dividends paid	(120.3)	(909.4)	(43.8)	953.2	(120.3)
Distribution paid by AeroGrow to noncontrolling interest	—	—	(40.5)	32.4	(8.1)
Purchase of Common Shares	(246.0)	—	—	—	(246.0)
Payments on seller notes	—	(15.5)	(13.2)	—	(28.7)
Excess tax benefits from share-based payment arrangements	7.9	—	—	—	7.9
Cash received from exercise of stock options	11.0	—	—	—	11.0
Financing cash flows from (to) affiliates	—	730.5	238.0	(968.5)	—
Net cash provided by (used in) financing activities	(101.2)	(318.5)	95.0	17.1	(307.6)
Effect of exchange rate changes on cash	—	—	1.6	—	1.6
Net increase (decrease) in cash and cash equivalents	—	37.1	33.3	—	70.4
Cash and cash equivalents at beginning of year excluding cash classified within assets held for sale	—	2.7	25.9	—	28.6
Cash and cash equivalents at beginning of year classified within assets held for sale	—	—	21.5	—	21.5
Cash and cash equivalents at beginning of year	—	2.7	47.4	—	50.1
Cash and cash equivalents at end of year	$ —	$ 39.8	$ 80.7	$ —	$ 120.5

(a) Cash received by the Parent from the Guarantors and Non-Guarantors in the form of dividends in the amount of $909.4 million represent return of investments and are included in cash flows from investing activities. Cash received by the Parent from the Guarantors and Non-Guarantors in the form of dividends in the amount of $28.8 million represent return on investments and are included in cash flows from operating activities. Cash received by the Guarantors from the Non-Guarantors in the form of distributions in the amount of $32.4 million represent return of investments and are included in cash flows from investing activities. Cash received by the Guarantors from the Non-Guarantors in the form of dividends in the amount of $15.0 million represent return on investments and are included in cash flows from operating activities.

THE SCOTTS MIRACLE-GRO COMPANY
Condensed, Consolidating Balance Sheet
As of September 30, 2017
(in millions)

	Parent	Subsidiary Guarantors	Non-Guarantors	Eliminations/ Consolidations	Consolidated
ASSETS					
Current assets:					
Cash and cash equivalents	$ —	$ 39.8	$ 80.7	$ —	$ 120.5
Accounts receivable, net	—	137.6	60.1	—	197.7
Accounts receivable pledged	—	88.9	—	—	88.9
Inventories	—	314.0	93.5	—	407.5
Prepaid and other current assets	1.3	43.4	22.4	—	67.1
Total current assets	1.3	623.7	256.7	—	881.7
Investment in unconsolidated affiliates	—	—	31.1	—	31.1
Property, plant and equipment, net	—	406.4	61.3	—	467.7
Goodwill	—	320.7	109.3	11.6	441.6
Intangible assets, net	—	606.3	133.8	8.8	748.9
Other assets	8.1	158.3	9.6	—	176.0
Equity investment in subsidiaries	1,112.8	—	—	(1,112.8)	—
Intercompany assets	759.7	—	—	(759.7)	—
Total assets	$ 1,881.9	$ 2,115.4	$ 601.8	$ (1,852.1)	$ 2,747.0
LIABILITIES AND EQUITY					
Current liabilities:					
Current portion of debt	$ 15.0	$ 97.8	$ 45.3	$ (15.0)	$ 143.1
Accounts payable	—	124.9	28.2	—	153.1
Other current liabilities	17.1	191.5	39.7	—	248.3
Total current liabilities	32.1	414.2	113.2	(15.0)	544.5
Long-term debt	1,200.7	508.6	108.0	(559.3)	1,258.0
Distributions in excess of investment in unconsolidated affiliate	—	21.9	—	—	21.9
Other liabilities	0.3	197.4	58.2	5.0	260.9
Equity investment in subsidiaries	—	82.6	—	(82.6)	—
Intercompany liabilities	—	17.1	152.7	(169.8)	—
Total liabilities	1,233.1	1,241.8	432.1	(821.7)	2,085.3
Total equity—controlling interest	648.8	873.6	169.7	(1,043.3)	648.8
Noncontrolling interest	—	—	—	12.9	12.9
Total equity	648.8	873.6	169.7	(1,030.4)	661.7
Total liabilities and equity	$ 1,881.9	$ 2,115.4	$ 601.8	$ (1,852.1)	$ 2,747.0

THE SCOTTS MIRACLE-GRO COMPANY
Condensed, Consolidating Statement of Operations
for the fiscal year ended September 30, 2016
(in millions)

	Parent	Subsidiary Guarantors	Non-Guarantors	Eliminations/ Consolidations	Consolidated
Net sales	$ —	$ 2,285.6	$ 220.6	$ —	$ 2,506.2
Cost of sales	—	1,434.7	165.3	—	1,600.0
Cost of sales—impairment, restructuring and other	—	5.9	—	—	5.9
Gross profit	—	845.0	55.3	—	900.3
Operating expenses:					
Selling, general and administrative	—	461.8	54.7	1.5	518.0
Impairment, restructuring and other	—	(49.8)	(1.7)	—	(51.5)
Other (income) loss, net	(0.5)	(12.8)	(0.5)	—	(13.8)
Income (loss) from operations	0.5	445.8	2.8	(1.5)	447.6
Equity (income) loss in subsidiaries	(348.2)	(8.4)	—	356.6	—
Other non-operating (income) loss	(22.0)	—	(22.4)	44.4	—
Equity in (income) loss of unconsolidated affiliates	—	(7.9)	0.1	—	(7.8)
Costs related to refinancing	8.8	—	—	—	8.8
Interest expense	62.1	43.6	1.6	(44.4)	62.9
Income (loss) from continuing operations before income taxes	299.8	418.5	23.5	(358.1)	383.7
Income tax (benefit) expense from continuing operations	(17.2)	146.1	8.7	—	137.6
Income (loss) from continuing operations	317.0	272.4	14.8	(358.1)	246.1
Income from discontinued operations, net of tax	—	66.3	2.4	—	68.7
Net income (loss)	$ 317.0	$ 338.7	$ 17.2	$ (358.1)	$ 314.8
Net (income) loss attributable to noncontrolling interest	—	—	—	0.5	0.5
Net income (loss) attributable to controlling interest	$ 317.0	$ 338.7	$ 17.2	$ (357.6)	$ 315.3

THE SCOTTS MIRACLE-GRO COMPANY
Condensed, Consolidating Statement of Comprehensive Income (Loss)
for the twelve months ended September 30, 2016
(In millions)

	Parent	Subsidiary Guarantors	Non-Guarantors	Eliminations/ Consolidations	Consolidated
Net income (loss)	$ 317.0	$ 338.7	$ 17.2	$ (358.1)	$ 314.8
Other comprehensive income (loss), net of tax:					
Net foreign currency translation adjustment	(6.2)	—	(6.2)	6.2	(6.2)
Net change in derivatives	4.3	0.3	—	(0.3)	4.3
Net change in pension and other post-retirement benefits	(8.2)	0.4	(8.6)	8.2	(8.2)
Total other comprehensive income (loss)	(10.1)	0.7	(14.8)	14.1	(10.1)
Comprehensive income (loss)	$ 306.9	$ 339.4	$ 2.4	$ (344.0)	$ 304.7
Comprehensive (income) loss attributable to noncontrolling interest	—	—	—	0.5	0.5
Comprehensive income attributable to controlling interest	$ 306.9	$ 339.4	$ 2.4	$ (343.5)	$ 305.2

THE SCOTTS MIRACLE-GRO COMPANY
Condensed, Consolidating Statement of Cash Flows
for the fiscal year ended September 30, 2016
(in millions)

	Parent	Subsidiary Guarantors	Non-Guarantors	Eliminations/ Consolidations	Consolidated
NET CASH PROVIDED BY (USED IN) OPERATING ACTIVITIES[a]	$ 18.0	$ 212.8	$ 10.2	$ (3.6)	$ 237.4
INVESTING ACTIVITIES[a]					
Proceeds from sale of long-lived assets	—	2.4	—	—	2.4
Investments in property, plant and equipment	—	(49.0)	(9.3)	—	(58.3)
Investments in loans receivable	—	(90.0)	—	—	(90.0)
Cash contributed to TruGreen Joint Venture	—	(24.2)	—	—	(24.2)
Net distributions from (investments in) unconsolidated affiliates	—	194.1	—	—	194.1
Investments in acquired businesses, net of cash acquired	—	—	(158.4)	—	(158.4)
Return of investments from affiliates	934.3	—	—	(934.3)	—
Investing cash flows from (to) affiliates	(914.2)	(29.1)	—	943.3	—
Net cash provided by (used in) investing activities	20.1	4.2	(167.7)	9.0	(134.4)
FINANCING ACTIVITIES					
Borrowings under revolving and bank lines of credit and term loans	—	1,819.5	249.6	—	2,069.1
Repayments under revolving and bank lines of credit and term loans	—	(1,937.7)	(212.7)	—	(2,150.4)
Proceeds from issuance of 6.000% Senior Notes	400.0	—	—	—	400.0
Repayment of 6.625% Senior Notes	(200.0)	—	—	—	(200.0)
Financing and issuance fees	(11.2)	—	—	—	(11.2)
Dividends paid	(116.6)	(909.4)	(26.5)	935.9	(116.6)
Purchase of Common Shares	(130.8)	—	—	—	(130.8)
Payments on seller notes	—	(2.3)	(0.5)	—	(2.8)
Excess tax benefits from share-based payment arrangements	5.8	—	—	—	5.8
Cash received from exercise of stock options	14.7	—	—	—	14.7
Financing cash flows from (to) affiliates	—	808.2	133.1	(941.3)	—
Net cash provided by (used in) financing activities	(38.1)	(221.7)	143.0	(5.4)	(122.2)
Effect of exchange rate changes on cash	—	—	(2.1)	—	(2.1)
Net increase (decrease) in cash and cash equivalents	—	(4.7)	(16.6)	—	(21.3)
Cash and cash equivalents at beginning of year excluding cash classified within assets held for sale	—	7.4	43.4	—	50.8
Cash and cash equivalents at beginning of year classified within assets held for sale	—	—	20.6	—	20.6
Cash and cash equivalents at beginning of year	—	7.4	64.0	—	71.4
Cash and cash equivalents at end of year	$ —	$ 2.7	$ 47.4	$ —	$ 50.1

(a) Cash received by the Parent from the Guarantors and the Non-Guarantors in the form of distributions in the amount of $934.4 million represent return of investments and are included in cash flows from investing activities. Cash received by the Guarantors from the Non-Guarantors in the form of dividends in the amount of $1.5 million represent return on investments and are included in the cash flows from operating activities.

THE SCOTTS MIRACLE-GRO COMPANY
Condensed, Consolidating Balance Sheet
As of September 30, 2016
(in millions)

	Parent	Subsidiary Guarantors	Non-Guarantors	Eliminations/ Consolidations	Consolidated
ASSETS					
Current assets:					
Cash and cash equivalents	$ —	$ 2.7	$ 25.9	$ —	$ 28.6
Accounts receivable, net	—	92.4	34.6	—	127.0
Accounts receivable, pledged	—	174.7	—	—	174.7
Inventories	—	327.8	66.9	—	394.7
Assets held for sale	—	—	256.2	—	256.2
Prepaid and other current assets	0.1	23.1	28.5	—	51.7
Total current assets	0.1	620.7	412.1	—	1,032.9
Investment in unconsolidated affiliates	—	100.3	0.7	—	101.0
Property, plant and equipment, net	—	392.1	52.8	—	444.9
Goodwill	—	260.4	99.9	11.6	371.9
Intangible assets, net	—	560.2	119.6	10.2	690.0
Other assets	13.2	103.8	0.6	(2.5)	115.1
Equity investment in subsidiaries	808.8	—	—	(808.8)	—
Intercompany assets	1,013.0	—	—	(1,013.0)	—
Total assets	$ 1,835.1	$ 2,037.5	$ 685.7	$ (1,802.5)	$ 2,755.8
LIABILITIES AND EQUITY					
Current liabilities:					
Current portion of debt	$ 15.0	$ 154.2	$ 30.8	$ (15.0)	$ 185.0
Accounts payable	—	108.8	22.4	—	131.2
Liabilities held for sale	—	—	213.0	—	213.0
Other current liabilities	16.6	143.3	18.0	—	177.9
Total current liabilities	31.6	406.3	284.2	(15.0)	707.1
Long-term debt	1,085.1	575.7	23.0	(652.9)	1,030.9
Other liabilities	3.2	221.9	56.0	2.4	283.5
Equity investment in subsidiaries	—	161.0	—	(161.0)	—
Intercompany liabilities	—	100.2	234.1	(334.3)	—
Total liabilities	1,119.9	1,465.1	597.3	(1,160.8)	2,021.5
Total equity—controlling interest	715.2	572.4	88.4	(660.8)	715.2
Noncontrolling interest	—	—	—	19.1	19.1
Total equity	715.2	572.4	88.4	(641.7)	734.3
Total liabilities and equity	$ 1,835.1	$ 2,037.5	$ 685.7	$ (1,802.5)	$ 2,755.8

THE SCOTTS MIRACLE-GRO COMPANY
Condensed, Consolidating Statement of Operations
for the fiscal year ended September 30, 2015
(in millions)

	Parent	Subsidiary Guarantors	Non-Guarantors	Eliminations/ Consolidations	Consolidated
Net sales	$ —	$ 2,192.1	$ 179.0	$ —	$ 2,371.1
Cost of sales	—	1,427.0	130.3	—	1,557.3
Cost of sales—impairment, restructuring and other	—	3.1	(0.1)		3.0
Gross profit	—	762.0	48.8	—	810.8
Operating expenses:					
Selling, general and administrative	—	435.0	52.1	1.7	488.8
Impairment, restructuring and other	—	69.6	0.8	—	70.4
Other (income) loss, net	—	(3.2)	1.0	—	(2.2)
Income (loss) from operations	—	260.6	(5.1)	(1.7)	253.8
Equity (income) loss in subsidiaries	(179.2)	(6.1)	—	185.3	—
Other non-operating (income) loss	(27.9)	—	(23.5)	51.4	—
Interest expense	55.2	44.1	0.9	(51.4)	48.8
Income (loss) from continuing operations before income taxes	151.9	222.6	17.5	(187.0)	205.0
Income tax (benefit) expense from continuing operations	(9.6)	79.3	6.6	—	76.3
Income (loss) from continuing operations	161.5	143.3	10.9	(187.0)	128.7
Income (loss) from discontinued operations, net of tax	—	29.1	0.9	—	30.0
Net income (loss)	$ 161.5	$ 172.4	$ 11.8	$ (187.0)	$ 158.7
Net (income) loss attributable to noncontrolling interest	—	—	—	1.1	1.1
Net income (loss) attributable to controlling interest	$ 161.5	$ 172.4	$ 11.8	$ (185.9)	$ 159.8

THE SCOTTS MIRACLE-GRO COMPANY
Condensed, Consolidating Statement of Comprehensive Income (Loss)
for the twelve months ended September 30, 2015
(In millions)

	Parent	Subsidiary Guarantors	Non-Guarantors	Eliminations/ Consolidations	Consolidated
Net income (loss)	$ 161.5	$ 172.4	$ 11.8	$ (187.0)	$ 158.7
Other comprehensive income (loss), net of tax:					
Net foreign currency translation adjustment	(14.2)	—	(14.2)	14.2	(14.2)
Net change in derivatives	(2.1)	(0.8)	—	0.8	(2.1)
Net change in pension and other post-retirement benefits	(4.3)	(5.4)	1.1	4.3	(4.3)
Total other comprehensive income (loss)	(20.6)	(6.2)	(13.1)	19.3	(20.6)
Comprehensive income (loss)	$ 140.9	$ 166.2	$ (1.3)	$ (167.7)	$ 138.1
Comprehensive (income) loss attributable to noncontrolling interest	—	—	—	1.1	1.1
Comprehensive income attributable to controlling interest	$ 140.9	$ 166.2	$ (1.3)	$ (166.6)	$ 139.2

THE SCOTTS MIRACLE-GRO COMPANY
Condensed, Consolidating Statement of Cash Flows
for the fiscal year ended September 30, 2015
(in millions)

	Parent	Subsidiary Guarantors	Non-Guarantors	Eliminations/ Consolidations	Consolidated
NET CASH PROVIDED BY (USED IN) OPERATING ACTIVITIES[a]	$ 239.4	$ 249.3	$ 39.5	$ (281.3)	$ 246.9
INVESTING ACTIVITIES[a]					
Proceeds from sale of long-lived assets	—	5.5	—	—	5.5
Proceeds from sale of business, net of transaction costs	—	—	—	—	—
Investments in property, plant and equipment	—	(56.6)	(5.1)	—	(61.7)
Investment in marketing and license agreement	—	(300.0)	—	—	(300.0)
Investments in acquired businesses, net of cash acquired	—	(170.8)	(9.4)	—	(180.2)
Investing cash flows from (to) affiliates	(141.9)	—	—	141.9	—
Net cash provided by (used in) investing activities	(141.9)	(521.9)	(14.5)	141.9	(536.4)
FINANCING ACTIVITIES					
Borrowings under revolving and bank lines of credit and term loans	—	1,568.1	267.9	—	1,836.0
Repayments under revolving and bank lines of credit and term loans	—	(1,284.1)	(173.9)	—	(1,458.0)
Financing and issuance fees	(0.4)	(0.1)	—	—	(0.5)
Dividends paid	(111.3)	(255.5)	(25.8)	281.3	(111.3)
Purchase of Common Shares	(14.8)	—	—	—	(14.8)
Payments on seller notes	—	(1.5)	—	—	(1.5)
Excess tax benefits from share-based payment arrangements	4.7	—	—	—	4.7
Cash received from exercise of stock options	24.3	—	—	—	24.3
Financing cash flows from (to) affiliates	—	230.0	(88.1)	(141.9)	—
Net cash provided by (used in) financing activities	(97.5)	256.9	(19.9)	139.4	278.9
Effect of exchange rate changes on cash	—	—	(7.3)	—	(7.3)
Net increase (decrease) in cash and cash equivalents	—	(15.7)	(2.2)	—	(17.9)
Cash and cash equivalents at beginning of year excluding cash classified within assets held for sale	—	23.1	41.8	—	64.9
Cash and cash equivalents at beginning of year classified within assets held for sale	—	—	24.4	—	24.4
Cash and cash equivalents at beginning of year	—	23.1	66.2	—	89.3
Cash and cash equivalents at end of year	$ —	$ 7.4	$ 64.0	$ —	$ 71.4

(a) Cash received by the Parent from the Guarantors in the form of dividends in the amount of $255.5 million represent return on investments and are included in cash flows from operating activities. Cash received by the Guarantors from the Non-Guarantors in the form of dividends in the amount of $25.8 million represent return on investments and are included in the cash flows from operating activities.

Schedule II—Valuation and Qualifying Accounts
for the fiscal year ended September 30, 2017

Column A	Column B	Column C	Column D	Column E	Column F
Classification	Balance at Beginning of Period	Reserves Acquired	Additions Charged to Expense	Deductions Credited and Write-Offs	Balance at End of Period
			(In millions)		
Valuation and qualifying accounts deducted from the assets to which they apply:					
Allowance for doubtful accounts	$ 4.8	$ —	$ 1.0	$ (2.7)	$ 3.1
Income tax valuation allowance	4.1	—	25.6	—	29.7

Schedule II—Valuation and Qualifying Accounts
for the fiscal year ended September 30, 2016

Column A	Column B	Column C	Column D	Column E	Column F
Classification	Balance at Beginning of Period	Reserves Acquired	Additions Charged to Expense	Deductions Credited and Write-Offs	Balance at End of Period
			(In millions)		
Valuation and qualifying accounts deducted from the assets to which they apply:					
Allowance for doubtful accounts	$ 5.1	$ —	$ 0.1	$ (0.4)	$ 4.8
Income tax valuation allowance	4.3	—	0.3	(0.5)	4.1

Schedule II—Valuation and Qualifying Accounts
for the fiscal year ended September 30, 2015

Column A	Column B	Column C	Column D	Column E	Column F
Classification	Balance at Beginning of Period	Reserves Acquired	Additions Charged to Expense	Deductions Credited and Write-Offs	Balance at End of Period
			(In millions)		
Valuation and qualifying accounts deducted from the assets to which they apply:					
Allowance for doubtful accounts	$ 4.4	$ —	$ 0.7	$ —	$ 5.1
Income tax valuation allowance	4.0	—	0.8	(0.5)	4.3

The Scotts Miracle-Gro Company

Index to Exhibits

Exhibit No.	Description	Location
3.1(a)	Initial Articles of Incorporation of The Scotts Miracle-Gro Company as filed with the Ohio Secretary of State on November 22, 2004	Incorporated herein by reference to the Current Report on Form 8-K of The Scotts Miracle-Gro Company (the "Registrant") filed March 24, 2005 [Exhibit 3.1]
3.1(b)	Certificate of Amendment by Shareholders to Articles of Incorporation of The Scotts Miracle-Gro Company as filed with the Ohio Secretary of State on March 18, 2005	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed March 24, 2005 [Exhibit 3.2]
3.2	Code of Regulations of The Scotts Miracle-Gro Company	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed March 24, 2005 [Exhibit 3.3]
4.1(a)	Indenture, dated as of October 13, 2015, by and among The Scotts Miracle-Gro Company, the Guarantors (as defined therein) and U.S. Bank National Association, as trustee	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed October 14, 2015 [Exhibit 4.1]
4.1(b)	First Supplemental Indenture, dated May 26, 2016, by and among The Scotts Miracle-Gro Company, the Guarantors (as defined therein) and U.S. Bank National Association, as trustee	Incorporated herein by reference to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended July 2, 2016 filed August 10, 2016 [Exhibit 4]
4.1(c)	Form of 6.000% Senior Notes due 2023	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed October 14, 2015 [Exhibit 4.2]
4.2(a)	Indenture, dated as of December 15, 2016, by and among The Scotts Miracle-Gro Company, the Guarantors (as defined therein) and U.S. Bank National Association, as trustee	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed December 16, 2016 [Exhibit 4.1]
4.2(b)	Form of 5.250% Senior Notes due 2026	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed December 16, 2016 [Exhibit 4.2]
4.3	Agreement to furnish copies of instruments and agreements defining rights of holders of long-term debt	*
10.1(a)	Amended and Restated Agreement and Plan of Merger, dated as of May 19, 1995, among Stern's Miracle-Gro Products, Inc., Stern's Nurseries, Inc., Miracle-Gro Lawn Products Inc., Miracle-Gro Products Limited, Hagedorn Partnership, L.P., the general partners of Hagedorn Partnership, L.P., Horace Hagedorn, Community Funds, Inc., and John Kenlon, The Scotts Company and ZYX Corporation	Incorporated herein by reference to the Current Report on Form 8-K of The Scotts Company, a Delaware corporation, filed June 2, 1995 [Exhibit 2(b)]
10.1(b)	First Amendment to Amended and Restated Agreement and Plan of Merger, made and entered into as of October 1, 1999, among The Scotts Company, Scotts' Miracle-Gro Products, Inc. (as successor to ZYX Corporation and Stern's Miracle-Gro Products, Inc.), Miracle-Gro Lawn Products Inc., Miracle-Gro Products Limited, Hagedorn Partnership, L.P., Community Funds, Inc., Horace Hagedorn and John Kenlon, and James Hagedorn, Katherine Hagedorn Littlefield, Paul Hagedorn, Peter Hagedorn, Robert Hagedorn and Susan Hagedorn	Incorporated herein by reference to the Current Report on Form 8-K of The Scotts Company, an Ohio corporation, filed October 5, 1999 [Exhibit 2]

10.2(a)	Fourth Amended and Restated Credit Agreement, dated as of October 29, 2015, by and among The Scotts Miracle-Gro Company, as a Borrower; the Subsidiary Borrowers (as defined therein); JPMorgan Chase Bank, N.A., as Administrative Agent; Bank of America, N.A. and Wells Fargo Bank, National Association, as Co- Syndication Agents; CoBank, ACB, Mizuho Bank, LTD., Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. "Rabobank Nederland", New York Branch, TD Bank N.A. and U.S. Bank National Association, as Co-Documentation Agents; and the several other banks and other financial institutions from time to time parties thereto	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed November 3, 2015 [Exhibit 10.1]
10.2(b)	Amendment No. 1, dated as of February 8, 2016, to Fourth Amended and Restated Credit Agreement dated October 29, 2015, by and among The Scotts Miracle-Gro Company, as a Borrower; the Subsidiary Borrowers (as defined therein); JPMorgan Chase Bank, N.A., as Administrative Agent; Bank of America, N.A. and Wells Fargo Bank, National Association, as Co- Syndication Agents; CoBank, ACB, Mizuho Bank, LTD., Coöperatieve Rabobank U.S., New York Branch (formerly known as Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. "Rabobank Nederland", New York Branch), TD Bank N.A. and U.S. Bank National Association, as Co-Documentation Agents; and the several other banks and other financial institutions from time to time parties thereto	Incorporated herein by reference to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended January 2, 2016 filed February 11, 2016 [Exhibit 10.3]
10.2(c)	Amendment No. 2, dated as of June 28, 2017, to Fourth Amended and Restated Credit Agreement dated October 29, 2015, by and among The Scotts Miracle-Gro Company, as a Borrower; the Subsidiary Borrowers (as defined therein); JPMorgan Chase Bank, N.A., as Administrative Agent; Bank of America, N.A. and Wells Fargo Bank, National Association, as Co-Syndication Agents; CoBank, ACB, Mizuho Bank, LTD., Coöperatieve Rabobank U.S., New York Branch (formerly known as Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. "Rabobank Nederland", New York Branch), TD Bank N.A. and U.S. Bank National Association, as Co-Documentation Agents; and the several other banks and other financial institutions from time to time parties thereto	Incorporated herein by reference to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended July 1, 2017 filed August 10, 2017 [Exhibit 10.5]
10.2(d)	Fourth Amended and Restated Guarantee and Collateral Agreement, dated as of October 29, 2015, made by The Scotts Miracle-Gro Company, each domestic Subsidiary Borrower under the Fourth Amended and Restated Credit Agreement, and certain of its and their domestic subsidiaries, in favor of JPMorgan Chase Bank, N.A., as Administrative Agent	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed November 3, 2015 [Exhibit 10.2]
10.2(e)	Amendment No. 1, dated July 29, 2016, to Fourth Amended and Restated Guarantee and Collateral Agreement, dated as of October 29, 2015, made by The Scotts Miracle-Gro Company, each domestic Subsidiary Borrower under the Fourth Amended and Restated Credit Agreement, and certain of its and their domestic subsidiaries, in favor of JPMorgan Chase Bank, N.A., as Administrative Agent	Incorporated herein by reference to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended July 2, 2016 filed August 10, 2016 [Exhibit 10]
10.3(a)†	The Scotts Miracle-Gro Company Long-Term Incentive Plan (reflects amendment and restatement of plan formerly known as The Scotts Miracle-Gro Company 2006 Long-Term Incentive Plan) [effective as of January 17, 2013] [pre-January 27, 2017 version]	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed January 24, 2013 [Exhibit 10.1]

10.3(b)†	Specimen form of Deferred Stock Unit Award Agreement for Nonemployee Directors (with Related Dividend Equivalents) used to evidence grants under the Long-Term Incentive Plan	Incorporated herein by reference to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended March 28, 2015 filed May 7, 2015 [Exhibit 10.3]
10.3(c)†	Specimen form of Deferred Stock Unit Award Agreement for Nonemployee Directors Retainer Deferrals (with Related Dividend Equivalents) used to evidence grants which may be made under the Long-Term Incentive Plan	Incorporated herein by reference to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended March 28, 2015 filed May 7, 2015 [Exhibit 10.4]
10.3(d)(i)†	Specimen form of Restricted Stock Unit Award Agreement for Third Party Service-Providers (with Related Dividend Equivalents) used to evidence grants which may be made under the Long-Term Incentive Plan	Incorporated herein by reference to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended March 28, 2015 filed May 7, 2015 [Exhibit 10.5]
10.3(d)(ii)†	Specimen form of Restricted Stock Unit Award Agreement for Employees (with Related Dividend Equivalents) used to evidence grants which may be made under the Long-Term Incentive Plan	Incorporated herein by reference to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended March 28, 2015 filed May 7, 2015 [Exhibit 10.8]
10.3(e)†	Specimen form of Performance Unit Award Agreement for Employees (with Related Dividend Equivalents) used to evidence grants which may be made under the Long-Term Incentive Plan	Incorporated herein by reference to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended March 28, 2015 filed May 7, 2015 [Exhibit 10.6]
10.3(f)(i)†	Specimen form of Nonqualified Stock Option Award Agreement for Employees used to evidence grants of Nonqualified Stock Options made under The Scotts Miracle-Gro Company 2006 Long-Term Incentive Plan (now known as The Scotts Miracle-Gro Company Long-Term Incentive Plan) [October 30, 2007 through October 8, 2008 version]	Incorporated herein by reference to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 30, 2007 filed November 29, 2007 [Exhibit 10(t)(3)]
10.3(f)(ii)†	Specimen form of Nonqualified Stock Option Award Agreement for Employees used to evidence grants of Nonqualified Stock Options made under The Scotts Miracle-Gro Company Amended and Restated 2006 Long-Term Incentive Plan (now known as The Scotts Miracle-Gro Company Long-Term Incentive Plan) [January 20, 2010 through January 19, 2012 version]	Incorporated herein by reference to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended January 2, 2010 filed February 11, 2010 [Exhibit 10.4]
10.3(f)(iii)†	Specimen form of Nonqualified Stock Option Award Agreement for Employees used to evidence grants of Nonqualified Stock Options made under The Scotts Miracle-Gro Company Amended and Restated 2006 Long-Term Incentive Plan (now known as The Scotts Miracle-Gro Company Long-Term Incentive Plan) [January 20, 2012 through January 17, 2013 version]	Incorporated herein by reference to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended December 31, 2011 filed February 8, 2012 [Exhibit 10.3]
10.3(f)(iv)†	Specimen form of Nonqualified Stock Option Award Agreement for Employees used to evidence grants which may be made under the Long-Term Incentive Plan [post-January 17, 2013 version]	Incorporated herein by reference to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended March 28, 2015 filed May 7, 2015 [Exhibit 10.7]
10.4(a)†	The Scotts Miracle-Gro Company Long-Term Incentive Plan (effective as of January 27, 2017)	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed January 30, 2017 [Exhibit 10.1]
10.4(b)†	Form of Project Focus Performance Unit Award Agreement under The Scotts Miracle-Gro Company Long-Term Incentive Plan (effective as of January 30, 2017)	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed January 30, 2017 [Exhibit 10.2]
10.4(c)†	Form of Standard Performance Unit Award Agreement under The Scotts Miracle-Gro Company Long-Term Incentive Plan (effective as of January 30, 2017)	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed January 30, 2017 [Exhibit 10.3]

10.4(d)†	Form of Standard Restricted Stock Unit Award Agreement under The Scotts Miracle-Gro Company Long-Term Incentive Plan (effective as of January 30, 2017)	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed January 30, 2017 [Exhibit 10.4]
10.4(e)†	Form of Standard Non-Qualified Stock Option Award Agreement under The Scotts Miracle-Gro Company Long-Term Incentive Plan (effective as of January 30, 2017)	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed January 30, 2017 [Exhibit 10.5]
10.5(a)†	The Scotts Company LLC Amended and Restated Executive Incentive Plan (effective as of January 30, 2014)	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed February 5, 2014 [Exhibit 10.1]
10.5(b)(i)†	Specimen form of Employee Confidentiality, Noncompetition, Nonsolicitation Agreement for employees participating in The Scotts Company LLC Executive/Management Incentive Plan (now known as The Scotts Company LLC Amended and Restated Executive Incentive Plan)	Incorporated herein by reference to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended July 1, 2006 filed August 10, 2006 [Exhibit 10.1]
10.5(b)(ii)†	Employee Confidentiality, Noncompetition, Nonsolicitation Agreement, dated as of December 12, 2013, by and between The Scotts Company LLC, all companies controlled by, controlling or under common control with The Scotts Company LLC, and James Hagedorn	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed December 17, 2013 [Exhibit 10.2]
10.6†	The Scotts Company LLC Executive Retirement Plan, as Amended and Restated as of January 1, 2015 (executed December 31, 2014)	Incorporated herein by reference to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended December 27, 2014 filed February 5, 2015 [Exhibit 10.2]
10.7†	Summary of Compensation for Nonemployee Directors of The Scotts Miracle-Gro Company (effective as of May 1, 2014)	Incorporated herein by reference to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 30, 2014 filed November 25, 2014 [Exhibit 10.9]
10.8†	Executive Severance Agreement, dated as of December 11, 2013, by and between The Scotts Company LLC and James Hagedorn	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed December 17, 2013 [Exhibit 10.1]
10.9(a)†	Consulting Agreement, dated February 12, 2016, between The Scotts Company LLC and Hanft Projects LLC [expired January 31, 2017]	Incorporated herein by reference to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended April 2, 2016 filed May 11, 2016 [Exhibit 10.3]
10.9(b)†	Consulting Agreement, dated January 31, 2017, between The Scotts Company LLC and Hanft Projects LLC	Incorporated herein by reference to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended April 1, 2017 filed May 10, 2017 [Exhibit 10.6]
10.10†	Incentive Compensation/Retention Award Agreement, dated February 11, 2016, between The Scotts Miracle-Gro Company and Michael C. Lukemire	Incorporated herein by reference to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended April 2, 2016 filed May 11, 2016 [Exhibit 10.2]
10.11(a)†	The Scotts Company LLC Executive Severance Plan, adopted on May 4, 2011	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed May 10, 2011 [Exhibit 10.1]
10.11(b)†	Form of Tier 1 Participation Agreement under The Scotts Company LLC Executive Severance Plan	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed May 10, 2011 [Exhibit 10.2]
10.12(a)†	The Scotts Company LLC Executive Severance Plan, adopted on April 25, 2017	Incorporated herein by reference to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended April 1, 2017 filed May 10, 2017 [Exhibit 10.9]
10.12.(b)†	Form of Tier 1 Participation Agreement under The Scotts Company LLC Executive Severance Plan	Incorporated herein by reference to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended April 1, 2017 filed May 10, 2017 [Exhibit 10.10]

10.13(a)	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 Monsanto Company and The Scotts Company LLC (as successor to The Scotts Company, an Ohio corporation)	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)]
10.13(b)	Letter Agreement, dated March 10, 2005, amending the Amended and Restated Exclusive Agency and Marketing Agreement, dated as of September 30, 1998, between Monsanto Company and The Scotts Company LLC (as successor to The Scotts Company, an Ohio corporation)	Incorporated herein by reference to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 30, 2009 filed November 24, 2009 [Exhibit 10.17(b)]
10.13(c)	Letter Agreement, dated March 28, 2008, amending the Amended and Restated Exclusive Agency and Marketing Agreement, dated as of September 30, 1998, between Monsanto Company and The Scotts Company LLC	Incorporated herein by reference to the Registrant's Annual Report on Form 10-K for the fiscal year ended September 30, 2008 filed November 25, 2008 [Exhibit 10.18(b)]
10.13(d)	Amendment to Amended and Restated Exclusive Agency and Marketing Agreement, dated as of May 15, 2015, between Monsanto Company and The Scotts Company LLC	Incorporated herein by reference to the Registrant's Current Report on Form 8-K/A filed May 20, 2015 [Exhibit 10.2]
10.13(e)	Lawn and Garden Brand Extension Agreement, dated as of May 15, 2015, between Monsanto Company and The Scotts Company LLC	Incorporated herein by reference to the Registrant's Current Report on Form 8-K/A filed May 20, 2015 [Exhibit 10.3]
10.13(f)	Commercialization and Technology Agreement, dated as of May 15, 2015, between Monsanto Company and The Scotts Company LLC	Incorporated herein by reference to the Registrant's Current Report on Form 8-K/A filed May 20, 2015 [Exhibit 10.4]
10.14(a)	Second Amended and Restated Exclusive Agency and Marketing Agreement, dated as of August 31, 2017, by and between Monsanto Company and The Scotts Company LLC	*
10.14(b)	Amended and Restated Lawn and Garden Brand Extension Agreement - Americas, dated as of August 31, 2017, between Monsanto Company and The Scotts Company LLC	*
10.15	Purchase Agreement, dated October 7, 2015, among The Scotts Miracle-Gro Company, the subsidiary guarantors named therein and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representative of the several initial purchasers named therein	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed October 14, 2015 [Exhibit 10.1]
10.16	Purchase Agreement, dated December 12, 2016, among The Scotts Miracle-Gro Company, the subsidiary guarantors named therein and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representative of the several initial purchasers named therein	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed December 16, 2016 [Exhibit 10.1]
10.17(a)	Master Repurchase Agreement, and Annex I thereto, with Cooperatieve Rabobank, U.A. (New York Branch), as agent and purchaser, and Sumitomo Mitsui Banking Corporation (New York Branch), as purchaser, dated as of April 7, 2017	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed April 13, 2017 [Exhibit 10.1]
10.17(b)(i)	Master Framework Agreement with Cooperatieve Rabobank, U.A. (New York Branch), as agent and purchaser, and Sumitomo Mitsui Banking Corporation (New York Branch), as purchaser, dated as of April 7, 2017	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed April 13, 2017 [Exhibit 10.2]

10.17(b)(ii)	Amendment No. 1 to Master Framework Agreement with Cooperatieve Rabobank, U.A. (New York Branch), as agent and purchaser, and Sumitomo Mitsui Banking Corporation (New York Branch), as purchaser, dated as of August 25, 2017	Incorporated herein by reference to the Registrant's Current Report on Form 8-K filed August 31, 2017 [Exhibit 10.1]
10.18	Contribution and Distribution Agreement, dated as of December 10, 2015, by and among The Scotts Miracle-Gro Company and TruGreen Holdings Corporation	Incorporated herein by reference to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended January 2, 2016 filed February 11, 2016 [Exhibit 10.5]
10.19	Form of Aircraft Time Sharing Agreement for Executive Officers	Incorporated herein by reference to the Registrant's Quarterly Report on Form 10-Q for the quarterly period ended April 2, 2016 filed May 11, 2016 [Exhibit 10.4]
10.20	Binding and Irrevocable Conditional Offer, dated April 29, 2017, from Garden Care Bidco Limited to Scotts-Sierra Investments LLC	*
12	Computation of Ratio of Earnings to Fixed Charges	*
21	Subsidiaries of The Scotts Miracle-Gro Company	*
23	Consent of Independent Registered Public Accounting Firm — Deloitte & Touche LLP	*
24	Powers of Attorney of Executive Officers and Directors of The Scotts Miracle-Gro Company	*
31.1	Rule 13a-14(a)/15d-14(a) Certifications (Principal Executive Officer)	*
31.2	Rule 13a-14(a)/15d-14(a) Certifications (Principal Financial Officer)	*
32	Section 1350 Certifications (Principal Executive Officer and Principal Financial Officer)	*
101.INS	XBRL Instance Document	*
101.SCH	XBRL Taxonomy Extension Schema	*
101.CAL	XBRL Taxonomy Extension Calculation Linkbase	*
101.DEF	XBRL Taxonomy Extension Definition Linkbase	*
101.LAB	XBRL Taxonomy Extension Label Linkbase	*
101.PRE	XBRL Taxonomy Extension Presentation Linkbase	*

* Filed or furnished herewith.

† Management contract, compensatory plan or arrangement.

Exhibit 4.3

November 28, 2017

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: The Scotts Miracle-Gro Company – Annual Report on Form 10-K for the fiscal year ended September 30, 2017

Ladies and Gentlemen:

The Scotts Miracle-Gro Company, an Ohio corporation ("Scotts Miracle-Gro"), is today filing its Annual Report on Form 10-K for the fiscal year ended September 30, 2017 (the "Form 10-K").

Neither Scotts Miracle-Gro nor any of its consolidated subsidiaries has outstanding any instrument or agreement with respect to its long-term debt, other than those filed or incorporated by reference as an exhibit to the Form 10-K, under which the total amount of long-term debt authorized exceeds ten percent (10%) of the total assets of Scotts Miracle-Gro and its subsidiaries on a consolidated basis. In accordance with the provisions of Item 601(b)(4)(iii) of SEC Regulation S-K, Scotts Miracle-Gro hereby agrees to furnish to the SEC, upon request, a copy of each such instrument or agreement defining the rights of holders of long-term debt of Scotts Miracle-Gro or the rights of holders of long-term debt of one of Scotts Miracle-Gro's consolidated subsidiaries, in each case which is not being filed or incorporated by reference as an exhibit to the Form 10-K.

Very truly yours,

THE SCOTTS MIRACLE-GRO COMPANY

/s/ THOMAS RANDAL COLEMAN

Thomas Randal Coleman
Executive Vice President and Chief Financial Officer

SECOND AMENDED AND RESTATED EXCLUSIVE AGENCY AND MARKETING AGREEMENT

by and between

MONSANTO COMPANY

and

THE SCOTTS COMPANY LLC

Effective as of September 30, 1998

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SECOND AMENDED AND RESTATED
EXCLUSIVE AGENCY AND
MARKETING AGREEMENT

THIS SECOND AMENDED AND RESTATED EXCLUSIVE AGENCY AND MARKETING AGREEMENT by and between Monsanto Company, a Delaware corporation ("Monsanto"), and The Scotts Company LLC, an Ohio limited liability company (f/k/a The Scotts Company, an Ohio corporation) (the "Agent"), is entered into on August 31, 2017 (the "Execution Date"), and shall amend and restate and supersede in its entirety the Amended and Restated Exclusive Agency Marketing Agreement and all other agreements to the extent addressed by or incorporated into this Agreement, dated as of September 30, 1998, as amended and restated as of November 11, 1998, and as amended and/or restated from time to time (collectively, the "Original Agreement"), with respect to the countries and territories described in this Agreement. Other countries and territories included in the Original Agreement that, as of the Execution Date, will no longer be addressed in this Agreement will be addressed in a separate agreement, effective as of the Execution Date, with respect to such countries and territories by and between Monsanto and the purchaser of Agent's international business. Monsanto and the Agent are sometimes referred to herein as the "parties."

WITNESSETH:

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

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

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

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

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

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

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

ARTICLE 1 - DEFINITIONS AND RULES OF CONSTRUCTION

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

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

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

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

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

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

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

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

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

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

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

"Ag Competitor" means any company developing, manufacturing, selling, marketing and/or distributing agricultural herbicides with net sales of agricultural herbicides in excess of Three Billion Dollars ($3,000,000,000) including, without limitation, 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).

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

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

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

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

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

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

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

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

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

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

"Change of Control" means, with respect to a Person, (i) the acquisition after the date hereof by any individual (or group of individuals acting in concert), corporation, company, association, joint venture or other entity, of beneficial ownership of 50% or more of the voting securities of such Person; 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.

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

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

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

"Cost of Goods Sold" means, for any given Program Year, the aggregate cost, as determined in accordance with GAAP applied on a consistent basis, of Roundup Products sold for such Program

Year; provided, however, in computing this amount, the cost of Glyphosate, which is a component of this Cost of Goods Sold, shall equal the amount set forth in the Transfer Price, for such Program Year.

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

"EDI" means electronic data interchange.

"Effective Date" means September 30, 1998.

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

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

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

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

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

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

"Formulation Agreement" means that certain Amended and Restated Formulation Agreement, dated as of February 24, 2012, by and between Monsanto and the Agent for the manufacture and packaging by the Agent of Roundup Products solely for North America to be entered by the parties upon closing of the sale of the Non-Roundup Assets.

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

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

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

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

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

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

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

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

"Lawn and Garden Employee" shall have the meaning set forth in Section 6.13(e).

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

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

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

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

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

"Material Breach" shall mean:

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

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

"Material Fraud" shall mean:

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

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

"Material Willful Misconduct" shall mean:

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

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

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

"Monsanto" means Monsanto Company, a Delaware corporation.

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

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

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

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

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

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

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

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

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

"Program EBIT" means, for any given Program Year, the amount of Program Sales Revenues for such Program year, *less* the amount of Program Expenses for such Program Year, provided, however, for purposes of determining the Agent's Commission.

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

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

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

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

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

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

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

"Roundup Offering Materials" means any and all written descriptions of, solicitations or proposals with respect to or any information delivered in connection with, in each case, a potential Roundup Sale that are provided by Monsanto to any third party, or finalized for provision to a third party, for their evaluation of participation in a potential Roundup Sale, including, without limitation, relevant historical financial information and projections, along with a written summary of any additional information supplied orally by Monsanto to such third parties.

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

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

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

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

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

"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.

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

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

"Sell-Through Business" means, with respect to the Activated Included Markets, unit volume sales determined by Program Year point-of-sale unit movement at those Customers for which measurable data on a consistent basis is reasonably available and which (i) are among the top 20 Customers in the Activated Included Markets for each of the Program Years in question and (ii) provide measurable data on a consistent basis for each of the Program Years in question. Such point-of-sale information shall be based on census data gathered from such top 20 Customers and transmitted via electronic data interchange (EDI) on a weekly reported basis.

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

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

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

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

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

"USEPA" means the United States Environmental Protection Agency.

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

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

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

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

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

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

ARTICLE 2 - EXCLUSIVE AGENCY AND DISTRIBUTORSHIP

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

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

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

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

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

(3) **Warehousing and Inventory**.

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

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

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

- reconciling the physical inventory to perpetual records;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

shall require the prior approval of the Steering Committee unless already approved by the Global Support Team and the Business Unit pursuant to Section 4.2(c).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 2.7 ***Compliance.***

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

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

read and will comply with the terms included in the Supplier Code of Business Conduct, Anti-Corruption/FCPA Policy and Human Rights Policy.

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

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

(e) *Definition of "Official"*. For purposes of this Section 2.7, an "Official" shall include all employees of a government department or agency, whether in the executive, legislative or judicial branches of government and whether at the national, state/provincial or local level (or their equivalents). The term covers part-time workers, unpaid workers, any person "acting in an official capacity," and members of a royal family. Also included under the term "Official" are political parties, party officials, and candidates for political office. Moreover, Officials include employees of public international organizations (list posted at www.gpo.gov/fdsys) such as the United Nations ("U.N."), Food and Agriculture Organization of the U.N. ("FAO"), the International Cotton Institute, the International Monetary Fund, the International Wheat Advisory Committee, the Organization of Economic Cooperation and Development ("OECD"), the Organization of American States, the World Intellectual Property Organization, the World Trade Organization, the International Cotton Advisory Committee ("ICAC") and the International Food Policy Research Institute. Finally, the term "Official" covers officers and employees of public academic institutions and companies under government ownership or control, even if the companies or institutions (such as universities) are operated like privately owned entities.

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

on the list of "Specifically Designated Nationals and Blocked Persons," the "Entity List," or the "Denied Persons List."

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

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

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

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

(b) *Financial Reporting*. The Agent shall provide Monsanto no later than the date that is the earlier of (i) four (4) business days after the last day of each of the Agent's fiscal months and (ii) the first business day of each calendar month (which corresponds to the first work day of Monsanto's closing period) a full, detailed report by country of the Roundup SKU's being sold during the past month, including but not limited to Monsanto SKU identifier, quantity sold, quantity of samples provided free of charge, total sales value by SKU (in local currency). The

Agent shall provide to Monsanto monthly financial statements, including (i) the full Roundup P&L (from Gross Sales to EBIT), balance sheet and cash flow statements, (ii) the Netback expense detail (accruals and actuals), (iii) all other Expense detail (accruals and actuals), and (iv) Cost of Goods Sold detail. Such monthly financial statements shall be provided (i) in their preliminary form (due to the closing schedule, the parties acknowledge that these results may be preliminary or final and a subsequent true-up may occur in the following month) no later than the date that is the earlier of (i) four (4) business days after the last day of each of the Agent's fiscal months and (ii) the first business day of each calendar month (which corresponds to the first work day of Monsanto's closing period), and (ii) in their final form no later than ten (10) business days following the end of each calendar month.

(c) *Audit*. Monsanto shall have the right to periodically audit or have an independent accountant audit, on Monsanto's behalf, all the Roundup Records. The audit shall be at the cost of Monsanto unless any material error has been committed by the Agent, in which case the Agent shall bear the cost of the audit. Upon exercise of its right of audit, and discovery of any disputed item, Monsanto shall provide written notice of dispute to the Agent. The parties shall resolve such dispute in the manner set forth in Section 3.4 hereof.

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

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

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

(c) *Cash Settlement*. At the end of each week, the Agent shall verify the actual amount of the Customers' remittances for the Roundup Products received and Expenses paid over the past week and shall send to Monsanto a weekly reconciliation statement (the "Reconciliation Statement") setting forth such information in the form attached hereto as Schedule 3.2(c). Within three business days (or such other time period agreed to by the Agent and Monsanto) of the receipt by Monsanto of the Reconciliation Statement, Monsanto shall review and approve such

Reconciliation Statement; provided, that (i) if Monsanto disputes the contents of the Reconciliation Statement, the Agent and Monsanto shall work in good faith to resolve any such disputes and (ii) any such dispute shall be reconciled and addressed by way of an adjustment to the cash settlement in the current month or a subsequent month, as mutually agreed to by the Agent and Monsanto. Upon the approval of the Reconciliation Statement (subject to any agreed to revisions), Monsanto or the Agent, as applicable, shall pay by wire transfer of immediately available funds the net amount due to the Agent or to Monsanto, as applicable. For the purpose of this Section 3.2(c), customer remittances shall be allocated by the Agent to Roundup Products in proportion to the amount payable by such customer to the Agent in relation Roundup Products to the total amount payable by such customer to the Agent.

(d) *Recognition.* The parties acknowledge and agree that all sales by the Agent will be recognized for accounting purposes at the time when the product to be accounted for as sold has been shipped to the applicable account and its receipt confirmed. With respect to all buy/sell sales and all other direct account sales, whether by the Agent's sub-distributors or sub-agents, such sales will be recognized for accounting purposes at the time when the product to be accounted for as sold has been shipped to the applicable sub-distributor or sub-agent and its receipt confirmed. Any payments received by the Agent as Monsanto's agent for sales made in accordance with this Agreement will be remitted to Monsanto in accordance with the procedures set forth in this Agreement as modified by the course of performance of the parties.

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

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

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

(b) *Expense Verification*. Each party shall have the right to verify whether any particular Expense is an Approved Expense by sending a written inquiry to that effect to the Agent's nominee. The party incurring an Expense shall endeavor to promptly provide upon request of the Agent's nominee the appropriate documentary evidence supporting such Expense. Upon failure by the said party to provide the appropriate documentary evidence, the inquiring party shall have the right to send a written notice of dispute to the other party and the parties shall resolve such dispute

in the manner set forth in Section 3.4 hereof. Upon determination by such Independent Accountant (as defined below) that the Expense was not an Approved Expense, such Expense shall be deducted from the Program Expenses and the Agent and Monsanto shall include an appropriate adjustment in accordance with the procedures set forth in Section 3.2(c). Allocated Expenses shall be paid no more than three weeks after months' end in accordance with the procedures set forth in Section 3.2(c).

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

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

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

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

Section 3.5 ***Fixed Contribution to Expenses***.

(a) *Amount and Purpose*. Each Program Year the Agent shall make a fixed contribution to the overall Expenses of the Roundup L&G Business in an amount equal to eighteen million U.S. Dollars ($18,000,000) ("Contribution Payment"). Such Contribution Payment shall be payable by the Agent to Monsanto in twelve equal monthly installments which shall be due on the first day of each month and shall not be subject to any "set-off".

Section 3.6 ***Commission***.

(a) *Amount of Commission*. In consideration to the Agent for performance of its duties and obligations hereunder, the Agent shall be entitled to a Commission ("Commission"). Such Commission shall represent a percentage of the Program EBIT realized by the Roundup L&G Business which percentage shall be (i) for Program Years 2017 and 2018, 50% of the Program EBIT and (ii) for Program Years 2019 and thereafter, 50% of the Program EBIT in excess of $40MM (such $40MM threshold, the "Commission Threshold"). The parties agree that the Commission Threshold 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.

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

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

Section 3.7 ***[Intentionally deleted]***

Section 3.8 ***Additional Commission***.

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

(b) The Agent is exclusively distributing and managing the sale of the Roundup Pro SKU in Lawn and Garden Channels in the United States. The parties acknowledge that the Agent purchases the Roundup Pro SKU from Monsanto (or a successor entity which holds the rights to manufacture, sell or commercialize the Roundup Pro SKU) for the Agent's own account in its capacity as a distributor and not as a marketing agent, and the sales resulting from such Roundup

Pro SKU shall not be included in the Program Sales Revenues hereunder. In the event that the Agent is terminated as an exclusive distributor of the Roundup Pro SKU by Monsanto (or by a successor entity which holds the rights to manufacture, sell or commercialize the Roundup Pro SKU), any subsequent sales of the Roundup Pro SKU by parties other than Agent in the Lawn and Garden Channels in the United States will be subject to the provisions of Section 3.8(c) below.

(c) Except to the extent provided in Section 3.8(b) above, on and after the Effective Date, Monsanto shall use its reasonable efforts to ensure that Roundup Ag Products are not sold, directly or indirectly, through Lawn and Garden Channels to consumers in the Lawn and Garden Market in the Included Markets. In the event that in the normal course of business the Agent determines based on satisfactory evidence that a material amount of additional Roundup Ag Products, above Program Year 2016 sales levels (such amount, the "Historical Threshold"), are being sold directly by Monsanto (or directly by any successor entity which holds the rights to manufacture, sell or commercialize the Roundup Pro SKU) through Lawn and Garden Channels in the Included Markets, the parties shall negotiate in good faith to include, subject to the principles set forth in Section 3.8(d), an appropriate percentage of such incremental sales that exceed the Historical Threshold to reflect such Lawn and Garden Use within the definition of Program Sales Revenues so that the Agent receives credit therefor for purposes of calculating the Agent's Commission, or such other compensation as required to fully compensate the Agent for lost Commission as a result of such sales of Roundup Ag Products above the Historical Threshold as the Parties may agree (collectively, the "Additional Amount").

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

(e) During the 2014 Program Year and for each Program Year thereafter, in consideration for the Agent's marketing, distribution and sales of Roundup 365, for the 2014 Program Year, and for each Program Year thereafter, if 365 Gross Profits exceed USD $10MM in a Program Year, the Agent shall be paid an amount equal to 7% of the 365 Gross Profits for such Program Year (including, for the avoidance of doubt, the first USD $10MM of the 365 Gross Profits). The amount that becomes payable under this Section 3.8(e) with respect to a Program Year shall be included as a separate line item in the Commission Statements delivered by Agent to Monsanto and the payment of such amount shall be in addition to the Commission otherwise payable under Section 3.6(b) and shall be subject to all other terms and conditions of this Agreement except as otherwise expressly stated in this Section 3.8(e).

ARTICLE 4 - ROUNDUP L&G BUSINESS MANAGEMENT STRUCTURE

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

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

(i) Common Interests:

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

(B) continue to strengthen the Roundup brand; and

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

(ii) Monsanto's Interests:

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

(B) retain control over key business decisions; and

(C) provide global stewardship of the Roundup brand.

(iii) The Agent's Interests:

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

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

Section 4.2 ***Steering Committee***.

(a) *Appointment*. Monsanto and the Agent shall each appoint by April 1 of each year two (2) executives to a steering committee ("Steering Committee") provided, however, any vacancy shall be filled in such a manner that the parties shall maintain their respective proportionate representation on the Steering Committee and that upon failure by either party to appoint said two (2) executives by such time, the two (2) executives previously appointed by such party shall be deemed appointed for another Program Year. Notwithstanding the foregoing, the members of the Steering Committee for the Program Year 2017 shall be the individuals whose names are set forth as Schedule 4.2(a) attached hereto. Either party may also invite a reasonable number of additional members from their respective organizations to attend meetings of the Steering Committee as they deem appropriate; provided, that, except to the extent provided under this Agreement, such additional members in attendance shall not have any voting rights.

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

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

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

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

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

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

(ii) approve any and all strategic plans;

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

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

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

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

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

Section 4.3 ***Business Units***.

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

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

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

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

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

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

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

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

(a) *Appointment*. Monsanto shall maintain a team of up to 10 employees, or such number as the Agent and Monsanto may agree to from time to time, to support the Roundup

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

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

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

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

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

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

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

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

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

ARTICLE 5 - DUTIES AND OBLIGATIONS OF MONSANTO

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

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

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

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

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

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

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

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

ARTICLE 6 - REPORTS AND ADDITIONAL OBLIGATIONS OF THE PARTIES

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

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

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

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

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

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

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

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

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

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

contractors" subsequently classified by any authority under any Law, as an employee) in connection with the performance of this Agreement.

Section 6.6 ***Liens***. Subject to the provisions of any existing intercreditor agreement to which Monsanto is currently a party (as the same may be amended, modified or terminated) and except as may otherwise be agreed to by Monsanto, which agreement shall not be unreasonably withheld in the case of similar arrangements with existing or future institutional lenders, the Agent agrees not to allow any liens or encumbrances of any nature to attach to Roundup Products. At Monsanto's request, the Agent, sub-agent, or sub-distributor shall execute such financing statements, security agreements and other documents as Monsanto may reasonably request to create, perfect, and continue in effect its security interests hereunder.

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

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

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

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

(a) During the term of this Agreement, Monsanto covenants and agrees to first offer (the "Product Offer") to the Agent, with respect to the Included Markets, the exclusive agency and distribution rights to any newly created non-selective herbicide product, which is not marketed for Lawn and Garden Use as of the date of this Agreement, and which Monsanto, in its exclusive, reasonable discretion, determines to be suitable for sale as a new product for Lawn and Garden Use (the "New Product"); provided, however, that for the Lawn and Garden Market, that any new product containing Glyphosate or another non-selective herbicide shall be considered to be a New Product. The Product Offer shall be in writing, shall be in sufficient detail describing such New Product, and shall be made within sixty (60) days of the date of commercialization of such New Product for uses other than Lawn and Garden Use. In no event shall Monsanto, directly or indirectly, commercialize any New Product for Lawn and Garden Use in the Included Markets without first offering such New Product to the Agent pursuant to the terms of this Section 6.10. If the Agent agrees in writing

within ninety (90) days of receipt of the Product Offer to accept the New Product, then such New Product shall be, without further action or amendment, included within the definition of Roundup Products and be subject to the terms and conditions of this Agreement. In such event, the parties shall adjust the Commission Thresholds to reflect this additional source of revenue unless the New Product is a Glyphosate-based product or an improvement of any existing Roundup Products in which case the Commission Thresholds shall remain the same. If the Agent fails to agree in writing to accept the Product Offer within such ninety (90) days of receipt, then Monsanto shall have the exclusive right to manufacture, package, promote, distribute, and sell such New Product in the Included Markets, regardless of any actual or potential conflict with the terms of Agreement.

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

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

Marks in full force and effect and Monsanto agrees to cooperate with the Agent in providing any product sample or other required information to assist in the maintenance and renewal of the Canada Marks. Monsanto acknowledges OMS Investments, Inc.'s exclusive ownership of all right, title and interest in and to the Canada Marks and agrees that Monsanto's use of the Canada Marks shall inure to the benefit of OMS Investments, Inc. Monsanto further agrees that it will in no way dispute, impugn or attack the validity of said Canada Marks or OMS Investments, Inc.'s or the Agent's rights thereto.

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

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

(f) The marketing, sale and distribution of each of the Natural Products in Canada shall be governed in all respects by the terms and conditions of this Agreement, including without limitation, the calculation of the Commission pursuant to Section 3.6 hereof. Following the inclusion of the Natural Products in the Roundup L&G Business in Canada, and fully consistent

with the performance standards and requirements of Section 2.2(b) of this Agreement, the performance of the Roundup L&G Business will be evaluated based on the total results of the business, including from current Roundup Products, the added Natural Products, and any future products added to the Roundup L&G Business. Subject to the provisions of the applicable Annual Business Plan, the Agent shall continue to promote Roundup Products in the manner described in Section 2.2(a)(7). The parties will ensure that marketing, promotional and selling plans promote the sale of the Natural Products in a manner that is consistent with this Agreement and complementary to Roundup Products, and does not directly or indirectly disparage or advertise against Roundup Products, as set forth in this Agreement. Furthermore, in addition to marketing and selling the Natural Products in such a manner to existing Customers, the Agent will use its best efforts to target retailers and customers who do not currently purchase Roundup Products. Without limiting the foregoing, the Agent hereby agrees that matters relating to the Naturals Products shall be included in the Annual Business Plan.

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

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

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

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

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

(c) The Agent hereby grants to Monsanto, during the term of this Agreement, a non-exclusive, royalty-free, non-transferable and non-assignable license (without the right to

sublicense, except as specifically set forth in Section 6.11(h)) to use the Additional Roundup Products Formulation Data for the purpose of and to the limited extent necessary to register each of the Additional Roundup Products with federal, state, or territorial government authorities (as may be required by law) in the United States and its territories. To the Agent's knowledge, the Additional Roundup Products Formulation Data does not infringe or otherwise conflict with any trademarks, registrations, or other intellectual property or proprietary rights of any third party and none of the Additional Roundup Products Formulation Data is being infringed upon by a third party.

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

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

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

(g) Agent hereby grants to Monsanto, during the term of this Agreement, a non-exclusive, royalty-free, non-transferable and non-assignable license (without the right to sublicense, except as specifically set forth in Section 6.11(h)) to use the Additional Roundup Products Trademarks for the purpose of and to the limited extent necessary to register the Additional Roundup Products with federal, state, or territorial government authorities (as may be required by law) in the United States and its territories (the “Additional Roundup Products Trademarks

License”). Upon the expiration or termination of this Agreement, Monsanto shall have no right to use the Additional Roundup Products Trademarks. Upon such expiration or termination, the Agent will purchase any remaining inventory of the Additional Roundup Products, including any components thereof, at cost.

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

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

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

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

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

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

(n) To the extent feasible, Monsanto shall notify the Agent in advance of any meetings with regulatory authorities relating to regulatory, scientific or safety issues concerning the Additional Roundup Products and shall provide the Agent with the opportunity to participate

in such meetings. To the extent such advance notice is not feasible, Monsanto shall provide the Agent with notice of any such meeting within a reasonable period following the conclusion of the meeting. The parties agree that the provisions of this Section 6.11(n) will not apply to routine day-to-day regulatory activities.

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

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

Section 6.13 ***Noncompetition***.

(a) *Noncompetition Period*. The "Noncompetition Period" shall be the term of this Agreement, and for the two-year period following the termination, cancellation or non-renewal of this Agreement; provided, however, that in the event (i) Monsanto terminates this Agreement pursuant to Section 10.4(a)(2) or (ii) the Agent terminates this Agreement pursuant to Section 10.5(a), the Noncompetition Period shall be deemed to terminate simultaneously upon the effective date of the termination of this Agreement.

(b) *Monsanto Covenant*. Except as provided for in Section 3.8, Monsanto covenants and agrees that for the Noncompetition Period, Monsanto will not, nor will it permit any Affiliate to, directly or indirectly, own, manage, operate or control, or participate in the ownership, management, operation or control of, or be connected with or have any interest in, as a shareholder, partner, creditor or otherwise, any "Competitive Business." A Competitive Business shall be any business which, anywhere within the Included Markets, (x) manufactures, sells, markets or

distributes any non-selective weed control product, whether residual or non-residual, for Lawn and Garden Use or (y) competes with the Roundup L&G Business; provided, however, this Section 6.13(b) shall not apply to those actions of Monsanto or any Affiliate (i) to the extent such actions are expressly contemplated by this Agreement, for the duration of this Agreement, (ii) to the extent that immediately upon termination of this Agreement for whatever reason Monsanto or any Affiliates or successor to the Roundup L&G Business shall continue to operate the Roundup L&G Business without infringing this covenant, or (iii) to the extent that Monsanto's interest in a Competitive Business, as a shareholder, partner, creditor or otherwise, is equal to or less than 5%.

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

(c) *Agent's Covenant*. The Agent covenants and agrees that during the Noncompetition Period, the Agent will not, nor will it permit any Affiliate to, directly or indirectly, own, manage, operate or control, or participate in the ownership, management, operation or control of, or be connected with or have any interest in, as a shareholder, partner, creditor or otherwise, any Competitive Business; provided, however, this Section 6.13(c) shall not apply to those actions of the Agent or any Affiliate (i) to the extent such actions are expressly contemplated by this Agreement, for such term of this Agreement; (ii) to the extent such actions relate to the products listed on Exhibit D hereto in the countries listed therein, the products that the Agent either owns, has contracted to purchase or entered into a letter of intent with respect to as of the Effective Date and such additional products as the parties may from time to time agree (the "Permitted Products"); (iii) to the extent that the Agent's interest in a Competitive Business, as a shareholder, partner, creditor or otherwise, is equal to or less than 5%; or (iv) to any separate agreement with Monsanto with respect to transgenic technology sharing. Notwithstanding the foregoing provisions of this Section 6.13(c), the Agent shall have the right to market and make sales of Roundup Products labeled for Lawn and Garden Use to any business that markets and makes sales to Lawn and Garden Channels in Mexico regardless of whether that business also makes sales to the Ag Market in Mexico, and such sales shall not constitute a violation of Section 6.13(c) of this Section 6.13(c).

(d) *Non-Solicitation by Monsanto*. Monsanto agrees that for the duration of the Noncompetition Period and for the two years thereafter, without the prior written consent of the Agent, it will not, nor will it permit any of its Affiliates to (i) solicit for employment any person

then employed by the Agent or any of its Affiliates or (ii) knowingly employ any employee of the Agent or any of its Affiliates who voluntarily terminates such employment with the Agent (or such Affiliate) after the Effective Date, until three months have passed following termination of such employment.

(e) *Non-Solicitation by the Agent*. The Agent agrees that for the duration of the Noncompetition Period, without the prior written consent of Monsanto, it will not, nor will it permit any of its Affiliates to (i) solicit for employment any person then employed who works primarily with Roundup Products or with other products with Lawn & Garden Uses ("Lawn & Garden Employee") by Monsanto or any of its Affiliates or (ii) knowingly employ any Lawn & Garden Employee of Monsanto or any of its Affiliates who voluntarily terminates such employment with Monsanto (or such Affiliate) after the Effective Date, until three months have passed following termination of such employment.

(f) *Consideration*. The consideration for the agreements contained in this Section 6.13 are the mutual covenants contained herein, the agreement of the parties to consummate the purchase of the Non-Roundup Assets, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

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

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

Section 6.14 ***Industrial Property***.

(a) Monsanto represents and warrants that Monsanto or Affiliates are the exclusive owners of the trademarks, trade names, packages, copyrights and designs used in the sale of Roundup Products (hereinafter referred to as "Industrial Property"). To Monsanto's knowledge, the conduct of the Roundup L&G Business as now being conducted and the use of the Industrial Property in the conduct of the Roundup L&G Business, do not infringe or otherwise conflict with any trademarks, registrations, or other intellectual property or proprietary rights of others, nor has any claim been made that the conduct of the Roundup L&G Business as now being conducted

infringes or otherwise is covered by the intellectual property of a third party, except for any conflict or infringement which would not have a material adverse effect. To the knowledge of Monsanto, none of the Industrial Property is currently being infringed upon by a third party.

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 7 - [RESERVED]

ARTICLE 8 - REPRESENTATIONS, WARRANTIES, AND COVENANTS

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

(a) The Agent is a limited liability company duly organized, validly existing and in full force and effect under the laws of Ohio and has all requisite limited liability company

power and authority to carry on and conduct its business as it is now being conducted, to own or lease its assets and properties and is duly qualified and in good standing in every jurisdiction in which the conduct of its business or ownership of its assets requires it to be so qualified.

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

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

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

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

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

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

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

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

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

ARTICLE 9 - INDEMNIFICATION

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

(a) *Indemnification*. Each party hereto agrees to indemnify, defend and hold harmless the other party and its employees, officers, directors, agents and assigns from and against any and all loss (including reasonable attorneys' fees), damage, injury or liability, whether incurred as a party or non-party to any action or proceeding, that may arise out of any actual or threatened claim asserted or action brought by or on behalf of a third party for injury to or death of a person for loss of or damage to property, including employees and property of the indemnified party ("Loss"), to the extent resulting directly or indirectly from the indemnifying party's actual or alleged (i) breach of a duty, representation, or obligation of this Agreement, or (ii) negligence or willful misconduct in the performance of its obligations under this Agreement, except to the extent that such indemnification is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement.

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

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

(2) If the indemnifying party elects to compromise or defend such Asserted Liability it shall (i) within thirty (30) days after confirmed receipt of the Claims Notice notify the Indemnitee of its intent to do so, and the Indemnitee shall cooperate, at the expense of the indemnifying party, in the compromise of, or defense against, such Asserted Liability, and shall make available to the indemnifying party any books, records or other documents within its control that are necessary or appropriate for such defense, (ii) select counsel and, if applicable, consultants and contractors, reasonably acceptable to Indemnitee in connection with conducting the defense of such Asserted Liability, and (iii) defend or settle such Asserted Liability in

consultation with Indemnitee, including, without limitation, consulting Indemnitee on litigation strategy and keeping Indemnitee reasonably informed of all proceedings and settlement demands and negotiations;

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

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

(5) Notwithstanding the foregoing, the Indemnitee and the indemnifying party may participate, in all instances, and at their own expense, in the defense of any Asserted Liability.

ARTICLE 10 - TERMS, TERMINATION, AND FORCE MAJEURE

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

Section 10.2 ***[Reserved***].

Section 10.3 ***[Reserved***].

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

(a) *Termination Rights*. In addition to its right to terminate this Agreement pursuant to Section 10.9, Monsanto shall have the right to terminate this Agreement by giving the Agent a termination notice specified for each termination event upon the occurrence and continuance of either of the following:

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

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

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

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

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

(4) [Intentionally omitted.];

(5) [Intentionally omitted.];

(6) the Insolvency of Agent;

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

(8) [Intentionally omitted.]; or

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

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

(c) Payment of Termination Fee. Except for termination of this Agreement by Monsanto upon any Event of Default, a Termination Fee (as specified in Section 10.4.(d)) shall only be paid either by Monsanto or by the successor to the Roundup Business, as the case may be, upon the following terms and conditions:

(1) in the event the Agreement is effectively terminated by either Monsanto or its successor or by the Agent upon Material Breach, Material Fraud or Material Willful Misconduct by Monsanto as provided for in Section 10.5.(c);

(2) no later than the effective date of the applicable termination notice and no later than the effective date of the termination; and

(3) only in the event the Agent does not become the successor to the Roundup Business, in which case the Termination Fee shall not be paid but shall be credited against the purchase price as described in Section 10.4(d).

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

The Termination Fee payable shall vary in accordance with the Table hereunder:

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

(e) *Remedies for Monsanto*. Subject to Section 10.4(g), in case of termination by Monsanto upon any of the Events of Default by the Agent specified in Section 10.4(b)(1)-(3), Monsanto shall be entitled to exercise all remedies available to it, either at law or in equity. In the case of termination by Monsanto upon any of the Events of Default specified in Sections 10.4(b)(6), (7) and (9), the remedies of Monsanto shall be limited to (i) termination of this Agreement and (ii) the recovery of reasonable and customary out-of-pocket expenses incurred by Monsanto in transferring the Agent's duties hereunder to a new agent; provided that in no case shall the amount of expenses recoverable under this provision exceed $20MM.

(f) *Exclusive Remedy*. The payment of a Termination Fee to the Agent under Section 10.4(c) shall be deemed to constitute the exclusive remedy for any damages resulting out of the termination of this Agreement by Monsanto or the successor to the Roundup Business pursuant

to Section 10.4(c) and the Agent shall waive its right to exercise any other remedies otherwise available at law or in equity.

(g) *Arbitration*. In the event either party 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:

(1) After the asserted occurrence of a Material Breach, a Material Fraud, or Material Willful Misconduct, the party who contends that such breach, fraud or misconduct has occurred (the "Claimant") shall send to the Breaching Party a notice, in accordance with the notice provisions of Section 11.9 of this Agreement, in which the Claimant shall: (i) identify the Material Breach, Material Fraud, or Material Willful Misconduct which it contends has occurred; (ii) appoint an arbitrator; and (iii) demand that the Breaching Party appoint an arbitrator.

(2) Within fifteen (15) days after receipt of the notice, the Breaching Party shall send a response to the Claimant, in accordance with the notice provisions of Section 11.9 of this Agreement, in which the Breaching Party shall: (i) indicate whether it contests the asserted occurrence of the Material Breach, Material Fraud, or Material Willful Misconduct, as the case may be; and (ii) if it does contest such asserted occurrence, appoint a second arbitrator. The failure on the part of the Breaching Party to timely respond to the notice, and/or to timely appoint its arbitrator, shall be deemed to constitute acceptance of the arbitrator designated by the Claimant as the 'sole arbitrator.

(3) If the Breaching Party appoints an arbitrator, then within fifteen (15) days after the receipt of the Breaching Party's response by the Claimant, the two arbitrators shall jointly appoint a third arbitrator. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association. Upon their selection by either means, the three arbitrators (the "Arbitrators") shall expeditiously proceed to determine whether a Material Breach, Material Default or Material Willful Misconduct has occurred, in accordance with the procedures hereafter set forth.

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

(5) The award shall be made within three (3) months after the appointment of the third Arbitrator, and each of the Arbitrators shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the parties or by the Arbitrators, if necessary.

(6) Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the other with copies of documents relevant to the issues raised by the notice or the response, including those documents on which the producing party may rely in support of or in opposition to any claim or defense. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the Arbitrators, which determination shall be conclusive. All discovery shall be completed within 60 days following the appointment of the third Arbitrator.

(7) At the request of a party, the Arbitrators shall have the discretion to order examination by deposition of witnesses to the extent the Arbitrators deem such additional discovery relevant and appropriate. Depositions shall be held within 30 days of the making of a request, and shall be limited to a maximum of number of hours' duration as may be mutually agreed to by the parties, or in the absence of such agreement as may be determined by the Arbitrators. All objections are reserved for the arbitration hearing, except for objections based on privilege and proprietary or confidential information.

(8) Either party may apply to the Arbitrators seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy under this Agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the controversy).

(9) The scope of the Arbitration shall include the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) The written determination of the Arbitrators shall be made and delivered promptly to the parties to the Arbitration and shall be final and conclusive upon the parties to the Arbitration.

(13) Except as may be required by law, neither a party nor an Arbitrator may disclose the existence, content, or results of any Arbitration hereunder without the prior written consent of both parties.

Section 10.5 ***Termination by the Agent***.

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

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

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

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

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

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

(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 10.5(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 10.5(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).

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(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 2018	Program Year 2019	Program Year 2020	Program Year 2021	Program Year 2022
Additional Commission Amount in Program Year 2018	$10MM				
Additional Commission Amount in Program Year 2019	$10MM	$10MM			
Additional Commission Amount in Program Year 2020	$10MM	$10MM	$10MM		
Additional Commission Amount in Program Year 2021	$10MM	$10MM	$10MM	$8MM	
Additional Commission Amount in Program Year 2022	$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 10.6 ***Roundup Sale***.

(a) *Roundup Sale Procedures.*

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

in Section 10.6(a)(ii) (a "Roundup Sale Notice"). For the avoidance of doubt, the provisions of this Section 10.6(a) shall apply to any and all potential Roundup Sales.

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

(iii) Exclusivity.

(A) For a period of sixty (60) days from the last date of receipt by the Agent of the Roundup Sale Notice and any related Roundup Offering Materials as set forth in Section 10.6(a)(ii) (the "Exclusive Roundup Sale Period"), Monsanto agrees to negotiate in good faith with the Agent on an exclusive basis with respect to any potential Roundup Sale. If and only if Monsanto has complied with the provisions of the preceding sentence and no definitive agreement has been entered into with the Agent or one of its Affiliates with respect to a Roundup Sale, then following the Exclusive Roundup Sale Period, Monsanto may then make solicitations to, or otherwise negotiate with, a third party or parties with respect to a Roundup Sale and may provide the Roundup Offering Materials previously provided to the Agent to any such third party or parties in connection with a process to pursue a Roundup Sale. In the event that Monsanto engages in a process in which it seeks bids or proposals from more than one third party in connection with a contemplated Roundup Sale, the Agent shall be entitled to a fifteen (15) day exclusive negotiation period following the receipt and review by Monsanto of all bids or proposals (the "Roundup Quiet Period"), provided that, in determining the value of the price terms of the Agent's bid, Monsanto shall not discount the Agent's bid as a result of the fact that the Termination Fee is an offset or credit against the total purchase price, and that, during the Roundup Quiet Period, the Agent shall have the right to revise its original bid but shall not have the right to review the terms of any other bids or proposals. Monsanto may consummate a Roundup Sale with any third party only if such Roundup Sale is made pursuant to the acceptance by Monsanto of a Roundup Superior Offer.

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

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

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

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

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

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

(e) *Noncompetition Upon Termination*. In the event of a termination of this Agreement by Monsanto pursuant to Section 10.4(a)(2) hereof, or by the Agent pursuant to Section 10.6(c)(1) hereof, then notwithstanding the provisions of Section 6.13 hereof, either party may, no earlier than three (3) years prior to the expiration of the Noncompetition Period, commence non-commercial activities (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).

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

(a) *Reserved*.

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

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

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

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

Section 10.9 ***[Intentionally deleted]***

ARTICLE 11 - MISCELLANEOUS

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

Steering Committee or Global Roundup Team take any action inconsistent with the foregoing expression of the nature of their relationship, except as required pursuant to applicable governmental authority under applicable Law or with the express written consent of the other party. Accordingly, the parties expressly agree to cooperate and communicate with the Steering Committee and the Global Roundup Support Team from time to time and in all events, annually, to ensure that both parties' actions are in compliance with this Section 11.1.

Section 11.2 ***Interpretation in accordance with GAAP***. The parties acknowledge that several terms and concepts (such as various financial and accounting terms and concepts) used or referred to herein are intended to have specific meanings and are intended to be applied in specific ways, but they are not so expressly and fully defined and explained in this Agreement. In order to supplement definitions and other provisions contained in this Agreement and to provide a means for interpreting undefined terms and applying certain concepts, the parties agree that, except as expressly provided herein, when costs are to be determined or other financial calculations are to be made, GAAP as well as the party's past accounting practices shall be used to interpret and determine such terms and to apply such concepts. For example, when actual costs and expenses are referred to herein, they are not intended to contain any margin or profit for the party incurring such costs or expenses.

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

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

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

Section 11.6 ***Entire Agreement***. Subject to Section 6.10(g) of this Agreement, this Agreement, together with all respective exhibits and schedules hereto, constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all representations, warranties, understandings, terms or conditions on such subjects that are not set forth herein or therein. Agreements on other subjects, such as security and other credit agreements or arrangements, shall remain in effect according to their terms. The parties recognize that, from time to time, purchase orders, bills of lading, delivery instructions, invoices and similar documentation will be transmitted by each party to the other to facilitate the implementation of this Agreement. Any terms and conditions contained in any of those documents which are inconsistent

with the terms of this Agreement shall be null, void and not enforceable. This Agreement is for the benefit of the parties hereto and is not intended to confer upon any other person any rights or remedies hereunder. The provisions of this Agreement shall apply to each division or subsidiary of the Agent and Monsanto and either the Agent or Monsanto may seek enforcement of the provisions of this Agreement on behalf of or with respect to a particular subsidiary or division without changing the rights and obligations of the parties under this Agreement as to other aspects of the Agent's or Monsanto's business.

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

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

Section 11.8 ***Assignment***.

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

(b) Notwithstanding the foregoing:

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

(2) Subject to Agent's rights set forth in Section 10.6, Monsanto shall have the right to transfer and assign all or a portion of its rights, interests and obligations hereunder to a Person that acquires all or a portion of Monsanto's business related to the Lawn and Garden

Market (whether by sale or transfer of equity interests or assets, merger or otherwise); provided, that any such assignee shall be subject to the provisions of this Agreement as if it were the original party hereto, including, without limitation, this Section 11.8;

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

(4) the Agent shall be entitled to transfer and assign its rights, interests and obligations hereunder and under the License Agreement with respect to the Included Markets; provided, that (A), the Agent may only make one (1) assignment pursuant to this Section 11.8(b)(4) with respect to the North America Territories and one (1) assignment pursuant to this Section 11.8(b)(4) with respect to any Other Included Markets, (B) the Agent determines in its reasonable commercial opinion that the assignee of such rights pursuant to this Section 11.8(b)(4) 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 (C) 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.

(c) Notwithstanding anything in this Agreement to the contrary, the Agent may not transfer or assign any rights, interests or obligations (i) under this Agreement to any Restricted Party or (ii) that are provided pursuant to Sections 10.5(d) or 10.6 of this Agreement.

(d) 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. Any transfer or assignment not permitted by this Section 11.8 shall be null and void.

Section 11.9 ***Notices***. All notices and other communications hereunder shall be in writing and shall be deemed given on the same business day if delivered personally or sent by telefax with confirmation of receipt, on the next business day if sent by overnight courier, or on the earlier of actual receipt as shown on the registered receipt or five business days after mailing if mailed by registered or certified mail (return receipt requested) to the parties at the addresses set forth below (or at such other address for a party as shall be specified by like notice):

If to the Agent, to:	The Scotts Company LLC 14111 Scottslawn Road Marysville, OH 43041 Attn: President Telephone: (937) 644-0011 Facsimile No.: (937) 644-7568
with a copy to	The Scotts Company LLC 14111 Scottslawn Road Marysville, OH 43041 Attn: General Counsel Telephone: (937) 644-0011 Facsimile: (937) 644-7568
If to Monsanto, to:	Monsanto Company 800 North Lindbergh Boulevard St. Louis, MO 63167 Attn: Kerry Preete Telephone: (314) 694-1000 Facsimile: (314) 694-7030
with a copy to	Monsanto Company 800 North Lindbergh Boulevard St. Louis, Missouri 63167 Attn: Martin Kerckhoff Telephone: (314) 694-1536 Facsimile: (314) 694-9009

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

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

Section 11.11 ***Equal Opportunity***. To the extent applicable to this Agreement, Monsanto and the Agent shall each comply with the following clauses contained in the Code of Federal Regulations and incorporated herein by reference: 48 C.F.R. §52.203-6 (Subcontractor Sales to Government); 48 C.F.R. §52.219-8, 52.219-9 (Utilization of Small and Small Disadvantaged Business Concerns); 48 C.F.R. §52.219-13 (Utilization of Women-Owned Business Concerns); 48 C.F.R. §52.222-26 (Equal Opportunity); 48 C.F.R. §52.222-35 (Disabled and Vietnam Era Veterans); 48 C.F.R. §52.222-36 (Handicapped Workers); 48 C.F.R. §52.223-2 (Clean Air and Water); and 48 C.F.R. §52.223-3 (Hazardous Material Identification and Material Safety Data). Unless previously provided, if the value of this Agreement exceeds $10,000, the Agent shall provide a Certificate of Nonsegregated Facilities to Monsanto. Furthermore, Monsanto and the Agent shall each comply with the Immigration Reform and Control Act of 1986 and all rules and regulations issued thereunder.

Each party hereby certifies, agrees and covenants that none of its employees or employees of its subcontractors who perform work under this Agreement is or shall be unauthorized aliens as defined in the Immigration Reform and Control Act of 1986, and each party shall defend, indemnify and hold the other party harmless from any and all liability incurred by or sought to be imposed on the other party as a result of the first party's failure to comply with the certification, agreement and covenant made by such party in this Section.

Section 11.12 ***Governing Law***.

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

(b) Any 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. The Agent hereby irrevocably appoints CT Corporation, having an address at 1209 Orange Street, Wilmington, Delaware 19801 and Monsanto hereby irrevocably appoints Corporation Service Corporation, having an address at 2711 Centerville Rd, Suite 400, Wilmington, Delaware 19808, as its agent to receive on behalf of each such party and its respective properties, service of copies of any summons and complaint and any other pleadings which may be served in any 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.

Section 11.13 ***Public Announcements***. No public announcement may be made by any person with regard to the transactions contemplated by this Agreement without the prior consent of the Agent and Monsanto, provided that either party may make such disclosure if advised by counsel that it is required to do so by applicable law or regulation of any governmental agency or stock exchange upon which securities of such party are registered. The Agent and Monsanto will discuss any public announcements or disclosures concerning the transactions contemplated by this Agreement with the other parties prior to making such announcements or disclosures.

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

[signature page to follow]

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

THE MONSANTO COMPANY

By:	/s/ KERRY PREETE
Name:	Kerry Preete
Title:	EVP and Chief Strategy Officer

THE SCOTTS COMPANY LLC

By:	/s/ RANDY COLEMAN
Name:	Randy Coleman
Title:	EVP and CFO

EXHIBIT D

PERMITTED PRODUCTS

United States

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

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

SCHEDULE 1.1(a)

ACTIVATED INCLUDED MARKETS

The United States of America

Canada

Puerto Rico

Mexico

Provided, that with respect to all matters related to Roundup 365, only the United States of America

SCHEDULE 1.1(b)

ROUNDUP PRODUCTS

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

Canada	**Formulation**	**Size**
Roundup Ready-to-Use	2% Glyphosate or less	2 liter or less
Roundup Concentrate	18% - 41% Glyphosate	2 liter or less
EcoSense Path Clear Ready-to-Use	x% or less	2 liter or less
EcoSense Path Clear Concentrate	x% or less	2 liter or less

SCHEDULE 2.2(a)

ILLUSTRATIVE EXAMPLE ANNUAL BUSINESS PLAN TEMPLATE

1) Mission Statement and Explanation: Answers questions: What business are we in? Why does the business exist?

2) Category Definition/Growth Trend: Also need to address related categories and their potential interaction with the target category

    a) Assessment of growth potential

    b) Competitor evaluation/assessment of threat

3) Business Review: Summary of a process that will occur in each preceding January

    a) Critical learning from prior year

    b) Key Implications from learning: Arranged by key functional area

4) Brand Positioning:

    a) Consumer Target: Demographics, Psychographics, use Segmentation

    b) Key feature(s), Attribute(s) and Benefits delivered (for brand and sub-brands)

    c) Brand Character/Imagery: Describe the personification of the brand/sub-brands

        i) This section should also specifically address the degree to which the proposed positioning consistent with the Brand's historical image

5) Key Business Goals

    a) Financial: Historical trend and three year projections of Equivalent Case Volume, Net Sales, EBIT and ACM

    b) Competitive:

        i) Market Share Goal and trend

        ii) Advertising Share of Voice Goal and trend

    c) Consumer: Critical behavioral and attitudinal measures that describe the development of the Brand which could include:

        i) Penetration

        ii) Unaided awareness

iii) Annual usage

iv) Seasonal usage

d) Customer:

i) % ACV Distribution by Channel

ii) Fill Rates by Top 10 customers (with detailed definition of what constitutes an on-time shipment)

iii) Display achievement

iv) Other measurable customer satisfaction measures

6) Major Strategies to achieve Key Goals (some examples include...)

a) Product Line: What products/drive groups/lines to focus on

b) Significant new product launches

c) Private Label at a Key Account(s)

d) Marketing Support focus: Example would be a shift from advertising to promotion

e) New Consumer Uses: Extended use campaign, new forms

f) Geographic focus including a new regional/market emphasis. CDI/BDI analysis

g) Seasonal focus including new emphasis if relevant. Weekly seasonality by region and drive group/item.

h) Channel/Customer including new/alternative channels if relevant

i) Operational strategies to address quality, capacity, cost position, service, technology application, etc., including fill rates, inventory levels and turns

j) Acquisition/divestiture strategies to improve market position

7) Functional Operating Plans: This is a lengthy section that lays out a detailed annual operating plan for each functional area in the business (including rationale where appropriate) and that pays particular attention to changes in that plan from the prior year’s plans and results. Each section will contain a detailed budget with direct and assigned expenses shown.

a) General Management: Description of Business Unit Management team and planned

costs

i) Performance standards for all employees

ii) Description of employee performance incentives and link to performance standards

b) Marketing:

i) Organization Plan

ii) Spending allocation: Total spending by marketing support category including working and non-working media, consumer promotion, public relations, market research, etc.

iii) Advertising: Preliminary media plan including spending trends, creative strategy and discussion of any planned/contemplated changes to that strategy.

iv) Consumer Promotion: Promotion objectives, key plan elements and payout calculations

v) POP Plan: Focus on Key changes versus prior year plan

vi) Pricing: To include trends and competitive benchmarks

vii) Packaging - graphic and physical: Changes planned along with specific costs, implementation timing and risk factors

viii) Market Research plan: List all studies, cost estimate and rationale for each, including tracking

ix) Public Relations

x) Test plans (applies to all of above)

c) Sales:

i) Organization Plan

ii) Top 5 Account Plans

(i) Program changes anticipated

(ii) Planned Net Sales trend by drive group/item (with historical trend)

(iii) Profitability analysis

(iv) Category Management plans

iii) Five year sales goal

iv) Private Label/control brand opportunities

v) Headquarters Sales Presentation plan with a focus on what the key messages are and discussion of any unique methods of communication to customers

vi) Retail Merchandising Support including planned in-house, distributor and contracted merchandising services. Focus on in-store merchandising and display techniques as well as pre-season store set plans

(i) Share of shelf

(ii) Share of off-shelf

vii) Other selling services plans as appropriate

viii) Product Knowledge Plan including principle target(s) and vehicles

d) Operations:

i) Organization Plan

ii) Key Manufacturing initiatives such as: Cost savings, capacity planning, make/buy analyses, etc.

iii) Distribution/Warehousing Plan

iv) Inventory plan by month (versus prior year) that balances the need for high fill rates with a product utilization of working capital. Targets to be included in plan.

v) Purchasing: Including Key supplier relationship development

vi) Quality: Measurement and delivery against objectives from balanced scorecard

vii) Capital Plan with capital expenditure detail

e) Research & Development:

i) Organization/Staffing Plan

ii) Priority projects and innovation pipeline - new product portfolio review

iii) Innovation launch timeline

iv) Product specifications and planned changes

v) Pioneering Research

f) Customer Service:

i) Organization Plan

ii) Special Programs such as telemarketing

iii) Discussion of and key changes to order taking, order processing invoicing, collection, reconciliation (to original PO and program) procedures

g) Consumer Service:

i) Organization plan including a discussion of outscored versus in-house services

ii) Call volume and measurement of answering efficiency and effectiveness

iii) Plan for communicating to marketing and operations any significant consumer complaints

8) Detailed Financials - Prior Year, Current Year, Future Year

a) Income Statement (annual and monthly), cash flow and balance sheet

b) Net Sales and margins by key drive group/item, and including product mix analysis

c) Selling and Marketing Expenses by key line item

d) Assignment of Shared Services: This section will discuss the agreed upon allocation

methodology for shared services to their respective Business Unit statements and highlights any proposed changes to that methodology

e) Anticipated changes form prior year

f) Financial Metrics

i) Invoice accuracy

ii) Days Sales Outstanding (DSO)

iii) Obsolete inventory charge

iv) Bad debt allowance

v) Netbacks, MAT and COGS detail prior, current and next year

9) Approved amendments: This section will show any amendments approved by senior management (or the Steering Committee)

a) Includes spending at levels above those established in the annual business plan.

SCHEDULE 3.2(c)

FORM OF RECONCILIATION STATEMENT

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

Signature of Authorized Monsanto Representative: _____ Date:_____

Signature of Authorized Scotts Representative: _____ Date:_____

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

			Anticipated Source		
Revenue/Expense Category	**Definition**	**Determination/Allocation Method**	**Roundup**	**SMG**	**MTC**
Gross sales	Gross revenues for all sales of Roundup L&G products in defined markets	Direct; minor allocations as necessary; default based on % of gross sales	X		
Markdowns & allowances	Discounts or other allowances provided to customers as reductions of gross sales	same as gross sales	X		
Product returns	Any product returns and related allowances provided customers for previously billed gross sales	same as gross sales	X		
Trade	Deductions from gross sales				
Cash discounts	Any early payment discounts offered to customers	Direct; minor allocations as necessary; default based on % of gross sales	X		
MDF	Marketing Development Funds - display and merchandising allowances, volume discounts, and any other incentives provided to customers for the purpose of promoting Roundup sales	Actual; default based on % of gross sales to specific customer	X		
Merchandising	In store product display, housekeeping and general store level relationship management	Actual; default based on % of gross sales to specific customer		X	
Cost to serve	Discount to reduced invoiced sales depending on the customer’s delivery method. Plant and Mixing Warehouse collection offer the highest discount and direct-to-store shipments offer the lowest discount.Services include warehousing and handling, and product distribution and logistics.	For distribution and warehousing activities, if allocations are necessary, split will be based on a reasonable driver (e.g. cubic feet or hundred weight) shipped and stored.	X	X	
Other Sales Program	Other programs directed at retailers to increase product movement	Actual; default based on % of sales attributable to specific program	X	X	
Net Sales	Gross sales less trade, as defined				
Product Costs	Direct materials and supplies, plus direct and indirect costs of producing finished goods to be sold	Based on standard costs as defined in formulation agreement	X	X	

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

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

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

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

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

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

			Anticipated Source		
Revenue/Expense Category	**Definition**	**Determination/Allocation Method**	**Roundup**	**SMG**	**MTC**
Gross Profit	Net sales less product and non-standard cost of good sold				
MAT-Marketing	Functional areas responsible for creating brand image, developing brand awareness strategies and promotions. Also includes all sales activities performed by business unit personnel.				
Direct Marketing	Marketing activities and associated expenses which can be directly traced to Roundup				
Advertising	Includes network, spot and cable TV, radio, print media, advertising production costs, and advertising agency fees	Actual; default based on % of direct media spending	X		
Public relations	Includes expenses related to public relations (indirect advertising) and related agency fees	Actual	X		
Consumer promotion	Includes consumer directed rebates, in-stores promotional activities and give-aways, and point-of-purchase materials	Actual	X		
Trade promotion	Any trade directed promotions (not already included in MDF), including related agency fees	Actual	X		
Brand specific market research	Market research directed toward the Roundup brand	Actual	X		
Brand specific marketing management	Primarily personnel and related support costs (salaries, incentives, fringes, travel & entertainment, computers, communications, and space & supplies) of marketing personnel dedicated to L&G Roundup	Actual	X	X	X
Allocated marketing	Marketing activities managed on a shared services basis				

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

			Anticipated Source		
Revenue/Expense Category	**Definition**	**Determination/Allocation Method**	**Roundup**	**SMG**	**MTC**
Marketing management	Primarily personnel and related support costs (salaries, incentives, fringes, relocation, travel & entertainment, computers, communications, and space & supplies) of the marketing management group overseeing L&G Roundup and related products	Based on management's assessment of % of time of general marketing management group spend on Roundup activities as agreed upon in the Annual Business Plan		X	
Marketing support functions	Functions include innovation, market research and creative services. Principally personnel costs (salaries, incentives, fringes, travel & entertainment, computers, communications, and space & supplies) of the marketing support functions	Based on management's assessment of % of time marketing support function groups spend on Roundup activities as agreed upon in the Annual Business Plan		X	
Other marketing expenses	All other marketing related expenses, excluding advertising, promotions and personnel costs				
Innovation projects	Consulting, materials and other non-personnel related costs associated with innovation projects	Direct; default based on overall % of innovation group activities directed toward Roundup	X	X	X
Package design	Agency fees, supplies and materials, and other non-personnel related costs associated with package design	Direct; default based on overall % of creative service group activities directed toward Roundup	X	X	
Market research services	Fees and other non-personnel costs associated with non-brand specific market research (POS data, usage and attitudes studies, etc)	Direct; default based on overall % of market research group activities directed toward Roundup	X	X	
Sales & promotional literature	Non-personnel costs associated with developing, publishing and disseminating sales materials and other non-POP related promotional literature	Direct; default based on overall % of total sales & promotional space employed for Roundup	X	X	
Consumer services	Costs related to handling consumer inquiries. Function maybe performed by Scotts personnel or outsourced. In handled internally costs will include personnel related expenses, communications expenses (toll-free numbers and internet), and other costs necessary to maintain this function	Direct; default based on overall % of consumer service activities directed toward Roundup	X	X	

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

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

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

			Anticipated Source		
Revenue/Expense Category	**Definition**	**Determination/Allocation Method**	**Roundup**	**SMG**	**MTC**
SVP and general management	Primarily personnel and related support costs (salaries, incentives, fringes, travel & entertainment, computers, communications, and space & supplies) of the business unit general management group. Also includes general costs of operating the business unit not otherwise assigned or classified	Direct for Roundup assigned employees, including reasonable charges for fringe benefits and related support costs. Scotts costs will be allocated based on agreed to % of actual business unit general support costs		X	X
Information technology	Personnel and related support costs (salaries, incentives, fringes, travel & entertainment, computers, communications, and space & supplies) of the information technology function supporting the business unit which manages the L&G Roundup brand. Costs also include depreciation and annual software license fees, hardware depreciation and rental, outside service fees and contracts and other non-personnel costs associated with operating the information technology group.	Scotts costs will be allocated based on agreed to % of actual business unit information technology costs, net of developmental costs, but including service costs		X	
Finance and accounting	Personnel and related support costs (salaries, incentives, fringes, travel & entertainment, computers, communications, and space & supplies) of the finance and accounting functions supporting the business unit which manages the L&G Roundup brand. Functions include financial planning and analysis, general accounting, order-to-cash functions assigned to finance, accounts payable and payroll. Costs will also include internal and external audit Tees, specialized IT services, and corporate treasury, tax and controllership functions.	Direct for Roundup seconded people, including reasonable charges for fringe benefits and related support costs. Scotts costs will be allocated based on agreed to % of actual business unit finance and accounting costs		X	X
Human resources	Personnel and related support costs (salaries, incentives, fringes, travel & entertainment, computers, communications, and space & supplies) of the human resource function supporting the business unit which manages the L&G Roundup brand. Costs also include external fees and consulting related to human resource matters not assigned to other functional areas.	Scotts costs will be allocated based on agreed to % of headcount for actual business unit related human resource costs		X	

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

			Anticipated Source		
Revenue/Expense Category	**Definition**	**Determination/Allocation Method**	**Roundup**	**SMG**	**MTC**
Site/administrative services	Costs associated with procuring and maintaining general office space, not otherwise assigned to functional areas. Costs include lease/rental fees, heating and cooling, lighting, telecommunications, general and grounds maintenance, amortization of leasehold improvements, and depreciation of furniture and fixtures. Will also include personnel costs to manage these functions.	Scotts costs will be allocated based on agreed to % of headcount for actual business unit site/administrative service costs		X	
Legal services	Primarily personnel and related support costs (salaries, incentives, fringes, travel & entertainment, computers, communications, and space & supplies) of the legal services group supporting the business unit which manages the L&G Roundup brand. Also includes other expenses of maintaining in-house legal counsel and any outside attorney's fees for work on the L&G Roundup brand.	Direct for specific outside legal fees and services. Scotts costs will be allocated based on agreed to % of actual business unit general legal costs	X	X	
Scotts or Monsanto corporate services	Any other Scotts or Monsanto corporate services used to support the L&G Roundup brand, not otherwise assigned to a functional area.	If the business unit managing the L&G Roundup brand uses services supplied by either Scotts or Monsanto, either party has the right to bill for such services, provided the cost of such services was agreed to in advance by business unit management. Allocation of such services to the L&G Roundup business will be based on agreed to % of the actual costs billed to the business unit.		X	X
MAT-Technical	Functional areas responsible for product development, product registration and regulatory activities, field research and environmental matters.				
Product development	Personnel and related support costs (salaries, incentives, fringes, travel & entertainment, computers, communications, and space & supplies) of the product development group supporting the business unit which manages the L&G Roundup brand. Also includes other expenses related to product development work on the L&G Roundup brand.	Direct for Roundup assigned employees, including reasonable charges for fringe benefits and related support costs. Direct for specific outside services related to L&G Roundup product development. Scotts costs will be allocated based on agreed to % of actual business unit general product development costs.	X	X	X

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

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

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

			Anticipated Source		
Revenue/Expense Category	**Definition**	**Determination/Allocation Method**	**Roundup**	**SMG**	**MTC**
Other	Any other items reasonably included in determining EBITA/operating profit, not otherwise classified	Direct	X		
EBITA/Operation profit	Earnings before interest, taxes and amortization. Excludes interest expense, income and franchise taxes, amortization of intangible property, agreed upon non-recurring items, and pre-agreement legal, environmental and other contingencies above the defined amount.				

SCHEDULE 4.2(a)

STEERING COMMITTEE

For the Agent:

Michael Lukemire, President, Chief Operating Officer

Randy Coleman, Executive Vice President, Chief Financial Officer

For Monsanto:

Mike Demarco, Strategy, Finance and Operations Lead

Jim Guard, Global Lawn and Garden Lead

SCHEDULE 6.11(A)

ADDITIONAL ROUNDUP PRODUCTS

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

SCHEDULE 6.11(F)

ADDITIONAL ROUNDUP PRODUCTS TRADEMARKS

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

Amended and Restated

Lawn and Garden Brand Extension Agreement - Americas

This Agreement is 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, and shall amend and restate and supersede in its entirety the Lawn and Garden Brand Extension Agreement dated as of May 15, 2015 as it applies to the Territory.

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 the Exclusive Agency and Marketing Agreement effective as of September 30, 1998, which was amended and restated on the date that this Agreement was executed by Monsanto and Scotts (the “Execution Date”), and as it may be hereafter amended or modified from time to time (collectively referred to as the “Agency Agreement”).

D. At Scotts’ request, Monsanto and Garden Care are entering into that certain Lawn and Garden Brand Extension Agreement - Ex-Americas (the “Ex-Americas Brand Extension Agreement”) which applies to the Excluded Specific Territory. For the avoidance of doubt, as of the Execution Date, the Excluded Specific Territory will no longer be addressed in 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 Amended and Restated 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 May 15, 2015.

1.14 “Excluded Territories” means (i) any country subject to a comprehensive U.S. trade embargo, (ii) countries subject to other relevant embargos and trade restrictions to the extent that such relevant embargos and trade restrictions would materially adversely impact either Party’s ability to fulfill such Party’s duties and obligations under this Agreement and (iii) the Excluded Specific Territory.

1.15 “Excluded Specific Territory” means every country, other than Israel and China, throughout the continents of Europe, Africa, Asia, and Australia.

1.16 “Execution Date” means [•], 2017.

1.17 “Garden Care” means Garden Care Bidco Limited and its Affiliates, and its successors in interest under the Ex-Americas Brand Extension Agreement.

1.18 “FTO Cleared Product(s)” means L&G Field Products within the categories on Schedule B attached hereto and incorporated by this reference.

1.19 “FTO Review Process” means the freedom to operate review process as set forth in Section 2.2 of this Agreement.

1.20 “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.

1.21 “ITO” means industrial, turf and ornamental.

1.22 “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.

1.23 “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.

1.24 “Laws” means the definition set out in Section 2.3.1 of this Agreement.

1.25 “Loss” means the definition set out in Section 13.1 of this Agreement.

1.26 “Licensed Marks” means the trademarks as set out on Schedule A, attached hereto and incorporated herein by this reference.

1.27 “Material Breach” means breach of Sections 2.3, 3, 6, and/or 12 including any subparts thereof.

1.28 “Monsanto” means Monsanto Company and its Affiliates.

1.29 “New Material” means the definition set out in Section 4.1. of this Agreement.

1.30 “Party” means either Monsanto or Scotts, and the term “Parties” means collectively Monsanto and Scotts.

1.31 “Person” means any individual, corporation, proprietorship, firm, partnership, limited liability company, trust, association, or other entity.

1.32 “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”).

1.33 “Recall Campaign” means the definition as set forth in Section 5.2 of this Agreement.

1.34 “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.

1.35 “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.

1.36 “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 though 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 repellant 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.

1.37 "Scotts" means The Scotts Company LLC and its Affiliates.

1.38 "Scotts' Material" means the definition set out in Section 4.1 of this Agreement.

1.39 "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.

1.40 "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.

1.41 "Term" means the initial term and all renewals as set forth in Section 10 of this Agreement.

1.42 "Territory" means every country throughout the North American continent, South American continent, Central America, the Caribbean, Israel and China, other than the Excluded Territories. "North America Territories" means the United States of America, Puerto Rico, Canada, Mexico and the Caribbean countries.

1.43 "Third Party" means any Person other than Monsanto and Scotts.

1.44 "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 and Relinquishment of Rights.

2.1.6.1 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.

2.1.6.2 Effective as of the Execution Date, Scotts' hereby: (i) relinquishes any and all rights under the May 15, 2015 Lawn and Garden Brand Extension Agreement to use the Licensed Marks to develop, manufacture, produce, have manufactured and produced, advertise, market, promote, distribute or sell any L&G Field Product(s) & Services in the Excluded Specific Territory and expressly agrees that, from and after the Execution Date, it will not use the Licensed Marks to develop, manufacture, produce, have manufactured and produced, advertise, market, promote, distribute or sell any L&G Field Product(s) & Services in the Excluded Specific Territory, (ii) consents to, and requests, Monsanto's agreement to exclusively license use of the Licensed Marks to Garden Care to develop, manufacture, produce, have manufactured and produced, advertise, market, promote, distribute or sell certain L&G Field Product(s) & Services in the Excluded Specific Territory under the Ex-Americas Brand Extension Agreement and (iii) expressly agrees that any use by Garden Care of the Licensed Marks to develop, manufacture, produce, have manufactured and produced, advertise, market, promote, distribute or

sell any L&G Field Product(s) & Services in the Territory shall not be deemed to be a breach by Monsanto of this 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 AND OTHER OBLIGATIONS

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 may, in its discretion, and shall, if reasonably requested by Scotts, prepare and provide appropriate Trademark Usage Rules for countries in the Territory in which the Licensed Marks are not used as of the Execution Date 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 word-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 then 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 The Parties acknowledge and agree that Monsanto received consideration for the rights and licenses granted herein pursuant to the May 15, 2015 Lawn and Garden Brand Extension Agreement.

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 is 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 Products 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) Monsanto Company shall have the right to transfer and assign all or a portion of its rights, interests and obligations hereunder to a Person that acquires all or a portion of Monsanto's business related to the Lawn and Garden Market (as such term is defined in the Agency Agreement) (whether by sale or transfer of equity interests or assets, merger or otherwise), and provided, further, that any such assignee shall be subject to the provisions of this Agreement as if it were the original party hereto, including, without limitation, this Section 11; (c) 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 (d) 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 Included Markets (as such term is defined in the Agency Agreement); provided, that with respect to this clause (d), (i) The Scotts Company LLC may only make one (1) assignment pursuant to this clause (d) with respect to the North American Territories and one (1) assignment pursuant to this clause (c) with respect to any Other Included Markets (as such term is defined in the Agency Agreement), and (ii) 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 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. Notwithstanding anything in this Agreement to the contrary, The Scotts Company LLC may not transfer or assign any rights, interests or obligations under this Agreement to any Restricted Party (as defined in the Agency 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. Any transfer or assignment not permitted by this Section 11 shall be null and void.

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; (iv) in confidence, in connection with the sale or assignment of substantially all the business assets to which this Agreement relates; or (v) in confidence to Garden Care in connection with matters relating to L&G Product(s) in general, such as product safety concerns, 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/ RANDY COLEMAN	By: /s/ KERRY PREETE
Title: EVP and CFO	Title: EVP and Chief Strategy Officer
Date: 8/31/17	Date: 8/10/17

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/ RANDY COLEMAN

Name: Randy Coleman

Title: EVP and CFO

SCHEDULE A
Licensed Marks[1]

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	*To be provided upon filing*	IC5: insecticides for domestic use	*Intent-to-use application to be filed upon execution of this Agreement*
ROUNDUP	*To be provided upon filing*	IC5: fungicides for domestic use	*Intent-to-use application to be filed upon execution of this Agreement*
ROUNDUP	*To be provided upon filing*	IC1: fertilizers for domestic use	*Intent-to-use application to be filed upon execution of this Agreement*
ROUNDUP	*To be provided upon filing*	IC31: mulch	*Intent-to-use application to be filed upon execution of this Agreement*

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.

[1] Mon and Scotts to confirm whether this Schedule needs to be updated.

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

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 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 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.

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.

29 April 2017

From:

Garden Care Bidco Limited

6th Floor 30, Broadwick Street

London W1F 8JB

To:

Scotts-Sierra Investments LLC

1209 Orange Street, Wilmington, DE 19801, United States of America

The Scotts Miracle-Gro Company

14111 Scottslawn Road, Marysville, Ohio 43041, United States of America

Dear Sirs

Final Binding Offer for the Scotts-Miracle Gro International Business

We refer to the proposed agreement for the sale and purchase of the Scotts Miracle-Gro International Business (the "**Group**"), the form of which is attached as Exhibit 1 to this letter ("**Sale and Purchase Agreement**"), which may be entered into by The Scotts Miracle-Gro Company (the "**Guarantor**"), Scotts-Sierra Investments LLC (the "**Seller**") and Garden Care Bidco Limited (the "**Purchaser**") concerning the possible acquisition of the shares of the Group Companies listed in Part 1 and the businesses listed in Part 2 of Schedule 1 to the Sale and Purchase Agreement (the "**Transaction**").

Capitalised terms used but not otherwise defined herein (including in Appendix 1 to this letter) shall have the meanings ascribed to them in the Sale and Purchase Agreement.

All references in this letter to times are to London times.

The Purchaser hereby makes a final, binding and irrevocable offer for the acquisition of the Group, by itself and the other Relevant Purchasers, as the case may be, on and subject to the terms of this letter and the Sale and Purchase Agreement (the "**Offer**"). A copy of the Sale and Purchase Agreement, initialled by the Purchaser to confirm it is the sale and purchase agreement to which the Offer relates, is attached as Exhibit 1 to this letter.

1. Offer Acceptance

1.1 The Offer shall remain valid and in effect, and shall be irrevocable, until (and shall terminate at) 11.59 p.m. on the earlier of:

(a) 6 October 2017; and

(b) the fifth Business Day after the date of completion of the process of notice, information and consultation with the French Works Council (as defined in Appendix 1 to this letter) required to be carried out before the Seller decides whether or not to accept the Offer and enter into the Sale and Purchase Agreement (the "**Consultation Process**"). Completion of the Consultation Process shall be deemed to take effect upon the earlier of: (i) delivery of the Works Council Opinion to the Seller; and (ii) the Legal Deadline (as defined in Appendix 1 to this letter) ("**Consultation Completion**"),

(in either case as such date may be extended by agreement in writing between the Seller and the Purchaser) (the "**Offer Expiration Date**").

1.2 If, following the Consultation Completion, the Seller delivers written notice to the Purchaser of its intention to proceed with the Transaction in the form of the acceptance notice as attached to this letter at Exhibit 2 (the "**Acceptance Notice**") accompanied by three original signature pages of the Sale and Purchase Agreement duly executed by the Seller and the Guarantor, in each case prior to 11.59 p.m. on the Offer Expiration Date, the Purchaser shall promptly (and in any event within five Business Days of receipt of the Acceptance Notice and the Sale and Purchase Agreement duly executed by the Seller and the Guarantor) deliver to the Seller three original signature pages of the Sale and Purchase Agreement duly executed by it, and upon delivery thereof the Sale and Purchase Agreement shall become a valid and binding agreement of the parties thereto in accordance with its terms.

1.3 At the date on which the Sale and Purchase Agreement becomes binding, all rights and obligations of the Seller, the Guarantor and the Purchaser under this letter shall terminate, save in respect of antecedent breaches.

2. French Works Council and Consultation Process

2.1 The Seller shall procure that Scotts France SAS:

(a) sends out the convening invites to the French Works Council promptly (and in any event by no later than 5 Business Days after the date of this letter) with a view to obtaining delivery of the French Works Council Opinion pursuant to the French regulations as soon as reasonably practicable; and

(b) complies with all appropriate information and/or consultation procedures in connection with the Consultation Process.

2.2 The Seller shall keep the Purchaser informed in a timely manner of the status of matters relating to the Consultation Process, including furnishing the Purchaser as soon as reasonably practicable with copies of the economic note, meeting agendas and the French Works Council Opinion. Except to the extent commercially sensitive to the Seller, the Seller shall also furnish the Purchaser with draft copies of any proposed written communications including any questions and answers to be provided by the Seller or Scotts France SAS to the French Works Council, as soon as reasonably practicable and in any event at least three Business Days prior to the proposed delivery of such communications to the French Works Council. The Purchaser commits to provide replies to any questions raised by the French Works Council in a timely manner.

2.3 The Seller shall not, and shall procure that no Group Company or Business Seller shall, without the Purchaser's prior written consent: (i) make any commitments to the employees of Scotts France SAS or their representative bodies which are outside the ordinary course of business (including with respect to the terms of employment and employment benefits of the employees of Scotts France SAS); or (ii) provide any information to the employees of Scotts France SAS or their representative bodies in relation to the Purchaser or any of its affiliates or its or their intentions regarding the Group and its employees, save for the information contained in the economic note regarding the expected consequences of the Transaction on employment (including any impact on employees' collective status).

2.4 The Purchaser agrees to cooperate, as may reasonably be required, with the Seller and the Group, including by providing any documents and information relating to the Purchaser that may be reasonably requested by the French Works Council and by attending meetings organised by the French Works Council upon receipt by the Purchaser of at least three Business Days advance notice thereof. The Purchaser will consult with the Seller and consider any issues and proposals in relation to the Transaction that may be raised as part of the Consultation Process by the French Works Council provided that the Purchaser's obligations in this respect will be limited to such consultation and consideration and the Purchaser shall not be obliged to agree to any modification to the Transaction or to the Sale and Purchase Agreement nor shall it be obliged to offer any commitments to the French Works Council.

2.5 Each of the Seller and the Purchaser agrees to abide by the provisions of Appendix 1 to this letter.

3. Warranty

3.1 The Purchaser warrants that the statements set out in Schedule 5 to the Sale and Purchase Agreement are true and accurate as of the date of this letter. For the purposes of this letter, references in Schedule 5 to the Sale and Purchase Agreement shall be deemed to be to this letter.

3.2 The Seller warrants that the statements set out in paragraph 1 of Schedule 3 to the Sale and Purchase Agreement are true and accurate as of the date of this letter. For the purposes of this letter, references in paragraph 1 of Schedule 3 to the Sale and Purchase Agreement shall be deemed to be to this letter.

4. Satisfaction of Conditions Precedent and Pre-Completion Obligations

4.1 The Seller agrees to comply, and the Purchaser agrees that it shall comply, on and after the date of this letter until it is terminated in accordance with its terms, with its respective obligations set out in Clauses 3 (*Conditions*), 5 (*Pre-completion Obligations*) and 9.4 (*Seller's Warranties and Undertakings*) of the Sale and Purchase Agreement and they shall be incorporated herein as if they were set out in full in this letter, except that references to "the date of this Agreement" in Clause 5 (*Pre-completion Obligations*) shall be interpreted as references to the date of this letter. For the avoidance of doubt, Clause 9 (*Seller's Warranties and Undertakings*) shall not require any Relevant Seller, Group Company or Senior Manager to take any action that would amount to a decision to sell the Group to the Purchaser prior to the Consultation Completion.

5. Exclusivity

5.1 From and including the date of this letter until the earlier to occur of (i) the execution of the Sale and Purchase Agreement, and (ii) the date that is nine months from the date of this letter, the Seller

shall not, and shall procure that no member of the Seller's Group and no Group Companies shall, directly or indirectly:

(a) enter into or continue discussions or negotiations with, or provide any information to, any third party who may be interested in making an offer for, or entering into an agreement to acquire, the Group, any part of its business or assets or any Group Company, or any transaction designed to achieve a similar economic outcome to any of the foregoing (an "**Alternative Transaction**");

(b) solicit, encourage or otherwise facilitate any enquiries or the making of any offer or proposal by a third party with respect to an Alternative Transaction; or

(c) enter into any Alternative Transaction with a third party.

6. Break Fee

6.1 If:

(a) the Seller does not comply with its obligations in paragraph 2.1 of this letter; or

(b) the Consultation Completion occurs, and an Acceptance Notice is not received by the Purchaser accompanied by three original signature pages of the Sale and Purchase Agreement duly executed by the Seller and the Guarantor on or prior to 11.59 p.m. on the fifth Business Day after Consultation Completion,

then in consideration of the Purchaser committing time and expense to the Transaction, the Seller shall pay to the Purchaser an amount of EUR10,000,000 (the "**Break Fee**") in cash to the account nominated by the Purchaser. It is acknowledged that the provisions of this paragraph 6: (i) protect the Purchaser's legitimate interest in completing the Transaction and are both reasonable and proportionate; and (ii) are an integral part of this Offer, without which the Purchaser would not have made the Offer.

6.2 Payment of the Break Fee to the Purchaser shall not affect or determine the undertakings given by the Seller pursuant to paragraph 5.1 of this letter and the Seller shall continue to comply with the provisions of paragraph 5.1 until expiry of the relevant time period set out therein.

7. Confidentiality

7.1 Subject to paragraph 7.2 the provisions of Clause 18 (*Confidentiality*) of the Sale and Purchase Agreement shall apply from the date of this letter as if set out herein except that references to "this Agreement" shall be construed to include references to this letter.

7.2 Notwithstanding paragraph 7.1 the Purchaser agrees that, upon countersignature of this letter by the Seller, each of the Guarantor and the Purchaser may announce the Offer and the contents of this letter, provided that any such announcement shall be in a form agreed between the Guarantor and the Purchaser.

7.3 The Confidentiality Agreement between Scotts-Sierra Investments LLC and Exponent Private Equity LLP is hereby terminated with effect from the date of this letter.

7.4 Exponent Private Equity LLP may, under the Contracts (Rights of Third Parties) Act 1999, enforce the terms of this letter, as varied from time to time under paragraph 11.1. Other than as expressly

provided in this letter, a person who is not a party to this letter shall have no right to enforce any of its terms.

8. Counterparts

This letter may be entered into in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any party may enter into this letter by executing any such counterpart.

9. Notices

Clause 32 (*Notices*) of the Sale and Purchase Agreement shall apply from the date of this letter between the Purchaser, the Guarantor and the Seller as if set out herein except that references to "this Agreement" shall be construed to include references to this letter.

10. Guarantee

10.1 In consideration of the Purchaser making the Offer, the Guarantor irrevocably and unconditionally guarantees to the Purchaser punctual performance by the Seller of all of the Seller's obligations pursuant to this letter and undertakes to the Purchaser that:

(a) whenever the Seller does not pay any amount when due pursuant to or in connection with this letter, the Guarantor shall immediately on demand pay that amount as if it was the principal obligor;

(b) whenever the Seller fails to perform any other obligations pursuant to this letter, the Guarantor shall immediately on demand perform (or procure performance of) and satisfy (or procure the satisfaction of) that obligation; and

(c) agrees as principal debtor and primary obligor to indemnify the Purchaser against all losses and damages sustained by it flowing from any non-payment or default of any kind by the Seller under or pursuant to this letter,

so that the same benefits are conferred on the Purchaser as it would have received if such obligation had been performed and satisfied by the Seller.

10.2 This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by the Seller pursuant to this letter, regardless of any intermediate payment or discharge in whole or in part.

10.3 Save to the extent provided in paragraph 10.4 the obligations of the Guarantor will not be discharged or affected by:

(a) any time, waiver or consent granted to the Seller or any other person;

(b) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against the Seller pursuant to this letter;

(c) the insolvency (or similar proceedings) of the Seller, any incapacity or lack of power, authority or legal personality of the Seller or change in control, ownership or status of the Seller;

(d) any unenforceability or invalidity of any obligation of the Seller; or

(e) any amendment to this letter.

10.4 For the avoidance of doubt, the Guarantor shall have no liability under this paragraph 10 in respect of any liability of the Seller pursuant to this letter to the extent that such liability is amended or varied in accordance with paragraph 11.1, and the Guarantor's obligations under this paragraph 10 in respect of such obligation or liability as it subsists following such amendment, variation or waiver shall be determined by reference to such obligation as so amended or varied, or taking account of the extent to which such obligation or liability has been so waived.

11. General

11.1 No amendment to this letter shall be valid unless it is in writing and duly executed by or on behalf of the parties to it.

11.2 This letter is for the sole benefit of the parties to it and their respective successors and permitted assigns and nothing in this letter, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this letter.

11.3 No failure or delay in exercising any right, power or privilege under this letter will operate as a waiver of it, nor will any single or partial exercise of any right, power or privilege under this letter preclude any other or further exercise of it or of any other right, power or privilege under this letter or otherwise.

12. Governing Law

12.1 This letter and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.

12.2 Each of the Seller, the Guarantor and the Purchaser irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this letter and that accordingly any proceedings arising out of or in connection with this letter shall be brought in such courts. Each of the Seller, the Guarantor and the Purchaser irrevocably submits to the jurisdiction of such courts and waives any objection to proceedings in any such court on the ground of venue or on the ground that proceedings have been brought in an inconvenient forum.

13. Process Agent

13.1 Seller and Guarantor's Process Agent

(a) The Seller and the Guarantor each hereby irrevocably appoint The Scotts Company (UK) Limited, c/o White & Case LLP, 5 Old Broad St, London EC2N 1DW, as their agent to accept service of process in England and Wales in any legal action or proceedings arising out of this letter, service upon whom shall be deemed completed whether or not forwarded to or received by them.

(b) The Seller and the Guarantor each agree to inform the Purchaser in writing of any change of address of such process agent within 28 days of such change.

(c) If such process agent ceases to be able to act as such or to have an address in England and Wales, the Seller and the Guarantor each irrevocably agree to appoint a new process agent in England and Wales acceptable to the Purchaser and to deliver to the Purchaser within 14 days a copy of a written acceptance of appointment by the process agent.

Yours faithfully,

(*Signature pages to this letter follow*)

SIGNED by /s/ Simon Davidson and /s/ Chris Graham

on behalf of **GARDEN CARE BIDCO LIMITED**

The countersignature by the Seller is solely for the purpose of evidencing its agreement to the terms of, and the Seller's obligations and undertakings under, this letter. Such countersignature shall not be construed as an acceptance of the Offer to acquire the Group contemplated herein and any such acceptance shall only be made in accordance with the terms of paragraph 1 hereof.

on behalf of **SCOTTS-SIERRA INVESTMENTS LLC**

/s/ Dimiter Todorov

[*Signature page to Binding Offer Letter – Scotts-Sierra Investments LLC*]

By: /s/ Thomas Randal Coleman

For and on behalf of **THE SCOTTS MIRACLE-GRO COMPANY**

Name: **Thomas Randal Coleman**

Position: **Executive Vice President and Chief Financial Officer**

[*Signature page to Binding Offer Letter – The Scotts Miracle-Gro Company*]

Appendix 1
Defined Terms

In this letter, the following terms have the meanings set out alongside them:

1.1 "**French Works Council**" means the Comité Central d'Entreprise at Scotts France SAS;

1.2 "**Information Note**" means the detailed information note to be delivered to the French Works Council on the Transaction;

1.3 "**Legal Deadline**" means: (i) the date two calendar months after the date of delivery of the Information Note to the French Works Council; or (ii) the date of expiry of such other period as is determined by a competent court, in accordance with applicable law, to be the date on which the Consultation Process is deemed to be completed; and

1.4 "**Works Council Opinion**" means positive or negative advice provided by the French Works Council to Scotts France SAS in connection with the Transaction in accordance with applicable law.

Appendix 2
Works Council Procedures

The Seller and the Purchaser acknowledge that in the context of the Consultation Process, the French Works Council may seek certain commitments in writing from the Purchaser or impose (other) conditions on relevant members of the Purchaser's Group. The Seller shall notify the Purchaser of any requests for such commitments or (other) conditions stipulated by or on behalf of the French Works Council. In such an event, the Seller shall, in consultation with the Purchaser, negotiate and/or liaise in good faith with the French Works Council to attempt to seek an outcome satisfactory to both the Purchaser and the Seller, taking into account the principles set forth in the final sentence of paragraph 2.4 of this letter. For the avoidance of doubt, neither the Seller nor the Purchaser shall be under any obligation to accept or agree to such commitments or conditions sought by the French Works Council.

Exhibit 1
Sale and Purchase Agreement

Dated 5 July 2017

Share and Business Sale Agreement

relating to the companies and business comprising the
Scotts Miracle-Gro International Business

between

Scotts-Sierra Investments LLC
as Seller

The Scotts Miracle-Gro Company
as Guarantor

Garden Care Bidco Limited
as Purchaser

PURSUANT TO REGULATION S-K, ITEM 601(b)(2), THE SCHEDULES TO THE SALE AND PURCHASE AGREEMENT INCLUDED AS EXHIBIT 10.6, AS DESCRIBED BELOW, HAVE NOT BEEN FILED. THE REGISTRANT AGREES TO FURNISH SUPPLEMENTALLY A COPY OF OMITTED SCHEDULES TO THE SECURITIES AND EXCHANGE COMMISSION UPON REQUEST; PROVIDED, HOWEVER, THAT THE REGISTRANT MAY RERQUEST CONFIDENTIAL TREATMENT OF OMITTED ITEMS.

Part 1 Closing Statement

Part 2 Form of Closing Statement

Part 3 Illustrative Closing Statement

Schedule 8 Transaction Documents

Schedule 9 Contracts

Part 1 Shared Contracts

Part 2 International Business Contracts

Part 3 Third Party Consents

Part 4 Excluded Shared Supply Contracts

Part 5 Licences

Part 6 Product Registrations

Schedule 10 Intellectual Property

Part 1 Transfer of International Business Intellectual Property owned by OMS Investments, Inc. and Hawthorne Gardening B.V.

Part 2 Transfer of International Business Intellectual Property owned by the Business Sellers other than OMS Investments, Inc. and Hawthorne Gardening B.V.

Part 3 Owned Intellectual Property

Part 4 Form of Patent Assignment

Part 5 Form of Trade Mark Assignment

Part 6 Form of Domain Name Transfer Agreement

Part 7 List of Product Registrations

Schedule 11 Product Pipeline

Schedule 12 Retained Intellectual Property

Schedule 13 Intentionally left blank

Schedule 14 Purchase Price Allocation Agreement

Schedule 15 Deferred Payment

Schedule 16 Seller Commitments

Schedule 17 Moveable Assets

Schedule 18 Employees

Part 1 International Business Employees

Schedule 19 Receivables

Schedule 20 Financial Information

Schedule 21 Catch-up Capital Expenditure

Schedule 22 New Supply Agreements

Schedule 23 Pensions & OPEB Debt Like Treatment

Schedule 24 Excluded Liabilities

This Agreement is made on 5 July 2017

Between:

(1) **Scotts-Sierra Investments LLC** a company incorporated in Delaware with registered number 2512334 and whose registered office is at 1209 Orange Street, Wilmington, DE 19801, United States of America (the "**Seller**");

(2) **The Scotts Miracle-Gro Company** a company incorporated in Ohio with registered number 1501530 and whose registered office is at 14111 Scottslawn Road, Marysville, Ohio 43041, United States of America (the "**Guarantor**"); and

(3) **Garden Care Bidco Limited** a company incorporated in England and Wales with registered number 10734808 and whose registered office is at 6th Floor, 30 Broadwick Street, London, United Kingdom, W1F 8JB (the "**Purchaser**").

Whereas:

(A) The Seller has agreed to sell the Group (or to procure the sale by the Relevant Sellers of certain Group Companies or Group Businesses) and to assume the obligations imposed on the Seller under this Agreement.

(B) The Purchaser has agreed to purchase the Group (or to procure the purchase by the Relevant Purchasers of certain Group Companies or Group Businesses) and to assume the obligations imposed on the Purchaser under this Agreement.

(C) The Guarantor has agreed to guarantee the obligations of the Seller on the terms and subject to the conditions of this Agreement.

It is agreed:

1. Interpretation

1.1 In this Agreement:

"**Accounts Date**" means 30 September 2016;

"**Accounts**" means the audited statutory financial statements of (a) Scotts Celaflor GmbH; (b) Scotts Celaflor HGmbH; (c) Scotts Holdings Limited; (d) The Scotts Company (Manufacturing) Limited; (e) The Scotts Company (UK) Limited; (f) Humax Horticulture Limited; (g) Levington Group Limited; (h) Scotts Benelux BVBA; (i) Scotts France Holdings SARL; (j) Scotts France SAS; (k) Scotts Australia Pty Limited; and (l) Scotts Poland Sp.z.o.o., comprising the profit and loss statement and balance sheet in respect of each, as at the Accounts Date, together with the accompanying notes and reports;

"**Acquired Entity**" has the meaning set out in Clause 12.2;

"**Adjustment Amount**" has the meaning set out in Clause 7.3(f);

"**Agents**" means, in relation to a person, that person's directors, officers, employees, advisers, agents and representatives;

"**America Business Intellectual Property**" means:

(a) any Intellectual Property owned by a member of the Seller's Group in the Purchaser Manufacturing Territories as at Completion, which the manufacture of any International Business Products in the Purchaser Manufacturing Territories as at Completion would, in the absence of a licence from the relevant member of the Seller's Group, infringe that Intellectual Property;

(b) any patent applications filed by the relevant member of the Seller's Group after Completion in the Purchaser Manufacturing Territories based on any invention disclosure that forms part of the Intellectual Property described in (a) and any granted patents issuing from such applications; and

(c) all continuations, continuations in part, divisions, extensions, substitutions, reissues, re examinations and renewals in the Purchaser Manufacturing Territories of any patents or patent applications forming part of the Intellectual Property described in (a) or the patents and patent applications referred to in (b);

"**Applicable Name Change Period**" has the meaning set out in Clause 11.2(b);

"**Assumed Liabilities**" means all Liabilities at Completion of the Business Sellers other than the Excluded Liabilities (including, for the avoidance of doubt, any loan amount payable by a Business Seller to the EEIG corresponding to an EEIG Receivable), and "**Assumed Liability**" means any one of them;

"**Austrian Schemes**" means Abfertigung alt, Abfertigung neu, voluntary Abfertigung and Bonus Pensionskassen Aktiengesellschaft;

"**Authority**" means any Environmental Authority, Taxation Authority or other supra-national, federal, national, state, county, local, municipal or other governmental, regulatory or administrative authority, agency, commission or other instrumentality, any court, tribunal or arbitral body with competent jurisdiction, or any national securities exchange or automated quotation service;

"**Bank Account Side Letter**" means the side letter between the Purchaser and the Seller pursuant to which the Seller agrees to procure that employees of the Purchaser's Group and International Business Employees shall have access to the specified bank accounts of the Business Sellers and the ability to sweep cash from such bank accounts to bank accounts held by the Business Purchasers twice a day and for a period of up to 12 months after Completion, subject to the Purchaser agreeing to pay the cost of maintaining such bank accounts at any time from six months after Completion;

"**Bid Value**" has the meaning set out in Clause 4.1(a)(i);

"**BNPP Facility**" means the uncommitted credit facility in the amount of EUR 2,424,000 provided by BNP Paribas to Scotts France SAS;

"**Books and Records**" has the meaning set out in Clause 11.4;

"**Business**" means the business of the Group comprising the direct or indirect sale or provision of the Products;

"**Business Day**" means a day (other than a Saturday or Sunday or a public holiday) when commercial banks are open for ordinary banking business in London, Delaware and Ohio;

"**Business Intellectual Property**" means the International Business Intellectual Property and the Owned Intellectual Property;

"**Business Purchasers**" means the members of the Purchaser's Group notified by the Purchaser to the Seller in accordance with Clause 2.10, and "**Business Purchaser**" means any one of them;

"**Business Seller**" means, in relation to each of the Group Businesses referred to in column (2) of Part 2 of Schedule 1, the company whose name is set out opposite that Group Business in column (1) of Part 2 of Schedule 1;

"**Business Warranties**" means all Warranties other than the Fundamental Warranties and the Relevant Contracts Warranty;

"**Cash Balances**" means cash in hand or credited to any account with a financial institution and securities which are readily convertible into cash as shown in the reconciled cash book balance (such that cheques written but not yet cashed shall be deducted in calculating the balance and cheques received but not yet cleared shall be included in calculating the balance), excluding any rent deposits and including the line items in the column 'Cash Balances' in Part 2 of Schedule 7, in each case as at the Effective Time and calculated in accordance with Schedule 7;

"**Claim**" means any claim made by the Purchaser under Clause 9.1 and Schedule 3 (*Warranties*) of this Agreement and "**Claims**" shall mean all such claims;

"**Claims Made Policies**" means any insurance policies (including without limitation any directors' and officers' liability insurance policies) which are in force at the date of this Agreement and which provide cover in relation to Pre-Completion Matters on a claims made basis;

"**Closing Amount**" has the meaning set out in Part 2 of Schedule 2;

"**Closing Debt**" means in respect of each Group Company and each Business Seller (for the avoidance of doubt, excluding items that are Excluded Liabilities) the amount as at the Effective Time of:

(a) all interest and non-interest bearing loans or other financing liabilities or obligations, including overdrafts and any other liabilities in the nature of borrowed money (whether secured or unsecured);

(b) all reimbursement or payment obligations with respect to letters of credit, bills, bonds, notes, debentures or loan stock and other similar instruments;

(c) any obligations under finance or capital leases and hire purchase agreements, to the extent that such hire purchase agreements are recorded as a liability in accordance with US GAAP as applied consistently with the accounting policies applied in the Relevant Balance Sheet;

(d) any transaction costs, transaction bonuses and retention bonuses related to the proposed sale of the Group (gross of any tax and social security liabilities in relation to such costs and bonuses incurred by any Group Company);

(e) any obligations in respect of interest rate swaps or other financial derivatives stated at their fair value;

(f) the aggregate of the line items in the column "Closing Debt" in Part 2 of Schedule 7, without double counting of any other item in paragraphs (a) to (i) here;

(g) any liabilities in relation to corporation tax, corporate income tax, profits tax or any similar tax on corporate income, profits or gains, but excluding deferred tax assets and deferred tax

liabilities net of any prepayment assets in respect of corporation tax, corporate income tax, profits tax or any similar tax on corporate income, profits or gains; and

(h) all obligations issued, undertaken or assumed as the deferred purchase price in respect of any acquired business or shares,

together with all interest, fees and penalties accrued thereon prior to the Effective Time, and any prepayment premiums or penalties payable in order to retire or extinguish any Closing Debt to the extent triggered by Completion, but excluding (A) trading debt or trading liabilities arising in the ordinary course of business, (B) any unamortised debt issuance costs; and (C) any amounts included in Intra Group Financing Payables or Intra-Group Financing Receivables;

"**Closing Statement**" means the statement to be prepared in accordance with Clause 7 and Schedule 7 (*Closing Statement*);

"**Competition Conditions**" has the meaning given to it in Clause 3.1(i);

"**Completion**" means completion of the sale and purchase of the Shares and Group Businesses under this Agreement;

"**Completion Date**" means (a) on the Business Day after the earliest Completion Month End that is at least fifteen (15) Business Days after (and excluding) the date on which the Conditions are satisfied or waived in accordance with this Agreement or (b) such other date as mutually agreed between the Seller and the Purchaser;

"**Completion Month End**" means one of the following dates (as applicable): (a) 29 July 2017; (b) 26 August 2017; (c) 30 September 2017; or (d) 28 October 2017;

"**Conditions**" means the conditions referred to in Clause 3 (*Conditions*);

"**Confidentiality Agreement**" means the confidentiality agreement between the Seller and Exponent Private Equity LLP dated 28th October 2016;

"**Continuing Provisions**" means Clause 1 (*Interpretation*), Clause 15 (*Business Information*), Clause 18 (*Confidentiality*), Clause 19 (*Announcements*), Clause 20 (*Grossing-up*), Clause 21 (*Guarantee*), Clause 22 (*Assignment*), Clause 24 (*Entire Agreement*), Clause 25 (*Severance and Validity*), Clause 26 (*Variations*), Clause 27 (*Remedies and Waivers*), Clause 29 (*Third Party Rights*), Clause 31 (*Costs, Expenses and Stamp Duty*), Clause 32 (*Notices*), Clause 35 (*Governing Law and Jurisdiction*) and Clause 36 (*Agent for Service of Process*), all of which shall continue to apply after the termination of this Agreement pursuant to Clause 3.10 or Clause 6.3(c) or Clause 13.2 without limit in time;

"**Control**" means, in relation to a person:

(a) holding or controlling, directly or indirectly, a majority of the voting rights exercisable at shareholder meetings (or the equivalent) of that person; or

(b) having, directly or indirectly, the right to appoint or remove directors holding a majority of the voting rights exercisable at meetings of the board of directors (or the equivalent) of that person; or

(c) having, directly or indirectly, the ability to direct or procure the direction of the management and policies of that person, whether through the ownership of shares, by contract or otherwise; or

(d) having the ability, directly or indirectly, whether alone or together with another, to ensure that the affairs of that person are conducted in accordance with his or its wishes, and

(i) the terms "**Controlling**" and "**Controlled**" shall be construed accordingly; and

(ii) any two or more persons acting together to secure or exercise Control of another person shall be viewed as Controlling that other person;

"**Data Room**" means the data room comprising the actual copies of documents and other information relating to the Business, the Group Companies and the Group Businesses made available to the Purchaser online at https://services.intralinks.com, as itemised in the data room index in the agreed terms and contained on the USB provided by the Seller's Lawyers to the Purchaser's Lawyers on 26 April 2017;

"**Deferred Payment Amount**" means either: (i) if a Deferred Payment Trigger occurs, an amount equal to EUR 20,000,000; (ii) if a French Exit occurs on or prior to 31 January 2021, an amount equal to EUR 20,000,000 if a French Deferred Payment Trigger occurs; or (iii) if an Exit occurs on or prior to 31 January 2021, the lesser of: (a) an amount equal to EUR 20,000,000 if the Investment Return as a result of such Exit and following payment of such amount is not less than 1.0x; and (b) such lesser amount which, after payment of such amount, would result in the Investment Return as a result of such Exit being equal to 1.0x, provided always that if the Investment Return would be less than 1.0x then the Deferred Payment Amount shall be zero;

"**Disclosed**" means fairly disclosed in the Data Room or the Disclosure Letter, in each case with sufficient details to identify the nature and scope of the matter disclosed;

"**Disclosure Letter**" means the letter dated as at the Offer Letter Date from the Seller to, and acknowledged by, the Purchaser;

"**Draft Closing Statement**" has the meaning given to it in Clause 7.1;

"**EEIG**" means Scotts Treasury EEIG;

"**EEIG Interests**" means the interests held by the Business Sellers in the EEIG (together with the EEIG Interests held by certain Group Companies, comprising all of the interests in the EEIG);

"**EEIG Payables**" means all outstanding loans or other financing liabilities or obligations (including, for the avoidance of doubt, interest accrued and dividends declared or payable but not paid) owed by the EEIG to a Business Seller as at the Effective Time;

"**EEIG Receivables**" means all outstanding loans or other financing liabilities or obligations (including, for the avoidance of doubt, interest accrued and dividends declared or payable but not paid) owed by a Business Seller to the EEIG as at the Effective Time;

"**Effective Time**" means the time of Completion on the Completion Date;

"**Employment Costs**" means all salaries, wages, commission, bonuses, incentive payments, vacation pay, pension or other retirement benefit contributions, statutory contributions, social security

contributions, taxation, expenses and all other emoluments and benefits made to or on behalf of or in respect of an employee, save for any Employment Liabilities;

"**Employment Liabilities**" means any and all Losses arising out of or connected with employment or the employment relationship, or termination of employment or the employment relationship (including but not limited to, all Losses in connection with any claim for redundancy, termination or severance pay (whether arising out of statute or contract) notice pay, or damages or compensation for dismissal, breach of statutory employment rights or breach of contract);

"**Encumbrance**" means any pledge, charge, lien, mortgage, debenture, hypothecation, security interest, pre-emption right or option, or any agreement to create any of the foregoing;

"**Environment**" means all or any of the following media (alone or in combination): air (including the air within buildings and the air within other natural or man-made structures whether above or below ground); water (including water under or within land or in drains or sewers); soil and land, any ecological systems and living organisms supported by these media and man;

"**Environmental Authority**" means any legal person or body of persons (including any government department or government agency or court or tribunal) having authority, or jurisdiction to determine any matter arising, under Environmental Law;

"**Environmental Law**" means all applicable laws, statutes, regulations, statutory guidance notes and final and binding court and other tribunal decisions of any relevant jurisdiction whose purpose is (i) to protect, or prevent pollution of, the Environment; (ii) to protect human health or welfare and/or the conditions of the workplace; or (iii) to regulate emissions, discharges or releases of Hazardous Substances into the Environment, or to regulate the use, treatment, storage, burial, disposal, transport or handling of Hazardous Substances, and all by-laws, codes, regulations with any of therein, decrees or orders issued or promulgated or approved under or in connection with any of them;

"**Environmental Permit**" means any licence, approval, registration, consent, authorisation, permission, notification, waiver, order or exemption which is issued, granted or required under Environmental Law and which is required for the operation of the business of the Group as it is currently operated;

"**Estimated Cash**" means EUR2,567,000;

"**Estimated Debt**" means EUR13,376,000 being the Seller's good faith reasonable estimate of the Closing Debt as at the Effective Time;

"**Estimated Intra-Group Financing Payables**" means EUR24,122,000, being the Seller's good faith reasonable estimate of the Intra-Group Financing Payables as at the Effective Time;

"**Estimated Intra-Group Financing Receivables**" means EUR129,000, being the Seller's good faith reasonable estimate of the Intra-Group Financing Receivables as at the Effective Time;

"**Estimated Working Capital**" means EUR54,579,000, being the Seller's good faith reasonable estimate of the Working Capital as at the Effective Time;

"**Estimated Working Capital Adjustment**" means EUR25,421,000, being the amount by which the Estimated Working Capital is less than the Target Working Capital;

"**Everris IP Licence Agreements**" means:

(a) the Patent and Technology Licence between Scotts International B.V. (now known as Everris International B.V. and The Scotts Company LLC dated 28 February 2011; and

(b) the Trade Mark Licence between Scotts International B.V. (now known as Everris International B.V.) and The Scotts company LLC dated 28 February 2011;

"**Everris Sub-licenses**" means: (a) the Trade Mark Sub-licence Agreement between The Scotts Company LLC and the Purchaser granting the Purchaser rights to use certain trade marks owned by Everris International B.V. (formerly known as Scotts International B.V.) in the agreed terms; and (b) the Patent Sub-licence Agreement between the Scotts Company LLC and the Purchaser granting the Purchaser rights to use certain patents and other intellectual property owned by Everris International B.V. (formerly known as Scotts International B.V.) in the agreed terms;

"**Everris Supply Agreements**" means:

(a) the Supply Agreement for Bourth Plant Protection Products between Scotts France SAS and Anti Germ France SAS dated 28 February 2011;

(b) the Supply Agreement for UK Growing Media Products from Gretna (North) between The Scotts Company (UK) Limited and ICL Horticulture UK Limited (now known as Everris Limited) dated 28 February 2011;

(c) the Supply Agreement for Howden Pro Products between The Scotts Company (UK) Limited and ICL Horticulture UK Limited (now known as Everris Limited) dated 28 February 2011; and

(d) the Supply Agreement for Osmocote (and derivative) Products in Heerlen between Euro Clearon Netherlands B.V. and The Scotts Company LLC dated 28 February 2011;

"**Excluded Assets**" means those assets, contracts and rights which are excluded from the sale of the Group Businesses under this Agreement and the Local Transfer Documents, details of which are set out in Clause 2.2(f);

"**Excluded Liabilities**" means any and all Liabilities set out in Schedule 24;

"**Excluded Shared Contracts**" means the:

(a) Shared IT Contracts;

(b) Original Roundup Agreements;

(c) Everris IP Licence Agreements;

(d) Trade Mark Licence Agreement between OMS Investments Inc., The Scotts Company (UK) Limited, The Scotts Company LLC and Bord Na Mona Gorticulture Limited dated 29 April 2013;

(e) Trade Mark Licence Agreement between OMS Investments Inc., The Scotts Company (UK) Limited and Everris International B.V. (formerly known as Scotts International B.V.) dated 28 February 2011;

(f) Trade Mark Co-Existence Agreement between OMS Investments Inc., and Fisons Limited dated 28 July 2011;

(g) Research Agreement between the Royal Melbourne Institute of Technology and Scotts Australia Pty Limited dated 18 June 2015, which is to be transferred to The Scotts Company LLC prior to Completion;

"**Excluded Shared Supply Contracts**" means any Shared Contracts for the supply of goods or raw materials which the Parties agree in writing prior to Completion that Part 1 of Schedule 9 should not apply to and to which Part 4 of Schedule 9 should apply instead;

"**Excluded Territories**" means all jurisdictions other than the Relevant Territories;

"**Final Payment Date**" means ten (10) Business Days after the date on which the process described in paragraph 3 of Part 1 of Schedule 7 (*Closing Statement*) for the agreement or determination of the Closing Statement is complete;

"**French Mandatory Retirement Schemes**" means: (i) the defined contribution national social security basic retirement scheme and (ii) the defined contribution AGIRC and ARRCO complementary retirement schemes;

"**French Pension Schemes**" means: (i) the Sovilo Plan; (ii) the end of career payments due by Scotts France SAS when workers retire; (iii) the jubilee awards; and (iv) the Record II Pension Scheme;

"**Fundamental Warranties**" means the Warranties set out in paragraphs 1, 2 and 13 of Schedule 3;

"**Fundamental Warranty Claims**" means a Claim in relation to a breach of the Fundamental Warranties;

"**German Pension Schemes**" means each of:

(a) Versorgungsordnung 1987;

(b) Pensionsordnung en vom 27.02.2002;

(c) Grund- und Demografieförderung und Chemietarifförderung;

(d) Anfangspension;

(e) Betriebsvereinbarung über Jubiläeen; and

(f) Altersteilzeit;

"**Global Marine Policy**" means any insurance policy pursuant to which the Group is provided with risk cover for physical loss or damage to the subject matter insured during transit (including by land, air or sea);

"**Goodwill**" means the goodwill of the Business Sellers in relation to the Group Businesses as at Completion together with the exclusive right (so far as the Relevant Sellers can grant the same) for the Business Purchasers to represent themselves as carrying on the Group Businesses in succession to the Business Sellers;

"**Group**" means the Group Companies and the Group Businesses;

"**Group Businesses**" means the entirety of the businesses carried on by the Business Sellers during the 12 months prior to Completion and being sold under (and subject to the terms and conditions of) this Agreement and the Local Transfer Documents, particulars of which are non-exhaustively described in Part 2 of Schedule 1 and "**Group Business**" means any one of them;

"**Group Companies**" means the entities listed in Part 3 of Schedule 1 and "**Group Company**" means any one of them;

"**Group Commitments**" shall have the meaning given to such term in Clause 9.4;

"**Guarantor's Group**" means the Guarantor, its Parent Undertakings, its Subsidiary Undertakings and all other Subsidiary Undertakings of any such Parent Undertakings as the case may be from time to time (but excluding the Group);

"**Hazardous Substances**" means any wastes, pollutants, contaminants and any other natural or artificial substance or thing (whether in solid, liquid, gas, vapour or other form) which is capable (alone or in combination) of causing harm or damage to the Environment or a nuisance to any person (including radiation, noise, vibration, electricity and heat);

"**HMRC**" means Her Majesty's Revenue & Customs;

"**Hydroponic Products**" means hydroponics related products and other tools focused on the development of indoor urban gardening (i) including nutrients, substrates, systems (as well as components of systems such as precision irrigation, ph meters, pumps and timers), growing media, lighting and plastics and (ii) including, without limitation, products sold by the Seller's Group under the brands General Hydroponics, Vermicrop, Vermicrop Organics, Botanicare, Gavita, Aerogarden and Gold Label;

"**Intellectual Property**" means patents, utility models, trade marks, service marks, trade and business names, rights in designs, copyright (including rights in software), database rights, domain names, semi-conductor topography rights, rights in inventions, trade secrets and know-how and other intellectual property rights which may subsist in any part of the world, in each case whether registered or not (and including applications for registration);

"**International Business Assets**" means all property, rights and assets of the Business Sellers (excluding the Excluded Assets) to be sold under Clause 2.2 of this Agreement or any relevant Local Transfer Document;

"**International Business Contracts**" means the customer, supply, distribution, hire purchase and other commercial contracts or agreements or trading relationships (whether written or unwritten) to which a member of the Seller's Group is a party which relates exclusively to the Group including (but not limited to) the contracts listed in Part 2 of Schedule 9 and "**International Business Contract**" means any of them;

"**International Business Employees**" means those employees who are immediately prior to Completion employed in the companies listed in column (1) of Part 2 of Schedule 1;

"**International Business Intellectual Property**" means all Intellectual Property owned by any member of the Seller's Group which in the 12-month period before Completion has been used exclusively by the Group in relation to the Business, including the Intellectual Property described in Part 1 and Part 2 of Schedule 10, but excluding the Retained Intellectual Property;

"**International Business Leased Properties**" means the properties which are set out in Part 4 of Schedule 6;

"**International Business Owned Properties**" means the properties which are set out in Part 3 of Schedule 6;

"**International Business Product Registrations**" means the Product Registrations which during the 12 month period before Completion are exclusively used by the Group in relation to the Business, including the Product Registrations set out in Part 7 of Schedule 10;

"**International Business Products**" means Products that:

(a) have been sold or produced directly or indirectly by, or on behalf of, the Group in relation to the Business in the 12 months prior to the Completion Date;

(b) are contained in the Product Pipeline; or

(c) are Products that are an improvement, modification or further development of any of the Products referred to in (a) or (b) above;

"**International Business Properties**" means the International Business Owned Properties and the International Business Leased Properties, and **"Business Property**" means any one of them;

"**Intra-Group Financing Payables**" means all outstanding loans or other financing liabilities or obligations (including, for the avoidance of doubt, interest accrued and dividends declared or payable but not paid) owed by a Group Company to a member of the Seller's Group (other than a Group Company) as at the Effective Time, but excluding any EEIG Payables and any item which falls to be included in calculating the Group Companies' Cash Balances or the Closing Debt or Working Capital;

"**Intra-Group Financing Receivables**" means all outstanding loans or other financing liabilities or obligations (including, for the avoidance of doubt, interest accrued and dividends declared or payable but not paid) owed by a member of the Seller's Group (other than a Group Company) to a Group Company as at the Effective Time, but excluding any EEIG Receivables and any item which falls to be included in calculating the Group Companies' Cash Balances or the Closing Debt or Working Capital;

"**Intra-Group IP Licences**" means any licences of Intellectual Property granted by: (a) any member of the Seller's Group to a Group Company prior to Completion; or (b) any Group Company to a member of the Seller's Group;

"**Investment Return**" has the meaning given to it in Schedule 15;

"**IP Assignments**" means assignment agreements relating to the International Business Intellectual Property, in substantially the form attached as Part 3, Part 4, Part 5 and Part 6 of Schedule 10 (as applicable);

"**IP Licence**" means the licence to Garden Care Bidco Limited of certain Retained Intellectual Property (other than the Retained Trade Marks) in the agreed terms;

"**IT Contracts**" means any material written agreements, arrangements or licences to which a Group Company or a Business Seller is a party relating to the IT Systems;

"**Ipswich Office**" means the part of the ground floor of the building adjoining the Charter Building, Levington Park, Ipswich, Suffolk IP10 0NE currently occupied by The Scotts Company (UK) Limited pursuant to a lease dated 1 July 2012;

"**IT Systems**" means computer hardware and software (excluding shrink-wrapped, click-wrapped or software commercially available off-the-shelf or the internet and any public telecommunications

networks) which in each case is used or held for use for the purposes of the Business and required in all material respects to conduct the Business;

"**JPM Facility**" means the revolving credit facility in the amount of USD 1,700,000,000 provided pursuant to a facility agreement between The Scotts Miracle-Gro Company Inc., as borrower, and JP Morgan, as lender, dated 29 October 2015;

"**Key Worker**" means (i) any Senior Manager; or (ii) any Worker whose total gross annual salary exceeds EUR 150,000 (or its equivalent in applicable local currency);

"**Leased Properties**" means the leased land and premises currently used or occupied by the Group for the purposes of the Business, certain details of which are set out in Part 2 of Schedule 6 (*Properties*);

"**Liabilities**" means all liabilities, duties and obligations of every description, whether deriving from contract, common law, statute or otherwise, whether present or future, actual or contingent or ascertained or unascertained and whether owed or incurred severally or jointly or as principal or surety;

"**Licences**" means permits, licences, certificates or other authorisations or consents of an Authority, including Environmental Permits;

"**Licensed International Intellectual Property**" means:

(a) the International Business Intellectual Property and the Owned Intellectual Property;

(b) any patent applications filed by the relevant member of the Purchaser's Group after Completion in the Relevant Territory based on any invention disclosure that forms part of the International Business Intellectual Property and the Owned Intellectual Property and any granted patents issuing from such applications; and

(c) all continuations, continuations in part, divisions, extensions, substitutions, reissues, re examinations and renewals in the Relevant Territory of any patents or patent applications forming part of the International Business Intellectual Property and the Owned Intellectual Property or the patents and patent applications referred to in (b);

"**Licensed Retained Intellectual Property**" means any Retained Intellectual Property licensed to Garden Care Bidco Limited under the IP Licence or the Trade Mark Licence;

"**Local Transfer Document**" has the meaning given to it in Clause 2.3 (a);

"**Long Stop Date**" means 6 October 2017 or such other date as the Parties may agree in writing;

"**Loss**" or "**Losses**" means all losses, liabilities, actions and claims, including charges, costs, damages, fines, penalties, interest and all legal and other professional fees and expenses, including, in each case, all related Taxes;

"**Material Contract**" means any contract to which a Group Company or a Business Seller is a party to, or bound by, which for the previous financial year had, or for the current financial year is expected to have, revenue or expenditure of more than EUR 500,000 per annum;

"**Material Environmental Contracts**" means all contracts, agreements, binding obligations or covenants which concern (in whole or in part) a Hazardous Substance, the protection of, or prevention of harm to, the Environment or the carrying out of any Remedial Action and which are, or are likely

to be, material to any Group Company or Group Business's business, profits, assets (including properties) or prospects;

"**Material IP Licences**" has the meaning set out in paragraph 18.7 of Schedule 3 (*Warranties*);

"**Moveable Assets**" means the furniture, trade utensils, computer hardware and peripherals, telecommunications equipment and infrastructure, other information technology related to plant and equipment, plant and machinery, vehicles and other equipment and other chattels (whether or not physically located at the Properties) which are owned by a member of the Seller's Group and used predominantly in relation to the Group Businesses including but not limited to those items listed in Schedule 17;

"**Monsanto**" means the Monsanto Company;

"**Monsanto Supply Agreeme**nt" means the glyphosate supply agreement between Scotts France SAS and Monsanto International S.A. dated 31 March 2005;

"New Project IP" means all Intellectual Property owned by any member of the Purchaser Group arising out of, or in connection with, the New Projects whether prior to Completion or in the nine months post-Completion, including:

(i) any patent applications filed by any member of the Purchaser's Group after Completion in the Excluded Territories based on any invention disclosure that forms part of the Intellectual Property described in Clause 16.5(a) and any granted patents issuing from such applications; and

(ii) all continuations, continuations in part, divisions, extensions, substitutions, reissues, re examinations and renewals in the Excluded Territories of any patents or patent applications forming part of the Intellectual Property described in Clause 16.5(a) or the patents and patent applications referred to in Clause 16.5(b);

"**New Projects"** means the research and development projects in relation to pelargonic acid and pyrethrum rapeseed oil that were carried out prior to Completion, and will continue to be carried out post-Completion, by (on behalf of) the Business;

"**New Roundup Agreements**" means the exclusive agency and marketing agreement and the lawn and garden brand extension agreement, each between Monsanto and the Purchaser and relating to the marketing and distribution of Roundup products, to be entered into on or prior to Completion reflecting and consistent with the Roundup Term Sheet and as amended from time to time;

"**New Supply Agreements**" the non-exclusive supply agreements to be entered into between a member of the Purchaser's Group and a member of the Seller's Group on or prior to Completion in relation to the goods and raw materials listed in Schedule 21 and under which those goods and raw materials will be supplied on the terms that: (a) are set out in Schedule 21; or (b) are otherwise consistent with the terms on which those goods and raw materials were supplied by the relevant member of the Seller's Group to a Group Company or a Business Seller in relation to the Business in the 12 months immediately prior to the Offer Letter Date, provided that in any three month period the volumes of those goods and raw materials to be purchased by the relevant member of the Purchaser's Group is no greater than 110% of the purchase volumes forecasted for the following 3 months by such member of the Purchaser's Group;

"**Non-Transferring Licences**" means those Licences held by a Business Seller or member of the Seller's Group that relate to the Group Businesses and are not capable of being transferred or assigned to the relevant Relevant Purchaser under applicable law and which would otherwise constitute Transferred Licences;

"**Notice**" has the meaning set out in Clause 32.1;

"**Objecting Employee**" has the meaning as set out in Schedule 18;

"**Occurrence Basis Policies**" means any insurance policies (including without limitation any directors' and officers' liability insurance policies) which are in force at the date of this Agreement and which provide cover in relation to any Pre-Completion Matter on an occurrence basis;

"**Offer Letter Date**" means 28 April 2017;

"**Opted Properties**" has the meaning set out in Clause 2.9(c);

"**Original Roundup Agreements**" means:

(a) the Amended and Restated Exclusive Agency and Marketing Agreement dated 30 September 1998 (as subsequently amended on 15 May 2015); and

(b) the Lawn and Garden Brand Extension Agreement dated 15 May 2015,

each relating to Roundup products and between Monsanto and The Scotts Company LLC.

"**Owned Intellectual Property**" means the Intellectual Property that is owned by any Group Company which in the 12 month period before Completion has been used exclusively by the Group in relation to the Business, including the Intellectual Property, details of which are set out in Part 3 of Schedule 10 but excluding the Retained Intellectual Property;

"**Owned Properties**" means the land and premises currently owned, used or occupied by the Group for the purposes of the Business, certain details of which are set out in Part 1 of Schedule 6 (*Properties*);

"**Parent Undertaking**" means an Undertaking which, in relation to another Undertaking, a "**Subsidiary Undertaking**":

(a) holds a majority of the voting rights in the Undertaking; or

(b) is a member of the Undertaking and has the right to appoint or remove a majority of its board of directors (or analogous body, including a management board and supervisory council); or

(c) has the right to exercise a dominant influence over the Undertaking, by virtue of provisions contained in its constitutional documents or elsewhere; or

(d) is a member of the Undertaking and controls alone, pursuant to an agreement with the other shareholders or members, a majority of the voting rights in the Undertaking,

and an Undertaking shall be treated as the Parent Undertaking of any Undertaking in relation to which any of its Subsidiary Undertakings is, or is to be treated as, the Parent Undertaking, and "**Subsidiary Undertaking**" shall be construed accordingly;

"**Party**" means a party to this Agreement and "**Parties**" shall mean the parties to this Agreement;

"**Pension Schemes**" means the UK Schemes, French Pension Scheme, German Pension Schemes and Austrian Schemes, certain details of which are set out in Folder 7 (*Employment and Pensions*) of the Data Room;

"**Permitted Claim**" means:

(a) in respect of an Occurrence Basis Policy, a claim relating to a Pre-Completion Matter (including, but not limited to, a claim which has been notified to the relevant insurer(s) before Completion and is pending or outstanding at Completion under such Occurrence Basis Policy and a claim relating to a Pre-Completion Matter not yet notified to the relevant insurer(s)); and

(b) in respect of a Claims Made Policy, a claim which has been notified (or which the Seller is entitled, pursuant to such Claims Made Policy, to notify, including a claim that the Seller is not aware has arisen) to the relevant insurer(s) on or before Completion and which is pending or outstanding at Completion;

"**Pre-Completion Matters**" means any matter or event in relation to the carrying on of the business of all or any part of the Group at any time on or before Completion and/or any matter or event occurring in relation to the Group (or, the directors and/or officers of the Group) at any time on or before Completion;

"**Press Release**" means the announcement to be issued by the Purchaser and the Seller in connection with the Transaction, in the agreed terms;

"**Prior Service**" means in respect of an International Business Employee, the period of service (including any period of service deemed by law or contract) which an International Business Employee has had with the relevant Business Seller immediately before and continuous with the commencement of employment with the relevant Business Purchaser;

"**Proceedings**" has the meaning set out in Clause 35.2

"**Product Liability**" means any liability arising out of death, personal injury or damage to property caused by a defective product or defective services sold, supplied or provided by any member of the Group or a Business Seller on or prior to Completion;

"**Product Pipeline**" means the product pipeline of the Business as at the Completion Date, as set out in Schedule 11;

"**Product Registration**" means such approval as may be granted by a relevant regulatory authority to use, sell, supply, advertise or store a certain plant protection product or fertilizer in a particular jurisdiction;

"**Products**" means consumer lawn and garden products, including, without limitation, fertilizer, fertilizer combination products, micro-nutrients, bio-stimulants, seed, growing media (including peat products, soil conditioning agents, turf dressings, compost, mulches, combination growing media and bark), plant food, wetting agents, plant protection products, pesticides, herbicides, insecticides, fungicides, repellents, rodenticides and durable applicators but excluding any Hydroponic Products;

"**Properties**" means the Owned Properties and Leased Properties;

"**Purchase Price**" has the meaning set out in Clause 4.1;

"**Purchase Price Allocation Agreement**" means the agreement to be entered into at Completion between the Seller and the Purchaser substantially in the form set out in Schedule 14 and after agreement or determination of the indicative Purchase Price allocation pursuant to Clauses 4.3 and 4.4;

"**Purchaser Debt Finance**" means the debt financing incurred or intended to be incurred in accordance with the Purchaser Debt Finance Agreement;

"**Purchaser Debt Finance Agreement**" means the senior term and revolving facilities agreement entered into on or around the Offer Letter Date between, inter alia, Garden Care Holdco Limited, the Purchaser, GSO European Senior Debt Fund (Luxembourg) S.à r.l., GSO Aiguille des Grands Montets ESDF I (Luxembourg) S.à r.l. and GSO Capital Opportunities Fund III (Luxembourg) S.à r.l., HSBC Bank plc and HSBC Corporate Security Trustee Company (UK) Limited;

"**Purchaser Manufacturing Territories**" means the Excluded Territories except for: (a) the United States of America, Israel and Japan and each of their territories and possessions; (b) any country subject to a comprehensive U.S. trade embargo (currently Cuba, Iran, North Korea, Sudan, Syria and the Crimea region of Ukraine); and (c) any country 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 fulfil such party's duties and obligations under the Trade Mark Licence or the IP Licence;

"**Purchaser's Group**" means the Purchaser, its Subsidiary Undertakings, any Parent Undertaking of the Purchaser and all other Subsidiary Undertakings of any such Parent Undertaking as the case may be from time to time (and including, after Completion, the Group);

"**Purchaser's Lawyers**" means Allen & Overy LLP of One Bishops Square, London E1 6AD;

"**Purchaser's Warranties**" means the warranties referred to in Clause 11 (*Purchaser's Warranties and Undertakings*) and set out in Schedule 5 (*Purchaser's Warranties*);

"**PwC Diligence Report**" means the draft diligence report titled 'Project Moonshine' prepared by PricewaterhouseCoopers LLP, addressed to The Scotts Company LLC and dated 25 November 2016;

"**Receivables**" means the aggregate amount as at the Effective Time of all outstanding accounts receivable (including all trading debt arising in the ordinary course in favour of the Group Businesses) owed to a member of the Seller's Group to the extent they relate to the Group Businesses, by any person other than (i) any other member of the Seller's Group to the extent related solely to financing or (ii) any Group Company or Group Business;

"**Record II Pension Scheme**" means the optional retirement scheme entered into by Sovilo Fertiligene with Gan Vie under number 01593621Y;

"**Registered Intellectual Property**" means Registered Owned Intellectual Property and Registered International Business Intellectual Property;

"**Registered International Business Intellectual Property**" means patents, registered trade marks, registered designs, domain name registrations (and applications for any of the same) that form part of the International Business Intellectual Property;

"**Registered Owned Intellectual Property**" means patents, registered trade marks, registered designs, domain name registrations (and applications for any of the same) that form part of the Owned Intellectual Property;

"**Regulatory Authorities**" means the German Federal Cartel Office, the French Competition Authority and the Polish Competition Authority;

"**Related Persons**" has the meaning given in Clause 24.5;

"**Relevant Balance Sheet**" has the meaning given in paragraph 16.2 of Schedule 3;

"**Relevant Contracts Warranty**" means the Warranty set out in paragraph 3.9 of Schedule 3;

"**Relevant International Business Contract**" means an International Business Contract that: (a) relates to the Business carried on in the UK, Germany or France; (b) is a contract under which the Group received supplies prior to the Offer Letter Date; and (c) is for a fixed term duration of at least 12 months and which sets out specific pricing or other material terms which shall be applied for the duration of such contract;

"**Relevant Part**" means, in respect of a Shared Contract, the part of it which exclusively relates to the Group;

"**Relevant Party's Group**" means, in relation to the Purchaser, the Purchaser's Group; in relation to the Seller, the Seller's Group; and, in relation to the Guarantor, the Guarantor's Group;

"**Relevant Property**" means any property (including the Properties) or part thereof now or previously owned, leased, occupied or controlled by the Group;

"**Relevant Purchasers**" means the Purchaser, the Business Purchasers and the Share Purchasers;

"**Relevant Sellers**" means each of the Share Sellers and Business Sellers whose names are set out in Schedule 1;

"**Relevant Territory**" means the jurisdictions in which the Group carries on the Business, or operates as at the Offer Letter Date, the date of this Agreement or the Completion Date, and including (for the avoidance of doubt) Spain, Denmark, Finland, Iceland, Norway and Sweden;

"**Remedial Action**" means:

(a) any works or action limiting, mitigating, remediating, preventing, removing, ameliorating or containing the presence or effect of any Hazardous Substance in or on the Environment; or

(b) any investigation, sampling or monitoring in connection with any such works or action;

"**Reporting Accountants**" means Deloitte LLP or, if that firm is unable or unwilling to act in any matter referred to them under this Agreement, a firm of accountants of international standing to be agreed by the Seller and the Purchaser within seven (7) days of a notice by one to the other requiring such agreement or failing such agreement to be nominated on the application of either of them by or on behalf of the President for the time being of the Institute of Chartered Accountants in England and Wales;

"**Retained Intellectual Property**" means (a) the Retained Trade Marks; (b) the Intellectual Property that is listed in Schedule 12; and (c) all Intellectual Property which is owned by the Seller's Group or the Group and is either: (i) used in relation to the Business on a non-exclusive basis; or (ii) not used in relation to the Business;

"**Retained Trade Marks**" means the trade marks to be licensed under the Trade Mark Licence;

"**Roundup Commission**" means the Commission (as defined in Article 1 of the Amended and Restated Agency and Marketing Agreement dated 30 September 1998 (as subsequently amended on 15 May 2015)) which a member of the Purchaser's Group receives pursuant to the New Roundup Agreements;

"**Roundup Term Sheet**" means the term sheet relating to the New Roundup Agreements, in the agreed terms;

"**Sanctions**" means any economic, trade or financial sanctions or export control laws, regulations, rules, and/or decisions administered, enacted or enforced by the United Nations, United States of America, the European Union or the United Kingdom;

"**Secondary Information**" has the meaning given to it in Clause 11.6;

"**Seller Commitments**" has the meaning given to it in Clause 11.7;

"**Seller's Designated Account**" means the Sterling denominated bank account to be notified by the Seller to the Purchaser no less than five (5) Business Days prior to Completion together with such KYC documentation as is required by the Purchaser's Lawyers (acting reasonably) regarding the holder of such account;

"**Seller's Group**" means the Seller, its Subsidiary Undertakings, any Parent Undertaking of the Seller and all other Subsidiary Undertakings of any such Parent Undertaking as the case may be from time to time (including the Business Sellers but excluding the Group Companies);

"**Seller's Group Information**" has the meaning given to it in Clause 11.6;

"**Seller's Lawyers**" means White & Case LLP of 5 Old Broad Street, London EC2N 1DW;

"**Senior Manager**" means each of Guillaume Roth, Sheila Hill, Wieslaw Wielgat, Stefan Eha, Andrew Martin, Sonia van Steenberghe, Deepak Pandya, Laurent Martel, Emilie Chevalier and Gunter De Paepe;

"**Share Purchasers**" means the members of the Purchaser's Group notified by the Purchaser to the Seller in accordance with Clause 2.10, and "**Share Purchaser**" means any one of them;

"**Share Seller**" means, in relation to each of the Group Companies referred to in column (2) of Part 1 of Schedule 1, the company whose name is set out opposite that company in column (1) of Part 1 of Schedule 1;

"**Shared Contracts**" means any contract which relates both to: (i) the Group (excluding the Excluded Assets and the Excluded Liabilities), and (ii) the Seller's Group, and to which a Group Company or a Business Seller is a party or in respect of which a Group Company or Business Seller has any right, liability or obligation at Completion, excluding the Excluded Shared Contracts and "**Shared Contract**" means any one of them, including those contracts set out in paragraph 1.1 of Part 1 of Schedule 9;

"**Shared IT Contracts**" means any contract relating to the IT Systems and which relates both to: (i) the Group (excluding the Excluded Assets and the Excluded Liabilities), and (ii) the Seller's Group, and to which a Group Company or a Business Seller is a party or in respect of which a Group Company or Business Seller has any right, liability or obligation at Completion;

"**Shares**" means the issued shares, interests and membership interests in the Group Companies specified in column (3) of Part 1of Schedule 1 and the EEIG Interests;

"**Sovilo Plan**" means the supplementary pension scheme known as the "Sovilo Plan" pursuant to which Scotts France SAS guarantees a defined benefit pension to some of its workers that is seventy per cent. (70%) of the updated average salary paid over the last three (3) years of activity (including the amount paid by the French Mandatory Retirement Schemes);

"**Stock**" means the stock in trade of finished and unfinished goods, work in progress and raw materials and consumables and packaging owned by a Business Seller for the purposes of the Group Businesses as at Completion (including items which, although supplied to a Business Seller under reservation of title by the suppliers, are under the control of the Seller's Group);

"**Subsidiaries**" means the companies' particulars each of which are set out in Part 3of Schedule 1 (*Share Sellers, Business Sellers and the Group*), and "**Subsidiary**" shall mean any of them;

"**Subsidiary Undertaking**" means any Undertaking in relation to which another Undertaking is its Parent Undertaking;

"**Target Working Capital**" means EUR80,000,000;

"**Tax**" or "**Taxation**" means and includes all forms of taxation and statutory and governmental, state, provincial, local governmental or municipal charges, duties, contributions and levies in each case in the nature of tax, and withholdings and deductions for or on account of tax, in each case whether of the United Kingdom or elsewhere and whenever imposed and all related penalties, charges, costs and interest;

"**Tax Claim**" means any claim under the Tax Deed, any claim for breach of any of the Tax Warranties, and (if and to the extent that the claim in question is in respect of a liability to Taxation) any claim for breach of any of the other Warranties;

"**Tax Deed**" means the tax deed, in the agreed terms, to be entered into between Scotts-Sierra Investments LLC and the Purchaser;

"**Taxation Authority**" means any governmental or other authority competent to impose, collect or assess Taxation whether in the United Kingdom or elsewhere;

"**Tax Warranties**" means the Warranties set out in paragraph 17 of Schedule 3 (*Warranties*);

"**Third Party Consents**" means all consent, licences, approvals, permits, authorisations or waivers required from third parties in connection with the transfer of the International Business Assets and "**Third Party Consent**" means any one of them;

"**TOGC**" has the meaning given in Clause 2.9(b);

"**TIOPA 2010**" means the Taxation (International and Other Provisions) Act 2010;

"**Trade Mark Licence**" means the licence of trade marks to Garden Care Bidco Limited in the agreed terms;

"**Transaction**" means the transactions contemplated by this Agreement;

"**Transaction Documents**" means this Agreement, the Disclosure Letter, the Confidentiality Agreement, the Local Transfer Documents, the New Roundup Agreements, the Transitional Services

Agreement, the Trade Mark Licence, the IP Licence, the IP Assignments, the Tax Deed, the Vendor Loan Note Instrument, the Bank Account Side Letter, the CAA Elections, the New Supply Agreements, the Everris Sub-licences and each other document identified in Schedule 8 and "**Transaction Document**" shall mean any one of them;

"**Transferring Employees**" has the meaning given to such term in Schedule 18;

"**Transfer Provisions**" means, in the European Union, the national legislation implementing the provisions of the European Community's directive 2001/23/EC of 12 March 2001 and outside the European Union any legislation applicable to transfer an International Business Employee's employment by operation of law;

"**Transferred Licences**" means all Licences owned or held by the Group as are necessary for the business of the Group as is presently conducted (but excluding any such items held by the Group Companies);

"**Transitional Services Agreement**" means the transitional services agreement, in the agreed terms, to be entered into between The Scotts Company LLC and Garden Care Bidco Limited;

"**Tri-partite Senior Manager Agreement**" has the meaning given to such term in Schedule 18;

"**Undertaking**" means a body corporate or partnership or an unincorporated association carrying on trade or business;

"**UK Schemes**" means each of:

(a) The Miracle Garden Care Pension Scheme; and

(b) The Scotts Company (UK) Pension Scheme;

"**US GAAP**" means the United States Generally Accepted Accounting Principles as adopted by the Seller's Group for the accounting period ending on the Accounts Date;

"**VAT**" means:

(a) within the European Union, any tax imposed by any member state in conformity with the Directive of the Council of the European Union on the common system of value added tax (2006/112/EC); and

(b) outside the European Union, any tax corresponding to, or substantially similar to, the common system of value added tax referred to in paragraph (a) above;

"**Vendor Loan Note Instrument**" means the instrument in the agreed terms constituting the Vendor Loan Notes;

"**Vendor Loan Notes**" means the EUR25,000,000 nominal amount of vendor loan notes to be issued to the Seller on Completion constituted by the Vendor Loan Note Instrument;

"**Warranties**" means the warranties referred to in Clause 9 and set out in Schedule 3 (*Warranties*) and "**Warranty**" shall mean any one of them;

"**Workers**" means any employees, directors, officers, workers and self-employed contractors of the Group;

"**Working Capital**" means the aggregate value of the line items listed in the column labelled "Working Capital" set out in Part 2 of Schedule 7 as at the Effective Time and excluding unamortised debt issuance costs; and

"**Working Capital Adjustment**" means the amount by which the Working Capital exceeds the Target Working Capital (which amount shall be added to the Bid Value for the purpose of Clause 4.1) or the amount by which the Working Capital is less than the Target Working Capital (which amount shall be deducted from the Bid Value for the purposes of Clause 4.1).

1.2 The expression "**in the agreed terms**" means in the form agreed between the Purchaser and the Seller and signed for the purposes of identification by or on behalf of the Purchaser and the Seller.

1.3 Any reference to "**writing**" or "**written**" means any method of reproducing words in a legible and non-transitory form (excluding, for the avoidance of doubt, email).

1.4 References to "**include**" or "**including**" are to be construed without limitation.

1.5 References to a "**company**" include any company, corporation or other body corporate wherever and however incorporated or established.

1.6 References to a "**person**" include any individual, company, partnership, joint venture, firm, association, trust, governmental or regulatory authority or other body or entity (whether or not having separate legal personality).

1.7 The table of contents and headings are inserted for convenience only and do not affect the construction of this Agreement.

1.8 Unless the context otherwise requires, words in the singular include the plural and vice versa and a reference to any gender includes all other genders.

1.9 References to Clauses, paragraphs and Schedules are to clauses and paragraphs of, and schedules to, this Agreement. The Schedules form part of this Agreement.

1.10 References to any statute or statutory provision include a reference to that statute or statutory provision as amended, consolidated or replaced from time to time (whether before or after the date of this Agreement) and include any subordinate legislation made under the relevant statute or statutory provision except to the extent that any amendment, consolidation or replacement would increase or extend the liability of the Seller under this Agreement.

1.11 References to any English legal term for any action, remedy, method of financial proceedings, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include what most nearly approximates in that jurisdiction to the English legal term.

1.12 References to "**substantiated**" in the context of a Claim means a Claim for which the Seller may be liable and which is admitted or proved in a court of competent jurisdiction.

1.13 This Agreement shall be binding on and be for the benefit of the successors of the Parties.

2. Sale and Purchase

2.1 Sale of the Shares

(a) On and subject to the terms of this Agreement and the Local Transfer Documents, at Completion the Seller shall procure that the Share Sellers shall sell the Shares set out against their respective names in Part 1of Schedule 1, and the Purchaser shall (or shall procure that each Relevant Purchaser designated as a Share Purchaser pursuant to Clause 2.10, shall) purchase the Shares.

(b) The Shares shall be sold and transferred free from Encumbrances together with all rights and advantages attaching or accruing to them as at Completion (including the right to receive all dividends or distributions declared, made or paid on or after Completion).

(c) The Seller covenants with the Purchaser that each Share Seller has the right to sell and transfer to the Purchaser (or a Relevant Purchaser) the full and legal beneficial interest in the Shares that it currently owns (according to Part 1of Schedule 1) on the terms set out in this Agreement.

(d) The Seller shall procure that each Share Seller waives any right of pre-emption or other restriction on transfer in respect of the Shares conferred on them under the relevant constitutional documents or otherwise and shall procure that on or prior to Completion any and all rights of pre-emption or other restrictions on transfer in respect of the Shares are waived irrevocably by any other persons entitled thereto.

2.2 **Sale of the Group Businesses**

(a) On and subject to the terms of this Agreement and the Local Transfer Documents, at Completion the Seller shall procure that the Business Sellers shall sell the Group Businesses set out against their respective names in Part 2 of Schedule 1, and the Purchaser shall (or shall procure that each Relevant Purchaser designated as a Business Purchaser pursuant to Clause 2.10, shall) purchase the Group Businesses.

(b) The Seller shall procure that the International Business Intellectual Property, International Business Contracts and any other asset of the Group Businesses not owned by a Business Seller is assigned, novated or transferred (as the case may be) to the Purchaser (or a Relevant Purchaser designated as a Business Purchaser pursuant to Clause 2.10) at Completion.

(c) Subject to Clause 2.2 (f) below, there shall be included in the sale and transfer of the Group Businesses under this Agreement or, where relevant, the Local Transfer Documents:

(i) the International Business Properties, which shall be transferred in accordance with the provisions of Part 5, Part 6 and Part 7 of Schedule 6 (*Properties*);

(ii) the International Business Intellectual Property;

(iii) the Goodwill;

(iv) any of the IT Systems that are used exclusively by the Group Businesses;

(v) the Moveable Assets;

(vi) the rights of any member of the Seller’s Group arising or existing at Completion under the International Business Contracts (including, for the avoidance of doubt, the bank account of Scotts France SAS held with BNP Paribas with the following details: RIB 30004 02249 00010120104 84; IBAN FR76 3000 4022 4900 0101

2010 484; BIC BNPAFRPPXXX and the associated credit card program "Cartes affaires");

(vii) the rights of any member of the Seller's Group arising or existing at Completion under any direct insurance contracts (*Direktversicherungsverträge*), reinsurance contracts (*Rückdeckungsversicherungsverträge*) and insolvency protection agreements with respect to or for the benefit of Transferring Employees provided such transfer is permitted (i) by the relevant provider; (ii) under the terms of such contracts or agreements; and (iii) under applicable laws;

(viii) the German Pension Schemes insofar as they relate to the Transferring Employees;

(ix) the French Pension Schemes;

(x) the Relevant Part of each Shared Contract;

(xi) the International Business Product Registrations, in respect of which the provisions of Part 6 of Schedule 9 shall apply;

(xii) the EEIG Interests;

(xiii) the Stock;

(xiv) the Licences not owned by a Group Company at Completion;

(xv) the Books and Records;

(xvi) the Receivables;

(xvii) all other property, rights and assets owned by or licensed to the Business Sellers and used, enjoyed or exercised predominantly in relation to the Group Businesses at Completion, in each case other than any Excluded Assets; and

(xviii) any loan amounts receivable by a Business Seller corresponding to an EEIG Payable.

(d) The International Business Assets, together with all legal and beneficial interests therein, shall be sold, transferred or assigned (as the case may be) free from any Encumbrances.

(e) The Seller covenants with the Purchaser that the Business Sellers have the right to sell and transfer to the Purchaser (or a Relevant Purchaser) the full and legal beneficial interest in the International Business Assets on the terms set out in this Agreement.

(f) There shall be excluded from the sale of the Group Businesses under this Agreement and the Local Transfer Documents the following:

(i) the Cash Balances held by or on behalf of the Business Sellers on Completion in relation to the Group Businesses;

(ii) except as otherwise provided in Clause 14 of this Agreement, the benefit of any claim under any insurance policies held by the Seller's Group;

(iii) debts due from any relevant Taxation Authority in respect of Tax;

(iv) the Retained Intellectual Property;

(v) any royalty payment obligations owed to a member of the Seller's Group; and

(vi) any loan amounts receivable by a Business Seller from a Group Company other than any asset corresponding to an EEIG Payable,

(together, the "**Excluded Assets**").

(g) The Seller agrees to procure that the Business Sellers transfer (to the extent they are able to do so) and the Purchaser agrees to procure that the Business Purchasers agree, with effect from the Completion Date, to accept the transfer of, and to assume, duly and punctually pay, satisfy, discharge, perform or fulfil, all Assumed Liabilities. The Seller agrees that the Assumed Liabilities shall be transferred to and assumed by the Business Purchasers so that the Business Purchasers shall have and be entitled to the benefit of the same rights, powers, remedies, claims, defences, obligations and conditions (including the rights of set-off and counterclaim) as the Business Sellers.

(h) The Seller shall be responsible for (and no Business Purchaser shall be obliged to accept the transfer of or to assume), and shall duly and punctually pay, satisfy, discharge, perform or fulfil the Excluded Liabilities;

(i) The Purchaser shall (and shall procure that each Relevant Purchaser shall):

(i) take such action as the Seller may reasonably request to avoid, dispute, resist, appeal, compromise, defend or mitigate any claim which constitutes or may constitute an Excluded Liability under paragraphs (vii), (viii), (x), (xiii), (xiv) and (xv) of Schedule 24 (a "**Relevant Excluded Liability Claim**") subject to the Purchaser being indemnified by the Seller against all Liabilities which may thereby be incurred as a result of taking such action;

(ii) make available to the Seller or its duly authorised agents on reasonable notice during normal business hours access to all relevant books of account, records and correspondence relating to the Group (and shall permit the Seller to take copies thereof) for the purposes of enabling the Seller to ascertain or extract any information relevant to any Relevant Excluded Liability Claim; and

(iii) give such assistance to the Seller as it may reasonably require on reasonable notice in relation to any Relevant Excluded Liability Claim including providing the Seller or any member of the Seller's Group and its representatives and advisers with access to and assistance from directors, managers, employees, advisers, agents or consultants of the Purchaser and/or of each other member of the Purchaser's Group (collectively, the "**Relevant Persons**") and the Purchaser will use its reasonable endeavours to procure that such Relevant Persons comply with any reasonable requests from the Seller and generally co-operates with and assists the Seller and other member of the Seller's Group.

(j) The Seller shall (and shall procure that each Relevant Seller shall) take such action as the Purchaser may reasonably request to avoid, dispute, resist, appeal, compromise, defend or mitigate any claim which constitutes or may constitute an Assumed Liability (an "**Assumed Liability Claim**") subject to the Seller being indemnified by the Purchaser against all Liabilities which may thereby be incurred as a result of taking such action.

2.3 **Local Transfer Documents**

(a) On Completion, the Seller shall (and the Seller shall procure that the Relevant Sellers shall) and the Purchaser shall (and the Purchaser shall procure that the Relevant Purchasers shall) execute such agreements, transfers, conveyances, dispositions and other documents, to the extent required under and subject to the relevant local law and otherwise as may be agreed between the Seller and the Purchaser, to implement the transfer of:

(i) the Shares; and

(ii) the Group Businesses,

(the "**Local Transfer Documents**" and each, a "**Local Transfer Document**").

The parties do not intend this Agreement to transfer title to any of the Shares. Title to the Shares shall be transferred by the applicable Local Transfer Document. The parties shall procure that (A) the Local Transfer Documents contain all provisions required to effect Clause 2.9(b); (B) the Local Transfer Documents do not contain any warranties (subject to the preceding paragraph (A)) or adjustments to the Purchase Price.

(b) To the extent that the provisions of a Local Transfer Document are inconsistent with or (except to the extent they implement a transfer in accordance with this Agreement) additional to the provisions of this Agreement:

(i) the provisions of this Agreement shall prevail; and

(ii) so far as permissible under the laws of the relevant jurisdiction, the Seller and the Purchaser shall procure that the provisions of the relevant Local Transfer Document are adjusted, to the extent necessary to give effect to the provisions of this Agreement or, to the extent this is not permissible, the Seller shall indemnify the Purchaser against all Losses suffered by the Relevant Purchasers or, as the case may be, the Purchaser shall indemnify the Seller against all Losses suffered by the Relevant Sellers, in either case through or arising from the inconsistency between the Local Transfer Document and this Agreement or the additional provisions (except to the extent they implement a transfer in accordance with this Agreement).

(c) If there is an adjustment to the Purchase Price under Clause 7 of this Agreement which relates to a part of the Group which is the subject of a Local Transfer Document, then, if required to implement the adjustment and so far as permissible under the laws of the relevant jurisdiction, the Relevant Seller and the Relevant Purchaser shall enter into a supplemental agreement reflecting such adjustment and the allocation of such adjustment.

(d) No Relevant Seller shall bring any claim against any Relevant Purchaser pursuant to the Local Transfer Documents, save to the extent necessary to implement any transfer of the Shares or Group Businesses in accordance with this Agreement. To the extent that a Relevant Seller does bring a claim in breach of this Clause 2.3(d), the Seller shall indemnify the Relevant Purchaser against all Losses which the Relevant Purchaser may suffer through or arising from the bringing of such a claim and the Relevant Seller shall indemnify the Seller against any payment which the Seller shall make to the Relevant Purchaser pursuant to this Clause 2.3(d).

(e) No Relevant Purchaser shall bring any claim against any Relevant Seller pursuant to the Local Transfer Documents, save to the extent necessary to implement any transfer of the Shares or Group Businesses in accordance with this Agreement. To the extent that a Relevant

Purchaser does bring a claim in breach of this Clause 2.3(e), the Purchaser shall indemnify the Relevant Seller against all Losses which the Relevant Seller may suffer through or arising from the bringing of such a claim and the Relevant Purchaser shall indemnify the Purchaser against any payment which the Purchaser shall make to the Relevant Seller pursuant to this Clause 2.3(e).

(f) Any payment of consideration required pursuant to a Local Transfer Document shall be satisfied by the satisfaction of the Purchase Price pursuant to this Agreement.

2.4 **Properties**

The provisions of Schedule 6 shall apply in respect of the Properties.

2.5 **Contracts**

The provisions of Schedule 9 shall apply in respect of the contracts of the Group.

2.6 **Relevant Employees**

The provisions of Schedule 18 shall apply in respect of the International Business Employees.

2.7 **Receivables**

The provisions of Schedule 19 shall apply in relation to Receivables.

2.8 **Transfer Obligations**

On Completion, the Seller shall procure that the Relevant Sellers shall, and the Purchaser shall procure that the Relevant Purchasers shall, execute and/or deliver and/or make available Local Transfer Documents and take such steps as are required to transfer the Shares and the Group Businesses to the Relevant Purchasers.

2.9 **VAT in relation to the sale of the Group Businesses**

(a) Subject to the remaining provisions of this Clause 2.9, all amounts expressed to be payable in respect of the transfer of any Group Business pursuant to any Local Transfer Document shall be exclusive of any VAT that is payable.

(b) Each Relevant Seller and the Purchaser hereby acknowledges that they intend that each of the transfers of the Group Businesses under the Local Transfer Documents shall, so far as possible, be treated as a "transfer of a going concern" ("**TOGC**") for VAT purposes (including, further, without limitation, in relation to the submission of any document to a Taxation Authority, and any inquiry, examination, audit, investigation, negotiation, dispute, appeal or litigation in each case with respect to such transfer), except to the extent otherwise provided below in relation to the Opted Properties.

(c) With a view to ensuring that each of the transfers under the Local Transfer Documents constitutes a TOGC for VAT purposes (except to the extent otherwise provided below in relation to the Opted Properties), the Purchaser:

(i) warrants and undertakes:

(A) that the assets comprising the Group Businesses (including, for the avoidance of doubt, the Business Intellectual Property, the International

Business Contracts and any other assets of the Group Businesses not owned by a Business Seller but assigned, novated or transferred to the relevant Business Purchasers) are to be used by the relevant Business Purchasers in carrying on the same kind of businesses as are carried on by the Relevant Sellers prior to Completion; and

(B) that each relevant Business Purchaser is duly registered for VAT purposes or has applied or shall apply for VAT registration with an effective date on or before Completion (and where there is more than one relevant Business Purchaser in respect of a Group Business, they are or shall be registered under a single group registration);

(ii) undertakes to the Seller that, before the Completion Date, the relevant Business Purchaser will assess whether to exercise an option to tax under Part 1 of Schedule 10 to the Value Added Tax Act 1994 (for the purposes of this Clause 2.9 an "**option to tax**") in relation to the properties at Levington Research Centre and 1 Woodend, Carnwarth, Lanarkshire (the "**Opted Properties**") and not less than five (5) Business Days before the Completion Date either (as applicable) : (i) produce to the Seller's Lawyers a certified copy of the relevant notification to HMRC and acknowledgement of receipt of notification from HMRC, or (ii) notify the Seller that the relevant Business Purchaser has decided not to exercise such an option to tax;

(iii) undertakes to the Seller that the relevant Business Purchaser shall not revoke any options to tax described in Clause 2.9(c)(ii) above; and

(iv) undertakes to the Seller that, if the relevant Business Purchaser decides to exercise an option to tax in relation to an opted property, then the relevant Business Purchaser shall not less than five (5) Business Days before the Completion Date notify the Seller that article 5(2B) of the Value Added Tax (Special Provisions) Order 1995 does not apply to the relevant Business Purchaser.

(d) Notwithstanding Clauses 2.9(a), 2.9(b) and 2.9(d), if: (i) the transfer of any Group Business pursuant to any Local Transfer Document is treated by the Relevant Seller and the relevant Business Purchaser as a TOGC for VAT purposes, with the result that VAT is not charged on the transfer of the relevant Group Business, but any relevant Taxation Authority in the relevant jurisdiction subsequently determines that VAT is chargeable in respect of such transfer; or (ii) the relevant Business Purchaser decides not to exercise the option to tax in relation to an Opted Property, so that VAT is chargeable on the transfer of that Opted Property, and (in each case) the Relevant Seller (or any member of the Seller's Group which is in the same VAT group as the Relevant Seller) is required to account for the VAT to the relevant Taxation Authority (and all reasonable avenues of appeal have been exhausted), then:

(i) such VAT (and any interest and/or penalties thereon) shall be paid to the relevant Taxation Authority by the Relevant Seller (or another member of the Seller's Group);

(ii) Clause 2.9(e) shall apply to determine the basis of any liability of the relevant Business Purchaser to pay to the relevant Seller the amount of any such VAT;

(iii) where the relevant transfer would have been a TOGC for VAT purposes but for a breach of a warranty or undertaking given by the Purchaser in Clause 2.9(c), the

relevant Business Purchaser shall promptly reimburse the Relevant Seller with the amount of any such interest and/or penalties payable by the Relevant Seller or another member of the Seller's Group to the relevant Taxation Authority as a result of such determination;

(iv) the Relevant Seller shall deliver to the relevant Business Purchaser a valid VAT invoice in respect of that VAT; and

(v) the relevant Business Purchaser shall use reasonable endeavours to recover or otherwise obtain credit for the amount of such VAT to the extent permitted by law.

(e) Where this Clause 2.9(e) applies:

(i) where the relevant transfer would have been a TOGC for VAT purposes but for a breach of a warranty or undertaking given by the Purchaser in Clause 2.9(c), the relevant Business Purchaser shall promptly pay to the Relevant Seller the amount of any VAT due on such transfer following receipt of an appropriate valid VAT invoice;

(ii) where VAT is chargeable on the transfer of an Opted Property to the relevant Business Purchaser as a result of the relevant Business Purchaser deciding not to exercise the option to tax in relation to that Opted Property, the relevant Business Purchaser shall promptly pay to the Relevant Seller the amount of any VAT due on such transfer following receipt of an appropriate valid VAT invoice; and

(iii) where neither Clause 2.9(e)(i) nor Clause 2.9(e)(ii) applies, if any relevant Business Purchaser recovers from a Taxation Authority any VAT paid or payable by a Relevant Seller or another member of the Seller's Group pursuant to Clause 2.9(d) (or otherwise obtains credit for such VAT from a Taxation Authority), the Purchaser shall pay (or procure that a relevant Business Purchaser shall pay) to the Relevant Seller the amount of that VAT which is recovered (or for which credit is obtained) within five (5) Business Days of receipt of such amount or credit by a relevant Business Purchaser.

(f) Notwithstanding Clauses 2.9(a), 2.9(b) and 2.9(c), if the transfer of any Group Business pursuant to any Local Transfer Document is treated by the Relevant Seller and the relevant Business Purchaser as a TOGC for VAT purposes, with the result that VAT is not charged on the transfer of the relevant Group Business, but any relevant Taxation Authority in the relevant jurisdiction subsequently determines that VAT is chargeable in respect of such transfer and the relevant Business Purchaser (or any member of the Purchaser's Group which is in the same VAT group as the relevant Business Purchaser) is required to account for the VAT (or for any import VAT or acquisition VAT) to the relevant Taxation Authority (and all reasonable avenues of appeal have been exhausted), then:

(i) such VAT shall be paid to the relevant Taxation Authority by the relevant Business Purchaser (or another member of the Purchaser's Group);

(ii) the Relevant Seller shall indemnify the relevant Business Purchaser on demand for any interest and/or penalties arising on such VAT (save where the relevant transfer would have been a TOGC for VAT purposes but for a breach of a warranty or undertaking given by the Purchaser in Clause 2.9(c)); and

(iii) the Relevant Seller shall deliver to the relevant Business Purchaser a valid VAT invoice in respect of the supply or supplies giving rise to that VAT.

2.10 **Relevant Purchasers**

The Purchaser shall confirm to the Seller in writing the identities of the Relevant Purchasers (and whether each Relevant Purchaser shall be a Business Purchaser or Share Purchaser) no less than five (5) Business Days prior to the Completion Date.

2.11 **Capital Allowances**

(a) The Seller undertakes to procure that each relevant Business Seller (at the Purchaser's cost):

(i) reasonably cooperates with the relevant Business Purchasers; and

(ii) provides such information and assistance as the relevant Business Purchasers may reasonably request,

in each case to assist the relevant Business Purchasers in claiming capital allowances in respect of the assets comprising the Group Businesses and in giving effect to the CAA Elections (as defined in Clause 2.11(b) below).

(b) The Seller and the Purchaser agree that, for the purposes of the Capital Allowances Act 2001, the parts of the Purchase Price attributable (respectively) to:

(i) fixtures in the Properties situated in the United Kingdom expenditure on which is not "special rate expenditure" within section 104A of the Capital Allowances Act 2001 (**Non-Integral Fixtures**) shall be fair market value; and

(ii) fixtures in the Properties situated in the United Kingdom expenditure on which is "special rate expenditure" within section 104A of the Capital Allowances Act 2001 (**Special Rate Fixtures**) shall be fair market value

in each case subject to any maximum amount determined under applicable law, and with the fair market values of the assets in question being determined in accordance with the Appraisal (as defined in Schedule 14) (the **Agreed Apportionments**).

(c) Each of the relevant Business Sellers and each of the relevant Business Purchasers shall, on Completion, enter into elections under section 198 of the Capital Allowances Act 2001, such elections specifying:

(i) the aggregate amount fixed in respect of Non-Integral Fixtures; and

(ii) the aggregate amount fixed in respect of Special Rate Fixtures,

in each case in relation to the Properties situated in the United Kingdom, with such aggregate amounts corresponding to the respective Agreed Apportionments and apportioned between each relevant Business Purchaser and each relevant Business Seller in the same relevant proportions as the part of the Purchase Price attributable to the Group Businesses is allocated in accordance with the Purchase Price Allocation Agreement (the "**CAA Elections**") (with each party to retain a duly signed version of each relevant election at Completion).

(d) The Seller shall procure that each of the relevant Business Sellers shall, and the Purchaser shall procure that each of the relevant Business Purchasers shall submit their respective CAA Elections to HM Revenue & Customs within the time limit prescribed by law and take all reasonable steps to procure that the respective Agreed Apportionments are accepted by HM Revenue & Customs.

3. Conditions

3.1 Completion is conditional upon the satisfaction (or waiver by the Purchaser, as the case may be) of the following conditions (the "**Conditions**"):

(a) Monsanto entering into the New Roundup Agreements which incorporate the terms of the Roundup Term Sheet in a manner acceptable to the Purchaser (acting reasonably);

(b) Monsanto International S.A. consenting to the assignment of the Monsanto Supply Agreement, including the benefit of the relevant glyphosate indemnification, by Scotts France SAS to a Relevant Purchaser, in a form acceptable to the Purchaser (acting reasonably);

(c) the receipt of consent in writing of each relevant landlord for the transfer or assignment of each of the International Business Leased Properties in the United Kingdom other than the Ipswich Office to a Relevant Purchaser or Group Company;

(d) the receipt of consent in writing from the relevant landlord in respect of the change of control clause in the lease of premises at Berkshire Park New South Wales 61 St Marys Rd 2765 Australia in relation to the sale of the entire issued share capital in Scotts Australia Pty Ltd;

(e) (i) evidence of the waiver by the relevant municipal authority of its pre-emption right in relation to the International Business Properties located in Bourth, France and Hautmont, France; or (ii) expiry of the two month period, commencing from the date of service of the relevant declaration of sale on the relevant municipal authority, in which the relevant municipal authority may exercise its pre-emption right in relation to the International Business Properties located in Bourth, France and Hautmont, France where the relevant municipal authority has not replied to the relevant declaration of sale and is therefore deemed to have waived its pre-emption right;

(f) the receipt of consent in writing from Everris to (i) the assignment of the Everris Supply Agreements, and (ii) the sub-licensing of Intellectual Property licensed to the relevant member of the Seller's Group under the Everris IP Licence Agreements on the terms of the Everris Sub-licences;

(g) the German Federal Cartel Office ("**FCO**") approving the Transaction. This Condition shall be deemed satisfied if:

(i) the Purchaser has received a written notice from the FCO that the conditions for a prohibition according to Sec. 36 para. 1 German Act Against Restraints of Competition ("**GWB**") are not met; or

(ii) the FCO fails to notify the Purchaser within the one-month period under Sec. 40 para. 1 Clause 1 GWB that it has initiated a formal investigation of the Transaction under Sec. 40 para. 1 GWB;

(h) the French Competition Authority ("Autorité de la Concurrence") indicating that:

(i) the notified transaction does not fall within the scope of French merger control rules (Articles L430-1 and L430-2 of the French Commercial Code ("**FCC**")); or

(ii) the Transaction is cleared pursuant to Article L430-5, III, second indent, of the FCC or deemed to have been cleared under Article L430-5, IV, of the FCC ("**Phase I clearance**") and the French Minister of Economy has not used its power to request, within 5 days of the Phase I clearance, the opening of a formal investigation in relation to the notified transaction pursuant to Article L430-7-1, I, of the FCC; and

(i) the Polish Competition Authority ("Prezes Urzędu Ochrony Konkurencji i Konsumentów" – "**PCA**") approving the Transaction or, as the case may be, the statutory period for the PCA to issue a merger decision as provided in Article 96 of the Polish Act of 16 February 2007 on Competition and Consumer Protection (as amended) lapsing, or the PCA returning the merger notification or issuing a decision discontinuing the proceedings due to the fact that the Transaction does not give rise to a concentration falling within the scope of the Act on Competition and Consumer Protection (together with the Conditions in sub-clauses (g) and (h) above, the "**Competition Conditions**").

3.2 In respect of sub-clauses 3.1(a) and 3.1(b), the Purchaser shall negotiate in good faith the terms of the New Roundup Agreements and the assignment of the Monsanto Supply Agreement (including the transfer of the benefit of the glyphosate indemnification).

3.3 The Seller shall use all reasonable endeavours to procure the fulfilment of:

(a) the Conditions set out in sub-clauses 3.1(a), (b), (e) and (f) above; and

(b) the Conditions set out in sub-clauses 3.1(c) and (d), in accordance with the provisions of Schedule 6.

3.4 The Purchaser shall (i) use all reasonable endeavours to procure that it satisfies its obligations in Schedule 6 in relation to the fulfilment of the Conditions set out in sub-clauses 3.1(c) and (d), and (ii) use its best endeavours to procure the fulfilment of the Competition Conditions.

3.5 The Purchaser shall:

(a) submit any notifications, filings or submissions to the Regulatory Authorities as soon as possible following the date of this Agreement;

(b) give the Seller the opportunity to participate in any call or meeting with the Regulatory Authorities (save to the extent that the Regulatory Authorities expressly request that the Seller should not attend the call or part of the call, or be present at the meeting or part of the meeting);

(c) promptly inform the Seller of the content of any meeting, material conversation and any other material communication which takes place between the Purchaser (or its Agents) and the Regulatory Authorities in which the Seller did not participate and provide copies or, in the case of non-written material communications, a written summary, to the Seller;

(d) procure that the Seller is given a reasonable opportunity to review and comment on drafts of all notifications, filings and submissions before they are submitted to the Regulatory Authorities and provide the Seller with final copies of all such notifications, filings and submissions (it being acknowledged that certain such drafts and/or documents may be shared on a confidential basis only with outside counsel) and take account of any reasonable comments; and

(e) take all steps (including agreeing to any conditions, undertakings or divestments) required by any Regulatory Authority to satisfy the Competition Conditions,

save that in relation to all disclosure under this Clause 3.5, business secrets and other confidential material may be redacted so long as the Purchaser acts reasonably in identifying such material for redaction.

3.6 The Seller shall co-operate with the Purchaser in providing the Purchaser with such assistance as is reasonably necessary and it is reasonably able to provide, and shall provide the Regulatory Authorities with such information as may reasonably be necessary and it is reasonably able to provide to ensure that:

(a) any notifications, filings or submissions to the Regulatory Authorities are made in accordance with Clause 3.2 and 3.5(a) above;

(b) any request for information from the Regulatory Authorities is fulfilled promptly and in any event in accordance with any relevant time limit; and

(c) where practicable, the Seller provides copies of any proposed material communication with the Regulatory Authorities in relation to the transactions contemplated by this Agreement to the Purchaser and that (acting reasonably) the Seller takes due consideration of any reasonable comments that the Purchaser may have in relation to such proposed communication,

save that in relation to all disclosure under this Clause 3.6, business secrets and other confidential material may be redacted so long as the Seller acts reasonably in identifying such material for redaction.

3.7 The Purchaser shall not, without the prior written consent of the Seller, withdraw any notification, filing or submission made to the Regulatory Authorities.

3.8 The Seller undertakes to notify the Purchaser in writing, and the Purchaser undertake to notify the Seller in writing, of anything which will or may prevent any of the Conditions from being satisfied on or before the Long Stop Date promptly after it comes to its attention.

3.9 Each Party undertakes to notify the other Parties as soon as possible on becoming aware that any Condition has been satisfied and in any event within two (2) Business Days of such satisfaction.

3.10 If any Condition is not fulfilled or waived on or before the Long Stop Date, this Agreement shall automatically terminate subject to, and on the basis set out in, Clause 13.5.

4. Consideration

4.1 The aggregate consideration for the purchase of the Group under this Agreement and the Local Transfer Documents shall be:

(a) an amount equal to:

(i) EUR212,369,000 (the "**Bid Value**");

plus

(ii) the Group Companies' Cash Balances and the Intra-Group Financing Receivables;

minus

(iii) the Closing Debt and the Intra-Group Financing Payables;

plus or minus

(iv) the Working Capital Adjustment,

(the "**Purchase Price**"); and

(b) the payment in cash by the Purchaser to the Seller by way of additional consideration for the Group, of an amount equal to the Deferred Payment Amount (the "**Deferred Payment**"), to the extent due and payable pursuant to and in accordance with Schedule 15 (*Deferred Payment*).

4.2 Payment of the Purchase Price by the Purchaser (including on behalf of each Relevant Purchaser) to the Seller shall be made in accordance with Clauses 6 and 7 of this Agreement.

4.3 The Purchase Price shall be allocated in accordance with the Purchase Price Allocation Agreement. The Seller and the Purchaser, each acting reasonably and in good faith shall endeavour to agree such indicative allocation, and the form of the Purchase Price Allocation Agreement, between the Offer Letter Date and Completion.

4.4 Failing agreement between the Seller and the Purchaser on the indicative allocation of the Purchase Price and, accordingly, the form of the Purchase Price Allocation Agreement, the indicative allocation of the Purchase Price shall be determined by the Reporting Accountants, on the application of the Seller or the Purchaser, who shall allocate the Purchase Price in accordance with the principles set out in the form of the Purchase Price Allocation Agreement set out in Schedule 14. Paragraphs 3.2 to 3.10 of Part 1 of Schedule 7 shall apply *mutatis mutandis* to the engagement and determination of the Reporting Accountants pursuant to the Purchase Price Allocation Agreement.

5. Pre-Completion Obligations

5.1 Subject to Clause 5.2, the Seller shall procure that (and shall procure that the Relevant Sellers shall procure that), from the date of this Agreement until Completion:

(a) each member of the Group and each Business Seller carries on its business only in the ordinary and usual course, consistent with past practice;

(b) other than in respect of Scotts Poland Sp.z.o.o., there is no declaration or payment of a dividend or other distribution (whether in cash, stock or in kind) made or paid on any of its issued share capital or membership interests nor any purchase or reduction of its paid-up share capital or membership interests by any member of the Group;

(c) no share, loan capital or other security is created, allotted or issued or agreed to be created, allotted or issued by any member of the Group and that no option over, or any other rights in respect of, any share, loan capital or other security is granted;

(d) all transactions between any Group Company or any Business Seller and any member of the Seller's Group take place on arm's length terms or substantially in a manner and on terms consistent with previous practice in the 12 month period prior to the Offer Letter Date;

(e) no Group Company or Business Seller:

(i) creates, amends or agrees to create or amend any Encumbrance over the shares of any member of the Group or the assets (excluding the Excluded Assets) of any member of the Group or any Business Seller;

(ii) makes any alteration to its articles of association or any other document or agreement establishing, evidencing or relating to its constitution;

(iii) enters into any agreement or arrangement or permits any action whereby another company becomes its subsidiary or subsidiary undertaking;

(iv) enters into any joint venture, partnership or agreement or arrangement for the sharing of profits or assets;

(v) acquires (whether by one transaction or by a series of transactions) the whole, or a substantial or material part of the business, undertaking, assets or securities of any other person;

(vi) disposes of (whether by one transaction or by a series of transactions) the whole or any substantial or material part of its business, undertaking or any other of its assets;

(vii) makes any material change to the nature or organisation of its business;

(viii) makes any change to its accounting practices, policies or procedures other than as required by applicable law or regulation;

(ix) discontinues or ceases to operate all or a material part of its business;

(x) makes (or announces any intention to make) any material variation to the terms and conditions of employment of any employee earning EUR150,000 per annum or more, or which would apply to any general categories of employee;

(xi) save for in respect of the UK Schemes, establishes any pension, retirement, death or disability, jubilee, old-age part-time, bridging or life assurance scheme, or any employees' share scheme or employee trust or share ownership plan, share option or shadow share option scheme, or other profit sharing, bonus or incentive scheme in each case for the directors, employees or former directors or employees (or dependants thereof) of any Group Company or Business Seller, the variation of the terms or rules of any such new or any existing scheme, the appointment and removal of any trustee or manager of such a scheme or the allocation of options or other entitlements or the making of any payments under any such scheme;

(xii) terminates the employment of any Key Worker, or employs any person who would reasonably be considered to be of a similar level of seniority to any Key Worker;

(xiii) borrows (other than in the ordinary course of business and consistent with past practice and within limits subsisting at the date of this Agreement) any money or agrees to do so or enter into any foreign exchange contracts, interest rate swaps or other derivative instruments;

(xiv) grants any loans or other financial facilities or assistance to, or enters into any guarantees or indemnities or provides other security for the benefit of, any person;

(xv) grants any exclusive or sole licence of, or enters into, terminates or amends any material agreement relating to Intellectual Property other than in the ordinary course and consistent with past practice;

(xvi) enters into any agreement which materially restricts its freedom to do business;

(xvii) makes any political contribution or donation, or any charitable contribution or donation;

(xviii) settles, or agrees to settle, any litigation where the settlement is likely to result in a payment to or by a member of the Group or Business Seller of EUR500,000 or more (except for collection in the ordinary course of business, consistent with past practice), of trade debts;

(xix) takes any steps to wind up or dissolve any member of the Group or any Business Seller, obtain an administration order in respect of any member of the Group or any Business Seller, invite any person to appoint an administrative receiver or any other receiver or manager of the whole or any part of the business or assets of any member of the Group or any Business Seller or do anything similar or analogous to those steps in any other jurisdiction;

(xx) enters into or makes itself liable for any capital commitment (whether by way of purchase, lease, hire purchase or otherwise but excluding any such commitments entered into in the ordinary course of the Group's business consistent with past practice) for an amount in excess of EUR 500,000 or which, when aggregated with all such other commitments entered into by it and other members of the Group and the Business Sellers since the Offer Letter Date, results in the aggregate of all such commitments exceeding EUR 2,000,000;

(xxi) makes any material claim, surrender or election, or takes any similar action, for the purposes of Tax;

(xxii) enters into or terminates its membership of any group, consolidation, group payment or similar arrangement for the purposes of any Tax, or alters the terms of any such existing arrangement, except where expressly provided for under this Agreement or the Tax Deed;

(xxiii) enters into any agreement to sell or dispose of any Property or International Business Property or acquire any other property or make any material alterations to any Property or International Business Property or agree any rent review in respect of any Leased Property or International Business Leased Property;

(xxiv) agrees to do any of the actions referred to in subparagraphs (i) to (xxiii) above; or

(xxv) does or agrees to do anything which, in the reasonable opinion of the Seller, is outside the ordinary course of business.

5.2 Clause 5.1 does not apply in respect of and shall not operate so as to restrict or prevent:

(a) any matter reasonably undertaken in an emergency or disaster situation with the intention of and to the extent only of those matters strictly required with a view to minimising any adverse effect of such situation on the Group (and of which the Purchaser will be promptly notified in writing);

(b) any matter expressly permitted by, or necessary for performance of, this Agreement or any of the other Transaction Documents or necessary for Completion;

(c) any matter undertaken at the written request or with the written consent of the Purchaser;

(d) providing information to any Regulatory Authority in the ordinary course of business; or

(e) any matter to the extent required by law.

5.3 As soon as reasonably practicable after the date of this Agreement the Seller shall provide the Purchaser with reasonable details of the Shared Contracts which it proposes should be Excluded Shared Supply Contracts and the Parties agree to negotiate in good faith to agree the Shared Contracts to which Schedule 9 Part 4 shall apply.

5.4 The Seller shall consult with the Purchaser following the date of this Agreement in relation to the potential renewal of the lease in relation to the Ipswich Office and shall consult with the Purchaser before taking any action, or omitting to take any action, which would cause such lease to expire before Completion.

5.5 The Seller shall provide the Purchaser with a copy of the form of the written notice that it intends to send to the counterparties of each International Business Contract in each jurisdiction in relation to the proposed assignment of such International Business Contract to the Purchaser or the Relevant Purchasers at least 10 Business Days prior to the sending of such written notice. The Seller shall take into account the reasonable comments of the Purchaser in relation to the form of such written notice and shall promptly provide the Purchaser with copies of any negative written responses received from the counterparties in relation to the proposed assignment of such contracts. The Seller shall consult with the Purchaser in relation to any notice received from a counterparty indicating that such counterparty has refused or may refuse to consent to the assignment or intends to terminate or materially amend the terms of such contract.

5.6 Promptly after the date of this Agreement the Parties shall cooperate, each acting reasonably and in good faith, to determine and add to the schedules to the Transitional Services Agreement prior to Completion the allocation of the Base Fixed Charge for each Relevant Service Category between each of the individual sub-categories for those Relevant Service Categories, such allocation to be calculated on the basis of the charges allocated for such service sub-categories in the twelve (12) months immediately prior to Completion. For the purposes of this Clause 5.6, (i) “Relevant Service Category” shall mean the IT Services and the R&D Services, and (ii) “Base Fixed Charge”, “IT Services” and “R&D Services” shall have the meaning given to them in the Transitional Services Agreement.

5.7 Between the date of this Agreement and the Completion Date, the Seller shall use its reasonable endeavours to provide the Purchaser with an updated list of Moveable Assets to the extent that the list in Schedule 16 is incomplete.

5.8 Between the date of this Agreement and the Completion Date, the Seller and the Purchaser shall use reasonable endeavours to procure that the relevant Business Seller and relevant Business Purchaser comply with paragraph 1.1.11 of Schedule 18 in relation to Stefan Eha.

5.9 Between the date of this Agreement and the Completion Date, the Parties shall use reasonable endeavours to procure the transfer of contractual arrangements in respect of: (a) the French Pension Schemes; and (b) the German Pension Schemes in so far as they relate to the Transferring Employees, provided always that such transfer is permitted: (i) by the relevant provider (if any); (ii) under the terms of such contracts or agreements; and (iii) under applicable laws.

5.10 The Seller shall, as soon as reasonably practicable after the date of this Agreement and in any event by the Completion Date, provide to the Purchaser full details of, and all relevant agreements and powers of attorney in respect of all relevant third party agents, consultants or distributors, which are currently engaged by any member of the Group in relation to the International Business Product Registrations.

5.11 Between the date of this Agreement and the Completion Date, the Parties will co-operate in good faith to try to procure that an agreement or arrangement equivalent to the relevant parts of the Everris IP Licence Agreements to which the Everris Sub-licences relate are entered into directly between the Sub-Licensee and Everris International B.V..

5.12 Between the date of this Agreement and the Completion Date, the Parties shall discuss a potential research and development collaboration between themselves pursuant to which the Parties would hold confidential discussions regarding the status of research and development projects which each Party, in its sole discretion, considers potentially to be of interest to the other Party for use in the Relevant Territory or the Excluded Territories as applicable. If the Parties are able to reach agreement on the form and structure of such collaboration, they shall enter into a separate agreement (in a form satisfactory to the Parties) to govern that collaboration.

6. Completion

6.1 Completion shall take place on the Completion Date at the offices of the Purchaser's or the Seller Lawyers, in each case taking into account applicable tax considerations, or at such other place as is agreed in writing by the Seller and Purchaser.

6.2 At Completion the Seller shall undertake those actions listed in Part 1of Schedule 2 (*Completion Arrangements*) and the Purchaser shall undertake those actions listed in Part 2 of Schedule 2 (*Completion Arrangements*). Payment of the Closing Amount to the Seller's Designated Account shall discharge the obligations of the Purchaser (a) pursuant to Clause 6.4 and (b) to pay the Closing Amount, and the Purchaser shall not be concerned as to the application of the Closing Amount between the Relevant Sellers.

6.3 If: (i) the Seller breaches its obligations under Clause 6.2 and under paragraph 1, 2.3, 2.5, 3.2, 3.4, 3.5, 3.6 or 3.7 of Part 1 of Schedule 2 (*Completion Arrangements*); or (ii) the Purchaser breaches its obligations under Clause 6.2 and under paragraph 1, 2, 3 or 4 of Part 2 of Schedule 2 (*Completion Arrangements*) on the Completion Date, the Seller (in the case of a breach by the Purchaser) or the

Purchaser (in the case of a breach by the Seller) shall not be obliged to complete this Agreement and the Seller or, as the case may be, the Purchaser, may elect by notice in writing to the other to:

(a) defer Completion (with the provisions of this Clause 6 applying to Completion as so deferred);

(b) proceed to Completion as far as practicable (without limiting its rights and remedies under this Agreement); or

(c) treat this Agreement as terminated for breach of condition subject to, and on the basis set out in, Clause 13.5.

6.4 Immediately following Completion but on the Completion Date:

(a) the Purchaser shall procure that each relevant Group Company repays to the relevant member of the Seller's Group (other than another Group Company) the amount of any Estimated Intra-Group Financing Payables in respect of that Group Company, and shall acknowledge on behalf of each relevant Group Company the payment of the Estimated Intra-Group Financing Receivables in accordance with Clause 6.4(b); and

(b) the Seller shall procure that each relevant member of the Seller's Group (other than a Group Company) repays to the relevant Group Company the amount of any Estimated Intra-Group Financing Receivables in respect of that Group Company, and shall acknowledge on behalf of each relevant member of the Seller's Group the payment of the Estimated Intra-Group Financing Payables in accordance with Clause 6.4(a).

6.5 The repayments made pursuant to Clause 6.4 shall be adjusted in accordance with Clause 7.4 when the Closing Statement becomes final and binding in accordance with Clause 7.2(a).

6.6 The Parties agree that notwithstanding Clause 6.1, if any Local Transfer Document is required to be notarised, the relevant Parties shall execute such document on the Completion Date at a mutually convenient location where a notary with the required qualification will be present.

7. Post-Completion Adjustments

7.1 Closing Statement

The Purchaser shall procure that within 60 days following Completion the Group Companies shall draw up a draft of the Closing Statement (the "**Draft Closing Statement**") in accordance with Schedule 7 (*Closing Statement*).

7.2 Determination of Closing Statement

(a) The Draft Closing Statement as agreed or determined pursuant to Part 1 of Schedule 7 (*Closing Statement*):

(i) shall constitute the Closing Statement for the purposes of this Agreement; and

(ii) shall be final and binding on the Seller and the Purchaser.

(b) The Working Capital, the Group Companies' Cash Balances, the Closing Debt, the Intra-Group Financing Receivables and the Intra-Group Financing Payables shall be extracted from the Closing Statement.

7.3 **Adjustments to Purchase Price**

(a) Group Companies' Cash Balances

(i) If the Group Companies' Cash Balances are less than the Estimated Cash, the Seller shall repay to the Purchaser by way of adjustment to the Purchase Price an amount equal to the deficiency; or

(ii) if the Group Companies' Cash Balances are greater than the Estimated Cash, the Purchaser shall pay to the Seller by way of adjustment to the Purchase Price an additional amount equal to the excess.

(b) Intra-Group Financing Receivables

(i) If the Intra-Group Financing Receivables are less than the Estimated Intra-Group Financing Receivables, the Seller shall repay to the Purchaser by way of adjustment to the Purchase Price an amount equal to the deficiency; or

(ii) if the Intra-Group Financing Receivables are greater than the Estimated Intra-Group Financing Receivables, the Purchaser shall pay to the Seller by way of adjustment to the Purchase Price an additional amount equal to the excess,

in each case in accordance with Clause 7.4.

(c) Closing Debt

(i) If the Closing Debt is greater than the Estimated Debt, the Seller shall repay to the Purchaser by way of adjustment to the Purchase Price an amount equal to the excess; or

(ii) if the Closing Debt is less than the Estimated Debt, the Purchaser shall pay to the Seller by way of adjustment to the Purchase Price an additional amount equal to the deficiency.

(d) Intra-Group Financing Payables

(i) If the Intra-Group Financing Payables are greater than the Estimated Intra-Group Financing Payables, the Seller shall repay to the Purchaser an amount equal to the excess; or

(ii) if the Intra-Group Financing Payables are less than the Estimated Intra-Group Financing Payables, the Purchaser shall pay to the Seller an additional amount equal to the deficiency,

in each case in accordance with Clause 7.4.

(e) Working Capital

(i) If the Working Capital is less than the Estimated Working Capital, the Seller shall repay to the Purchaser an amount equal to the deficiency; or

(ii) if the Working Capital exceeds the Estimated Working Capital, the Purchaser shall pay to the Seller an additional amount equal to the excess.

(f) Adjustment Amount

The net amount to be paid by (i) the Seller to the Purchaser, or (ii) the Purchaser to the Seller (as applicable) as a result of the calculations in Clauses 7.3(a) to 7.3(e) shall be the "**Adjustment Amount**" and shall be paid in euros. The Parties agree that the Adjustment Amount may be settled by one (1) payment reflecting the net aggregate position rather than individual payments for the constituent parts. Insofar as any identifiable part of any payment made in respect of the Adjustment Amount relates to any Relevant Territory, that part of that payment shall (in each case so far as possible) adjust that part of the Purchase Price allocated to the relevant Relevant Territory under the Purchase Price Allocation Agreement on a basis agreed between the Seller and the Purchaser (each acting reasonably and in good faith).

7.4 **Adjustments to Repayment of Intra-Group Financing Payables and Intra-Group Financing Receivables**

Following agreement or determination of the Closing Statement pursuant to Clause 7.2 and Part 1 of Schedule 7, if the amount of any Intra-Group Financing Payable and/or any Intra-Group Financing Receivable contained in the Closing Statement is greater or less than the amount of the corresponding Estimated Intra-Group Financing Payable or Estimated Intra-Group Financing Receivable, then the Seller and the Purchaser shall procure that such adjustments to the repayments pursuant to Clause 6.4 are made as are necessary to ensure that (taking into account such adjustments) the actual amount of each Intra-Group Financing Payable and each Intra-Group Financing Receivable has been repaid by each relevant Group Company to the relevant member of the Seller's Group or by the relevant member of the Seller's Group to the relevant Group Company, as the case may be.

7.5 The Seller shall procure that the Intra-Group Financing Receivables owed by a member of the Seller's Group to a Group Company will be less than EUR2,000,000.

7.6 **Date and effect of payment**

(a) Any payment pursuant to Clause 7.3 or 7.4 shall be made on or before the Final Payment Date.

(b) Where any payment is required to be made pursuant to Clause 7.3, the Purchase Price shall be reduced or increased accordingly.

8. Assumed and Excluded Liabilities

8.1 With effect from Completion, the Purchaser shall indemnify and keep indemnified the Business Sellers against:

(a) all Assumed Liabilities;

(b) any Losses which the Business Sellers and/or any other member of the Seller's Group (other than the Group Companies) may suffer by reason of the Business Sellers taking any reasonable action to avoid, resist or defend against, or otherwise in connection with or arising from, any Assumed Liabilities; and

(c) any Losses which the Business Sellers and/or any other member of the Seller's Group (other than the Group Companies) may suffer where such Business Sellers and/or other member of the Seller's Group are held liable for Losses incurred or attributable to the EEIG Interests, in each case arising and relating to the period after Completion.

8.2 With effect from Completion, the Seller shall indemnify and keep indemnified the Purchaser and the Business Purchasers against:

(a) all Excluded Liabilities; and

(b) any Losses which the Business Purchasers and/or any other member of the Purchaser's Group may suffer by reason of the Business Purchasers taking any reasonable action to avoid, resist or defend against, or otherwise in connection with or arising from, any Excluded Liability or any Excluded Asset.

9. Seller's Warranties and Undertakings

9.1 The Seller warrants to the Purchaser, each Share Purchaser and each Business Purchaser that: (i) except as Disclosed, each of the Business Warranties was true and accurate as at the Offer Letter Date; (ii) each of the Fundamental Warranties was true and accurate as at the Offer Letter Date; (iii) each of the Fundamental Warranties will at Completion be true and accurate; (iv) the warranty in paragraph 7.5 of Schedule 3 will at Completion be true and accurate; and (v) except as fairly disclosed in writing to the Purchaser at least three (3) Business Days prior to Completion, the Relevant Contracts Warranty will as at three (3) Business Days prior to Completion be true and accurate. The Warranties are given subject to Clause 10 and Schedule 4 (*Seller's Limitations on Liability*) below.

9.2 The Seller agrees with the Purchaser, each Share Purchaser, each Business Purchaser, and each Employee to waive any rights or claims which it may have in respect of any misrepresentation, inaccuracy or omission in or from any information or advice supplied or given by such Employee in connection with the giving of the Warranties and the preparation of the Disclosure Letter. The provisions of this subparagraph: (a) may with the prior written consent of the Purchaser be enforced by any Employee against the Seller under the Contracts (Rights of Third Parties) Act 1999; and (b) may be varied or terminated by agreement between the Seller and the Purchaser (and the Purchaser may also release or compromise in whole or in part any liability in respect of rights or claims contemplated by this subparagraph) without the consent of any such Employee.

9.3 Any Warranties that are qualified by the knowledge, belief or awareness of the Seller shall mean the actual (but not constructive or imputed) knowledge, belief or awareness of the Seller having made due and careful enquiry of Emilie Chevalier, Gunter DePaepe, Stefan Eha, Sheila Hill, Wieslaw Wielgat, Laurent Martel, Andrew Martin, Deepak Pandya, Guillaume Roth and Sonia Van Steenberghe.

9.4 The Seller hereby:

(a) agrees that it shall procure that by not later than immediately prior to Completion each member of the Group shall be unconditionally and irrevocably released in full from their respective obligations under any guarantee, security interest, indemnity, support letter or other contingent obligation, including without limitation the grant of collateral, given or undertaken by a member of the Group in relation to or arising out of any obligations or liabilities of any member of the Seller's Group (the "**Group Commitments**");

(b) undertakes to indemnify and hold the Purchaser and each other member of the Group harmless from and against all Losses suffered or incurred by it after Completion in relation to or arising out of the Group Commitments;

(c) undertakes to procure that Scotts Gardening Fertilizer (Wuhan) Co., Ltd. is transferred by Scotts Australia Pty. Limited to a member of the Seller's Group prior to Completion (the "**China Share Sale Agreement**");

(d) undertakes to indemnify in full and hold the Purchaser and Scotts Australia harmless from and against all Losses suffered or incurred by them after Completion in relation to or arising from any Liabilities arising from the China Share Sale Agreement;

(e) agrees to procure, at its own cost, that each Business Seller shall change its name with effect from Completion;

(f) undertakes to indemnify in full and hold harmless on an after taxation basis, and keep indemnified, the Purchaser from and against any and all Liabilities and Losses arising as a result of any compensation payment which a Relevant Seller agrees to make to any member of the UK Schemes in connection with the members of the UK Schemes losing their final salary link;

(g) undertakes to indemnify and hold the Purchaser and each other member of the Group harmless from and against all Losses suffered or incurred by it after Completion relating to: (a) tax or social security in respect of any incentive payments made prior to Completion by Scotts France SAS to the extent that such payments contravene applicable law; (b) the "Ross" litigation, as disclosed in document 8.1.1 and sub-folder 8.1.4 in the Data Room; and (c) the circumstances and claims referred to in the Disclosure Letter in the specific disclosures against the warranty in paragraph 5 of Schedule 3 underneath the sub-headings 'Scotts Austria' and 'European Group'; and

(h) undertakes to indemnify the Purchaser for any transaction costs, transaction bonuses and retention bonuses related to the sale of the Group (gross of any tax and social security liabilities) that a Group Company or a Business Seller agreed to pay prior to Completion and payable by a Group Company or a Relevant Purchaser after Completion.

9.5 The liability of the Seller in respect of Clause 9.4(g) shall not arise until the amount of any such claim would when substantiated exceed EUR 75,000 (in which case the Seller shall be liable for the whole amount and not just the excess).

9.6 The Purchaser shall (and shall procure that each other Relevant Purchaser shall) use all reasonable endeavours to apply to and obtain from the relevant regulatory authorities the necessary product registration in respect of the Acetic Acid Stock (as defined in the Disclosure Letter).

9.7 Subject to applicable law regarding the information and consultation of the International Business Employees and their staff representatives, the Seller undertakes that it shall at the Purchaser's expense, and shall procure that the Group Companies shall, prior to the Completion Date, provide the Purchaser and its representatives with: (i) such assistance as they may reasonably request in connection with the Purchaser's debt financing agreements for the purposes of the Transaction; and (ii) such: (a) access to (A) the Senior Managers and other Workers (whose identity or role within the Business shall be determined by the Purchaser, subject to a maximum of ten (10) Workers), and (B) Workers with knowledge of the IT Systems; and (b) information regarding the businesses and affairs of the Group, in each case as the Purchaser may reasonably require to prepare for the integration of the Group with the Purchaser, including, but not limited to, (A) meeting with the Senior Managers for two Business Days per each calendar month to plan such integration and (B) access to financial information regarding the performance of the Group. Nothing in this Clause 9.7 shall entitle the

Purchaser to require any Relevant Seller, Group Company or Senior Manager to take any action that would amount to the actual integration of the Group with the Purchaser prior to Completion.

9.8 With regards to any objection (opposition) filed pursuant to Articles L. 141-14 to L. 141-17 of the French Commercial Code by a creditor of the Relevant Seller's Group Business in France against the payment of the purchase price to be paid for the Group Business in France, the Seller undertakes to: (i) subject to Clause 8.1(a), indemnify and hold the Purchaser and the Relevant Purchasers harmless from and against all Losses suffered or incurred by them after Completion arising from the filing of such objection; and (ii) procure that any third party that attempts to exercise rights against the Purchaser or a Relevant Purchaser pursuant to Articles L. 141-14 to L. 141-17 of the French Commercial Code shall revoke any objection to the acquisition of a Group Business by the Purchaser or a Relevant Purchaser. Without prejudice to the foregoing, each Party shall co-operate with the other in connection with such release process, including by providing any relevant information in its possession and making any filing, submission or declaration as reasonably necessary under applicable laws.

9.9 The Seller undertakes to the Purchaser that it shall, and shall procure that each member of the Seller's Group will, preserve for a period of at least seven (7) years from Completion all books, records and documents of or relating to each Business Seller at Completion (together the "**Business Seller Books and Records**"). The Seller shall during such period, subject to the Purchaser giving such undertakings as to confidentiality as the Seller may reasonably require, upon being given reasonable notice (and in any event within five (5) Business Days of written notice being given to the Seller by the Purchaser), permit the Purchaser and its Agents to inspect and to make copies of any Business Seller Books and Records, but only to the extent necessary for the purpose of satisfying applicable laws, regulations or the published practice of a Taxation Authority.

9.10 In the event that any proceeding, enquiry or investigation of any judicial or regulatory authority or Taxation Authority is pending at the time of expiry of the period of seven (7) years from Completion, or if at such time the Purchaser is in the process of using any Business Seller Books and Records in connection with satisfying applicable laws, regulations or the published practice of a Taxation Authority, the Purchaser shall be entitled to continuing access to the Business Seller Books and Records on the same terms as provided in Clause 9.9 for a further period until completion of the relevant enquiry, investigation or other event.

9.11 The Seller shall and shall procure that Scotts France Holdings SARL and Scotts France SAS indemnify in full and hold the Purchaser and any Relevant Purchaser harmless, on a net after Taxation basis, from and against any Liabilities or Losses consisting of any income tax or apprenticeship tax and related reasonable costs that may be suffered or incurred by the Purchaser or any Relevant Purchaser in relation to any liability of the said Purchaser or any Relevant Purchaser under article 1684 of the French tax code in relation to any transaction occurring under or pursuant to this Agreement, and within ten (10) Business Days of receipt of a notice sent by the Purchaser to the Seller in this respect together with a copy of the relevant tax collection notice issued by the French tax administration (or any equivalent document).

10. Seller's Limitations on Liability

The liability of the Seller in respect of Claims shall be limited as provided in Schedule 4 (*Seller's Limitations on Liability*).

11. Purchaser's Warranties and Undertakings

11.1 The Purchaser warrants to the Seller that each of the Purchaser's Warranties was true and accurate as at the Offer Letter Date and will at Completion be true and accurate.

11.2 The Purchaser and the Relevant Purchasers shall, each at its own cost:

(a) with effect from Completion, be entitled to adopt the current corporate name of each Business Seller for the relevant Business Purchaser purchasing the respective Group Business; and

(b) procure that the name of any Group Company and any Business Purchaser which incorporates the word "Scotts" is changed to a name which does not include that word or any name which, in the reasonable opinion of the Seller, is capable of being confused with "Scotts", in each case within:

(i) twenty four (24) months after Completion or thirty (30) months after Completion if the Purchaser provides evidence to the Seller that complying with this Clause 11.2(b)(i) may affect the ability of the Group to rely on any Licences necessary to sell its Products in compliance with applicable law; or

(ii) a reasonable period of time following the termination of the licence to use the "Scotts" mark that is to be granted in the Trade Mark Licence, if that licence is terminated before the expiry of the period referred to in Clause 11.2(b)(i) in accordance with the terms of the Trade Mark Licence,

(the "**Applicable Name Change Period**").

11.3 It is agreed and acknowledged that:

(a) for a period of 12 months following the expiry of the Applicable Name Change Period the Purchaser shall have the right to sell any remaining Products in the Purchaser's inventory bearing labels or packaging which incorporates the word "Scotts"; and

(b) nothing in Clause 11.2(b) shall require the Purchaser, any Group Company or Business Purchaser to recall any Products which have already been sold or shipped to customers or distributors in order to change the packaging or labelling on such Products so that they omit the word "Scotts".

11.4 The Purchaser undertakes to the Seller that it shall, and shall procure that each member of the Purchaser's Group will, preserve for a period of at least seven (7) years from Completion all books, records and documents of or relating to each Group Company existing at Completion (together the "**Books and Records**"). The Purchaser shall during such period, subject to the Seller giving such undertakings as to confidentiality as the Purchaser may reasonably require, upon being given reasonable notice (and in any event within five (5) Business Days of written notice being given to the Purchaser by the Seller), permit the Seller and its Agents to inspect and to make copies of any Books and Records, but only to the extent relating to the period before Completion and to the extent necessary for the purpose of satisfying applicable laws, regulations or the published practice of a Taxation Authority.

11.5 In the event that any proceeding, enquiry or investigation of any judicial or regulatory authority or Taxation Authority is pending at the time of expiry of the period of seven (7) years from Completion, or if at such time the Seller is in the process of using any Books and Records in connection with satisfying applicable laws, regulations or the published practice of a Taxation Authority, the Seller

shall be entitled to continuing access to the Books and Records on the same terms as provided in Clause 11.4 for a further period until completion of the relevant enquiry, investigation or other event.

11.6 If Completion does not take place, the Purchaser undertakes to the Seller that it shall, at the Purchaser's election, destroy or forthwith hand over, or procure the destruction or handing over of, all books, records, documents and papers of or relating to the Seller's Group which shall have been made available to it and all copies or other records derived from such materials ("**Seller's Group Information**") and that it shall remove any information derived from such materials or otherwise concerning the subject matter of this Agreement ("**Secondary Information**") from any computer, word processor or other device containing information, provided that (i) the Purchaser shall only be required to use commercially reasonable efforts to return or destroy any Seller's Group Information or Secondary Information stored electronically, and the Purchaser shall not be required to return or destroy any electronic copy of Seller's Group Information or Secondary Information created pursuant to its electronic backup and archival procedures; and (ii) the Purchaser may retain any Seller's Group Information or Secondary Information to the extent required to comply with applicable law or regulation or rule, requirement or official request of any regulatory or governmental authority or stock exchange or judicial, supervisory, banking or taxation authority or established document retention policies and practices, or to demonstrate compliance with such requirements.

11.7 The Purchaser hereby:

(a) agrees that it shall use its best endeavours to procure that immediately following Completion the Seller and each other member of the Seller's Group shall be unconditionally and irrevocably released in full from their respective obligations under any guarantee, security interest, indemnity, support letter or other contingent obligation, including without limitation the grant of collateral, given or undertaken by the Seller or a member of the Seller's Group in relation to or arising out of any obligations or liabilities of any Group Company, in each case to the extent that any such guarantee, security interest, indemnity, support letter or other contingent obligation is listed in Schedule 16 (the "**Seller Commitments**") and to the extent outstanding immediately prior to Completion; and

(b) undertakes to indemnify and hold the Seller and each other member of the Seller's Group harmless from and against all Losses suffered or incurred by it after Completion in relation to or arising out of the Seller Commitments (but only to the extent relating to the period after Completion).

11.8 The Purchaser undertakes to the Seller that it will not, without the prior written consent of the Seller amend the Purchaser Debt Finance Agreement in a manner which would be materially prejudicial to the interests of the Seller under this Agreement; provided that, for the avoidance of doubt, the Purchaser Debt Finance Agreement may be amended to add purchasers, lenders, lead arrangers, book-runners, syndication agents or similar entities. The Purchaser shall use all reasonable endeavours to obtain and consummate the Purchaser Debt Finance at Completion.

12. Restrictions on Seller

12.1 Except as provided in Clause 12.2, the Seller shall not and shall procure that no other member of the Seller's Group shall, without the prior written consent of the Purchaser:

(a) neither pending nor within three (3) years following the Completion Date carry on or be directly or indirectly engaged in the Business (or directly or indirectly interested in any entity engaged in the Business), in each case in any Relevant Territory in which the Group

operates as at the Completion Date or at any time during the twelve (12) months immediately preceding the Completion Date; or

(b) neither pending nor within three (3) years following the Completion Date grant any third party a licence permitting that third party to use any Licensed Retained Intellectual Property in relation to the Business in any Relevant Territory in which the Group operates as at the Completion Date or at any time during the twelve (12) months immediately preceding the Completion Date; or

(c) neither pending nor within three (3) years following the Completion Date:

(i) solicit any employee or consultant who is a director or senior manager or who has a salary of more than EUR 150,000 per annum, in each case in relation to (i) any Group Company; or (ii) any Group Business; or

(ii) solicit, induce or attempt to induce any customer, supplier or retailer of any member of the Group to cease to deal, or to restrict or vary their terms of dealing, with that member of the Group or a Relevant Purchaser.

12.2 Nothing in this Clause 12 shall prevent or restrict any member of the Seller's Group from:

(a) acquiring any company or business (the "**Acquired Entity**") in any part of the world which competes with the Business in the Relevant Territory where the turnover generated by the competing part of the Acquired Entity during the most recently ended accounting period does not exceed fifteen per cent. (15%) of the aggregate turnover of the Acquired Entity during that accounting period;

(b) any general advertisement to the public of employment by any member of the Seller's Group to which any person referred to in Clause 12.1(c)(i) responds, provided that such advertisement is not specifically targeted at the Group nor any member of the Group nor any employee or consultant of any such member at the Completion Date;

(c) carrying on or developing its present business(es) (other than in respect of the Group and other than the Business in any Relevant Territory) including, for the avoidance of doubt, any business relating to the manufacturing, distributing or development of Hydroponic Products; or

(d) trading with any of its existing customers or clients or any future customers or clients provided it does not do so in respect of the Business in any Relevant Territory or in competition with any Group Company or any Relevant Purchaser.

13. No Right to Rescind or Terminate

13.1 Save for termination pursuant to Clause 3.10, the Parties' express right to terminate in Clause 6.3(c) and the Purchaser's right to terminate pursuant to Clause 13.2 and Clause 13.4, the Purchaser shall not be entitled to rescind or terminate this Agreement, whether before or after Completion, and the Purchaser waives all and any rights of rescission which it may have in respect of any matter to the full extent permitted by law, other than such rights in respect of fraud. Without prejudice to the generality of the foregoing, the Purchaser agrees that the remedy of rescission is excluded in relation to all matters and shall not be available, save in respect of fraud.

13.2 If Completion does not occur on or before the date that is four months from the Offer Letter Date and anything occurs after the Offer Letter Date which has or is reasonably likely to have a Material Adverse Effect within six months after the occurrence of such event, the Purchaser may elect to terminate this Agreement with immediate effect by giving notice in writing to the Seller.

13.3 For the purposes of Clause 13.2, "**Material Adverse Effect**" means any change, event, occurrence or effect ("**Effects**") that, individually or in the aggregate, would have a material adverse effect on the business, results of operations or financial condition of the Group, taken as a whole, provided, however, that, none of the following Effects shall be taken into account in determining whether a Material Adverse Effect has occurred: (A) changes or proposed changes in applicable law or accounting standards, (B) changes in general economic or political conditions in any country or region in which the Group operates, (C) changes or proposed changes (including changes of applicable law or interpretations thereof) or conditions generally affecting the industry in which the Group operates, (D) any action taken (or omitted to be taken) at the request of the Purchaser or resulting from a breach of this Agreement or violation of applicable law by the Purchaser, (E) any action taken by the Group that is required or expressly contemplated or permitted by this Agreement, including any actions required under this Agreement to obtain any approval or authorization under applicable antitrust laws, and (F) any Effects resulting from or arising out of the execution and performance of this Agreement or the announcement or pendency of the Transaction or the identity of or any facts or circumstances relating to the Purchaser, including the impact of any of the foregoing on the relationships, contractual or otherwise with employees, any Authority or any other persons.

13.4 If, prior to Completion: (a) one or more suppliers under one or more Relevant International Business Contracts notifies a Group Company or a member of the Seller's Group that: (i) it refuses to consent to the assignment of such contract; or (ii) it intends to terminate such supplies, materially reduce its supplies or materially amend the terms of such contract; and (b) the aggregate effect of such refusal(s), termination(s) and/or amendment(s) has or is reasonably likely to have (within 6 months after Completion) a material adverse effect on the business, results of operations or financial condition of the Group, taken as a whole, then the Purchaser may elect to terminate this Agreement with immediate effect by giving notice in writing to the Seller.

13.5 If this Agreement is terminated by a Party in accordance with:

(a) Clause 3.10; or

(b) Clause 6.3(c); or

(c) Clause 13.4; or

(d) Clause 13.2,

the rights and obligations of the Parties under this Agreement shall cease immediately, save in respect of antecedent breaches (but excluding any right of the Purchaser to claim damages for breach of Warranty or of the Seller's obligations under Clause 5) and under the Continuing Provisions.

14. Insurance

14.1 The Seller shall and shall procure that each Group Company and each member of the Seller's Group shall continue in force all pre-existing insurance cover in respect of the Group maintained by them up to and including the Completion Date.

14.2 Subject to Clauses 14.3 to 14.5, the Seller shall be entitled to arrange for any insurance cover provided by the Seller's Group in relation to the Group to cease upon Completion.

14.3 The Seller shall not (and shall procure that no member of the Seller's Group shall) terminate or agree to terminate any cover under the Global Marine Policy, any Occurrence Basis Policies or any Claims Made Policies in respect of which a Permitted Claim has been or may be made, or take (or omit to take) any other action which could reasonably be expected to adversely affect the rights of any member of the Group to effect recovery of Permitted Claims.

14.4 Without prejudice to paragraphs 12 and 24 of Schedule 3, promptly following Completion, the Seller shall (and shall procure that each member of the Seller's Group shall) provide the Purchaser and its representatives with copies of the Global Marine Policy, and/or any Occurrence Basis Policies and/or Claims Made Policies under which a claim in respect of a Permitted Claim has been notified or in respect of which a Permitted Claim may be notified, and, in either case, which has not been paid.

14.5 The Seller shall ensure that, following Completion, each member of the Seller's Group shall take such steps as may reasonably be requested by the Purchaser having regard to the Seller's role as policyholder under the relevant policy to enable the Purchaser or the relevant member of the Group to pursue any Permitted Claim which is pending or outstanding at Completion, or to make and pursue any other Permitted Claim.

14.6 The obligations of the Seller under Clause 14.3 shall include assisting as necessary any member of the Group or any other member of the Purchaser's Group in pursuing any Permitted Claim. The Seller shall pay to the Purchaser any proceeds actually received by a member of the Seller's Group from an insurer in respect of Permitted Claims, less, if applicable:

(a) any tax thereon;

(b) any reasonable costs of recovery, including legal and other fees and expenses; and

(c) any costs (including tax) of passing on the relevant amounts to the Purchaser's Group,

within five (5) Business Days of their receipt.

15. Business Information

15.1 Subject to Clauses 9.9 and 9.10, to the extent that any information reasonably required for the Business is not in the possession of the Purchaser but remains held by the Seller's Group, for a period of seven (7) years following the Completion Date the Seller shall use its reasonable endeavours to procure that, subject to the Purchaser giving such undertakings as to confidentiality as the Seller may reasonably require, copies of such information are provided to the Purchaser as soon as reasonably practicable following a written request for such information by the Purchaser.

15.2 The Purchaser shall indemnify and hold the Seller harmless from and against all Losses suffered or incurred by it in complying with its obligations under this Clause 15.

16. Intellectual Property and Product Registrations

16.1 The provisions of Schedule 10 (Intellectual Property and Product Registrations) shall apply in respect of the International Business Intellectual Property and the International Business Product Registrations.

16.2 The Purchaser grants, or shall procure that the relevant member of the Group shall grant, with effect from Completion, to the Seller or a member of the Seller's Group designated by the Seller a non-exclusive, royalty-free, perpetual and irrevocable and sub-licensable licence to use the Licensed International Intellectual Property, solely for the purposes of: (a) research and development; (b) manufacturing in the Relevant Territory products or their component parts which are protected by the Licensed International Intellectual Property for export outside the Relevant Territory; and (c) exporting the products referred to in (b) from the Relevant Territory.

16.3 The Seller grants, and shall procure that each relevant member of the Seller's Group shall grant, with effect from Completion, to the Purchaser or a member of the Purchaser's Group designated by the Purchaser a non-exclusive, royalty-free, perpetual and irrevocable (except in respect of any Intellectual Property that relates to the same technology as is covered by the Licensed Retained Intellectual Property, which licence shall terminate on termination of the IP Licence in accordance with its terms) and sub-licensable licence to use the America Business Intellectual Property, solely for the purposes of: (a) research and development in connection with the International Business Products in any of the Purchaser Manufacturing Territories; (b) manufacturing the International Business Products, or their component parts which are protected by the America Business Intellectual Property, in any of the Purchaser Manufacturing Territories for export outside the Excluded Territories; and (c) exporting to countries in the Relevant Territory the International Business Products referred to in (b) from the Purchaser Manufacturing Territory where such International Business Products or their component parts were manufactured.

16.4 The Intra-Group IP Licences will terminate with effect from Completion.

16.5 The Purchaser grants, and shall procure that each relevant member of the Purchaser Group shall grant, with effect from Completion to the Seller or a member of the Seller's Group designated by the Seller, a royalty-free, perpetual and irrevocable, sub-licensable and freely transferable licence to use and develop the New Project IP in the Excluded Territories. This licence shall be exclusive, save that the Purchaser may use, or license the use of, the New Project IP in the Excluded Territories solely for the purposes of: (a) research and development in connection with the products of the Business; (b) manufacturing the products of the Business, or their component parts for export outside the Excluded Territories; and (c) exporting to countries in the Relevant Territory the products and component parts referred to in (b) from the Excluded Territory where such products and component parts were manufactured.

16.6 The Purchaser shall, or shall procure that the relevant member of the Purchaser's Group shall provide the Seller with copies of any formulations, data, results and other materials arising out of the New Projects in the nine (9) month period immediately following Completion, as soon as reasonably practicable following their creation.

17. Misallocated Assets

17.1 If, within two (2) years after Completion, any property, right or asset which was not predominantly (in the case of any property, right or asset excluding Intellectual Property) or exclusively (in the case of any property, right or asset including Intellectual Property) used by or relating to, or forming part of, the Business before Completion is found to have been transferred to the Purchaser or a Relevant Purchaser or a Group Company, the Purchaser shall transfer, or procure that the relevant Group Company or Relevant Purchaser shall transfer, and the Seller shall accept, at no cost and free from any Encumbrance created by the Purchaser's Group after Completion, such property, right or asset as soon as practicable to the transferor or another member of the Seller's Group nominated by the

Seller, and pending such transfer shall hold any such property, right or asset (including any benefit attributed to or derived from it) on trust on behalf of and for the benefit of the relevant member of the Seller's Group absolutely until the time that such transfer becomes effective.

17.2 If, within three (3) years after Completion, any property, right or asset which was predominantly (in the case of any property, right or asset excluding Intellectual Property) or exclusively (in the case of any property, right or asset including Intellectual Property) used by, or forming part of, the Business before Completion is found to have been retained by the Seller's Group (whether directly or indirectly), the Seller shall transfer, or procure that the relevant member of the Seller's Group shall transfer, at no cost and free from any Encumbrance, such property, right or asset as soon as practicable to the Purchaser or such other Group Company or Relevant Purchaser, as may be nominated by the Purchaser, and pending such transfer shall hold any such property, right or asset (including any benefit attributed to or derived from it) on trust on behalf of and for the benefit of the Purchaser or relevant Group Company or Relevant Purchaser absolutely until the time that such transfer becomes effective.

17.3 If a member of either the Seller's Group or the Purchaser's Group discovers within three (3) years after Completion that a member of the Purchaser's Group owns (including in accordance with Clause 17.2) any Retained Intellectual Property, the Purchaser shall, as soon as practicable after receipt of a notice to that effect containing details of the Retained Intellectual Property concerned, procure the assignment of such Retained Intellectual Property by such other relevant member of the Purchaser's Group to a member of the Seller's Group designated by the Seller.

17.4 For the avoidance of doubt, any Tax cost arising in connection with any transfer or assignment made pursuant to any of Clauses 17.1 to 17.3 above shall be borne solely by the Seller.

18. Confidentiality

18.1 Save as expressly provided in Clause18.3, the Seller shall, and shall procure that each member of the Seller's Group shall, treat as confidential the provisions of the Transaction Documents and all information it has received or obtained relating to the Purchaser's Group as a result of negotiating or entering into the Transaction Documents and, with effect from Completion, all information it possesses relating to each Group Company and each Group Business, and shall not disclose or use any such information.

18.2 Save as expressly provided in Clauses 18.3 and 18.4, the Purchaser shall, and shall procure that each member of the Purchaser's Group shall, treat as confidential: (a) the provisions of the Transaction Documents and all information it has received or obtained about the Seller's Group as a result of negotiating or entering into the Transaction Documents; and (b) at all times prior to Completion, all information it possesses relating to each Group Company and each Group Business, and shall not disclose or use any such information.

18.3 A Party may disclose, or permit the disclosure of, information which would otherwise be confidential if and to the extent that it is disclosed:

(a) to Agents of that Party or of other members of the Relevant Party's Group, in each case providing this is reasonably required in connection with the transactions contemplated by the Transaction Documents (and provided that such persons are required to treat that information as confidential); or

(b) is required by law or any securities exchange, regulatory or governmental body or Taxation Authority; or

(c) was already in the lawful possession of that Party or its Agents without any obligation of confidentiality (as evidenced by written records); or

(d) is in the public domain at the Offer Letter Date or comes into the public domain other than as a result of a breach by a Party of this Clause 18.3,

provided that, to the extent lawful and reasonably practicable, prior written notice of any confidential information to be disclosed pursuant to Clause 18.3(b) shall be given to the other Parties and their reasonable comments taken into account.

18.4 The Purchaser may disclose, or permit the disclosure of, information which would otherwise be confidential if and to the extent that it is disclosed to:

(a) any fund managed or advised by (or to be managed or advised by) Exponent Private Equity LLP (the "**Exponent Funds**"), any investor or potential investor in any Exponent Funds, together with their Agents and any adviser to the Exponent Funds;

(b) any provider of finance or potential provider of finance to the Purchaser's Group or to a security trustee or agent acting on behalf of one or several banks or other financial institutions which have entered into, or may enter into, any financing agreements with any member of the Purchaser's Group or to any of the Agents of the foregoing; or

(c) to a potential purchaser of all or part of the Group and its Agents, provided that such potential purchaser has entered into an undertaking of confidentiality on customary terms.

18.5 The confidentiality restrictions in this Clause18 shall continue to apply after the termination of this Agreement pursuant to Clause 3.10 (*Conditions*), Clause 6.3(c) (*Completion*) or Clause 13.2 (*MAC*) without limit in time.

19. Announcements

19.1 Save for the Press Release in the agreed terms as expressly provided in Clause 19.2, no announcement shall be made by or on behalf of either Party or a member of the Relevant Party's Group relating to the Transaction Documents without the prior written approval of the other Party, such approval not to be unreasonably withheld or delayed.

19.2 A Party may make an announcement relating to the Transaction Documents if (and only to the extent) required by the law of any relevant jurisdiction or any securities exchange, regulatory or governmental body provided that, to the extent permitted by applicable law or regulation, prior written notice of any announcement required to be made is given to the other Parties in which case such Party shall take such steps as may be reasonable in the circumstances to agree the contents of such announcement with the other Parties prior to making such announcement.

20. Grossing-up

20.1 All sums payable under this Agreement shall be paid free and clear of all deductions, withholdings, set-offs or counterclaims whatsoever save only as may be required by law or as otherwise agreed. If any deductions or withholdings are required by law from any such sum payable (other than any

payment by the Purchaser in respect of the Purchase Price or the Deferred Payment), the payor shall be obliged to pay to the recipient such sum as will after such deduction or withholding has been made, leave the recipient with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding, provided that if either party to this Agreement shall have assigned or novated or declared a trust in respect of the benefit in whole or in part of this Agreement or shall have changed its tax residence or the permanent establishment to which the rights under this Agreement are allocated then the liability of the other party under this Clause 20.1 shall be limited to that (if any) which it would have been had no such assignment, novation, declaration of trust or change taken place.

20.2 The recipient or expected recipient of a payment under this Agreement shall take such steps as the payor may reasonably request in order to claim from the appropriate Taxation Authority any exemption, rate reduction, refund, credit or similar benefit (including pursuant to any relevant double tax treaty) to which it is entitled in respect of any deduction or withholding in respect of which a payment has been or would otherwise be required to be made pursuant to Clause 20.1 and, for such purposes, shall, within any applicable time limits, submit any claims, notices, returns or applications as the payor may reasonably request and send a copy of them to the payor.

20.3 If the recipient of a payment made under this Agreement receives a credit for or refund of any Taxation payable by it or similar benefit by reason of any deduction or withholding for or on account of Taxation then it shall reimburse to the payor such part of such additional amounts paid pursuant to Clause 20.1 above as the recipient of the payment certifies to the payor will leave the recipient (after such reimbursement) in no better and no worse position than the recipient would have been in if the payor had not been required to make such deduction or withholding.

21. Guarantee

21.1 In consideration of the Purchaser entering into this Agreement, the Guarantor irrevocably and unconditionally guarantees to the Purchaser and each Relevant Purchaser punctual performance by the Relevant Sellers of all of such Relevant Sellers' obligations under this Agreement, the Local Transfer Documents and the other Transaction Documents and undertakes to the Purchaser and each Relevant Purchaser that:

(a) whenever any of the Relevant Sellers do not pay any amount when due under or in connection with this Agreement or any other Transaction Document, the Guarantor shall immediately on demand pay that amount as if it was the principal obligor;

(b) whenever any of the Relevant Sellers fail to perform any other obligations under this Agreement, the Local Transfer Documents or any other Transaction Document, the Guarantor shall immediately on demand perform (or procure performance of) and satisfy (or procure the satisfaction of) that obligation; and

(c) agrees as principal debtor and primary obligor to indemnify the Purchaser and each Relevant Purchaser against all losses and damages sustained by it flowing from any non-payment or default of any kind by any of the Relevant Sellers under or pursuant to this Agreement, the Local Transfer Documents or any Transaction Document,

so that the same benefits are conferred on the Purchaser and each Relevant Purchaser as it would have received if such obligation had been performed and satisfied by any of the Relevant Sellers.

21.2 This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any of the Relevant Sellers under this Agreement, the Local Transfer Documents and the other Transaction Documents, regardless of any intermediate payment or discharge in whole or in part.

21.3 Save to the extent provided in Clause 21.4, the obligations of the Guarantor will not be discharged or affected by:

(a) any time, waiver or consent granted to the Relevant Sellers or any other person;

(b) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against the Relevant Sellers under this Agreement, the Local Transfer Documents or any other Transaction Document;

(c) the insolvency (or similar proceedings) of any of the Relevant Sellers, any incapacity or lack of power, authority or legal personality of any of the Relevant Sellers or change in control, ownership or status of any of the Relevant Sellers;

(d) any unenforceability or invalidity of any obligation of any of the Relevant Sellers; or

(e) any amendment to this Agreement, the Local Transfer Documents or any other Transaction Document.

21.4 For the avoidance of doubt, the Guarantor shall have no liability under this Clause 21 in respect of any liability of any of the Relevant Sellers under this Agreement, the Local Transfer Documents or any other Transaction Document to the extent that such liability is excluded by any provision of Schedule 4 (*Seller's Limitations on Liability*) and, where any obligation or liability of any of the Relevant Sellers is either:

(a) amended or varied in accordance with Clause 26 (*Variations*); or

(b) waived to any extent in a manner that is effective in accordance with Clause 27 (*Remedies and Waivers*),

the Guarantor's obligations under this Clause 21 in respect of such obligation or liability as it subsists following such amendment, variation or waiver shall be determined by reference to such obligation as so amended or varied, or taking account of the extent to which such obligation or liability has been so waived.

21.5 The Guarantor warrants to the Purchaser that: (a) it has full power and authority to enter into and perform this Agreement; (b) this guarantee constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms; and (c) its execution, delivery and performance of this Agreement will not constitute a breach of (i) any provision of its articles of association, by laws or equivalent constitutional documents; or (ii) any order, judgment or decree of any court or governmental authority by which it is bound.

21.6 Until all amounts which may be or become payable by any of the Relevant Sellers under or in connection with this Agreement, the Local Transfer Documents and any other Transaction Document have been irrevocably paid in full, the Purchaser and each Relevant Purchaser shall not be obliged to apply any sums held or received by it from the Guarantor towards payment of any of the Relevant Sellers' obligations.

22. Assignment

The Purchaser and the Relevant Purchasers may not assign, transfer, create an Encumbrance over, declare a trust of or otherwise dispose of all or any part of its rights and benefits under this Agreement or any other Transaction Document (including any cause of action arising in connection with any of them) or of any right or interest in any of them, save that:

(a) the Purchaser and the Relevant Purchasers may assign (in whole or in part) the benefit of this Agreement, the Local Transfer Documents or any other Transaction Document to any other member of the Purchaser's Group provided that if such assignee ceases to be a member of the Purchaser's Group all benefits relating to this Agreement, the Local Transfer Documents or any other Transaction Document assigned to such assignee shall be deemed automatically by that fact to be re-assigned to the Purchaser or a Relevant Purchaser immediately before such cessation; and

(b) the Purchaser, each of the Relevant Purchasers or any member of the Purchaser's Group may charge and/or assign the benefit of this Agreement, the Local Transfer Documents or any other Transaction Document to any person providing debt financing and/or hedging facilities to the Purchaser, each of the Relevant Purchasers or any member of the Purchaser's Group or to any security agent or any person or persons acting as trustee, nominee or agent for any such person by way of security for the facilities being made or to be made available to the Purchaser, each of the Relevant Purchasers or any member of the Purchaser's Group and any such person, security agent, trustee, nominee or agent may also, in the event of enforcement of such security in accordance with its terms, assign the benefit of such obligations and rights to a purchaser or assignee who acquires a Group Company or all or part of its business from that person, security agent, trustee, nominee or agent (or any receiver appointed by any of them).

23. Further Assurance

23.1 Insofar as it is able to do so after Completion, the Seller shall (and shall procure that the Relevant Sellers shall) from time to time and at their cost do, execute and deliver or procure to be done, executed and delivered all such further acts, documents and things reasonably required by the Purchaser in order to give full effect to this Agreement.

23.2 For so long after Completion as any Share Seller or any nominee of it remains the registered holder of any Shares, the Seller shall procure that such Share Seller shall hold (or direct the relevant nominee to hold) the relevant Shares and any distributions, property and rights deriving from it in trust for the Purchaser (or the relevant Relevant Purchaser) and shall deal with the relevant Shares and any distributions, property and rights deriving from it as the Purchaser (or the relevant Relevant Purchaser) directs; in particular, the Seller shall procure that the Share Seller shall exercise all voting rights as the Purchaser (or the relevant Relevant Purchaser) directs or shall execute an instrument

of proxy or other document which enables the Purchaser (or the relevant Relevant Purchaser) or its representative to attend and vote at any meeting of the Group Company concerned.

23.3 For so long after Completion as any Business Seller or any nominee of it remains the registered holder of any International Business Asset, the Seller shall procure that it shall hold (or direct the relevant nominee to hold) that International Business Asset and any distributions, property and rights deriving from it in trust for the Purchaser (or the relevant Relevant Purchaser) absolutely and shall deal with that International Business Asset and any distributions, property and rights deriving from it as the Purchaser (or the relevant Relevant Purchaser) directs.

24. Entire Agreement

24.1 This Agreement, together with the Transaction Documents and any other documents referred to in this Agreement or any Transaction Document, constitutes the whole agreement between the Parties and supersedes any previous arrangements or agreements between them relating to the sale and purchase of the Group.

24.2 Each Party confirms that it has not entered into this Agreement or any other Transaction Document on the basis of any representation, warranty, undertaking or other statement whatsoever by another Party or any of its Related Persons which is not expressly incorporated into this Agreement or the relevant Transaction Document and that, to the extent permitted by law, a Party shall have no right or remedy in relation to action taken in connection with this Agreement or any other Transaction Document other than pursuant to this Agreement or the relevant Transaction Document and each Party waives all and any other rights or remedies.

24.3 A Party's only right or remedy in respect of any provision of this Agreement or any other Transaction Document shall be for breach of this Agreement or that Transaction Document, and no party shall have any right or remedy in respect of misrepresentation (whether negligent or innocent and whether made prior to and/or in this Agreement) and each Party waives all and any rights or remedies in respect of misrepresentation which it may have in relation to any matter to the fullest extent permitted by law.

24.4 Save for any claim under or for breach of this Agreement or any other Transaction Document, no Party nor any of its Related Persons shall have any right or remedy, or make any claim, against another Party nor any of its Related Persons in connection with the sale and purchase of the Group.

24.5 In this Clause 24, "**Related Persons**" means, in relation to a Party, members of the Relevant Party's Group and the Agents of that Party and of members of the Relevant Party's Group.

24.6 Nothing in this Clause 24 shall operate to limit or exclude any liability for fraud.

25. Severance and Validity

If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, it shall be deemed to be severed from this Agreement. The remaining provisions will remain in full force in that jurisdiction and all provisions will continue in full force in any other jurisdiction.

26. Variations

No variation of this Agreement shall be effective unless in writing and signed by or on behalf of the Parties.

27. Remedies and Waivers

27.1 No waiver of any right under this Agreement or any other Transaction Document shall be effective unless in writing. Unless expressly stated otherwise a waiver shall be effective only in the circumstances for which it is given.

27.2 No delay or omission by any Party in exercising any right or remedy provided by law or under this Agreement, save to the extent otherwise provided in Schedule 4 (*Seller's Limitations on Liability*), shall constitute a waiver of such right or remedy.

27.3 The single or partial exercise of a right or remedy under this Agreement shall not preclude any other nor restrict any further exercise of any such right or remedy.

27.4 The rights and remedies provided in this Agreement are cumulative and do not exclude any rights or remedies provided by law except as otherwise expressly provided.

28. Effect of Completion

The provisions of this Agreement, including but not limited to the Warranties, and of the other Transaction Documents, shall continue in full force and effect notwithstanding Completion.

29. Third Party Rights

29.1 This Agreement is made for the benefit of the Parties and their successors and is not intended to benefit any other person, and no other person shall have any right to enforce any of its terms, except that:

(a) Clause 11 (*Purchaser's Warranties and Undertakings*) and Clause 18.2 (*Confidentiality*) are intended to benefit members of the Seller's Group;

(b) Clause 9 (*Seller's Warranties and Undertakings*) and Clause 18.1 (*Confidentiality*) are intended to benefit members of the Purchaser's Group;

(c) Clause 9.2 is intended to benefit Employees;

(d) Clause 24 (*Entire Agreement*) is intended to benefit a Party's Related Persons;

(e) each provision of this Agreement that is expressed to confer a benefit on a Relevant Purchaser other than the Purchaser is intended to benefit each such Relevant Purchaser;

(f) each provision of this Agreement that is expressed to confer a benefit on a Relevant Seller other than the Seller is intended to benefit such Relevant Seller,

and each such Clause or provision shall be enforceable by any of them to the fullest extent permitted by law, subject to the other terms and conditions of this Agreement.

29.2 The Parties may amend or vary this Agreement in accordance with its terms without the consent of any other person.

30. Payments

30.1 Any amount payable by the Seller or the Guarantor to, or at the direction of, the Purchaser under this Agreement shall, so far as possible, be deemed to be a reduction of the Purchase Price and each of the Seller, the Guarantor and the Purchaser shall to the extent permitted by law treat such payments as a reduction of the Purchase Price for all tax purposes. Insofar as any identifiable part of any payment made by the Seller or the Guarantor to, or at the direction of, the Purchaser under this Agreement relates to any Group Company, Group Business, International Business Contract, item of Business Intellectual Property or other asset of the Group Businesses, that part of that payment shall (in each case so far as possible) adjust that part of the Purchase Price allocated to the relevant Group Company, Group Business, International Business Contract, item of Business Intellectual Property or other asset of the Group Businesses under the Purchase Price Allocation Agreement on a basis agreed between the Seller and the Purchaser (each acting reasonably and in good faith).

30.2 The Parties shall consult with one another in good faith with a view to determining the most appropriate mechanism and treatment of any payments to be made or settled in accordance with this Agreement (including whether such payments are made or received by the Purchaser as principal or on behalf of a Relevant Purchaser) and the nature of any documentation that may be reasonably required to reflect such mechanism and treatment. The Parties shall take into account (inter alia) the consequences of any such payment and the impact on the availability of any Relief (as defined in the Tax Deed) which has been claimed by any Party or any Relevant Purchaser.

31. Costs, Expenses and Stamp Duty

31.1 Except as expressly provided otherwise in this Agreement, each Party shall pay its own costs and expenses in connection with the negotiation, preparation and performance of this Agreement and the other Transaction Documents.

31.2 Subject to Clauses 31.3 and 31.4, the Purchaser shall bear the cost of all stamp duty, notarial fees and all registration and transfer taxes and duties or their equivalents in all jurisdictions (the "**Transfer Taxes**") where such fees, taxes and duties are payable as a result of the transfer of the Shares and Group Businesses contemplated by this Agreement. The Purchaser shall be responsible for arranging the payment of such stamp duty and all other such fees, taxes and duties, including fulfilling any administrative or reporting obligation imposed by the jurisdiction in question in connection with such payment.

31.3 If the Transfer Taxes (for the avoidance of doubt, calculated on the basis of values set out in the Purchase Price Allocation Agreement) which are payable by the Purchaser in respect of the acquisition of the Business carried on in France, Germany and the UK (excluding any stamp duty land tax if and to the extent that it is attributable to VAT being chargeable in respect of the transfer of any Opted Property, where such VAT would not have been chargeable but for the relevant Business Purchaser deciding not to exercise the option to tax for VAT purposes in respect of that Opted Property) are more than the stamp duty that would have been payable had the Business carried on in France, Germany and the UK been transferred by transferring the shares in the Business Sellers in the UK, France and Germany to the Purchaser at Completion then the Seller shall pay to the Purchaser an amount in cash in euros which is equal to such excess (the "**Transfer Tax Payment**").

31.4 The Transfer Tax Payment shall be estimated by the Purchaser in accordance with the values set out in the Purchase Price Allocation Agreement no less than 5 (five) Business Days prior to Completion (the "**Estimated Transfer Tax Payment**") and paid by the Seller to the Purchaser at Completion. The final Transfer Tax Payment (the "**Final Transfer Tax Payment**") will be calculated by the Purchaser after Completion on the basis of the final values set out in the Purchase Price Allocation Agreement. If: (i) the Final Transfer Tax Payment is greater than the Estimated Transfer Tax Payment, the Seller shall pay to the Purchaser an amount equal to the difference between the two amounts; and (ii) the Final Transfer Tax Payment is less than the Estimated Transfer Tax Payment, the Purchaser shall pay to the Seller an amount equal to the difference between the two amounts, such payments to be made no later than fifteen (15) Business Days after the Final Transfer Tax Payment is determined. The Purchaser shall, as soon as reasonably practicable after determining its calculation of the Final Transfer Tax Payment, provide the Seller with the calculations upon which such determination is based, and the Seller shall be entitled to dispute such determination within thirty (30) days of its receipt of such calculations by giving notice to the Purchaser of such dispute and the reasons for such dispute (including reasonable detail of such reasons) (the "**Transfer Taxes Disputed Matters**") (a "**Transfer Taxes Dispute Notice**"). If the Seller gives a valid Transfer Taxes Dispute Notice within such thirty (30) days, the Seller and the Purchaser shall attempt in good faith to reach agreement in respect of the Transfer Taxes Disputed Matters and, if they are unable to do so within twenty-one (21) days of such notification, the Seller or the Purchaser may by notice to the other require that the Transfer Taxes Disputed Matters be referred to the Reporting Accountants and paragraphs 3.4 to 3.10 of Part 1 of Schedule 7 shall apply *mutatis mutandis* to the engagements and the determination of the Reporting Accountants hereunder.

32. Notices

32.1 Any notice or other communication to be given under or in connection with this Agreement ("**Notice**") shall be in the English language in writing and signed by or on behalf of the Party giving it. A Notice may be delivered personally or sent by pre-paid recorded delivery or international courier to the address provided in Clause 32.3, and marked for the attention of the person specified in that Clause.

32.2 A Notice shall be deemed to have been received:

(a) at the time of delivery if delivered personally;

(b) two (2) Business Days after the time and date of posting if sent by pre-paid recorded delivery; or

(c) three (3) Business Days after the time and date of posting if sent by international courier,

provided that if deemed receipt of any Notice occurs after 6pm or is not on a Business Day, deemed receipt of the Notice shall be 9am on the next Business Day. References to time in this Clause 32 are to local time in the country of the addressee.

32.3 The addresses for service of Notice are:

Seller:

Name: Scotts-Sierra Investments LLC
Address: 14111 Scottslawn Road, Marysville, Ohio 43041,
United States of America

For the attention of: General Counsel

Guarantor:

Name: The Scotts Miracle-Gro Company
Address: 14111 Scottslawn Road, Marysville, Ohio 43041,
United States of America
For the attention of: General Counsel

Purchaser:

Name: Garden Care Bidco Limited
Address: 6th Floor, 30 Broadwick Street, London,
United Kingdom, W1F 8JB
For the attention of: Simon Davidson

with a copy to Allen & Overy LLP, One Bishops Square, E1 6AD for the attention of Gordon Milne (delivery of such copy shall not in itself constitute valid notice).

32.4 A Party shall notify the other Party of any change to its details in Clause 32.3 in accordance with the provisions of this Clause 32, provided that such notification shall only be effective on the later of the date specified in the notification and five (5) Business Days after deemed receipt.

33. Counterparts

This Agreement may be executed in counterparts and shall be effective when each Party has executed and delivered a counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same instrument.

34. Time not of the Essence

Time shall not be of the essence of this Agreement whether as regards any dates, times and periods mentioned, as regards any dates, times and periods which may be substituted for them in accordance with this Agreement or by agreement in writing between the Parties or otherwise.

35. Governing Law and Jurisdiction

35.1 This Agreement, including any non-contractual obligations arising out of or in connection with this Agreement, is governed by and shall be construed in accordance with English law.

35.2 The Parties agree that the courts of England shall have exclusive jurisdiction to hear and determine any suit, action or proceedings arising out of or in connection with this Agreement (including any non-contractual obligations arising out of or in connection with this Agreement) ("**Proceedings**") and, for such purposes, irrevocably submit to the jurisdiction of such courts.

36. Agent for Service of Process

36.1 The Seller and the Guarantor each irrevocably appoint The Scotts Company (UK) Limited, c/o White & Case LLP, 5 Old Broad St, London EC2N 1DW as its agent for service of process in England.

36.2 If any person appointed as agent for service of process ceases to act as such the relevant Party shall immediately appoint another person to accept service of process on its behalf in England and notify the Purchaser of such appointment. If it fails to do so within ten (10) Business Days the Purchaser shall be entitled by notice to the relevant Party to appoint a replacement agent for service of process.

This Agreement has been entered into by the Parties on the date first above written.

Signed for and on behalf
of **Scotts-Sierra Investments LLC**

/s/ Katy Wiles

Signed for and on behalf
of **The Scotts Miracle-Gro Company**

/s/ Thomas Randal Coleman

Signed for and on behalf
of **Garden Care Bidco Limited**

/s/ Simon Davidson

Exhibit 2
Acceptance Notice pursuant to paragraph 1.2 of the Offer Letter

[ON THE LETTERHEAD OF SCOTTS-SIERRA INVESTMENTS LLC]

TO: **Garden Care Bidco Limited**

DATE: , 2017

We refer to the letter dated ,2017 from the Purchaser addressed to the Seller and the Guarantor concerning the Offer for the acquisition of the Shares and Businesses of the Companies listed in Parts 1 and 2 of Schedule 1 to the Sale and Purchase Agreement (the "**Offer Letter**").

Capitalised terms used but not otherwise defined herein shall have the same meaning as ascribed to them in the Offer Letter.

The Seller hereby provides notice to the Purchaser of the Seller's agreement to accept the Offer and proceed with the Transaction on the terms and conditions set out in the Sale and Purchase Agreement. Enclosed with this notice is the Sale and Purchase Agreement executed by the Seller and the Guarantor. This notice constitutes the acceptance notice from the Seller to the Purchaser for the purposes of paragraph 1.2 of the Offer Letter.

This notice and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.

on behalf of SCOTTS-SIERRA INVESTMENTS LLC,

Exhibit 12

The Scotts Miracle-Gro Company
Computation of Ratio of Earnings to Fixed Charges

($ IN MILLIONS)

	2017	2016	2015	2014	2013
Income from continuing operations before income taxes	$ 314.9	$ 383.7	$ 205.0	$ 206.1	$ 224.7
Fixed charges	94.1	80.3	65.3	60.8	68.1
Other [1]	33.1	0.2	0.6	(5.2)	1.0
Interest capitalized	(0.1)	(0.3)	(0.4)	(0.4)	(0.7)
Total adjusted earnings available for payment of fixed charges	$ 442.0	$ 463.9	$ 270.5	$ 261.3	$ 293.1
Fixed Charges:					
Interest expense [2]	$ 76.1	$ 62.9	$ 48.8	$ 46.5	$ 57.3
Interest capitalized	0.1	0.3	0.4	0.4	0.7
Rental expense representative of interest factor	17.9	17.1	16.1	13.9	10.1
Total Fixed Charges	$ 94.1	$ 80.3	$ 65.3	$ 60.8	$ 68.1
Ratio of Earnings to Fixed Charges	4.7	5.8	4.1	4.3	4.3

(1) Includes amortization of capitalized interest, adjustments for non-controlling interests in consolidated subsidiaries and distributed earnings of equity investees. Interest expense recorded on tax exposures has been recorded in income tax expense and has therefore been excluded from the calculation.

(2) Includes amortization of deferred financing and issuance costs related to indebtedness.

Exhibit 21

DIRECT AND INDIRECT SUBSIDIARIES OF
THE SCOTTS MIRACLE-GRO COMPANY

Directly owned subsidiaries, as of September 30, 2017, are located at the left margin, each subsidiary tier thereunder is indented. Subsidiaries are listed under the names of their respective parent entities. Unless otherwise noted, the subsidiaries are wholly-owned.

NAME	JURISDICTION OF FORMATION
GenSource, Inc.	Ohio
Gutwein & Co., Inc.	Indiana
OMS Investments, Inc.	Delaware
Scotts Temecula Operations, LLC	Delaware
Sanford Scientific, Inc.	New York
Scotts Global Investments, Inc.	Delaware
Scotts Global Services, Inc.	Ohio
Scotts Luxembourg SARL	Luxembourg
Scotts Manufacturing Company	Delaware
Miracle-Gro Lawn Products, Inc.	New York
Scotts Products Co.	Ohio
Scotts Servicios, S.A. de C.V.[1]	Mexico
Scotts Professional Products Co.	Ohio
Scotts Servicios, S.A. de C.V.[1]	Mexico
SLS Holdings, Inc.	Delaware
Outdoor Home Services Holdings LLC[2]	Delaware
SMG Growing Media, Inc.	Ohio
AeroGrow International, Inc.[3]	Nevada
Hyponex Corporation	Delaware
Rod McLellan Company	California
The Hawthorne Gardening Company	Delaware
Hawthorne Canada Limited	Canada
Hawthorne Hydroponics LLC	Delaware
Hawthorne Holdings B.V.	Netherlands
Hawthorne Gardening B.V.	Netherlands
Gavita Partners B.V.[4]	Netherlands
Gavita International B.V.	Netherlands
Agrolux Holding B.V.	Netherlands
HDP Trading B.V.	Netherlands
Agrolux Europe B.V.	Netherlands
Agrolux Nederland B.V.	Netherlands
Agrolux Lighting Holding Inc.	Canada
Agrolux Lighting Inc.	Canada

[1] Scotts Professional Products Co. owns 50% and Scotts Products Co. owns 50%.
[2] SLS Holdings, Inc.'s ownership is 29.9%.
[3] SMG Growing Media, Inc.'s ownership is 81.3%.
[4] Hawthorne Gardening B.V.'s ownership is 95%.

Gavita Holdings B.V.	Netherlands
Gavita Holland B.V.	Netherlands
Gavita Nederland B.V.	Netherlands
Gavita Canada Inc.	Canada
Gavita AS	Norway
HGCI, Inc.	Nevada
SMG ITO Holdings, Inc.	Ohio
Seamless Control LLC[5]	Delaware
SMGM LLC	Ohio
Scotts-Sierra Investments LLC	Delaware
ASEF B.V.	Netherlands
Scotts Asia, Limited	Hong Kong
Scotts Gardening Fertilizer (Wuhan) Co., Ltd.	China
Scotts Canada Ltd.	Canada
Laketon Peat Moss Inc.[6]	Canada
Scotts de Mexico SA de CV[7]	Mexico
Scotts France Holdings SARL	France
Scotts France SAS	France
SMG Germany GmbH	Germany
Scotts Holdings Limited	United Kingdom
Levington Group Limited	United Kingdom
SMG Gardening (UK) Limited	United Kingdom
The Scotts Company (Manufacturing) Limited	United Kingdom
Humax Horticulture Limited	United Kingdom
O M Scott International Investments Limited	United Kingdom
Teak 2, Ltd.	Delaware
Swiss Farms Products, Inc.	Delaware
The Scotts Company LLC	Ohio
The Scotts Miracle-Gro Foundation[8]	Ohio

[5] SLS Holdings, Inc. owns 51.0%.
[6] Scotts Canada Ltd.'s ownership is 50.0%.
[7] The Scotts Company LLC owns 0.5% and Scotts-Sierra Investments LLC owns the remaining 99.5%.
[8] The Scotts Miracle-Gro Foundation is a 501(c)(3) corporation.

Exhibit 23

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement Nos. 033-47073, 333-72715, 333-124503, 333-131466, 333-147397, 333-153925, 333-154364, 333-186187, and 333-215774 on Form S-8 and Registration Statement No. 333-208554 on Form S-3 of our reports dated November 28, 2017, relating to the consolidated financial statements and consolidated financial statement schedules of The Scotts Miracle-Gro Company and subsidiaries (the "Company"), and the effectiveness of the Company's internal control over financial reporting, appearing in this Annual Report on Form 10-K of the Company for the fiscal year ended September 30, 2017.

/s/ DELOITTE & TOUCHE LLP

Columbus, Ohio

November 28, 2017

POWER OF ATTORNEY

The undersigned director of The Scotts Miracle-Gro Company, an Ohio corporation (the "Corporation"), which anticipates filing with the Securities and Exchange Commission, Washington, D.C., under the provisions of the Securities Exchange Act of 1934, as amended, the Annual Report of the Corporation on Form 10-K for the fiscal year ended September 30, 2017, hereby constitutes and appoints James Hagedorn, Thomas Randal Coleman and Ivan C. Smith, and each of them, with full power of substitution and resubstitution, as attorney-in-fact and agent to sign for the undersigned, in any and all capacities, such Annual Report on Form 10-K and any and all amendments thereto ("Annual Report on Form 10-K"), and any and all applications or documents to be filed with the Securities and Exchange Commission pertaining to such Annual Report on Form 10-K, each in such form as they or any one of them may approve, and to file the same, with all exhibits thereto and other documents in connection therewith with the Securities and Exchange Commission, and grants unto each said attorney-in-fact and agent full power and authority to do and perform any and all acts and things whatsoever required and necessary to be done in the premises, as fully to all intents and purposes as the undersigned could do if personally present. The undersigned hereby ratifies and confirms all that each said attorney-in-fact and agent or his substitute or substitutes may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the undersigned has executed this Power of Attorney this 28th day of November, 2017.

/s/ BRIAN D. FINN

Brian D. Finn

POWER OF ATTORNEY

The undersigned officer and director of The Scotts Miracle-Gro Company, an Ohio corporation (the "Corporation"), which anticipates filing with the Securities and Exchange Commission, Washington, D.C., under the provisions of the Securities Exchange Act of 1934, as amended, the Annual Report of the Corporation on Form 10-K for the fiscal year ended September 30, 2017, hereby constitutes and appoints Thomas Randal Coleman and Ivan C. Smith, and each of them, with full power of substitution and resubstitution, as attorney-in-fact and agent to sign for the undersigned, in any and all capacities, such Annual Report on Form 10-K and any and all amendments thereto ("Annual Report on Form 10-K"), and any and all applications or documents to be filed with the Securities and Exchange Commission pertaining to such Annual Report on Form 10-K, each in such form as they or any one of them may approve, and to file the same, with all exhibits thereto and other documents in connection therewith with the Securities and Exchange Commission, and grants unto each said attorney-in-fact and agent full power and authority to do and perform any and all acts and things whatsoever required and necessary to be done in the premises, as fully to all intents and purposes as the undersigned could do if personally present. The undersigned hereby ratifies and confirms all that each said attorney-in-fact and agent or his substitute or substitutes may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the undersigned has executed this Power of Attorney this 28th day of November, 2017.

/s/ JAMES HAGEDORN

James Hagedorn

POWER OF ATTORNEY

The undersigned director of The Scotts Miracle-Gro Company, an Ohio corporation (the "Corporation"), which anticipates filing with the Securities and Exchange Commission, Washington, D.C., under the provisions of the Securities Exchange Act of 1934, as amended, the Annual Report of the Corporation on Form 10-K for the fiscal year ended September 30, 2017, hereby constitutes and appoints James Hagedorn, Thomas Randal Coleman and Ivan C. Smith, and each of them, with full power of substitution and resubstitution, as attorney-in-fact and agent to sign for the undersigned, in any and all capacities, such Annual Report on Form 10-K and any and all amendments thereto ("Annual Report on Form 10-K"), and any and all applications or documents to be filed with the Securities and Exchange Commission pertaining to such Annual Report on Form 10-K, each in such form as they or any one of them may approve, and to file the same, with all exhibits thereto and other documents in connection therewith with the Securities and Exchange Commission, and grants unto each said attorney-in-fact and agent full power and authority to do and perform any and all acts and things whatsoever required and necessary to be done in the premises, as fully to all intents and purposes as the undersigned could do if personally present. The undersigned hereby ratifies and confirms all that each said attorney-in-fact and agent or his substitute or substitutes may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the undersigned has executed this Power of Attorney this 28th day of November, 2017.

/s/ ADAM HANFT
Adam Hanft

POWER OF ATTORNEY

The undersigned director of The Scotts Miracle-Gro Company, an Ohio corporation (the "Corporation"), which anticipates filing with the Securities and Exchange Commission, Washington, D.C., under the provisions of the Securities Exchange Act of 1934, as amended, the Annual Report of the Corporation on Form 10-K for the fiscal year ended September 30, 2017, hereby constitutes and appoints James Hagedorn, Thomas Randal Coleman and Ivan C. Smith, and each of them, with full power of substitution and resubstitution, as attorney-in-fact and agent to sign for the undersigned, in any and all capacities, such Annual Report on Form 10-K and any and all amendments thereto ("Annual Report on Form 10-K"), and any and all applications or documents to be filed with the Securities and Exchange Commission pertaining to such Annual Report on Form 10-K, each in such form as they or any one of them may approve, and to file the same, with all exhibits thereto and other documents in connection therewith with the Securities and Exchange Commission, and grants unto each said attorney-in-fact and agent full power and authority to do and perform any and all acts and things whatsoever required and necessary to be done in the premises, as fully to all intents and purposes as the undersigned could do if personally present. The undersigned hereby ratifies and confirms all that each said attorney-in-fact and agent or his substitute or substitutes may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the undersigned has executed this Power of Attorney this 28th day of November, 2017.

/s/ MICHELLE A. JOHNSON
Michelle A. Johnson

POWER OF ATTORNEY

The undersigned director of The Scotts Miracle-Gro Company, an Ohio corporation (the "Corporation"), which anticipates filing with the Securities and Exchange Commission, Washington, D.C., under the provisions of the Securities Exchange Act of 1934, as amended, the Annual Report of the Corporation on Form 10-K for the fiscal year ended September 30, 2017, hereby constitutes and appoints James Hagedorn, Thomas Randal Coleman and Ivan C. Smith, and each of them, with full power of substitution and resubstitution, as attorney-in-fact and agent to sign for the undersigned, in any and all capacities, such Annual Report on Form 10-K and any and all amendments thereto ("Annual Report on Form 10-K"), and any and all applications or documents to be filed with the Securities and Exchange Commission pertaining to such Annual Report on Form 10-K, each in such form as they or any one of them may approve, and to file the same, with all exhibits thereto and other documents in connection therewith with the Securities and Exchange Commission, and grants unto each said attorney-in-fact and agent full power and authority to do and perform any and all acts and things whatsoever required and necessary to be done in the premises, as fully to all intents and purposes as the undersigned could do if personally present. The undersigned hereby ratifies and confirms all that each said attorney-in-fact and agent or his substitute or substitutes may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the undersigned has executed this Power of Attorney this 28th day of November, 2017.

/s/ STEPHEN L. JOHNSON

Stephen L. Johnson

POWER OF ATTORNEY

The undersigned director of The Scotts Miracle-Gro Company, an Ohio corporation (the "Corporation"), which anticipates filing with the Securities and Exchange Commission, Washington, D.C., under the provisions of the Securities Exchange Act of 1934, as amended, the Annual Report of the Corporation on Form 10-K for the fiscal year ended September 30, 2017, hereby constitutes and appoints James Hagedorn, Thomas Randal Coleman and Ivan C. Smith, and each of them, with full power of substitution and resubstitution, as attorney-in-fact and agent to sign for the undersigned, in any and all capacities, such Annual Report on Form 10-K and any and all amendments thereto ("Annual Report on Form 10-K"), and any and all applications or documents to be filed with the Securities and Exchange Commission pertaining to such Annual Report on Form 10-K, each in such form as they or any one of them may approve, and to file the same, with all exhibits thereto and other documents in connection therewith with the Securities and Exchange Commission, and grants unto each said attorney-in-fact and agent full power and authority to do and perform any and all acts and things whatsoever required and necessary to be done in the premises, as fully to all intents and purposes as the undersigned could do if personally present. The undersigned hereby ratifies and confirms all that each said attorney-in-fact and agent or his substitute or substitutes may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the undersigned has executed this Power of Attorney this 28th day of November, 2017.

/s/ THOMAS N. KELLY JR.
Thomas N. Kelly Jr.

POWER OF ATTORNEY

The undersigned director of The Scotts Miracle-Gro Company, an Ohio corporation (the "Corporation"), which anticipates filing with the Securities and Exchange Commission, Washington, D.C., under the provisions of the Securities Exchange Act of 1934, as amended, the Annual Report of the Corporation on Form 10-K for the fiscal year ended September 30, 2017, hereby constitutes and appoints James Hagedorn, Thomas Randal Coleman and Ivan C. Smith, and each of them, with full power of substitution and resubstitution, as attorney-in-fact and agent to sign for the undersigned, in any and all capacities, such Annual Report on Form 10-K and any and all amendments thereto ("Annual Report on Form 10-K"), and any and all applications or documents to be filed with the Securities and Exchange Commission pertaining to such Annual Report on Form 10-K, each in such form as they or any one of them may approve, and to file the same, with all exhibits thereto and other documents in connection therewith with the Securities and Exchange Commission, and grants unto each said attorney-in-fact and agent full power and authority to do and perform any and all acts and things whatsoever required and necessary to be done in the premises, as fully to all intents and purposes as the undersigned could do if personally present. The undersigned hereby ratifies and confirms all that each said attorney-in-fact and agent or his substitute or substitutes may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the undersigned has executed this Power of Attorney this 28th day of November, 2017.

/s/ KATHERINE HAGEDORN LITTLEFIELD

Katherine Hagedorn Littlefield

POWER OF ATTORNEY

The undersigned director of The Scotts Miracle-Gro Company, an Ohio corporation (the "Corporation"), which anticipates filing with the Securities and Exchange Commission, Washington, D.C., under the provisions of the Securities Exchange Act of 1934, as amended, the Annual Report of the Corporation on Form 10-K for the fiscal year ended September 30, 2017, hereby constitutes and appoints James Hagedorn, Thomas Randal Coleman and Ivan C. Smith, and each of them, with full power of substitution and resubstitution, as attorney-in-fact and agent to sign for the undersigned, in any and all capacities, such Annual Report on Form 10-K and any and all amendments thereto ("Annual Report on Form 10-K"), and any and all applications or documents to be filed with the Securities and Exchange Commission pertaining to such Annual Report on Form 10-K, each in such form as they or any one of them may approve, and to file the same, with all exhibits thereto and other documents in connection therewith with the Securities and Exchange Commission, and grants unto each said attorney-in-fact and agent full power and authority to do and perform any and all acts and things whatsoever required and necessary to be done in the premises, as fully to all intents and purposes as the undersigned could do if personally present. The undersigned hereby ratifies and confirms all that each said attorney-in-fact and agent or his substitute or substitutes may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the undersigned has executed this Power of Attorney this 28th day of November, 2017.

/s/ JAMES F. MCCANN

James F. McCann

POWER OF ATTORNEY

The undersigned director of The Scotts Miracle-Gro Company, an Ohio corporation (the "Corporation"), which anticipates filing with the Securities and Exchange Commission, Washington, D.C., under the provisions of the Securities Exchange Act of 1934, as amended, the Annual Report of the Corporation on Form 10-K for the fiscal year ended September 30, 2017, hereby constitutes and appoints James Hagedorn, Thomas Randal Coleman and Ivan C. Smith, and each of them, with full power of substitution and resubstitution, as attorney-in-fact and agent to sign for the undersigned, in any and all capacities, such Annual Report on Form 10-K and any and all amendments thereto ("Annual Report on Form 10-K"), and any and all applications or documents to be filed with the Securities and Exchange Commission pertaining to such Annual Report on Form 10-K, each in such form as they or any one of them may approve, and to file the same, with all exhibits thereto and other documents in connection therewith with the Securities and Exchange Commission, and grants unto each said attorney-in-fact and agent full power and authority to do and perform any and all acts and things whatsoever required and necessary to be done in the premises, as fully to all intents and purposes as the undersigned could do if personally present. The undersigned hereby ratifies and confirms all that each said attorney-in-fact and agent or his substitute or substitutes may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the undersigned has executed this Power of Attorney this 28th day of November, 2017.

/s/ NANCY G. MISTRETTA

Nancy G. Mistretta

POWER OF ATTORNEY

The undersigned director of The Scotts Miracle-Gro Company, an Ohio corporation (the "Corporation"), which anticipates filing with the Securities and Exchange Commission, Washington, D.C., under the provisions of the Securities Exchange Act of 1934, as amended, the Annual Report of the Corporation on Form 10-K for the fiscal year ended September 30, 2017, hereby constitutes and appoints James Hagedorn, Thomas Randal Coleman and Ivan C. Smith, and each of them, with full power of substitution and resubstitution, as attorney-in-fact and agent to sign for the undersigned, in any and all capacities, such Annual Report on Form 10-K and any and all amendments thereto ("Annual Report on Form 10-K"), and any and all applications or documents to be filed with the Securities and Exchange Commission pertaining to such Annual Report on Form 10-K, each in such form as they or any one of them may approve, and to file the same, with all exhibits thereto and other documents in connection therewith with the Securities and Exchange Commission, and grants unto each said attorney-in-fact and agent full power and authority to do and perform any and all acts and things whatsoever required and necessary to be done in the premises, as fully to all intents and purposes as the undersigned could do if personally present. The undersigned hereby ratifies and confirms all that each said attorney-in-fact and agent or his substitute or substitutes may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the undersigned has executed this Power of Attorney this 28th day of November, 2017.

/s/ PETER E. SHUMLIN

Peter E. Shumlin

POWER OF ATTORNEY

The undersigned director of The Scotts Miracle-Gro Company, an Ohio corporation (the "Corporation"), which anticipates filing with the Securities and Exchange Commission, Washington, D.C., under the provisions of the Securities Exchange Act of 1934, as amended, the Annual Report of the Corporation on Form 10-K for the fiscal year ended September 30, 2017, hereby constitutes and appoints James Hagedorn, Thomas Randal Coleman and Ivan C. Smith, and each of them, with full power of substitution and resubstitution, as attorney-in-fact and agent to sign for the undersigned, in any and all capacities, such Annual Report on Form 10-K and any and all amendments thereto ("Annual Report on Form 10-K"), and any and all applications or documents to be filed with the Securities and Exchange Commission pertaining to such Annual Report on Form 10-K, each in such form as they or any one of them may approve, and to file the same, with all exhibits thereto and other documents in connection therewith with the Securities and Exchange Commission, and grants unto each said attorney-in-fact and agent full power and authority to do and perform any and all acts and things whatsoever required and necessary to be done in the premises, as fully to all intents and purposes as the undersigned could do if personally present. The undersigned hereby ratifies and confirms all that each said attorney-in-fact and agent or his substitute or substitutes may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the undersigned has executed this Power of Attorney this 28th day of November, 2017.

/s/ JOHN R. VINES

John R. Vines

POWER OF ATTORNEY

The undersigned officer of The Scotts Miracle-Gro Company, an Ohio corporation (the "Corporation"), which anticipates filing with the Securities and Exchange Commission, Washington, D.C., under the provisions of the Securities Exchange Act of 1934, as amended, the Annual Report of the Corporation on Form 10-K for the fiscal year ended September 30, 2017, hereby constitutes and appoints James Hagedorn and Ivan C. Smith, and each of them, with full power of substitution and resubstitution, as attorney-in-fact and agent to sign for the undersigned, in any and all capacities, such Annual Report on Form 10-K and any and all amendments thereto ("Annual Report on Form 10-K"), and any and all applications or documents to be filed with the Securities and Exchange Commission pertaining to such Annual Report on Form 10-K, each in such form as they or any one of them may approve, and to file the same, with all exhibits thereto and other documents in connection therewith with the Securities and Exchange Commission, and grants unto each said attorney-in-fact and agent full power and authority to do and perform any and all acts and things whatsoever required and necessary to be done in the premises, as fully to all intents and purposes as he could do if personally present. The undersigned hereby ratifies and confirms all that each said attorney-in-fact and agent or his substitute or substitutes may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the undersigned has executed this Power of Attorney this 28th day of November, 2017.

/s/ THOMAS RANDAL COLEMAN
Thomas Randal Coleman

Exhibit 31.1

Rule 13a-14(a)/15d-14(a) Certifications
(Principal Executive Officer)
CERTIFICATIONS

I, James Hagedorn, certify that:

1. I have reviewed this Annual Report on Form 10-K of The Scotts Miracle-Gro Company for the fiscal year ended September 30, 2017;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 28, 2017

By: /s/ JAMES HAGEDORN

Printed Name: James Hagedorn

Title: Chief Executive Officer and Chairman of the Board

Exhibit 31.2

Rule 13a-14(a)/15d-14(a) Certifications
(Principal Financial Officer)
CERTIFICATIONS

I, Thomas Randal Coleman, certify that:

1. I have reviewed this Annual Report on Form 10-K of The Scotts Miracle-Gro Company for the fiscal year ended September 30, 2017;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 28, 2017

By: /s/ THOMAS RANDAL COLEMAN

Printed Name: Thomas Randal Coleman

Title: Executive Vice President and Chief Financial Officer

Exhibit 32

SECTION 1350 CERTIFICATIONS*

In connection with the Annual Report on Form 10-K of The Scotts Miracle-Gro Company (the "Company") for the fiscal year ended September 30, 2017 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned James Hagedorn, Chief Executive Officer and Chairman of the Board of the Company, and Thomas Randal Coleman, Executive Vice President and Chief Financial Officer of the Company, certify, pursuant to Section 1350 of Chapter 63 of Title 18 of the United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of their knowledge:

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

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

/s/ JAMES HAGEDORN	/s/ THOMAS RANDAL COLEMAN
Printed Name: James Hagedorn	Printed Name: Thomas Randal Coleman
Title: Chief Executive Officer and Chairman of the Board	Title: Executive Vice President and Chief Financial Officer
November 28, 2017	November 28, 2017

* THESE CERTIFICATIONS ARE BEING FURNISHED AS REQUIRED BY RULE 13a-14(b) UNDER THE SECURITIES EXCHANGE ACT OF 1934 (THE "EXCHANGE ACT") AND SECTION 1350 OF CHAPTER 63 OF TITLE 18 OF THE UNITED STATES CODE, AND SHALL NOT BE DEEMED "FILED" FOR PURPOSES OF SECTION 18 OF THE EXCHANGE ACT OR OTHERWISE SUBJECT TO THE LIABILITY OF THAT SECTION. THESE CERTIFICATIONS SHALL NOT BE DEEMED TO BE INCORPORATED BY REFERENCE INTO ANY FILING UNDER THE SECURITIES ACT OF 1933 OR THE EXCHANGE ACT, EXCEPT TO THE EXTENT THAT THE COMPANY SPECIFICALLY INCORPORATES THESE CERTIFICATIONS BY REFERENCE.