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# Section 1: 8-K/A (8-K/A EMPLOYMENT AGREEMENT AND OFFICER DEPARTURE)

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

**FORM 8-K/A**  
**(Amendment No. 1)**

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported): August 23, 2019 (August 22, 2019)



**Tractor Supply Company**

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(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation)

000-23314

(Commission File Number)

13-3139732

(I.R.S. Employer Identification No.)

5401 Virginia Way, Brentwood, Tennessee 37027  
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (615) 440-4000

Not Applicable

Former name or former address, if changed since last report

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)  
 Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)  
 Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))  
 Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Emerging growth company

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.008 par value	TSCO	NASDAQ Global Select Market

## EXPLANATORY NOTE

On August 23, 2019, Tractor Supply Company filed a Current Report on Form 8-K to disclose the entry into a Second Amended and Restated Employment Agreement (the “Agreement”) with its Chief Executive Officer, Gregory A. Sandfort, and to file a copy of the Agreement. This Current Report on 8-K/A is being submitted solely to correct Mr. Sandfort’s annual base salary and file a corrected copy of the Agreement.

### **Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

On August 22, 2019, Tractor Supply Company (the “Company”) entered into a Second Amended and Restated Employment Agreement (the “Agreement”) with its Chief Executive Officer, Gregory A. Sandfort, amending and restating in its entirety the First Amended and Restated Employment Agreement dated March 17, 2015 (the “Prior Agreement”). The Agreement includes the following changes from the Prior Agreement:

- extends the term of Mr. Sandfort’s employment to December 31, 2020, unless earlier terminated as set forth in the Agreement.
- updates Mr. Sandfort’s annual base salary to reflect his current base salary of \$1,250,000.
- provides that Mr. Sandfort may retire during the term of the Agreement and be entitled to the retirement benefits set forth in the Prior Agreement if the Board of Directors and Mr. Sandfort agree on the terms of a mutually satisfactory and customary transition plan for Mr. Sandfort’s position including the timing of his retirement and Mr. Sandfort’s compliance with the terms of the transition plan in all material respects.
- provides that any performance-based restricted stock units or performance share units will vest in accordance with the applicable award agreement in the event that Mr. Sandfort’s employment is terminated as a result of his death, disability or Retirement, or as a result of his termination without Cause or for Good Reason (each as defined in the Agreement).

The foregoing summary description of the Agreement is not intended to be complete and is qualified in its entirety by the complete text of the Agreement filed as Exhibit 10.1 to this Current Report on Form 8-K/A and incorporated by reference herein.

The Company also announced that Steve K. Barbarick, President and Chief Operating Officer, has resigned effective as of today, August 23, 2019.

### **Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits:

10.1 Second Amended and Restated Employment Agreement, dated August 22, 2019, by and between Tractor Supply Company and Gregory A. Sandfort.

104 The cover page from this Current Report on Form 8-K/A, formatted in Inline XBRL.

## SIGNATURES

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

Tractor Supply Company

August 23, 2019

By: /s/ Kurt D. Barton

Name: Kurt D. Barton

Title: Executive Vice President - Chief Financial Officer and Treasurer

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
10.1	<a href="#">Second Amended and Restated Employment Agreement, dated August 22, 2019, by and between Tractor Supply Company and Gregory A. Sandfort</a>

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## **Section 2: EX-10.1 (EXHIBIT 10.1 SECOND AMENDED AND RESTATED EMPLOYMENT AGREEMENT GREG SANDFORT)**

### **SECOND AMENDED AND RESTATED EMPLOYMENT AGREEMENT**

This SECOND AMENDED AND RESTATED EMPLOYMENT AGREEMENT (“Agreement”) is entered into as of August 22, 2019 by and between Tractor Supply Company, a Delaware corporation (the “Company”), and Gregory A. Sandfort (the “Executive”) and amends and restates that certain Amended and Restated Employment Agreement by and between the Company and Executive dated as of March 17, 2015.

#### **W I T N E S S E T H:**

WHEREAS, the Executive has served as the President and Chief Executive Officer of the Company since December 20, 2012 (the “Effective Date”);

WHEREAS, the Company desires that the Executive continue to serve as the Company’s President and Chief Executive Officer for the period set forth herein and the Executive desires to serve and be so employed by the Company; and

WHEREAS, the Company and the Executive wish to establish the terms of the Executive’s employment with the Company, the financial obligations of the Company to the Executive and to specify certain rights, responsibilities and duties of the Executive.

NOW, THEREFORE, based upon the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

#### **ARTICLE I. RESPONSIBILITIES**

The Executive shall serve as President and Chief Executive Officer of the Company, or such other executive position as the Executive shall approve, performing duties commensurate with the position of President and Chief Executive Officer and such additional duties as the Board of Directors of the Company (the “Board”) shall reasonably determine from time to time during the term of this Agreement. The Executive shall report directly to the Board. The Executive accepts employment upon the terms set forth in this Agreement and will perform diligently to the best of his abilities those duties contemplated by this Agreement in a

manner that promotes the interests and goodwill of the Company. The Executive will faithfully devote his commercially reasonable efforts and all his working time to and for the benefit of the Company. The Executive may devote reasonable time and attention to civic, charitable, business or social organizations or speaking engagements so long as such activities do not interfere with the performance of the Executive's responsibilities under this Agreement and provided the Executive may, with the Board's prior approval, serve as a director for up to two publicly traded companies (other than the Company or any of its subsidiaries). The Executive agrees to serve, if requested and without any additional compensation, as a director on the board of directors of the Company or any subsidiary of the Company and/or in one or more officer positions with any subsidiary of the Company. If the Executive's employment is terminated for any reason, whether such termination is voluntary or involuntary, the Executive shall resign, as applicable, as a director and officer of the Company and any of the Company's subsidiaries, such resignation to be effective no later than the date of termination of the Executive's employment with the Company. The permanent place of employment of the Executive shall be the corporate headquarters of the Company which shall be located within thirty (30) miles of the metropolitan Nashville, Tennessee area. The Executive shall not be required to relocate his place of employment outside of such area at any time during the Term without his prior consent, which consent may be withheld by the Executive for any reason he deems appropriate. The Executive will be required to conduct reasonable travel in the course of the performance of his duties on behalf of the Company.

ARTICLE II. **TERM**

Subject to termination pursuant to **Article IV** hereof, Executive's employment by the Company pursuant to this Agreement (as the same may be extended, the "Term") shall continue until December 31, 2020. However, if a Change in Control occurs during the Term, the Term shall expire no earlier than the second anniversary of the date on which such Change in Control occurs.

ARTICLE III. **COMPENSATION**

**Section 3.1 General Terms.**

(a) *Base Salary.* The Company shall pay the Executive base salary at the rate of \$1,250,000 per annum ("Minimum Base Salary"), payable in accordance with the Company's ordinary payroll policies. Executive's base salary shall be reviewed annually by the Compensation Committee of the Board and may be increased in the sole discretion of the Board (such base salary, as the same may be increased, is hereinafter referred to as the "Base Salary"); provided, however that the Base Salary shall at no time during the Term be below the Minimum Base Salary. Any increases in Base Salary that are memorialized in the minutes of the Board shall be incorporated herein by reference without further action by the Executive or the Company.

(b) *Bonus.* The Executive shall be eligible to participate in such bonus plans during the Term as the Board may determine appropriate for executive officers of the Company. Throughout the Term, the Executive's annual target bonus percentage shall be no less than 100% of the Minimum Base Salary; provided, however, that payment of any bonus shall remain subject to such performance and other criteria as may be established by the Board.

(c) *Equity.* The Executive shall be eligible to participate in such equity incentive plans during the Term as the Compensation Committee may determine appropriate for executive officers of the Company.

**Section 3.2 Reimbursement.**

It is acknowledged by the parties that the Executive, in connection with the services to be performed by him pursuant to the terms of this Agreement, will be required to make payments for travel, entertainment of business associates and similar business related expenses. The Company will reimburse the Executive for all reasonable, documented expenses of types authorized by the Company and incurred by the Executive in the performance of his duties hereunder. The Executive will comply with such budget limitations and approval and reporting requirements with respect to expenses as the Company may establish from time to time.

**Section 3.3 Employee Benefits.**

(d) *General.* During the Term, the Company shall provide the Executive with employee and fringe benefits under any and all employee benefit plans and programs which are from time to time generally made available to the executive officers of the Company. Nothing in this Agreement shall require the Company to maintain such plans or programs nor prohibit the Company from terminating, amending or modifying such plans and programs, as the Company, in its sole direction, may deem advisable. In all events, including, but not limited to, the funding, operation, management, participation, vesting, termination, amendment or modification of such plans and programs, the rights and benefits of the Executive shall be governed solely by the terms of the plans and programs, as

provided in such plans, programs or any contract or agreement related thereto. Nothing in this Agreement shall be deemed to amend or modify any such plan or program.

(e) *Vacation Leave.* During the Term, the Executive shall be entitled to paid vacation in accordance with the Company's standard vacation policies for its executive officers as may be in effect from time to time.

#### ARTICLE IV. **TERMINATION**

The Executive's employment by the Company pursuant to this Agreement shall not be terminated prior to the end of the Term hereof except as set forth in this **Article IV**.

##### **Section 4.1 By Mutual Consent.**

The Executive's employment pursuant to this Agreement may be terminated at any time by the mutual written agreement of the Company and the Executive. In the event that the Executive's employment is terminated pursuant to this **Section 4.1**, the Executive shall receive Base Salary and benefits to be paid or provided to the Executive under this Agreement through the Date of Termination (as defined in **Section 4.10** hereof) and any other unpaid benefits to which the Executive is otherwise entitled under any plan, policy or program of the Company (including any bonus plan) applicable to the Executive as of the Date of Termination, in accordance with the terms of such plan, policy or program.

##### **Section 4.2 Death.**

The Executive's employment pursuant to this Agreement shall be terminated upon the death of the Executive, in which event the Executive's heirs shall receive, when the same would have been paid to the Executive, (i) all Base Salary and benefits to be paid or provided to the Executive under this Agreement through the Date of Termination, (ii) an amount equal to the pro rata portion of the average of the Executive's annual bonus(es) or award(s) for the prior three (3) fiscal years pursuant to any cash bonus plan maintained by the Company in respect of the fiscal years preceding the Date of Termination (other than the Company's Long-Term Cash Plan (the "LTCP")), and (iii) any other unpaid benefits (including death benefits) to which he is entitled under any other plan, policy or program of the Company applicable to the Executive as of the Date of Termination, in accordance with the terms of such plan, policy or program. In addition, the Executive shall be fully vested in all then outstanding options to acquire stock of the Company, and, subject to the last sentence of this **Section 4.2**, all then outstanding restricted shares of stock and restricted stock units of the Company held by the Executive and any such options shall remain exercisable until the earlier of (x) the second anniversary of the Date of Termination and (y) the otherwise applicable normal expiration date of such option. The foregoing provision shall not apply to extend the expiration date of any option that is outstanding (whether vested or unvested) as of the date hereof and that is intended to qualify as an "incentive stock option" under Section 422 of the Internal Revenue Code of 1986, as amended (the "Code"). For the avoidance of doubt, settlement of any restricted stock units, the vesting of which is accelerated pursuant to this Agreement, shall occur upon vesting pursuant to this **Section 4.2**, subject to any previous legally binding deferral election or contrary payment date provided for in the applicable award agreement regarding such units. Anything to the contrary herein notwithstanding, the vesting of any performance share units or performance-based restricted stock or restricted stock unit awards shall vest according to the terms of the applicable award agreement.

##### **Section 4.3 By Retirement.**

The Executive's employment pursuant to this Agreement may be terminated during the Term if the Executive and the Board agree on the terms of a mutually satisfactory and customary transition plan for Executive's position, including the timing of Executive's retirement, and Executive shall have complied with the terms of the transition plan in all material respects (such termination pursuant to this **Section 4.3** being referred to herein as "Retirement"). In the event that the Executive's employment is terminated pursuant to the first sentence of this **Section 4.3**, the Executive shall receive: (i) any unpaid Base Salary and benefits to be paid or provided to the Executive under this Agreement through the Date of Termination; (ii) in lieu of any benefits continuation following Termination, the Company shall pay a lump sum payment, in cash, equal to the estimated cost of procuring for the Executive and his dependents: life, disability, accident and health insurance benefits for a period of two years following the Date of Termination; (iii) any other unpaid benefits to which the Executive is otherwise entitled under any other plan, policy or program of the Company (including any retirement plan) applicable to the Executive as of the Date of Termination, in accordance with the terms of such plan, policy or program; and (iv) Executive shall be fully vested in all then outstanding options to acquire stock of the Company, and subject to the last sentence of this **Section 4.3**, all then outstanding restricted shares of stock and restricted stock units of the Company held by the Executive and any vested options held by the Executive shall remain exercisable until the earlier of (x) the third anniversary of the Date of Termination (except in the case of Executive's death during such period, in which event the options shall be exercisable until the earlier of the second anniversary of the date of Executive's death and the third anniversary of the Date of Termination) and (y) the otherwise applicable normal expiration date of such option. The foregoing provision shall not apply (a) to extend the expiration date of any option that is outstanding (whether vested or unvested) as of the date hereof and that is intended to qualify as an "incentive stock option" under Section 422 of the Code, or (b) to any grant of restricted shares of stock or restricted share units that was intended to qualify as "performance-based compensation" within the meaning of Section 162(m) of the Code to the extent applicable. Anything to the contrary herein notwithstanding, the vesting of any performance share units or performance-based restricted stock or restricted stock unit awards shall vest according to the terms of the applicable award agreement.

#### **Section 4.4 Disability.**

The Executive's employment pursuant to this Agreement may be terminated by written notice to the Executive by the Company or to the Company by the Executive ("Notice of Termination") in the event that the Executive is unable, as reasonably determined by the Board, to perform his regular duties and responsibilities due to physical or mental illness or injury that has lasted (or can reasonably be expected to last) for a period of six (6) consecutive months. In the event the Executive's employment is terminated pursuant to this **Section 4.4**, the Executive shall be entitled to receive, when the same would have been paid to the Executive, (i) any unpaid Base Salary and benefits to be paid or provided to the Executive under this Agreement through the Date of Termination, (ii) an amount equal to the pro rata portion of the average of Executive's annual bonus(es) or award(s) for the prior three (3) fiscal years pursuant to any cash bonus plan maintained by the Company (other than the LTCP) in respect of the fiscal years preceding the Date of Termination, payable over the twelve (12) months following the Date of Termination in accordance with the Company's ordinary payroll practices with such payments commencing on the first Company payroll period occurring after the thirtieth (30th) day following the Executive's Date of Termination and (iii) any other unpaid benefits (including disability benefits) to which he is otherwise entitled under any other plan, policy or program of the Company applicable to the Executive as of the Date of Termination, in accordance with the terms of such plan, policy or program. In addition, subject to the last sentence of this **Section 4.4**, the Executive shall be fully vested in all then outstanding options to acquire stock of the Company, and all then outstanding restricted shares of stock and restricted stock units of the Company held by the Executive and any such options shall remain exercisable until the earlier of (x) the second anniversary of the Date of Termination and (y) the otherwise

applicable normal expiration date of such option. The foregoing provision shall not apply to extend the expiration date of any option that is outstanding (whether vested or unvested) as of the date hereof and that is intended to qualify as an “incentive stock option” under Section 422 of the Code. For the avoidance of doubt, settlement of any restricted stock units, the vesting of which is accelerated pursuant to this Agreement, shall occur upon vesting pursuant to this **Section 4.4**, subject to any previous legally binding deferral election or contrary payment date provided for in the applicable award agreement regarding such units. Anything to the contrary herein notwithstanding, the vesting of any performance share units or performance-based restricted stock or restricted stock unit awards shall vest according to the terms of the applicable award agreement.

#### **Section 4.5 By the Company for Cause.**

The Executive’s employment pursuant to this Agreement may be terminated by the Company at any time by delivery of a Notice of Termination to the Executive upon the occurrence of any of the following events (each of which shall constitute “Cause” for termination): (i) failure or refusal to carry out the lawful directions of the Company, which are reasonably consistent with the responsibilities of the Executive’s position, where such failure or refusal is not cured within thirty (30) days after notice to the Executive; (ii) a material act of dishonesty or disloyalty related to the business of the Company; (iii) conviction of a felony, a lesser crime against the Company, or any crime involving dishonest conduct; (iv) habitual or repeated misuse or habitual or repeated performance of the Executive’s duties under the influence of alcohol or controlled substances; (v) any incident materially compromising the Executive’s reputation or ability to represent the Company with the public; (vi) a material breach or violation of any of the Company’s policies, where such breach or violation is not cured within thirty (30) days after notice to the Executive; or (vii) any act or omission by the Executive that substantially impairs the Company’s business, good will or reputation. In the event the Executive’s employment is terminated pursuant to this **Section 4.5**, the Executive shall be entitled to receive all Base Salary and benefits to be paid or provided to the Executive under this Agreement through the Date of Termination, and any other unpaid benefits to which he is otherwise entitled under any plan, policy or program of the Company (not including any bonus plan) applicable to the Executive as of the Date of Termination, in accordance with the terms of such plan, policy or program.

#### **Section 4.6 By the Company Without Cause.**

The Executive’s employment pursuant to this Agreement may be terminated by the Company upon thirty (30) days’ prior written notice without Cause by delivery of a Notice of Termination to the Executive. In the event that the Executive’s employment is terminated pursuant to this **Section 4.6** during the Term, the Executive shall be entitled to receive: (i) Base Salary to be provided to the Executive under this Agreement through the second anniversary of the Date of Termination payable in accordance with the Company’s ordinary payroll policies (whether or not the Term shall have expired during such period) with such payments commencing on the first Company payroll period occurring after the thirtieth (30<sup>th</sup>) day following the Executive’s Date of Termination; (ii) an amount equal to two (2) times the Executive’s average annual cash bonus for the prior three (3) calendar years pursuant to any cash bonus plan maintained by the Company (other than the LTCP) in respect of the fiscal years preceding the Date of Termination, payable over the twenty-four (24) months following the Date of Termination in accordance with the Company’s ordinary payroll practices with such payments commencing on the first Company payroll period occurring after the thirtieth (30<sup>th</sup>) day following the Executive’s Date of Termination; (iii) in lieu of any benefits continuation following Termination, the Company shall pay a lump sum payment, in cash, equal to the estimated cost of procuring for the Executive and his dependents: life, disability, accident and health insurance benefits for a period of two years following the Date of Termination; and (iv) any other unpaid benefits to which the Executive is otherwise entitled under any other plan, policy or program of the Company applicable to the

Executive as of the Date of Termination, in accordance with the terms of such plan, policy or program. In addition, subject to the last sentence of this **Section 4.6**, the vesting of all then outstanding options to acquire stock of the Company and all then outstanding restricted shares of stock and restricted stock units of the Company held by the Executive and scheduled to vest during the 12 month period following the Date of Termination shall be accelerated, and any such options shall remain exercisable until the earlier of (x) the second anniversary of the Date of Termination and (y) the otherwise applicable normal expiration date of such option (these rights together with the payments and benefits enumerated in subsection (i) through (v) above shall be referred to as the “Severance Payments”). The foregoing provision shall not apply (a) to extend the expiration date of any option that is outstanding (whether vested or unvested) as of the date hereof and that is intended to qualify as an “incentive stock option” under Section 422 of the Code, or (b) to any grant of restricted shares of stock or restricted share units that was intended to qualify as “performance-based compensation” within the meaning of Section 162(m) of the Code to the extent applicable. For the avoidance of doubt, settlement of any restricted stock units, the vesting of which is accelerated pursuant to this Agreement, shall occur upon vesting pursuant to this **Section 4.6**, subject to any previous legally binding deferral election or contrary payment date provided for in the applicable award agreement regarding such units. As conditions precedent to receiving the Severance Payments contemplated by this **Section 4.6**, (a) the Executive agrees to sign, at the time of termination of his employment, a customary release of all claims in favor of the Company, its directors and officers and (b) all applicable revocation periods shall have ended prior to the scheduled receipt of any Severance Payment. Anything to the contrary herein notwithstanding, the vesting of any performance share units or performance-based restricted stock or restricted stock unit awards shall vest according to the terms of the applicable award agreement.

#### **Section 4.7 By the Executive for Good Reason.**

The Executive’s employment pursuant to this Agreement may be terminated by the Executive by written notice of his resignation (“Notice of Resignation”) delivered within ninety (90) days after the occurrence of (i) the assignment to the Executive of any duties materially inconsistent with the Executive’s status as a senior executive officer of the Company; (ii) a substantial adverse alteration in the nature or status of the Executive’s responsibilities; or (iii) a material breach of this Agreement by the Company, in any case, that remains uncured by the Company for a period of sixty (60) days after written notice by the Executive to the Board specifying such assignment, alteration or breach and specifically referencing this section of this Agreement (each of which shall constitute “Good Reason” for resignation). In the event that the Executive resigns for Good Reason pursuant to this **Section 4.7** during the Term, the Executive shall be entitled to receive the Severance Payments as described in **Section 4.6** above. As conditions precedent to receiving the Severance Payments contemplated by this **Section 4.7**, (a) the Executive agrees to sign, at the time of termination of his employment, a customary release of all claims in favor of the Company, its directors and officers and (b) all applicable revocation periods shall have ended prior to the scheduled receipt of any Severance Payment. Anything to the contrary herein notwithstanding, the vesting of any performance share units or performance-based restricted stock or restricted stock unit awards shall vest according to the terms of the applicable award agreement.

#### **Section 4.8 By the Executive Without Good Reason.**

The Executive’s employment pursuant to this Agreement may be terminated by the Executive at any time by delivery of a Notice of Resignation to the Company. In the event that the Executive’s employment is terminated pursuant to this **Section 4.8**, the Executive shall receive Base Salary and benefits to be paid or provided to the Executive under this Agreement through the Date of Termination and any other unpaid benefits to which the Executive is otherwise entitled under any plan, policy or program of the Company (not including

any bonus or incentive plan) applicable to the Executive as of the Date of Termination, in accordance with the terms of such plan, policy or program.

#### **Section 4.9 By the Company or the Executive Following a Change in Control.**

(a) No compensation shall be payable under this **Section 4.9** unless and until (a) there shall have been a Change in Control during the Term and (b) Executive's employment by the Company thereafter shall have been terminated in accordance with this **Section 4.9**. For purposes of this Agreement, a Change in Control shall be deemed to have occurred if:

(1) Any one person or more than one person acting as a group (as defined in Section 1.409A-3(i)(5)(v)(B) of the Treasury Regulations) acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons), ownership of the securities of the Company representing more than 35% of the total voting power of the Company's then outstanding securities; provided, however, that no Change of Control shall be deemed to have occurred as a result of a change in ownership percentage resulting solely from an acquisition of securities by the Company; or

(2) During any twelve (12) month period during the Term, the majority of the individuals who at the beginning of such twelve (12) month period constitute the Board and any new director whose election to the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved (such individuals and any such new director being referred to as the "Incumbent Board") are replaced; provided, however, that to the extent consistent with Section 409A of the Code, no individual shall be considered a member of the Incumbent Board if such individual initially assumed office as a result of an actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board (a "Proxy Contest") including by reason of any agreement intended to avoid or settle any Proxy Contest; or

(3) Consummation of a reorganization, merger or consolidation of the Company (a "Business Combination"), in each case, unless, following such Business Combination, all or substantially all of the individuals and entities who were the beneficial owners of outstanding voting securities of the Company immediately prior to such Business Combination beneficially own, directly or indirectly, 50% or more of the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors of the company resulting from such Business Combination (including, without limitation, a company which, as a result of such transaction, owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership immediately prior to such Business Combination of the outstanding voting securities of the Company; or

(4) A sale or other disposition of all or substantially all of the assets of the Company (other than in a transaction in which all or substantially all of the individuals and entities who were the Beneficial Owners (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) of outstanding voting securities of the Company immediately prior to such sale or other disposition beneficially own, directly or indirectly, substantially all of the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors of the acquirer of such assets (either directly or

through one or more subsidiaries) in substantially the same proportions as their ownership immediately prior to such sale or other disposition), or the approval by the stockholders of the Company of a complete liquidation or dissolution of the Company.

For purposes of this Agreement, the Executive's employment shall be deemed to have been terminated following a Change in Control by the Company without Cause or by the Executive with Good Reason, if within six (6) months prior to a Change in Control where the Change in Control was under consideration at the time of the following applicable termination event (x) the Executive's employment is terminated by the Company without Cause or (y) the Executive terminates his employment for Good Reason within six (6) months of the occurrence of the event which constitutes Good Reason, or if shorter, the end of the Term. In such event, the Executive shall be entitled to the severance benefits described herein, but notwithstanding anything to the contrary herein, any severance benefits owing to the Executive pursuant to this paragraph shall be paid at the same time and in the same manner as provided in **Section 4.6** in accordance with Section 409A of the Code (a "Deemed CIC Termination"). For the avoidance of doubt, any acceleration provisions regarding the vesting of any "performance-based compensation" within the meaning of Section 162(m) of the Code (including incentive plans or equity awards) which remain subject to a performance vesting provision at the time of a Deemed CIC Termination and which may be triggered by a Deemed CIC Termination under this Agreement shall not apply to the extent applicable.

For the avoidance of doubt, the definition of a Change in Control in this **Section 4.9(a)** is intended to comply with and shall be interpreted in accordance with Section 1.409A-3(i)(5) of the Treasury Regulations and any inconsistencies between such section and this definition (except for the selection of a higher percentage or more stringent ownership requirement contained in this **Section 4.9(a)**) shall be reformed to the definition of an applicable "change in the ownership," "change in the effective control" or a "change in the ownership of a substantial portion of the assets" of the Company, as such terms are defined in Section 1.409A-3(i)(5) of the Treasury Regulations. As a result, a Change in Control shall only be deemed to occur if such event meets the requirements of Section 1.409A-3(i)(5) of the Treasury Regulations, as such definition may be permissibly limited by this **Section 4.9(a)**.

(b) *Compensation Other Than Severance Payments*

(1) If the Executive's employment shall be terminated for any reason following a Change in Control and during the Term, the Company shall pay the Executive's full salary to the Executive through the Date of Termination (the "Accrued Salary") at the rate in effect immediately prior to the Date of Termination or, if higher, the rate in effect immediately prior to the Change in Control, together with all compensation and benefits payable to the Executive through the Date of Termination under and in accordance with the terms of the Company's compensation and benefit plans, programs or arrangements as in effect immediately prior to the Date of Termination or, if more favorable to the Executive, as in effect immediately prior to the Change in Control. The Accrued Salary shall be paid to the Executive within thirty (30) days of the Date of Termination, with the payment date determined by the Company in its sole discretion.

(2) If the Executive's employment shall terminate for any reason following a Change in Control and during the Term, the Company shall pay to the Executive the Executive's post-termination compensation and benefits as set forth in this Agreement; provided, however, that, the severance benefits provided in **Section 4.9(c)** hereof, if applicable, shall be exclusive

and the Executive shall not be entitled to participate in, or receive severance benefits under, any other severance plan or program that may be adopted by the Company or any other employment agreement. Any post-termination compensation and benefits shall be determined under, and paid in accordance with, the Company's retirement, insurance and other compensation or benefit plans, programs and arrangements as in effect immediately prior to the Date of Termination or, if more favorable to the Executive, as in effect immediately prior to the Change in Control.

*(c) Severance Payments*

If the Executive's employment is terminated within two (2) years following a Change in Control and during the Term, other than (A) by the Company for Cause, (B) by reason of death, Disability or Retirement, or (C) by the Executive without Good Reason, then the Company shall pay the Executive the following amounts, and provide the Executive the following benefits (collectively, the "Change in Control Severance Payments"), in addition to any payments and benefits to which the Executive is entitled under **Section 4.9(b)** hereof:

(1) In lieu of any further salary payments to the Executive for periods subsequent to the Date of Termination and in lieu of any severance benefit otherwise payable to the Executive (including pursuant to this Agreement), the Company shall pay to the Executive a lump sum severance payment, in cash, equal to two (2) times the sum of (x) the Executive's Base Salary as in effect immediately prior to the Date of Termination or, if higher, in effect immediately prior to the Change in Control, and (y) the average of Executive's annual bonus(es) or award(s) for the prior three (3) calendar years pursuant to any cash bonus plan (but excluding the Company's LTCP) maintained by the Company in respect of the fiscal years preceding the Date of Termination or, if higher, in respect of the fiscal years preceding the Change in Control.

(2) In lieu of any benefits continuation following Termination, the Company shall pay a lump sum payment, in cash, equal to the estimated cost of procuring for the Executive and his dependents: life, disability, accident and health insurance benefits for a period of two years following the Date of Termination.

(3) Notwithstanding any provision of any stock option plan, stock incentive plan, restricted stock plan or similar plan or agreement to the contrary, and subject to the last sentence of this **Section 4.9(c)(3)**, as of the Date of Termination, (x) the Executive shall be fully vested in all outstanding options to acquire stock of the Company (or the options of any parent, surviving, or acquiring company then held by the Executive) and all then outstanding restricted shares of stock of the Company and other equity-based awards (including restricted stock units of the Company) (or, in each case, such parent, surviving or acquiring company) held by the Executive, and (y) subject to any limitation on exercise in any such plan or agreement that may not be amended without stockholder approval, all options referred to in clause (x) above shall be immediately exercisable and shall remain exercisable until the earlier of (1) the third anniversary of the Date of Termination, or (2) the otherwise applicable expiration date of the term of such option. The foregoing provision shall not apply to extend the expiration date of any option that is outstanding (whether vested or unvested) as of the date hereof and that is intended to qualify as an "incentive stock option" under Section 422 of the Code. For the avoidance of doubt, settlement of any restricted stock units, the vesting of which is accelerated pursuant to this Agreement, shall occur upon vesting pursuant to this **Section 4.9(c)(3)**, subject to any previous legally binding deferral election or contrary payment date provided for in the applicable award agreement regarding such units. Anything to the contrary herein

notwithstanding, the vesting of any performance share units or performance-based restricted stock or restricted stock unit awards shall vest according to the terms of the applicable award agreement.

(4) To the extent that the full vesting of any stock option, share of restricted stock or other equity-based award, or the full exercisability of any stock option or other equity-based award, provided for in **Section 4.9(c)(3)** should violate any law, rule or regulation of any governmental authority or self-regulatory organization applicable to the Company, or to the extent otherwise determined by the Company in its sole discretion, the Company may, in lieu of providing any vesting or exercisability rights pursuant to **Section 4.9(c)(3)**, (x) cancel any or all of the Executive's outstanding options in exchange for a lump sum payment, in cash, equal to the excess of the fair market value of the shares of stock underlying such options (whether or not vested or exercisable) on the Date of Termination (as reasonably determined by the Board in good faith) over the aggregate exercise price provided for in such stock options, and (y) repurchase any shares of restricted stock or other equity-based awards (including restricted stock units of the Company) at their fair market value (as determined by the Board without regard to the restrictions on such shares of stock). The lump sum payment provided for in this **Section 4.9(c)(4)** shall be made, if at all, within thirty (30) days of the Date of Termination, with the payment date determined by the Company in its sole discretion. For the avoidance of doubt, settlement of any restricted stock units, the vesting of which is accelerated pursuant to this Agreement, shall occur pursuant to this **Section 4.9(c)(4)**, subject to any previous legally binding deferral election or contrary payment date provided for in the applicable award agreement regarding such units.

(5) The Company shall provide the Executive with outplacement services suitable to the Executive's position not to exceed \$50,000 in amount and in no event shall such amount be paid to Executive.

#### **Section 4.10 Date of Termination.**

The Executive's Date of Termination shall be (i) if the Executive's employment is terminated pursuant to **Section 4.1**, the date mutually agreed to by the Company and the Executive, (ii) if the Executive's employment is terminated pursuant to **Section 4.2**, the last day of the calendar month in which the Executive's death occurs, (iii) if the Executive's employment is terminated pursuant to **Section 4.3**, the date that Executive and the Board agree upon as Executive's date of Retirement, (iv) if the Executive's employment is terminated pursuant to **Section 4.4**, the last day of the calendar month in which a Notice of Termination is given, (v) if the Executive's employment is terminated pursuant to **Section 4.5**, the date on which a Notice of Termination is given, (vi) if the Executive's employment is terminated pursuant to **Section 4.6**, thirty (30) days after the date Notice of Termination is given, (vii) if the Executive's employment is terminated pursuant to **Section 4.7**, within ten (10) days of the expiration of the "Cure Period" provided for in **Section 4.7**, (viii) if the Executive's employment is terminated pursuant to **Section 4.8**, thirty (30) days after the date Notice of Resignation is given and (ix) if the Executive's employment is terminated pursuant to **Section 4.9**, thirty (30) days after the date Notice of Termination is given.

#### **Section 4.11 Offset; Termination of Obligation.**

(a) Notwithstanding anything contained in this **Article IV** to the contrary, in the event the Company terminates the Executive's employment pursuant to **Section 4.6** or the Executive terminates his employment pursuant to **Section 4.7** and the Executive accepts other employment or provides consulting, advisory or other services during the period in which the Company is required

to make payments pursuant to **Section 4.6** or **Section 4.7**, the Executive shall notify the Company in writing that he has accepted such employment or agreed to provide such consulting, advisory or other services and the terms of his employment or engagement. To the extent permitted by Section 409A of the Code, the Company's obligation to make payments pursuant to **Section 4.6** or **Section 4.7** shall be reduced dollar-for-dollar by the amount of compensation earned by the Executive from such other employment or for providing such services during the period in which the Company is required to make payments pursuant to **Section 4.6** or **Section 4.7**.

(b) Notwithstanding anything contained in this **Article IV** to the contrary, the Company's obligation to make payments pursuant to **Section 4.6**, **Section 4.7** or **Section 4.9** shall immediately terminate in the event the Executive violates in any material respect the provisions of **Article V** or **Article VI** of this Agreement.

#### **Section 4.12 Section 409A.**

(a) Notwithstanding anything herein to the contrary, to the maximum extent permitted by applicable law, the Severance Payments and Change in Control Severance Payments to be made to the Executive pursuant to **Article IV** shall be made in reliance upon Treasury Regulations promulgated under Section 409A of the Code, including Section 1.409A-1(b)(9) of the Treasury Regulations (including any exceptions from the application of Section 409A thereunder) or Section 1.409A-1(b)(4) of the Treasury Regulations. For this purpose, each Severance Payment and Change in Control Severance Payment shall be considered a separate and distinct payment for purposes of Section 409A of the Code. However, to the extent any such payments are treated as non-qualified deferred compensation subject to Section 409A of the Code, then (a) no amount shall be payable pursuant to this **Article IV** unless Executive's termination of employment constitutes a "separation from service" within the meaning of Section 1.409A-1(h) of the Treasury Regulations and (b) if Executive is deemed at the time of his separation from service to be a "specified employee" for purposes of Section 409A(a)(2)(B)(i) of the Code, then to the extent delayed commencement of any portion of the Severance Payments or Change in Control Severance Payments to which Executive is entitled under this Agreement is required in order to avoid a prohibited distribution under Section 409A(a)(2)(B)(i) of the Code, such portion of Executive's Severance Payments or Change in Control Severance Payments shall not be provided to Executive prior to the earlier of (x) the expiration of the six-month period measured from the date of the Executive's "separation from service" with the Company (as such term is defined in Section 1.409A-1(h) of the Treasury Regulations) or (y) the date of Executive's death. Upon the earlier of such dates, all payments deferred pursuant to this paragraph shall be paid in a lump sum to the Executive, and any remaining payments due under the Agreement shall be paid as otherwise provided herein. The determination of whether the Executive is a "specified employee" for purposes of Section 409A(a)(2)(B)(i) of the Code as of the time of his separation from service shall be made by the Company in accordance with the terms of Section 409A of the Code and applicable guidance thereunder (including without limitation Section 1.409A-1(i) of the Treasury Regulations and any successor provision thereto).

(b) Certain Reductions in Payment.

(1) Notwithstanding anything contained in this Agreement to the contrary, if any payment or benefit the Executive would receive from the Company pursuant to this Agreement or otherwise ("Payment", "Payments" in the aggregate) would, as determined by tax counsel to the Company reasonably acceptable to the Executive ("Tax Counsel"), (i) constitute a "parachute payment" within the meaning of Section 280G of the Code, and (ii) but for this

**Section 4.12**, be subject to the excise tax imposed by Section 4999 of the Code (the “Excise Tax”), then the Payments will be adjusted to equal the Reduced Amount. The “Reduced Amount” will be either (1) the largest portion of the Payments that would result in no portion of the Payments (after reduction) being subject to the Excise Tax or (2) the entire amount of the Payments, whichever amount after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate, net of the maximum reduction in federal income taxes which could be obtained from a deduction of such state and local taxes), results in the Executive’s receipt, on an after-tax basis, of the greatest amount of the Payments. If a reduction in Payments is to be made so that the Payments equal the Reduced Amount, (x) the Payments will be paid only to the extent permitted under the Reduced Amount alternative, and the Executive will have no rights to any additional payments and/or benefits constituting the Payments. In no event will the Company or any stockholder be liable to the Executive for any amounts not paid as a result of the operation of this **Section 4.12**. No portion of any Payment shall be taken into account which in the opinion of Tax Counsel does not constitute a “parachute payment” within the meaning of Code Section 280G(b)(2), including by reason of Code Section 280G(b)(4)(A) (regarding reasonable compensation for services rendered after a change in control).

(2) The Company shall reduce or eliminate the Payments by (i) first reducing or eliminating those payments or benefits which are payable in cash and (ii) then reducing or eliminating non-cash payments, in each case in reverse order beginning with payments or benefits which are to be paid the furthest in time from the Change in Control. Any reduction made pursuant to the preceding sentence shall take precedence over the provisions of any other plan, arrangement or agreement governing Executive’s rights and entitlements to any benefits or compensation. In applying these principles, any reduction or elimination of the Payments shall be made in a manner consistent with the requirements of Section 409A of the Code and where two economically equivalent amounts are subject to reduction but payable at different times, such amounts shall be reduced on a pro rata basis but not below zero.

(c) Except as otherwise provided herein, the payments provided for in **Article IV** (as adjusted by **Section 4.12** hereof) shall be made not later than the tenth business day following the Date of Termination, with the payment date determined by the Company in its sole discretion.

(d) The Executive and the Company shall each reasonably cooperate with the other in connection with any administrative or judicial proceedings concerning the existence or amount of liability for Excise Tax with respect to the Payments. The Company shall pay to the Executive all legal fees and expenses incurred by the Executive (i) in obtaining or enforcing any benefit or right provided by **Section 4.9** of this Agreement or (ii) in connection with any tax audit or proceeding to the extent attributable to the application of Section 4999 of the Code to any payment or benefit provided hereunder, provided that, in either case, Executive prevails on the merits of such action. Such amounts shall be paid in accordance with Section 409A of the Code, including Sections 1.409A-1(b)(11), 1.409A-3(g) and 1.409A-3(i)(1)(v) of the Treasury Regulations. In the event of a claim as to which Executive only obtains partial recovery or relief, Executive shall be considered to have prevailed if Executive should receive more than 50% of the amount or relief claimed. Such payments shall be made within five (5) business days after the later of (y) delivery of the Executive's written requests for payment accompanied with such evidence of fees and expenses incurred as the Company reasonably may require delivered within 20 days of a final, non-appealable judgment from a court of competent jurisdiction or the binding conclusion of an audit, investigation or proceeding by the

IRS or applicable agency and (z) a final, non-appealable judgment from a court of competent jurisdiction or the binding conclusion of an audit, investigation or proceeding by the IRS or applicable agency.

(e) All reimbursements and in-kind benefits described in this Agreement shall be made in accordance with Treasury Reg. § 1.409A-3(i)(1)(iv) to the extent applicable, including the amount of expenses eligible for reimbursement, and the in-kind benefits provided, during any year pursuant to this Agreement shall not affect the expenses eligible for reimbursement, or in-kind benefits to be provided in any other year, the reimbursement is made on or before the last day of the calendar year following the calendar year the expense was incurred, and the right to reimbursement or in kind benefit is not subject to liquidation or exchange for another benefit.

(f) Notwithstanding any other provision to the contrary, in no event shall any payment under this Agreement that constitutes “deferred compensation” for purposes of Section 409A of the Code and the Treasury Regulations promulgated thereunder be subject to offset by any other amount unless otherwise permitted by Section 409A of the Code.

(g) For the avoidance of doubt, the parties acknowledge that the amount of any Company-paid premiums for the health insurance benefits provided pursuant to this **Article IV** shall be taxable to the Executive and included in the Executive’s gross income, and that none of the amounts payable hereunder are intended to reimburse Executive for any income taxes payable with respect to such income.

## ARTICLE V. COVENANTS OF THE EXECUTIVE

### Section 5.1 Definitions.

(a) “*Company Property*” means all records, data, files, manuals, memoranda, documents, supplies, computer materials, equipment, inventory and other materials that have been created, used or obtained by the Company, including but not limited to pagers, databases, security cards and badges, insurance cards, keys, computer manuals, company or employee manuals, credit cards, computers, laptops, printers, fax machines, cellular and landline phones, and copiers, as well as Confidential and Proprietary Information and Technology and all business revenues and fees produced or transacted through the efforts of the Company.

(b) “*Confidential and Proprietary Information*” means all information, not generally known to the public, that relates to the business, technology, manner of operation, subscribers, customers, finances, employees, plans, proposals or practices of the Company or of any third parties doing business with the Company, and includes, without limitation, the identities of and other information regarding the Company’s subscribers, customers and prospects, supplier lists, employee information, business plans and proposals, software programs, marketing plans and proposals, technical plans and proposals, research and development, budgets and projections, nonpublic financial information, all other information the Company designates as “confidential,” and all other information and matters not generally known to the public. Excluded from the definition of Confidential and Proprietary Information is information (A) that is or becomes part of the public domain, other than through the breach of this Agreement by the Executive or (B) regarding the Company’s business or industry properly acquired by the Executive in the course of his career as an executive in the Company’s industry and independent of his employment by the Company. For this purpose, information known or available generally within the trade or industry of the Company or any subsidiary of the Company shall be deemed to be known to the public.

(c) “*Disparage the Company*” means, except in the good faith performance of the Executive’s duties, conduct by which he criticizes, denigrates or otherwise speaks adversely, or discloses negative information about, the operations, management or performance of the Company, an affiliate of the Company, or about any director, officer, employee or agent of any of the above.

(d) “*Solicitation*” means (A) the direct or indirect solicitation of, inducement of, or attempt to induce, any employees, agents, or consultants of the Company or any of its subsidiaries to leave the employ of, or stop providing services to, the Company or such subsidiary; (B) the direct or indirect offering or aiding another to offer employment to, or interfere or attempt to interfere with, the Company’s or such subsidiary’s relationship with any employees or consultants of the Company or such subsidiary; or (C) the direct or indirect solicitation, or assistance to any entity or person in solicitation of, any subscribers or customers of the Company to discontinue doing business with the Company.

(e) “*Technology*” means all inventions, discoveries, designs, developments, improvements, copyrightable materials, trade secrets, new concepts, new ideas and expressions of ideas, (including computer programs and software), which relate to the Company’s present or prospective businesses or have been created using Company property, Confidential or Proprietary Information of the Company, the advice or help of other Company employees, independent contractors or other third parties, or other resources of the Company. The Executive understands and agrees that this definition of “*Technology*” applies even if a patent or copyright cannot be issued or claimed, and even if the Company does not intend to exploit, work or develop the Technology.

### **Section 5.2 Nondisclosure of Confidential and Proprietary Information.**

The Executive understands and agrees that Confidential and Proprietary Information will be considered the trade secrets of the Company and will be entitled to all protections given by law to trade secrets and that the provisions of this Agreement apply to every form in which Confidential and Proprietary Information exists, including, without limitation, written or printed information, films, tapes, computer disks or data, or any other form of memory device, media or method by which information is stored or maintained. The Executive acknowledges that in the course of employment with the Company, he has received and may receive Confidential and Proprietary Information of the Company. The Executive further acknowledges that Confidential and Proprietary Information is a valuable, unique and special asset belonging to the Company. For these reasons, and except as otherwise directed by the Company, the Executive agrees, during his employment, and at all times after the termination of his employment with the Company, that he will not disclose or disseminate to anyone outside the Company, nor use for any purpose other than his work for the Company, nor assist anyone else in any such disclosure or use of, any Confidential or Proprietary Information of the Company.

The Executive further agrees, during his employment and for a period of two (2) years after his employment terminates, that he will not engage in any activities or accept any employment or work assignment that would compromise the confidentiality, or result in the direct or indirect disclosure or use, of any Confidential and Proprietary Information of the Company.

### **Section 5.3 Company Technology/Assignment of Inventions.**

The Executive recognizes and agrees that all present and future Technology, whether conceived, developed or reduced to practice during his employment by others or by himself, solely or jointly, is and will become the property of the Company. To the extent permitted under the U.S. Copyright Act (17 U.S.C. § 101 et seq.) and any successor statute thereto, the Executive agrees that any copyrightable materials that he

has created or creates during his employment that directly relate to the Company's then current or anticipated business, operations or plans will constitute "works made for hire," and the ownership of such materials will vest in the Company at the time they are created. The Executive agrees to assign and does hereby assign to the Company (or any person or entity designated by the Company) all his rights, title and interests in and to all Technology and all related patents, patent applications, copyrights and copyright applications. The Executive further agrees, both while employed by the Company and at the time his employment with the Company is terminated, to disclose promptly to the Company all Technology that has been made or conceived by him while employed by the Company. Both during and at all times after his employment with the Company is terminated, the Executive will, upon request, assist the Company to protect the Company's ownership of Technology and to obtain and protect any and all patents and copyrights covering any Technology. To this end, the Executive agrees to sign all papers, including, without limitation, copyright applications, patent applications, declarations, oaths, formal assignments, assignment of priority rights, and powers of attorney that the Company may deem necessary or desirable in order to protect its rights and interests in any Technology.

The Executive understands that his obligation to assign will not apply to any Technology that he develops or developed entirely on his own time without using the Company's equipment, supplies, facilities, or Confidential and Proprietary Information, unless the Technology (a) relates at the time of conception or reduction to practice directly to the Company's business or actual or demonstrably anticipated research or development of the Company, or (b) results from any work performed by him for the Company.

#### **Section 5.4 Company Property.**

The Executive agrees to preserve, use and hold Company Property, which is and remains the property of the Company, only for the benefit of the Company to carry out the Company's business. The Executive agrees that, on or before the day on which his employment with the Company is terminated, he will deliver or return to the Company all the Company Property, including all copies of the Company Property, in his possession or control. The Executive further agrees not to use any computer access code or password belonging to the Company and not to access any computer or database in the possession or control of the Company after his employment with the Company is terminated.

#### **Section 5.5 Nondisparagement.**

During the Term and thereafter, the Executive will not Disparage the Company. This **Section 5.5** shall not be deemed breached unless the violation is willful, with the intent to damage, in a public forum or intended to become public, and is of a material nature.

### ARTICLE VI. **NONCOMPETITION AND NONSOLICITATION**

#### **Section 6.1 Noncompetition.**

In consideration for the benefits the Executive is receiving hereunder, the Executive hereby acknowledges, and for other good and valuable consideration, agrees that during the Executive's employment and for two (2) years following the termination of his employment, and without the prior written consent of the Company, the Executive will not, in any manner, directly or indirectly, become an employee, director, consultant or advisor of, or otherwise affiliated with, any retailer principally in the farm and ranch sector with more than five (5) stores or more than \$15 million in annual revenues in the United States (a "Company Competitor") or be associated with or a consultant to, any entity that (i) is a Company Competitor, or (ii) will inevitably result in the disclosure or use of Confidential and Proprietary Information.

## **Section 6.2 Nonsolicitation.**

During the Executive's employment and for two (2) years following the termination of his employment, he will not engage in any Solicitation, provided that Solicitation will not be considered to have occurred by the general advertising for hiring of employees by entities with which the Executive is associated, as long as he does not directly or indirectly induce employees to leave the Company.

## **Section 6.3 Reformation and Severance.**

If a judicial determination is made that any of the provisions of the restrictions contained in this **Article VI** constitute an unreasonable or otherwise unenforceable restriction against the Executive, it shall be rendered void only to the extent that such judicial determination finds such provisions to be unreasonable or otherwise unenforceable. In this regard, the parties hereby agree that any judicial authority construing this Agreement shall be empowered to sever any portion of the prohibited business activity from the coverage of this restriction and to apply the restriction to the remaining portion of the business activities not so severed by such judicial authority.

## ARTICLE VII.

## **ARBITRATION**

### **Section 7.1 Scope.**

The Company and the Executive acknowledge and agree that any claim or controversy arising out of or relating to **Article IV** of this Agreement shall be settled by binding arbitration in Nashville, Tennessee, in accordance with the National Rules of the American Arbitration Association for the Resolution of Employment Disputes in effect on the date of the event giving rise to the claim or controversy. The Company and the Executive further acknowledge and agree that either party must request arbitration of any claim or controversy within ninety (90) days of the date of the event giving rise to the claim or controversy by giving written notice of the party's request for arbitration. Failure to give notice of any claim or controversy within ninety (90) days of the event giving rise to the claim or controversy shall constitute waiver of the claim or controversy.

### **Section 7.2 Procedures.**

All claims or controversies subject to arbitration shall be submitted to arbitration within six months from the date that a written notice of request for arbitration is effective. All claims or controversies shall be resolved by a panel of three arbitrators who are licensed to practice law in the State of Tennessee and who are experienced in the arbitration of employment disputes. These arbitrators shall be selected in accordance with the National Rules of the American Arbitration Association for the Resolution of Employment Disputes in effect at the time the claim or controversy arises. The arbitrators shall issue a written decision with respect to all claims or controversies within 30 days from the date the claims or controversies are submitted to arbitration. The parties shall be entitled to be represented by legal counsel at any arbitration proceedings. The Executive and the Company acknowledge and agree that the non-prevailing party (as determined by the arbitrators) in such arbitration will bear the cost of the arbitration proceeding, and each party shall be responsible for paying its own attorneys' fees, if any, unless the arbitrators determine otherwise. To the extent applicable, the arbitration provisions of this Agreement shall comply with Section 409A of the Code.

### **Section 7.3 Enforcement.**

The Company and the Executive acknowledge and agree that the arbitration provisions in this Agreement may be specifically enforced by either party, and that submission to arbitration proceedings may be compelled by any court of competent jurisdiction. The Company and the Executive further acknowledge

and agree that the decision of the arbitrators may be specifically enforced by either party in any court of competent jurisdiction.

**Section 7.4 Limitations.**

Notwithstanding the arbitration provisions set forth herein, Employee and the Company acknowledge and agree that nothing in this Agreement shall be construed to require the arbitration of any claim or controversy arising under **Articles V or VI** of this Agreement. These provisions shall be enforceable by any court of competent jurisdiction and shall not be subject to arbitration except by mutual written consent of the parties signed after the dispute arises, any such consent, and the terms and conditions thereof, then becoming binding on the parties. The Executive and the Company further acknowledge and agree that nothing in this Agreement shall be construed to require arbitration of any claim for workers' compensation or unemployment compensation.

ARTICLE VIII. **GENERAL TERMS**

**Section 8.1 Notices.**

All notices and other communications hereunder will be in writing or by written telecommunication, and will be deemed to have been duly given if delivered personally or if sent by overnight courier or by written telecommunication, to the relevant address set forth below, or to such other address as the recipient of such notice or communication will have specified to the other party hereto in accordance with this **Section 8.1**:

If to the Company, to:

Tractor Supply Company  
5401 Virginia Way  
Brentwood, Tennessee 37027  
Attention: General Counsel

If to the Executive, to:

Gregory A. Sandfort

\_\_\_\_\_  
\_\_\_\_\_

**Section 8.2 Withholding.**

All payments required to be made by the Company under this Agreement to the Executive will be subject to the withholding of such amounts, if any, relating to federal, state and local taxes as may be required by law.

**Section 8.3 Entire Agreement; Modification.**

This Agreement constitutes the complete and entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements between the parties. The parties have executed this Agreement based upon the express terms and provisions set forth herein and have not relied on any communications or representations, oral or written, which are not set forth in this Agreement. By execution of this Agreement, the parties agree and acknowledge that the Change in Control Agreement, dated March 14, 2012, by and between the Company and Executive, is superseded and replaced by this Agreement and

shall be of no further force or effect whatsoever.

#### **Section 8.4 Amendment.**

The covenants or provisions of this Agreement may not be modified by a subsequent agreement unless the modifying agreement: (i) is in writing; (ii) contains an express provision referencing this Agreement; (iii) is signed and executed on behalf of the Company by an officer of the Company other than the Executive; (iv) is approved by resolution of the Board; (v) is signed by the Executive; and (vi) to the extent applicable, complies with Section 409A of the Code.

#### **Section 8.5 Legal Consultation.**

Both parties have been accorded a reasonable opportunity to review this Agreement with legal counsel prior to executing this Agreement.

#### **Section 8.6 Choice of Law.**

This Agreement and the performance hereof will be construed and governed in accordance with the laws of the State of Delaware, without regard to its choice of law principles.

#### **Section 8.7 Successors and Assigns.**

(a) The obligations, duties and responsibilities of the Executive under this Agreement are personal and shall not be assignable. In the event of the Executive's death or disability, this Agreement shall be enforceable by the Executive's estate, executors or legal representatives.

(b) In addition to any obligations imposed by law upon any successor to the Company, the Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company to expressly assume and agree to perform this Agreement in accordance with its terms. Failure of the Company to obtain such assumption and agreement prior to or upon the effectiveness of any such succession shall constitute a material breach of this Agreement. If the Company successfully obtains such assumption and agreement prior to or upon the effectiveness of any such succession and the successor extends an offer of employment to the Executive, any termination of the Executive's employment with the Company incident to such succession shall be ignored for purposes of this Agreement, to the extent consistent with Section 409A of the Code.

#### **Section 8.8 Waiver of Provisions.**

Any waiver of any terms and conditions hereof must be in writing and signed by the parties hereto. The waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any subsequent breach of the same or any other terms and conditions hereof.

#### **Section 8.9 Severability.**

The provisions of this Agreement shall be deemed severable, and if any portion shall be held invalid, illegal or unenforceable for any reason, the remainder of this Agreement shall be effective and binding upon the parties provided that the substance of the economic relationship created by this Agreement remains materially unchanged.

### **Section 8.10 Remedies.**

The parties hereto acknowledge and agree that upon any breach by the Executive of his obligations under **Articles V** or **VI** hereof, the Company would suffer irreparable injury and will have no adequate remedy at law. Accordingly, the Company will be entitled to seek specific performance and other appropriate injunctive and equitable relief without the necessity of proving actual damages. No remedy set forth in this Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to any party, but the same shall be distinct, separate and cumulative and may be exercised from time to time as often as occasion may arise or as may be deemed expedient. The Executive represents that enforcement of a remedy by way of injunction will not prevent him from earning a livelihood. The Executive further represents and admits that time periods contained in **Article VI** are reasonably necessary to protect the interest of the Company and would not unfairly or unreasonably restrict the Executive.

### **Section 8.11 Counterparts.**

This Agreement may be executed in multiple counterparts, each of which will be deemed an original, and all of which together will constitute one and the same instrument.

### **Section 8.12 Compliance with Section 409A.**

The parties acknowledge and agree that, to the extent applicable, this Agreement shall be interpreted in accordance with, and the parties agree to use their best efforts to achieve timely compliance with, Section 409A of the Code and the Treasury Regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the Effective Date. Notwithstanding any provision of this Agreement to the contrary, in the event that the Company determines that any compensation or benefits payable or provided under this Agreement may be subject to Section 409A of the Code, the Company may, with the consent of the Executive, adopt such limited amendments to this Agreement and appropriate policies and procedures, including amendments and policies with retroactive effect, that the Company reasonably determines are necessary or appropriate to (i) exempt the compensation and benefits payable under this Agreement from Section 409A of the Code and/or preserve the intended tax treatment of the compensation and benefits provided with respect to this Agreement or (ii) comply with the requirements of Section 409A of the Code. By accepting this agreement, Executive hereby agrees and acknowledges that the Company makes no representations with respect to the application of Section 409A of the Code to any tax, economic, or legal consequences of any payments payable to Executive hereunder (including, without limitation, payments pursuant to **Article IV** above) and, by the acceptance of this Agreement, Executive agree to accept the potential application of Section 409A of the Code to the tax and legal consequences of payments payable to Employee hereunder (including, without limitation, payments pursuant to **Article IV** above).

**IN WITNESS WHEREOF**, the Company and the Executive have caused this Agreement to be executed as of the day and year first written above.

EXECUTIVE:

/s/ Gregory A. Sandfort  
Gregory A. Sandfort

COMPANY:

TRACTOR SUPPLY COMPANY

By: /s/ Cynthia T. Jamison  
Its: Director, Chairman of the Board

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