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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 8-K**

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**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 21, 2020**

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**BENEFITFOCUS, INC.**

(Exact name of registrant as specified in its charter)

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**Delaware**

(State or other jurisdiction of incorporation)

**001-36061**

(Commission File Number)

**46-2346314**

(IRS Employer Identification No.)

**100 Benefitfocus Way, Charleston, South Carolina 29492**

(Address of principal executive offices) (Zip Code)

**Registrant's telephone number, including area code (843) 849-7476**

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
<b>Common Stock, \$0.001 Par Value</b>	<b>BNFT</b>	<b>Nasdaq Global Market</b>

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.

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

**(b), (c), (d), (e)**

On August 21, 2020, the board of directors (the “Board”) of Benefitfocus, Inc. (the “Company”) appointed Stephen M. Swad, the Company’s current Chief Financial Officer, as Chief Executive Officer and made him a member of the Board, and appointed Company Vice President and Corporate Controller Alpana Wegner as Chief Financial Officer. Each of these appointments was effective at the beginning of the day on Monday, August 24, 2020. Mr. Swad will serve as a Class I director to hold office until the Company’s 2023 annual meeting of stockholders or until his successor is duly elected and qualified and will not serve on any of the Board’s committees.

Mr. Swad will serve as the Company’s “principal executive officer” for SEC filing purposes, and Ms. Wegner will serve as the Company’s “principal financial officer” and “principal accounting officer” for SEC filing purposes.

Mr. Swad has served as the Company’s Chief Financial Officer since July 2019. He also served as the Company’s treasurer during that time. Prior to that, Mr. Swad served on the Board since December 2013. Previously, Mr. Swad served as Chief Financial Officer of Vox Media, Inc. from January 2016 until July 2019. From February 2012 until April 2015, Mr. Swad served as President and Chief Executive Officer, and a director of Rosetta Stone Inc. (NYSE: RST), a publicly held language-learning software company, previously serving as its Chief Financial Officer beginning in November 2010. Prior to joining Rosetta Stone, Mr. Swad served as the Executive Vice President and Chief Financial Officer of Comverse Technology, Inc., beginning in May 2009. He also served as Executive Vice President and Chief Financial Officer of Federal National Mortgage Association (Fannie Mae) (NASDAQ: FNMA) from May 2007 until August 2008 and has held various senior financial management positions with then public companies, including AOL Inc. (now a part of Oath Inc.) and Time Warner Inc. (now a part of Warner Media, LLC). Additionally, Mr. Swad served on the board of Eloqua, Inc. from August 2011 until February 2013, including between August 2012 and February 2013, during which time it was a publicly held company. Mr. Swad, a former partner of KPMG LLP, also served as a Deputy Chief Accountant at the Securities and Exchange Commission. Swad holds a B.A. in business administration from the University of Michigan.

Mr. Swad is 59 years old and has no familial relationships with any executive officer or director of the Company. Other than Mr. Swad’s prior compensation for his service on the Board and as the Company’s Chief Financial Officer, there have been no transactions in which the Company has participated and in which Mr. Swad had a direct or indirect material interest that would be required to be disclosed under Item 404(a) of Regulation S-K.

Prior to his appointment as Chief Executive Officer, Mr. Swad was party to an employment agreement, dated July 2, 2019 (the “Swad Employment Agreement”) as disclosed in Item 5.02 of the Company’s Current Report on Form 8-K filed on July 10, 2019. In connection with Mr. Swad’s appointment as Chief Executive Officer, the Company and Mr. Swad entered into an amendment to the Swad Employment Agreement dated August 25, 2020 (the “Swad Amendment”). The Swad Amendment increases Mr. Swad’s annual base salary to \$475,000, increases the percentage of his annual salary that he is eligible to receive as an annual bonus to 100%, extends the time the Company will rent him an apartment in Charleston through January 2022, provides he will receive restricted stock units (“RSUs”) valued at \$700,000 vesting in three equal annual installments beginning on the first anniversary of the grant date, and updates his title and duties to reflect his becoming the Company’s Chief Executive Officer.

Ms. Wegner has served as the Company's Vice President, Corporate Controller since December 2017, having first joined the Company in April 2017 in the carrier business unit as general manager. Previously, Wegner worked for Blackbaud, Inc. (NASDAQ: BLKB) beginning in October 2008. She served first as director of SEC reporting, then interim Corporate Controller, followed by Vice President roles as the Chief Financial Officer of the enterprise customer business unit, and in sales operations. From May 2001 to August 2004, Wegner served as the director of external reporting and compliance at Allied Waste Industries, Inc. She also served in the assurance and business advisory segment of Arthur Andersen LLP. Ms. Wegner holds the CPA designation and received a B.S. in Accountancy from Arizona State University.

Ms. Wegner is 48 years old and has no familial relationships with any executive officer or director of the Company. Other than Ms. Wegner's prior compensation for her service as the Company's Vice President, Corporate Controller, there have been no transactions in which the Company has participated and in which Ms. Wegner had a direct or indirect material interest that would be required to be disclosed under Item 404(a) of Regulation S-K.

In connection with Ms. Wegner's appointment as Chief Financial Officer, the Company and Ms. Wegner entered into an employment agreement dated August 25, 2020 (the "Wegner Employment Agreement"). The Wegner Employment Agreement provides that her employment is "at will." Her annual base salary is initially \$350,000 and she is eligible to participate in the Company's Short-Term Incentive Program, with a target bonus of 50% of her base salary. Ms. Wegner also will receive a grant of RSUs valued at \$250,000, vesting in three equal annual installments beginning on the first anniversary of the grant date. If the Company terminates Ms. Wegner without cause or she resigns for good reason within 12 months of a change of control of the Company, she will receive 12 months' continued salary, COBRA coverage for 12 months and full vesting of all her equity awards. If the Company terminates Ms. Wegner without cause or she resigns for good reason at any other time, she will receive the same salary and COBRA coverage, and additional vesting of all her equity awards that would have otherwise vested in the 12 months following her termination. Ms. Wegner is subject to confidentiality, non-competition and non-solicitation covenants for one year following the termination of her employment.

Effective August 24, 2020 (the "Separation Date"), the Company's President and Chief Executive Officer and a director, Raymond A. August, resigned from all of his positions at the Company. The Board is treating this as a termination without cause. Mr. August was serving as the Company's principal executive officer. Mr. August's termination was not related to any disagreement with the Company on any matter relating to the Company's operations, policies or practices. Mr. August has agreed to remain at the Company for a transition period ending on January 1, 2021 (the "Termination Date").

Mr. August is party to an employment agreement with the Company dated on or about June 25, 2014, as amended on or about January 1, 2018 and again on April 1, 2019 (the "August Employment Agreement"). In connection with his termination, the Company and Mr. August entered into a separation and release agreement dated August 24, 2020 (the "Separation Agreement"). Pursuant to the August Employment Agreement, under the Separation Agreement Mr. August will receive the benefits for being terminated without cause under the August Employment Agreement, including: (i) continued payment of his base salary for 18 months following the Termination Date; (ii) payment of a portion of his 2020 annual bonus; (iii) continuation coverage under COBRA for 18 months following the Termination Date; and (iv) immediate vesting of time-based vesting equity awards that would have vested within 12 months of the Termination Date, other than his April 2019 RSU.

The foregoing summaries of the material terms of the Swad Amendment, Wegner Employment Agreement and the Separation Agreement are subject to the full and complete terms of the agreements, copies of which are filed as Exhibit 10.1, 10.2 and 10.3 hereto and are incorporated herein by reference. A copy of the press release regarding the above matters is attached hereto as Exhibit 99.1 and incorporated herein by reference.

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

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
10.1	<a href="#"><u>First Amendment to Employment Agreement, dated August 25, 2020, by and between Benefitfocus.com and Stephen M. Swad.</u></a>
10.2	<a href="#"><u>Employment Agreement, dated August 25, 2020, by and between Benefitfocus.com and Alpana Wegner.</u></a>
10.3	<a href="#"><u>Separation and Release Agreement, dated August 24, 2020, by and between Benefitfocus.com and Raymond A. August.</u></a>
99.1	<a href="#"><u>Press release dated August 24, 2020.</u></a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURE

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

Date: August 26, 2020

**BENEFITFOCUS, INC.**

/s/ Stephen M. Swad

Stephen M. Swad

Chief Executive Officer

## BENEFITFOCUS.COM, INC.

## FIRST AMENDMENT TO EMPLOYMENT AGREEMENT

THIS FIRST AMENDMENT TO EMPLOYMENT AGREEMENT (this “**Amendment**”) is made and entered into this 25<sup>th</sup> day of August 2020, by and between: Benefitfocus.com, Inc., having its principal place of business at 100 Benefitfocus Way, Charleston, SC 29492 (hereinafter referred to as “**Benefitfocus**”), and **Stephen Swad** (hereinafter referred to as the “**Associate**”)

WHEREAS, Associate and Benefitfocus previously entered into an Employment Agreement dated as of July 2, 2019 (the “**Employment Agreement**”);

WHEREAS, Associate and Benefitfocus wish to alter certain terms of the Employment Agreement with regard to Associate’s title, responsibilities, compensation and other matters; and

WHEREAS, in light of the foregoing, Associate and Benefitfocus desire to mutually and voluntarily amend the Employment Agreement, pursuant to the terms as set forth herein, effective as of August 24, 2020 (the “**Amendment Effective Date**”).

NOW, THEREFORE, in consideration of the foregoing, the mutual promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows.

1. AMENDMENT TO SECTION 1 OF THE EMPLOYMENT AGREEMENT. Section 1 of the Employment Agreement is modified as of the Amendment Effective Date by replacing the existing Section 1 in its entirety with a new Section 1 as follows:

1. Employment. Benefitfocus hereby agrees to employ the Associate in the capacity of Chief Executive Officer, upon the terms and conditions set out herein, and the Associate accepts such employment.

2. AMENDMENT TO SECTION 3 OF THE EMPLOYMENT AGREEMENT. Section 3 of the Employment Agreement is modified as of the Amendment Effective Date by replacing the existing Section 3 in its entirety with a new Section 3 as follows:

3. Duties. In his role as Chief Executive Officer, Associate will perform the duties as set out in Exhibit A entitled “Chief Executive Officer Job Description,” which is incorporated herein and made a part of this Agreement, and shall perform such additional duties as may otherwise be assigned to Associate from time to time by Benefitfocus’ Board of Directors.

3. AMENDMENT TO SECTION 19 OF THE EMPLOYMENT AGREEMENT. Section 19 of the Employment Agreement is modified as of the Amendment Effective Date by adding the following sentence to the end of the Section:

Upon termination by either party for any reason, the Associate will resign his position(s), if any, as an officer or director of the Company, as a member of any committees, as well as any other positions he may hold with or for the benefit of the Company and/or its affiliates.

4. AMENDMENT TO EXHIBIT A OF EMPLOYMENT AGREEMENT. Employment Agreement is modified as of the Amendment Effective Date by replacing the existing Exhibit A with the new Exhibit A attached to this Amendment as Exhibit 1.

5. AMENDMENT TO PARAGRAPH 1 OF EXHIBIT B OF EMPLOYMENT AGREEMENT. Paragraph 1 of Exhibit B to Employment Agreement is modified as of the Amendment Effective Date by striking Paragraph 1 and inserting new Paragraph 1 as follows:

1. *Salary*: As compensation for services rendered by the Associate, Benefitfocus shall pay a salary of \$ 18,269.23 per pay period (which annualizes to \$ 475,000), payable in accordance with Benefitfocus' customary payroll practices as in effect from time to time. All compensation paid to Associate shall be subject to withholding for such federal, state and local taxes as Benefitfocus determines are required to be withheld pursuant to applicable law.

6. AMENDMENT TO PARAGRAPH 4 OF EXHIBIT B OF EMPLOYMENT AGREEMENT. Paragraph 4 of Exhibit B to Employment Agreement is modified as of the Amendment Effective Date by striking the first sentence of Paragraph 4 and inserting a new first sentence in Paragraph 4 as follows:

*2019 Short Term Incentive Program*: You are eligible to participate in the Benefitfocus Short Term Incentive Program at the CEO level, which is 100% of your base pay, subject to adoption by the Board of Directors from time to time, and conditioned on achievement of annual performance targets.

7. AMENDMENT TO PARAGRAPH 5 OF EXHIBIT B OF EMPLOYMENT AGREEMENT. Paragraph 5 of Exhibit B to Employment Agreement is modified as of the Amendment Effective Date by adding new Subparagraph (c) as follows:

- c) *Restricted Stock Unit Award*: In accordance with, and subject to the Benefitfocus 2012 Stock Plan, effective as of the Amendment Effective Date, you will receive a one-time grant of Benefitfocus restricted stock units (RSUs) valued at \$700,000, measured at the time of the grant utilizing a 20-day running average (or such other method as the board of directors determines appropriate). You will be receiving the formal Annual Award Grant Notice and accompanying documentation as soon as possible after the Amendment Effective Date. This grant will vest in three (3) equal annual installments beginning on the first anniversary of the grant date, and will be subject to the terms of an RSU award agreement between you and Benefitfocus.

8. AMENDMENT TO PARAGRAPH 8 OF EXHIBIT B OF EMPLOYMENT AGREEMENT. Paragraph 8 of Exhibit B to Employment Agreement is modified as of the Amendment Effective Date by striking the last sentence of Paragraph 8 and replacing it a new sentence to the end of Paragraph 8 as follows:

The Company will also provide you with a private corporate apartment in Charleston through January, 2022.

9. AMENDMENT TO SUBPARAGRAPH 11(e) OF EXHIBIT B OF EMPLOYMENT AGREEMENT. Subparagraph 11(e) of Exhibit B to Employment Agreement is modified as of the Amendment Effective Date by striking subclause (iii) and inserting a new subclause (iii) as follows:

(iii) a material diminution in the authority, duties, or responsibilities of the corporate body to whom Executive is required to report, including a requirement that Associate report to any corporate officer or employee instead of reporting directly to the Board.

10. Except as expressly set forth in this Amendment, the provisions of the Employment Agreement shall remain in full force and effect, in their entirety, in accordance with their terms.

11. MISCELLANEOUS. This Amendment shall be governed, construed, and interpreted in accordance with the laws of the State of South Carolina, without giving effect to conflicts of laws principles. The parties agree that this Amendment may only be modified in a signed writing executed by both parties. This Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns. This Amendment may be executed in separate counterparts, each of which is deemed to be an original and all of which taken together constitute one agreement. Facsimile or PDF reproductions of original signatures will be deemed binding for the purpose of the execution of this Amendment.

*[Signature page follows]*

Signed, sealed and delivered in the presence of:

BENEFITFOCUS

/s/ Mason R. Holland

By: Mason R. Holland, Jr.

Its: Executive Chairman

Date: August 26, 2020

ASSOCIATE

/s/ Stephen M. Swad

By: Stephen Swad

Date: August 25, 2020

## BENEFITFOCUS.COM, INC.

## EMPLOYMENT AGREEMENT

THIS AGREEMENT (the “**Agreement**”), is made and entered into this 25<sup>th</sup> day of August, 2020, by and between: Benefitfocus.com, Inc., having its principal place of business at 100 Benefitfocus Way, Charleston, SC 29492, (hereinafter referred to as “**Benefitfocus**”) and **Alpana Wegner** whose present address is: 253 River Oak Drive, Mount Pleasant, SC 29464 (hereinafter referred to as the “**Associate**”).

1. **Employment.** Benefitfocus hereby agrees to employ the Associate in the capacity of Chief Financial Officer, upon the terms and conditions set out herein, and the Associate accepts such employment.
2. **Term.** The term of this Agreement shall commence upon execution, and Associate’s employment shall commence on August 24, 2020. The Associate understands and acknowledges that employment is “at will” and is terminable at any time at the will of Benefitfocus or the Associate, notwithstanding any other provisions of this Agreement, including Section 19 hereof. This Agreement shall remain in force until terminated at the will of either party or as described in Section 19 of this Agreement.
3. **Duties.** The Associate shall perform, for Benefitfocus, the duties set out in the attached Exhibit A entitled “Job Description,” which is incorporated herein and made a part of this Agreement, along with those other duties as may be assigned to Associate from time to time by Benefitfocus’ Chief Executive Officer or his designee.
4. **Compensation.** The Associate’s initial compensation shall be paid in accordance with that outlined in Exhibit B entitled “Compensation Program,” which is incorporated herein and made a part hereof, and is subject to review in accordance with then current compensation practices of Benefitfocus.
5. **Extent of Services.** The Associate shall devote her time, attention, and energies to Benefitfocus’ business and shall not, during the term of this Agreement, be engaged in other business activities that conflict with, or take significant amounts of the Associate’s time or attention away from, the Associate’s work for Benefitfocus, whether or not such business activity is pursued for gain, profit or other pecuniary advantage. The Associate further agrees that she will perform all of the duties assigned to the Associate to the best of her ability and in a manner satisfactory to Benefitfocus, that she will truthfully and accurately maintain all records, preserve all such records, and make all such reports as Benefitfocus may require; that she will fully account for all money and all of the property of Benefitfocus of which the Associate may have custody and will pay over and deliver the same whenever and however the Associate may be directed to do so. It is understood that the Associate will be permitted to serve on the Board of Directors (and related committees of the Board) of one company, provided that such company does not directly compete with Benefitfocus.
6. **Expenses.** Benefitfocus agrees to reimburse the Associate for travel and other expenses incurred while conducting business on behalf of Benefitfocus as long as they are reasonable and approved by Benefitfocus and comply with government regulations covering such expenses for business purposes. Such expenses will be stated on a Benefitfocus furnished expense form, have required receipts, be signed by the Associate, and sent to Benefitfocus for approval and reimbursement, all in accordance with Benefitfocus’ reimbursement policies and procedures as may be in effect from time to time.

7. Covenant Not to Disclose Trade Secrets and Confidential Information.

- a. As an employee of Benefitfocus, the Associate will be exposed to “Trade Secrets” and “Confidential Business Information” (as those terms are defined below). “**Trade Secrets**” shall mean information or data of or about Benefitfocus or any affiliated entity, including, but not limited to, technical or non-technical data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, financial data, financial plans, products plans, or lists of actual or potential customers, clients, distributors, or licensees, that: (i) derive economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use; and (ii) are the subject of efforts that are reasonable under the circumstances to maintain their secrecy. To the extent that the foregoing definition is inconsistent with a broader definition of “trade secret” under applicable law, the latter definition shall govern for purposes of interpreting the Associate’s obligations under this Agreement. Except as required to perform his or her obligations under this Agreement or except with Benefitfocus’ prior written permission, the Associate shall not use, redistribute, market, publish, disclose or divulge to any other person or entity any Trade Secrets of Benefitfocus. The Associate’s obligations under this provision shall remain in force (during or after the Term) for so long as such information or data shall continue to constitute a “trade secret” under applicable law. The Associate agrees to cooperate with any and all confidentiality requirements of Benefitfocus and the Associate shall immediately notify Benefitfocus of any unauthorized disclosure or use of any Trade Secrets of which the Associate becomes aware.
- b. The Associate agrees to maintain in strict confidence and, except as necessary to perform his or her duties for Benefitfocus, not to use or disclose any Confidential Business Information at any time, during the term of his or her employment or for a period of one (1) year after the Associate’s last date of employment, so long as the pertinent data or information remains Confidential Business Information. “**Confidential Business Information**” shall mean any non-public Information of a competitively sensitive or personal nature, other than Trade Secrets, acquired by the Associate, directly or indirectly, in connection with the Associate’s employment (including his or her employment with Benefitfocus prior to the date of this Agreement), including (without limitation) oral and written information concerning Benefitfocus or its affiliates relating to financial position and results of operations (revenues, margins, assets, net income, etc.), annual and long-range business plans, marketing plans and methods, account invoices, oral or written customer information, and personnel information. Confidential Business Information also includes information recorded in manuals, memoranda, projections, minutes, plans, computer programs, and records, whether or not legended or otherwise identified by Benefitfocus and its affiliates as Confidential Business Information, as well as information which is the subject of meetings and discussions and not so recorded; provided, however, that Confidential Business Information shall not include information that is generally available to the public, other than as a result of disclosure, directly or indirectly, by the Associate, or that was available to the Associate on a non-confidential basis prior to its disclosure to the Associate.

- c. Without limiting any of the foregoing, Associate acknowledges that Trade Secrets and Confidential Business Information exist in all formats in which information is preserved, including electronic, print, or any other form, and that each term includes all originals, copies, notes, or other reproductions or replicas thereof.
- d. Upon termination of employment, the Associate shall leave with Benefitfocus all Trade Secrets, Confidential Business Information, and any other business records relating to Benefitfocus and its affiliates including, without limitation, all contracts, calendars, and other materials or business records concerning its business or customers, including all physical, electronic, and computer copies thereof, whether or not the Associate prepared such materials or records herself, and Associate shall retain no copies of any such materials. In addition, upon termination of employment, Associate will immediately return to Benefitfocus all other property whatsoever of Benefitfocus in her possession or under her control. If requested, Associate shall certify in writing to Benefitfocus that no such materials are in her possession.
- e. As set forth above, the Associate shall not disclose Trade Secrets or Confidential Business Information. However, nothing in this Section 7 shall prevent the Associate from (i) disclosing Trade Secrets or Confidential Business Information pursuant to a court order or court-issued subpoena, so long as the Associate first notifies Benefitfocus of said order or subpoena in sufficient time to allow Benefitfocus to seek an appropriate protective order, and provided that Associate only discloses such information as she is actually required to disclose, or (ii) from reporting violations of law to any governmental agency or entity, or otherwise making disclosures that are protected under a whistleblower any law. The Associate agrees that if she receives any formal or informal discovery request, court order, or subpoena requesting that the Associate disclose Trade Secrets or Confidential Business Information, she will immediately notify Benefitfocus and provide Benefitfocus with a copy of said request, court order, or subpoena.

8. Covenant Not to Solicit Customers.

- a. The Associate covenants and agrees that during his or her employment and for a period of one (1) year following the date of termination of the Associate's employment with Benefitfocus, for any reason, whether by the Associate or Benefitfocus, the Associate shall not (except on behalf of or with the prior written consent of Benefitfocus) either directly or indirectly, on the Associate's own behalf or in the service or on behalf of others, (i) solicit, divert or appropriate to or for a Competing Business (as defined below), or (ii) attempt to solicit, divert, or appropriate to or for a Competing Business, any person or entity that was a customer or prospective customer of Benefitfocus on the date of termination and with whom the Associate had direct material contact within six months of the Associate's last date of employment. For purposes of this Agreement, the term "**Competing Business**" shall mean the business of offering human resource management and benefit administration services to companies via a Web-based system.

- b. The Associate recognizes and acknowledges that Benefitfocus' customers and the specific needs of such customers are essential to the success of its business and its continued goodwill and that its customer list and customer information constitute a property interest of Benefitfocus, having been developed by Benefitfocus at great effort and expense.
9. Covenant Not to Solicit Employees/Consultants. The Associate covenants and agrees that during his or her employment and for a period of one (1) year following the date of termination of the Associate's employment with Benefitfocus, for any reason, whether by Associate or Benefitfocus, Associate will not, either directly or indirectly, on the Associate's own behalf or in the service or on behalf of others, (i) solicit, divert, or hire away, or (ii) attempt to solicit, divert, or hire away any employee of or consultant to Benefitfocus or any of its affiliates engaged or experienced in the Business (as defined herein), regardless of whether the employee or consultant is full-time or temporary, the employment or engagement is pursuant to written agreement, or the employment is for a determined period or is at will. For purposes of this Agreement, the term "Business" shall mean the business of offering human resource management and benefit administration services to companies via a Web-based system.
10. Covenant Not to Compete. The Associate covenants and agrees that during his or her employment and for a period of one (1) year following the termination of the Associate's employment with Benefitfocus (by either party and regardless of the reason for such termination), Associate will not, hold a position based in or with responsibility for all or part of the Restricted Territory (as defined below), with any Competing Business (as defined above) whether as employee, consultant, or otherwise, in which Associate will have duties, or will perform or be expected to perform services for such Competing Business, that is or are the same as or substantially similar to the position held by Associate or those duties or services actually performed by Associate for Benefitfocus within the twelve (12) month period immediately preceding the termination of Associate's employment with Benefitfocus, or in which Associate will use or disclose or be reasonably expected to use or disclose any confidential or proprietary information of Benefitfocus for the purpose of providing, or attempting to provide, such Competing Business with a competitive advantage with respect to the Business. As used herein, "Restricted Territory" means the United States of America, it being understood that Benefitfocus' business is nationwide in scope, provided, however, that if a court of competent jurisdiction determines that the foregoing definition is too broad to be enforced under applicable law, then the parties agree that "Restricted Territory" will mean any State, province, or similar political subdivision to which Associate directed, or in which Associate performed, employment-related activities on behalf of Benefitfocus at the time of, or during the twelve (12) month period prior to, the termination of Associate's employment with Benefitfocus for any reason.
11. Covenants are Independent. The covenants on the part of the Associate contained in paragraphs 7, 8, 9, 10, 24 and 25 hereof, as well as in each subsection thereof, shall each be construed as agreements independent of each other and of any other provision in this Agreement and the unenforceability of one shall not affect the remaining covenants.
12. Consideration. The Associate acknowledges and agrees that valid consideration has been given to the Associate by Benefitfocus in return for the promises of the Associate set forth herein, including the promise of additional compensation to which the Associate was not entitled prior to the execution of this Agreement.

13. Extension of Periods. Each of the time periods described in this Agreement shall be automatically extended by any length of time during which the Associate is in breach of the corresponding covenant contained herein. The provisions of this Agreement shall continue in full force and effect throughout the duration of the extended periods.
14. Reasonable Restraint. It is agreed by the parties that the foregoing covenants in this Agreement are necessary for the legitimate business interests of Benefitfocus and impose a reasonable restraint on the Associate in light of the activities and Business of Benefitfocus on the date of the execution of this Agreement.
15. Notices. Any notice required or desired to be given under this Agreement shall be given in writing, sent by certified mail, return receipt requested, to his or her residence as shown in the records of Benefitfocus in the case of the Associate, or to its principal place of business to the attention of General Counsel, in the case of Benefitfocus.
16. Waiver of Breach. The waiver by Benefitfocus of a breach of any provision of this Agreement by the Associate shall not operate or be construed as a waiver of any subsequent breach by the Associate. No waiver shall be valid unless in writing and signed by Benefitfocus.
17. Assignment. The Associate acknowledges that the services to be rendered by the Associate are unique and personal. Accordingly, the Associate may not assign any of his or her rights or delegate any of his or her duties or obligations under this Agreement. The rights and obligations of Benefitfocus under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of Benefitfocus. The Associate agrees that this Agreement, and the covenants contained herein, may be assigned by Benefitfocus to any successor company.
18. Paid Time Off. Associate will be eligible to receive paid time off in accordance with Benefitfocus' paid time off policies as detailed in its Associate Handbook, the provisions of which are subject to change on a prospective basis.
19. Termination. Either party may terminate this Agreement at any time, with or without cause. In the event that Associate chooses to resign her employment, Benefitfocus requests fourteen (14) days written notice to Benefitfocus. In such event, the Associate shall continue (if agreed to by Benefitfocus) to render her services and shall be paid her regular compensation up to the date of termination. Upon termination by either party for any reason, Associate will resign her position(s), if any, as an officer or director of the Company, as a member of any committees, as well as any other positions she may hold with or for the benefit of the Company and/or its affiliates.
20. Entire Agreement; Amendment. This Agreement, and attached Exhibits, contain the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements (whether written or oral and whether express or implied) between the parties to the extent related to such subject matter. It may be changed only by an Agreement in writing, signed by the parties hereto.
21. Construction of Agreement. Should any of the provisions or terms of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing this Agreement shall not apply a presumption that such provision(s) or term(s) shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who prepared it, it being agreed that all parties have participated in the preparation and review of this Agreement and have had the opportunity to be represented by counsel.

22. Arbitration; Governing Law; and Venue. This Agreement, and all transactions contemplated hereby, shall be governed by, construed and enforced in accordance with the laws of the State of South Carolina. The parties agree that any dispute, controversy or claim arising out of or related to this Agreement or any breach of this Agreement shall be submitted to and decided by binding arbitration in South Carolina. Arbitration shall be administered exclusively by American Arbitration Association and shall be conducted by a neutral arbitrator consistent with the rules, regulations and requirements thereof, including discovery, which can be accessed at [www.adr.org](http://www.adr.org), as well as any requirements imposed by state law. The parties agree to arbitrate solely on an individual basis, and that this agreement does not permit class arbitration or any claims brought as a plaintiff or class member in any class or representative arbitration proceeding. The arbitral tribunal may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. Any award of the Arbitrator(s) is final and binding, and may be entered as a judgment in any court of competent jurisdiction. In the event the prohibition on class arbitration is deemed invalid or unenforceable, then the remaining portions of the arbitration agreement will remain in force.
23. Work Facilities. The Associate shall be provided with such other facilities and services as are suitable to the Associate's position and appropriate for the performance of his or her duties. In the case of an Associate performing the sales duties and located remote to the main office, it is expected that the Associate will maintain some form of office at his or her residence, which contains the necessary equipment to perform the assigned duties.
24. Severability. To the extent that any provision or language of this Agreement is deemed unenforceable, by virtue of the scope of the business activity prohibited or the length of time the activity is prohibited, Benefitfocus and Associate agree that this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of the State of South Carolina.
25. Remedies for Breach. The Associate recognizes and agrees that a breach by the Associate of any covenant contained in this Agreement would cause immeasurable and irreparable harm to Benefitfocus. In the event of a breach or threatened breach of any covenant contained herein, Benefitfocus shall be entitled to temporary and permanent injunctive relief, restraining the Associate from violating or threatening to violate any covenant contained herein, as well as all costs and fees incurred by Benefitfocus, including attorneys' fees, as a result of the Associate's breach or threatened breach of the covenant. Benefitfocus and the Associate agree that the relief described herein is in addition to such other and further relief as may be available to Benefitfocus at equity or by law. Nothing herein shall be construed as prohibiting Benefitfocus from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of damages from the Associate.
26. Additional Representations and Warranties of Associate. Indemnification by Associate. The Associate acknowledges and agrees that: (i) the covenants contained in this Agreement are the essence of this Agreement; (ii) the Associate has received good, adequate and valuable consideration for each of these covenants; (iii) each of these covenants is reasonable and necessary to protect and preserve the interests and properties of Benefitfocus; (iv) each of these covenants in this Agreement is separate, distinct and severable not only from the other covenants

but also from the remaining provisions of this Agreement; (v) the unenforceability of any covenants or agreements shall not affect the validity or enforceability of any of the other covenants or agreements or any other provision or provisions of this Agreement; and (vi) if the covenants herein shall ever be deemed to exceed the time, activity, or geographic limitations permitted by applicable law, then such provisions shall be and hereby are reformed to the maximum time, activity, or geographical limitations permitted by applicable law. **The Associate represents and warrants that her acceptance of employment with Benefitfocus has not been improperly induced with respect to any prior employment and the performance of her duties hereunder will not conflict with, or result in a violation of, a breach of, or a default under any contract, agreement, or understanding to which she is a party or is otherwise bound, including any non-solicitation, non-competition, or other similar covenant or agreement of a prior employer.**

27. **At-Will Employment.** THE ASSOCIATE UNDERSTANDS AND AGREES THAT THIS AGREEMENT SHALL IN NO WAY IMPOSE UPON BENEFITFOCUS ANY OBLIGATION TO EMPLOY THE ASSOCIATE OR TO CONTINUE THE ASSOCIATE'S EMPLOYMENT FOR ANY LENGTH OF TIME. THE EMPLOYMENT BY BENEFITFOCUS IS, AND AT ALL TIMES SHALL REMAIN, IN THE ABSOLUTE DISCRETION OF BENEFITFOCUS, WHICH EMPLOYMENT MAY BE TERMINATED BY THE ASSOCIATE OR BENEFITFOCUS AT WILL.

Signed, sealed and delivered in the presence of:

BENEFITFOCUS

ASSOCIATE

/s/ Mason R. Holland

/s/ Alpana Wegner

By: Mason R. Holland, Jr.

By: Alpana Wegner

Its: Executive Chairman

Date: August 26, 2020

Date: August 25, 2020

**CONFIDENTIAL AND PROPRIETARY**  
BENEFITFOCUS.COM, INC.

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(08/\_\_\_/2020)

**EXHIBIT B**

**Benefitfocus.com, Inc.  
Compensation Program for Alpana Wegner**

Exhibit B to Employment Agreement dated August 25, 2020.

1. *Salary*: As compensation for services rendered by you, Benefitfocus shall pay a salary at the annualized rate of \$350,000, payable in installments in accordance with Benefitfocus' customary payroll practices as in effect from time to time. All compensation paid to you shall be subject to withholding for such federal, state and local taxes as Benefitfocus determines are required to be withheld pursuant to applicable law.
2. *Annual Review*: Annual salary reviews will occur on or around the annual budget process for Benefitfocus.
3. *2020 Short Term Incentive Program*: You are eligible to participate in the Benefitfocus Short Term Incentive Program at the CFO level, which is 50% of your base salary, subject to adoption by the Board of Directors from time to time, and conditioned on achievement of annual performance targets. The targets for achieving the Bonus will be the same Company targets set for the entire Executive Management Team as adjusted at the beginning of each year. In general, you must be employed by Benefitfocus on the date on which a bonus is paid in order to earn and receive the bonus, except as contemplated by Section 8 of this Exhibit B.
4. *Long Term Incentive Program*.
  - a) Beginning in 2021, you shall be eligible to participate in the Benefitfocus 2012 Stock Plan, or any successor plan, subject to the terms of the Benefitfocus 2012 Stock Plan as amended or successor plan, as determined by the Board or the Compensation Committee, in its sole discretion.
  - b) *Restricted Stock Unit Award*: In accordance with, and subject to the Benefitfocus 2012 Stock Plan, you will receive a one-time grant of Benefitfocus restricted stock units (RSUs) valued at \$250,000, measured at the time of the grant utilizing a 20-day running average (or such other method as the board of directors determines appropriate), and subject to approval by the board of directors. You will be receiving the formal Annual Award Grant Notice and accompanying documentation upon your start date. This grant will vest in three (3) equal annual installments beginning on the first anniversary of the grant date, and will be subject to the terms of an RSU award agreement between you and Benefitfocus.
5. *Normal Hours of Work*: Full time executive positions are expected to work the amount of time needed to meet or exceed all job duties and performance expectations as assigned by the President and CEO.
6. *Benefits*: You are eligible for all Benefitfocus associate benefit programs including but not limited to Health Insurance, Life Insurance, Disability Insurance, 401(k) Retirement Program, and more, subject to the terms and conditions of such programs. Nothing in this Agreement or Compensation Program alters or limits Benefitfocus' rights to modify or terminate any such programs in its sole discretion.

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BENEFITFOCUS.COM, INC.

Exhibit A & B to Employment Agreement

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(08/\_\_\_/2020)

7. *Paid Time Off and Paid Holidays:* Your paid time off will follow the company schedule, as outlined in the benefit summary.

8. *Severance.*

- a) In the event that Benefitfocus or its acquirer terminates your employment without Cause, as defined herein, or upon your resignation for Good Reason, as defined herein (each a “trigger event”), at the time of or within twelve (12) months of the Change in Control, as defined herein, then upon your execution of a general release of claims satisfactory to Benefitfocus or its acquirer within the time allowed for execution (but not more than 59 days following the termination of employment date), which release is not revoked by you during any revocation period allowed by law, Benefitfocus or its acquirer will provide you with the following severance benefits: (i) salary continuation for a period of twelve (12) months at your then-current rate of base salary (which shall be paid in substantially equal installments in accordance with Benefitfocus’ payroll practice, commencing within 30 days after a Release becomes irrevocable); (ii) if you are eligible for, elect and remain eligible for COBRA continuation coverage, Benefitfocus or its acquirer will pay the same percentage of the premium it was paying prior to termination during the period you are receiving salary continuation; and (iii) to the extent the RSU and PSU awards referenced in this Agreement, or any other stock rights (as that term is defined in the plan) that have been granted to Associate have not been fully vested prior to such termination without cause or resignation for good reason, then upon that trigger event all unvested RSUs, PSUs and Stock Rights shall immediately vest in full to Associate. For the avoidance of doubt, PSUs that are already “earned” and now are just time-based RSUs for the earned share amount for some remaining time-based vesting schedule, those PSUs will accelerate in the same way RSUs would. For PSUs that are not yet “earned” as the performance period is still active/pending, those PSUs will be converted to RSUs at the target share amount at the time of the Change in Control. In the event of any conflict or interpretation issues between this clause (iv) and the Plan, or any document setting forth the terms of any such RSU, PSU or Stock Right, the terms of clause (iv) shall prevail and control.
- b) In the event that Benefitfocus terminates your employment without Cause, or your resignation for Good Reason, as defined herein, at any time prior to a Change in Control, as defined herein, then upon your execution of a general release of claims satisfactory to Benefitfocus within the time allowed for execution (but not more than 59 days following the termination of employment date), which release is not revoked by you during any revocation period allowed by law, Benefitfocus will provide you with (i) salary continuation for a period of twelve (12) months at your then-current rate of base salary (which shall be paid in substantially equal installments in accordance with Benefitfocus’ payroll practice, commencing within 30 days after a Release becomes irrevocable); (ii) if you are eligible for, elect and remain eligible for COBRA continuation coverage, Benefitfocus or its acquirer will pay the same percentage of the premium it was paying prior to termination during the period you are receiving salary continuation; and (iii) to the extent the RSU and PSU awards referenced in this Agreement, or any other stock rights (as that term is defined in the plan) that have been granted to Associate have not been fully vested prior to such termination without Cause or resignation for Good Reason, then upon that trigger event all unvested RSUs, PSUs and stock rights that would have vested in the twelve (12) month period following the Termination Date shall immediately vest and become exercisable. In the event of any conflict or interpretation issues between clause (iv) of the preceding sentence and the Plan, or any document setting forth the terms of any such RSU, PSU or stock right, the terms of clause (iv) shall prevail and control.

- c) “Cause” shall mean a reasonable determination by Benefitfocus’ board of directors of any of the following: (i) your violation of any applicable material law or regulation respecting the business of Benefitfocus; (ii) your conviction of, or plea of nolo contendere to, a felony or any crime involving fraud, embezzlement or any other act of moral turpitude; (iii) your act of dishonesty, fraud or misrepresentation made in connection with your responsibilities as an employee; (iv) your gross misconduct that results in a reasonable probability of material injury (whether tangible or reputational) to Benefitfocus; (v) your material breach of any material obligations under any written agreement with Benefitfocus or your continued failure to substantially perform your material employment duties, which breach or failure is not cured to Benefitfocus’ reasonable satisfaction within five (5) business days after notice thereof is delivered to you.
- d) A “Change of Control” shall be deemed to have occurred if any of the following conditions have occurred: (i) the merger or consolidation of Benefitfocus with another entity, where Benefitfocus is not the surviving entity and where after the merger or consolidation (A) its stockholders prior to the merger or consolidation hold less than 50% of the voting stock of the surviving entity or (B) its directors prior to the merger or consolidation are less than a majority of the directors of the surviving entity; (ii) the sale of all or substantially all of Benefitfocus’ assets to a third party where subsequent to the transaction (A) its stockholders hold less than 50% of the stock of said third party or (B) its directors are less than a majority of the board of directors of said third party; or (iii) a transaction or series of transactions, including a merger of Benefitfocus with another entity where Benefitfocus is the surviving entity, whereby (A) 50% or more of the voting stock of Benefitfocus after the transaction is owned actually or beneficially by parties who held less than 30% of the voting stock, actually or beneficially, prior to the transaction(s) or (B) its board of directors after the transaction(s) or within 60 days thereof is comprised of less than a majority of Benefitfocus’ directors serving prior to the transaction(s).
- e) “Good Reason” shall mean the occurrence of any of the following without your written consent: (i) a material diminution in your base salary or targeted annual bonus, or (ii) a material diminution in your authority, duties, or responsibilities. You may not establish “Good Reason” unless you have provided written notice of the existence of such condition to Benefitfocus within thirty (30) days of the event constituting such Good Reason, and Benefitfocus fails to reasonably cure such condition within the 30-day period immediately following receipt of such notice and you terminate your employment within thirty (30) days after the end of the cure period.
- f) *Noncompete/Nonsolicitation.* The receipt of any severance payments or benefits pursuant to this Section will be subject to your not violating the covenants contained within Section 7, 8, 9 and 10 of the Employment Agreement. In the event you breach such covenants, Benefitfocus shall, in addition to all other legal and equitable remedies, have the right to terminate or suspend all continuing payments and benefits to which you may otherwise be entitled pursuant to this Section 8 without affecting the release or any other obligations under the release agreement.]

9. *Application of Internal Revenue Code Section 409A*: All provisions of this Agreement will be interpreted in a manner consistent with Section 409A of the Internal Revenue Code and the regulations and other guidance thereunder and any state law of similar effect (collectively “**Section 409A**”). Notwithstanding anything to the contrary set forth herein, any payments and benefits provided under this Exhibit B that constitute “deferred compensation” within the meaning of Section 409A will not commence in connection with your termination of employment unless and until you have also incurred a “separation from service” (as such term is defined in Treasury Regulation Section 1.409A-1(h), unless Benefitfocus reasonably determines that such amounts may be provided to you without causing you to incur the additional 20% tax under Section 409A. The parties intend that each installment of the severance benefits payments provided for above is a separate “payment” for purposes of Treasury Regulation Section 1.409A-2(b)(2)(i). For avoidance of doubt, the parties intend that payments of the severance benefits satisfy, to the greatest extent possible, the exemptions from the application of Section 409A provided under Treasury Regulation Sections 1.409A-1(b)(4), 1.409A-1(b)(5), and 1.409A-1(b)(9). However, if Benefitfocus determines that the severance benefits constitute “deferred compensation” under Section 409A and you are, on the termination of service, a “specified employee” of Benefitfocus, as such term is defined in Section 409A, then, solely to the extent necessary to avoid the incurrence of the adverse personal tax consequences under Section 409A, the timing of the severance benefit payments will be delayed until the earlier to occur of: (i) the date that is six months and one day after your separation from service, or (ii) the date of your death (such applicable date, the “**Specified Employee Initial Payment Date**”), and Benefitfocus will (A) pay you a lump sum amount equal to the sum of the severance benefits payments that you would otherwise have received through the Specified Employee Initial Payment Date if the commencement of the payment of the severance benefits had not been so delayed pursuant to this paragraph, and (B) commence paying the balance of the severance benefits in accordance with the applicable payment schedules set forth in this Agreement.

**SEPARATION AND RELEASE AGREEMENT**

This SEPARATION AND RELEASE AGREEMENT (the "Agreement") is made and entered into this 24<sup>th</sup> day of August, 2020 (the "Effective Date") by and between Raymond A. August, a citizen and resident of South Carolina (hereinafter "Executive"), and Benefitfocus, Inc., a Delaware corporation, together with its subsidiaries, including, without limitation, Benefitfocus.com, Inc., a South Carolina corporation (collectively, the "Company").

WHEREAS, Executive has been employed by the Company as its Chief Executive Officer and President; and

WHEREAS, in connection with his employment with the Company, Executive executed an Employment Agreement dated on or about June 25, 2014, as amended by the First Amendment to Employment Agreement, effective as of January 1, 2018, and the Second Amendment to Employment Agreement, effective as of April 1, 2019 (together, the "Employment Agreement"); and

WHEREAS, Executive's employment will be terminated, effective as of January 1, 2021 (the "Termination Date"); and

WHEREAS, pursuant to the Employment Agreement, upon the separation of his employment under certain circumstances, Executive would receive certain severance benefits upon his execution of a general release in a form satisfactory to the Company; and

WHEREAS, the parties intend that this Agreement will set out the terms of Executive's employment from the Effective Date through the Termination Date and the terms of Executive's severance benefits, and provide for the general release of the Company by Executive as contemplated by the Employment Agreement;

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Termination of Employment and Transition.

a. Effective as of August 24, 2020, Executive will no longer serve as Chief Executive Officer and President of the Company, and Executive hereby resigns from all of his positions, if any, on the Boards of Directors of Company entities. During the period from August 24, 2020 through the Termination Date (the "Transition Period"), Executive shall serve the Company as "Special Advisor to the CEO," and Executive shall otherwise continue to receive his compensation and benefits as provided by the Employment Agreement. As Special Advisor to the CEO, Executive will be expected to devote at least ten (10) hours per week in performing duties as requested by the Company's Chief Executive Officer. Executive hereby acknowledges and agrees that this appointment during the Transition Period is by mutual consent of the parties, and shall not constitute "Good Reason" as defined by the Employment Agreement.

b. Effective as of the Termination Date, Executive's employment with the Company will be terminated. Except as expressly provided herein, as required by applicable law, or as may be vested under the Company's plans, policies and arrangements, after the Termination Date, Executive will be entitled to no further compensation or employee benefits from the Company.

2. Separation Benefits. If Executive signs this Agreement, and if, on the Termination Date, Executive signs and does not thereafter revoke the Release Agreement that is attached to this Agreement as Attachment A (the "Release"), the Company will provide Executive with the following payments and benefits (collectively the "Separation Benefits"):

a. Separation Pay. In consideration of Executive's execution of this Agreement and the Release, the Company will pay Executive an amount equal to eighteen (18) months of his regular base salary, minus applicable federal, state and local payroll taxes, and other withholdings required by law, paid out in accordance with the Company's regular payroll schedule (the "Separation Pay"). The first installment of the Separation Pay will be paid in on the Company's first regular pay day following the expiration of the Revocation Period described in Section 4 of the Release, and will include Separation Pay for the period from the Termination Date through the payroll date. The remaining installments will be paid over time in accordance with the Company's normal payroll schedule for its employees.

b. Annual Bonus. Executive will be eligible to receive a portion of his targeted annual bonus determined in accordance with Exhibit B to the Employment Agreement (the "2020 Annual Bonus"). The 2020 Annual Bonus, if earned, will be paid in accordance with the Company's plans, policies and practices in place for the award of incentive pay to current Company employees. The 2020 Annual Bonus, if earned, will be paid, minus applicable federal, state and local payroll taxes, at the time 2020 incentive payments are paid to existing Company personnel.

c. Benefits. If Executive properly and timely elects continuation coverage under COBRA following the Termination Date, the Company will continue to pay the employer-paid portion of his COBRA premiums (i.e. at the same percentage and terms as paid by the Company as of the Termination Date) for continuation coverage for Executive (and, if they were covered as of the Termination Date, for Executive's spouse and any eligible dependents) during the period in which Executive is receiving Separation Pay; provided, however, the Company has the right to discontinue the payment of the premium and pay to the Executive a lump sum amount equal to the employer-paid portion of the current COBRA premium times the number of months remaining in the Separation Pay period if the Company determines that continued payment of the employer-paid portion of the COBRA premiums is discriminatory under Sections 105(h) and 9815(a)(1) of the Internal Revenue Code. To the extent such coverage is continued, the Executive shall pay Executive's portion of any costs of continuation consistent with the Company's past practices.

d. Equity. Effective as of the Termination Date, all equity awards granted to Executive by the Company (including, but not limited to, unvested options, shares of restricted stock, and restricted stock units) that are subject to time-based vesting (but not equity subject to unmet performance-based vesting) that would have vested in the twelve (12) month period following the Termination Date shall immediately vest and become exercisable; provided, however, the accelerated vesting as described in this subsection shall not apply to Executive's April 2019 Restricted Stock Unit award as described in Paragraph 6 of the Employment Agreement.

3. Release of Claims. In exchange for the Company's agreement to provide Executive with the Separation Benefits described above, by signing this Agreement, Executive releases and forever discharges the Company, as well as its parent companies, affiliates, subsidiaries, divisions, officers, directors, stockholders, employees, agents, representatives, attorneys, lessors, lessees, licensors and licensees, and their respective successors, assigns, heirs, executors and administrators (collectively, the "Company Parties"), from any and all claims, demands, and causes of action of every kind and nature, whether known or unknown, direct or indirect, accrued, contingent or potential, which Executive ever had or now has, including but not limited to any claims arising out of or related to his employment with the Company and the termination thereof (except where and to the extent that such a release is expressly prohibited or made void by law). The release includes, without limitation, Executive's release of the Company and the Company Parties from any claims for lost wages or benefits, stock options, restricted stock, restricted stock units, compensatory damages, punitive damages, attorneys' fees and costs, equitable relief or any other form of damages or relief. In addition, this release is meant to release the Company and the Company Parties from all common law claims, including claims in contract or tort, including, without limitation, claims for breach of contract, wrongful or constructive discharge, intentional or negligent infliction of emotional distress, misrepresentation, tortious interference with contract or prospective economic advantage, invasion of privacy, defamation, negligence or breach of any covenant of good faith and fair dealing. Executive also specifically and forever releases the Company and the Company Parties (except where and to the extent that such a release is expressly prohibited or made void by law) from: all claims under South Carolina laws prohibiting discrimination, harassment and retaliation, including but not limited to the South Carolina Human Affairs Law and all similar state and local laws; all claims under laws governing the payment of wages or protection of workers seeking payment for work performed and any other federal, state or local statutory and/or common laws governing the payment of wages; and/or and all claims under federal law based on unlawful employment discrimination, harassment or retaliation, including, but not limited to, claims for violation of Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Genetic Information and Discrimination Act, and **the Federal Age Discrimination In Employment Act (29 U.S.C. § 621 et. seq.)**

Executive hereby acknowledges that this release applies both to known and unknown claims that may exist between Executive and the Company and the Company Parties. Executive expressly waives and relinquishes all rights and benefits which he may have under any state or federal statute or common law principle that would otherwise limit the effect of this Agreement to claims known or suspected prior to the date he executes this Agreement, and does so understanding and acknowledging the significance and consequences of such specific waiver. Provided, however, that nothing in this Agreement extinguishes any claims Executive may have against the Company for breach of this Agreement.

4. No Admissions. Executive understands, acknowledges and agrees that the release set out above in Section 3 is a final compromise of potential claims, and is not an admission by the Company that any such claims exist or that the Company or the Company Parties are liable for any such claims. Unless prohibited by applicable law or regulation, Executive further agrees not to hereafter, directly or indirectly, sue, assist in or be a voluntary party to any litigation against Company or any one or more of the Company Parties for any claims relating to events occurring prior to or simultaneously with the execution of this Agreement.

Notwithstanding the foregoing, nothing in this Agreement prohibits Executive from filing a charge with, or participating in any investigation or proceeding conducted by, the U.S. Equal Employment Opportunity Commission or a comparable state or federal fair employment practices agency; provided, however, that this Agreement fully and finally resolves all monetary matters between Executive and the Company and the Company Parties, and by signing this Agreement, Executive acknowledges that he is waiving any right to monetary damages, attorneys' fees and/or costs related to or arising from any such charge, complaint or lawsuit filed by Executive or on Executive's behalf, individually or collectively.

5. Cooperation. By signing this Agreement, Executive promises and agrees, at all times during the Transition Period and after the Termination Date, to cooperate fully with the Company and its officers, directors, employees, agents and legal counsel in connection with any claim, complaint, charge, suit or action previously or hereafter asserted or filed by or against the Company or any of the Company Parties which relates to, arises out of or is connected directly or indirectly with (i) Executive's employment with the Company, (ii) any other relationship or dealings between Executive and the Company or any of the Company Parties, or (iii) any other matter relating to the Company or any of the Company Parties. Executive's cooperation with the Company shall continue throughout the pendency of any such claim, complaint, charge, suit or action. Further, Executive promises and agrees that, in the event he is subject to a valid and enforceable subpoena or court order which compels his testimony at a trial, hearing or deposition concerning his relationship with the Company or any other matter relating to the Company or any of the Company Parties, he will provide reasonable and prompt notice to the Company of this fact and cooperate fully with the Company prior to and during his testimony, to the maximum extent possible, consistent with his obligation to provide truthful testimony. Executive further agrees that, in the event he is named as a defendant in a legal proceeding resulting from, arising out of, or connected directly or indirectly with Executive's employment with the Company, or any act, omission or conduct occurring during Executive's employment with the Company, he will provide reasonable and prompt notice of this fact to the Company. The Company agrees to reimburse Executive for reasonable out-of-pocket expenses as reasonably required for such cooperation and consultation.

Notwithstanding the foregoing, nothing in this Agreement prohibits Executive from reporting possible violations of federal law or regulation to any governmental agency or entity, including but not limited to the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General, or making other disclosures that are protected under the whistleblower provisions of federal law or regulation. Executive does not need the prior authorization of the Company to make any such reports or disclosures, and Executive is not required to notify the Company that he has made such reports or disclosures. The Company agrees that it will take no adverse action against Executive for truthful statements and testimony and that it will not seek to obtain any testimony or evidence that is not truthful and that it will not improperly seek to influence or modify any testimony of Executive.

6. Return of Property. On or before the Termination Date, Executive shall return all property of the Company in his possession, including, without limitation, any Company credit cards, Company-owned equipment, and all originals and any copies of all disks, tapes, files, correspondence, data, notes and other documents pertaining to the Company's proprietary products, customers and business and Confidential Business Information as defined in the Employment Agreement. Such property shall be in the same condition as when provided to Executive, reasonable wear and tear excepted.

7. Confidentiality and Restrictive Covenants. Executive hereby acknowledges and agrees that his post-employment duties and obligations under the Employment Agreement will remain in full force and effect in accordance with such terms, and that a breach of the Employment Agreement will also constitute a breach of this present Agreement.

8. No Disparagement. Executive agrees that he will not falsely denigrate, defame, disparage or cast aspersions upon the Company, its management, products, services, business and manner of doing business, and that he will use his reasonable best efforts to prevent any member of his immediate family from engaging in any such activity.

9. SECTION 409A.

a. The Parties hereby acknowledge and agree that all benefits or payments provided by the Company to Executive pursuant to this Agreement are intended either to be exempt from Section 409A of the Code, or to be in compliance with Section 409A, and the Agreement shall be interpreted to the greatest extent possible to be so exempt or in compliance. If there is an ambiguity in the language of the Agreement, or if Section 409A guidance indicates that a change to the Agreement is required or desirable to achieve exemption or compliance with Section 409A, Company and Executive agree to attempt to renegotiate in good faith to clarify the ambiguity or make such change.

b. If any severance or other payments that are required by the Agreement are to be paid in a series of installment payments, each individual payment in the series shall be considered a separate payment for purposes of Section 409A.

c. If any severance compensation or other benefit provided to Executive pursuant to this Agreement that constitutes "nonqualified deferred compensation" within the meaning of Section 409A is considered to be paid on account of "separation from service" within the meaning of Section 409A, and Executive is a "specified employee" within the meaning of Section 409A, no payments of any of such severance or other benefit shall be made for six (6) months plus one (1) day after the "separation from service" (the "New Payment Date"). The aggregate of any such payments that would have otherwise been paid during the period between the "separation from service" and the New Payment Date shall be paid to the Executive in a lump sum on the New Payment Date.

10. Relief and Enforcement. Executive understands and agrees that, in addition to any other remedies that the Company (or the Company Parties) has at law or in equity, upon any breach of this Agreement by Executive, the Company may immediately cease providing any or all of the Separation Benefits and/or seek recovery of Separation Benefits that have been paid to him pursuant to Section 2, above. Executive also understands and agrees that if he violates the terms of Sections 5, 6, 7 or 8 of this Agreement, Executive will cause injury to the Company and/or one or more of the Company Parties) that will be difficult to quantify or repair, so that the Company (and/or the Company Parties) will have no adequate remedy at law. Accordingly, Executive agree that if he violates Sections 5, 6, 7 or 8 of this Agreement, the Company (or the Company Parties) will be entitled as a matter of right to obtain an injunction from a court of law, restraining Executive from any further violation of this Agreement. The right to an injunction is in addition to any other remedies that the Company (or the Company Parties) has at law or in equity.

11. Assignment. This Agreement may not be assigned by Executive without the prior written consent of the Company. The Company shall have the right to assign this Agreement to its successors and assigns in connection with a change in control or business transaction requiring a general assignment, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by said successors or assigns. The term "Company" shall include any of the Company's subsidiaries, subdivisions or affiliates.

12. No Modifications; Governing Law; Entire Agreement. This Agreement cannot be changed or terminated orally, and no modification or waiver of any of the provisions of this Agreement is effective unless in writing and signed by all of the parties hereto. The parties agree that this Agreement is to be governed by and construed in accordance with the laws of the State of South Carolina. This Agreement, and the surviving provisions of the Employment Agreement, set forth the entire and fully integrated understanding between the parties, and there are no representations, warranties, covenants or understandings, oral or otherwise, that are not expressly set out therein.

13. Right to Revoke. ONCE SIGNED BY EXECUTIVE, THIS AGREEMENT IS REVOCABLE IN WRITING FOR A PERIOD OF SEVEN (7) DAYS (THE "REVOCATION PERIOD"). IN ORDER TO REVOKE HIS ACCEPTANCE OF THIS AGREEMENT, EXECUTIVE MUST DELIVER WRITTEN NOTICE TO MASON R. HOLLAND, JR., EXECUTIVE CHAIRMAN OF THE BOARD, AND SUCH WRITTEN NOTICE MUST ACTUALLY BE RECEIVED WITH THE SEVEN (7) DAY REVOCATION PERIOD.

14. Voluntary Execution. By signing below, Executive acknowledges that he has read this Agreement, that he understands its contents and that he has relied upon or had the opportunity to seek the legal advice of his attorney, who is the attorney of his own choosing.

EXECUTIVE HEREBY ACKNOWLEDGES THAT HE HAS BEEN GIVEN A PERIOD OF AT LEAST TWENTY-ONE (21) DAYS TO CONSIDER WHETHER TO EXECUTE THIS AGREEMENT. EXECUTIVE ALSO ACKNOWLEDGES THAT HE IS HEREBY ADVISED BY THE COMPANY IN WRITING TO CONSULT WITH AN ATTORNEY BEFORE SIGNING THIS AGREEMENT.

*[Signature page follows.]*

IN WITNESS WHEREOF, each of the parties hereto acknowledges having read and understood the contents and effect of this Agreement and has executed this Agreement freely and with full authority duly given, all as of the date first above written.

THE COMPANY:

BENEFITFOCUS.COM, INC.

By: /s/ Mason R. Holland (SEAL)

Name: Mason R. Holland

Title: Executive Chairman

EXECUTIVE:

/s/ Raymond A. August (SEAL)

Raymond A. August

RELEASE AGREEMENT

This RELEASE AGREEMENT (the "Release") is hereby made and entered into this 1st day of January, 2021, by and between Raymond A. August, a citizen and resident of South Carolina (hereinafter "Executive") and Benefitfocus, Inc., a Delaware corporation, together with its subsidiaries, including, without limitation, Benefitfocus.com, Inc., a South Carolina corporation (collectively, the "Company").

1. Release of Claims. In exchange for the Company's providing Executive with the Separation Benefits as defined and described in Section 2 of the Separation and Release Agreement signed by Executive and the Company (hereinafter the "Agreement"), by signing this Release, Executive hereby releases and forever discharges the Company, as well as its parent companies, affiliates, subsidiaries, divisions, officers, directors, stockholders, employees, agents, representatives, attorneys, lessors, lessees, licensors and licensees, and their respective successors, assigns, heirs, executors and administrators (collectively, the "Company Parties"), from any and all claims, demands, and causes of action of every kind and nature, whether known or unknown, direct or indirect, accrued, contingent or potential, which Executive ever had or now has, including but not limited to any claims arising out of or related to his employment with the Company and the termination thereof (except where and to the extent that such a release is expressly prohibited or made void by law). The release includes, without limitation, Executive's release of the Company and the Company Parties from any claims for lost wages or benefits, stock options, restricted stock, restricted stock units, compensatory damages, punitive damages, attorneys' fees and costs, equitable relief or any other form of damages or relief. In addition, this release is meant to release the Company and the Company Parties from all common law claims, including claims in contract or tort, including, without limitation, claims for breach of contract, wrongful or constructive discharge, intentional or negligent infliction of emotional distress, misrepresentation, tortious interference with contract or prospective economic advantage, invasion of privacy, defamation, negligence or breach of any covenant of good faith and fair dealing. Executive also specifically and forever releases the Company and the Company Parties (except where and to the extent that such a release is expressly prohibited or made void by law) from: all claims under South Carolina laws prohibiting discrimination, harassment and retaliation, including but not limited to the South Carolina Human Affairs Law and all similar state and local laws; all claims under laws governing the payment of wages or protection of workers seeking payment for work performed and any other federal, state or local statutory and/or common laws governing the payment of wages; and/or and all claims under federal law based on unlawful employment discrimination, harassment or retaliation, including, but not limited to, claims for violation of Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Genetic Information and Discrimination Act, and **the Federal Age Discrimination In Employment Act (29 U.S.C. § 621 et. seq.)**

Executive hereby acknowledges that this release applies both to known and unknown claims that may exist between Executive and the Company and the Company Parties. Executive expressly waives and relinquishes all rights and benefits which he may have under any state or federal statute or common law principle that would otherwise limit the effect of this Release to

claims known or suspected prior to the date he executes this Release, and does so understanding and acknowledging the significance and consequences of such specific waiver. Provided, however, that nothing in this Release extinguishes any claims Executive may have against the Company for breach of the Agreement.

2. No Admissions. Executive understands, acknowledges and agrees that the release set out above in Section 1 is a final compromise of potential claims, and is not an admission by the Company that any such claims exist or that the Company or the Company Parties are liable for any such claims. Unless prohibited by applicable law or regulation, Executive further agrees not to hereafter, directly or indirectly, sue, assist in or be a voluntary party to any litigation against Company or any one or more of the Company Parties for any claims relating to events occurring prior to or simultaneously with the execution of this Release.

Notwithstanding the foregoing, nothing in this Release prohibits Executive from filing a charge with, or participating in any investigation or proceeding conducted by, the U.S. Equal Employment Opportunity Commission or a comparable state or federal fair employment practices agency; provided, however, that this Release fully and finally resolves all monetary matters between Executive and the Company and the Company Parties, and by signing this Release, Executive acknowledges that he is waiving any right to monetary damages, attorneys' fees and/or costs related to or arising from any such charge, complaint or lawsuit filed by Executive or on Executive's behalf, individually or collectively.

3. No Modifications; Governing Law; Entire Agreement. This Release cannot be changed or terminated orally, and no modification or waiver of any of the provisions of this Release is effective unless in writing and signed by all of the parties hereto. The parties agree that this Release is to be governed by and construed in accordance with the laws of the State of South Carolina. This Release, the Agreement, and the surviving provisions of the Employment Agreement, set forth the entire and fully integrated understanding between the parties, and there are no representations, warranties, covenants or understandings, oral or otherwise, that are not expressly set out therein.

4. Right to Revoke. ONCE SIGNED BY EXECUTIVE, THIS RELEASE IS REVOCABLE IN WRITING FOR A PERIOD OF SEVEN (7) DAYS (THE "REVOCATION PERIOD"). IN ORDER TO REVOKE HIS ACCEPTANCE OF THIS RELEASE, EXECUTIVE MUST DELIVER WRITTEN NOTICE TO MASON R. HOLLAND, JR., EXECUTIVE CHAIRMAN OF THE BOARD, AND SUCH WRITTEN NOTICE MUST ACTUALLY BE RECEIVED WITH THE SEVEN (7) DAY REVOCATION PERIOD.

5. Voluntary Execution. By signing below, Executive acknowledges that he has read this Release, that he understands its contents and that he has relied upon or had the opportunity to seek the legal advice of his attorney, who is the attorney of his own choosing.

EXECUTIVE HEREBY ACKNOWLEDGES THAT HE HAS BEEN GIVEN A PERIOD OF AT LEAST TWENTY-ONE (21) DAYS TO CONSIDER WHETHER TO EXECUTE THIS RELEASE. EXECUTIVE ALSO ACKNOWLEDGES THAT HE IS HEREBY ADVISED BY THE COMPANY IN WRITING TO CONSULT WITH AN ATTORNEY BEFORE SIGNING THIS RELEASE.

IN WITNESS WHEREOF, Executive acknowledges he has read and understood the contents and effect of this Release, and has executed this Release freely and with full authority duly given, all as of the date first above written.

EXECUTIVE:

\_\_\_\_\_(SEAL)  
Raymond A. August



### Benefitfocus Appoints New CEO and CFO to Drive Next Phase of Growth

- *Stephen Swad named president and chief executive officer*
- *Alpana Wegner appointed chief financial officer*
- *Company reaffirms financial guidance*

Charleston, S.C. – August 24, 2020 – Benefitfocus, Inc. (NASDAQ: BNFT) announces that Stephen Swad, the company’s chief financial officer, is named president and chief executive officer, effective today. Swad succeeds Raymond August, who is stepping down as president and chief executive officer. To ensure a seamless handoff of leadership responsibilities, and as part of the board’s succession plan, August will remain with the company through the end of the year. Swad also succeeds August as a director on the Benefitfocus board of directors.

Swad is intimately familiar with Benefitfocus, having served as CFO since July 2019 and previously as a member of the board. Throughout his career in the technology industry, he has built deep expertise in business, operations, finance and accounting. Prior to Benefitfocus, Swad served as CFO of Vox Media, Inc. from 2016 until July 2019. Swad was also president and CEO of Rosetta Stone Inc., a publicly held language-learning software company, after serving as its CFO beginning in 2010.

Benefitfocus also announces the appointment of Alpana Wegner as CFO. Since joining Benefitfocus in 2017, she was quickly promoted to corporate controller and has taken on increasing financial and operational responsibility, drawing on her extensive business, accounting, sales and compliance experience. She previously served in various roles at Blackbaud, including vice president of sales operations and CFO of the enterprise customer business unit.

“I could not be more honored and excited to assume the responsibilities of CEO as our company begins its next chapter,” said Swad. “Benefitfocus plays an important leadership role in the industry, and we’re doing the work to build a truly great company. We are immediately focused on strengthening our products, platform, talent and tools, with the help of BuildGroup, to better serve our customers. We have confidence in our future and reaffirm our previously announced financial guidance for the third quarter and full-year 2020.”

“Given Benefitfocus’ leadership position and prospects in the industry, BuildGroup is thrilled to engage with the company in its next phase of development,” said Lanham Napier, co-founder and CEO of BuildGroup, which is a major investor in Benefitfocus. “With Steve’s collaborative leadership style, we are confident Benefitfocus is poised for continued growth and innovation”

“I know that I speak for everyone at Benefitfocus in thanking Ray for his leadership and dedication to the company,” said Mason Holland, chairman of the board. “With the team in place, and bolstered by the strategic partnership with BuildGroup, I’m excited about our future together at Benefitfocus.”

### **About Stephen Swad**

Stephen M. Swad served as Chief Financial Officer of Benefitfocus since July 2019, and was a member of the Benefitfocus Board of Directors from 2013 to 2019. Previously, Swad served as Chief Financial Officer of Vox Media, Inc. from January 2016 until July 2019. From February 2012 until April 2015, Swad served as President and Chief Executive Officer, and a director of Rosetta Stone Inc. (NYSE: RST), a publicly held language-learning software company, previously serving as its Chief Financial Officer beginning in November 2010. Prior to joining Rosetta Stone, Swad served as the Executive Vice President and Chief Financial Officer of Comverse Technology, Inc., beginning in May 2009. He also served as Executive Vice President and Chief Financial Officer of Federal National Mortgage Association (Fannie Mae) from May 2007 until August 2008 and has held various senior financial management positions with public companies, including AOL Inc. (now a part of Oath Inc.) and Time Warner Inc. and its subsidiaries. Additionally, Swad served on the board of Eloqua, Inc. from August 2011 until February 2013, including between August 2012 and February 2013, during which time it was a publicly held company. Swad, a former partner of KPMG LLP, also served as a Deputy Chief Accountant at the Securities and Exchange Commission. Swad holds a B.A. in business administration from the University of Michigan.

### **About Alpana Wegner**

Alpana Wegner served as Vice President, Corporate Controller of Benefitfocus since December 2017, having first joined the company in April 2017 in the carrier business unit as general manager. Previously, Wegner worked for Blackbaud beginning in October 2008. She served first as director of SEC reporting, then interim Corporate Controller, followed by VP roles as the CFO of the enterprise customer business unit, and in sales operations. From May 2001 to August 2004, Wegner served as the director of external reporting and compliance at Allied Waste Industries, Inc. She also served in the assurance and business advisory segment of Arthur Andersen LLP. Wegner, who holds the CPA designation, received a B.S. in Accountancy from Arizona State University.

### **About Benefitfocus**

Benefitfocus (NASDAQ: BNFT) unifies the entire U.S. benefits industry on a single technology platform to protect consumers' health, wealth, property and lifestyle. Our powerful cloud-based software, data-driven insights and thoughtfully-designed services, enable employers, insurance brokers, carriers and suppliers to simplify the complexity of benefits administration and deliver a world-class benefits experience. Learn more at [www.benefitfocus.com](http://www.benefitfocus.com), [LinkedIn](#) and [Twitter](#).

### **About BuildGroup**

BuildGroup is the first operator-led, permanent capital investment company for modern business models. Headquartered in Austin, Texas, the firm invests in companies that include SaaS-based subscription revenues, significant data assets that leverage AI to create high volume and targeted offers, and multifaceted platforms that serve large, connected networks of buyers, sellers, users and partners. BuildGroup targets fast-growing private companies and small-cap public companies through PIPEs. For more information on BuildGroup, its investment strategy and portfolio companies, visit [www.buildgroup.com](http://www.buildgroup.com).

### **Safe Harbor Statement**

Except for historical information, all of the statements, expectations, and assumptions contained in this press release are forward-looking statements. Actual results might differ materially from those explicit or implicit in the forward-looking statements. Important factors that could cause actual results to differ materially include: reliance on key personnel and risks of management transitions; volatility and uncertainty in the global economy and financial markets in light of the evolving COVID-19 pandemic; our continuing losses and need to achieve GAAP profitability; fluctuations in our financial results; our ability to maintain our culture, retain and motivate qualified personnel; the immature and volatile market for

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our products and services; risks related to changing healthcare and other applicable regulations; risks associated with acquisitions; cyber-security risks; the need to innovate and provide useful products and services; our ability to compete effectively; privacy, security and other risks associated with our business; and the other risk factors set forth from time to time in our SEC filings, copies of which are available free of charge within the Investor Relations section of the Benefitfocus website at <http://investor.benefitfocus.com/sec-filings> or upon request from our Investor Relations Department. Benefitfocus assumes no obligation and does not intend to update these forward-looking statements, except as required by law.

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