

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

FORM 8-K

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

Date of Report (Date of earliest event reported) April 29, 2021

BENEFITFOCUS, INC.
(Exact name of registrant as specified in its charter)

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

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

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

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

Emerging growth company

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

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

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

Item 3.02 Unregistered Sales of Equity Securities.

The terms of the Initial Grant, as defined below in Item 5.02, are incorporated herein by reference. No commissions, underwriting discounts, or similar payments were made in connection with the Initial Grant. The Initial Grant was made in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act of 1933, as amended. In determining to rely on this exemption, Benefitfocus, Inc. (the “Company”) considered that Mr. Levin is an accredited or sophisticated investor who is familiar with the Company’s operations, the Company did not engage in any general solicitation or advertising in connection with the Initial Grants, and Mr. Levin acquired the shares subject to the Initial Grant without a view to resell or distribute them to others immediately, as demonstrated by the vesting criteria applicable to the Initial Grants.

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 May 4, 2021, the Company publicly announced that its board of directors (the “Board”) has appointed Matthew Levin as President and Chief Executive Officer and made him a member of the Board. Mr. Levin’s appointment will be effective on May 10, 2021. Mr. Levin 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.

Prior to joining the Company, Mr. Levin served as Chief Strategy Officer of Automatic Data Processing, Inc., a leading provider of human capital management solutions (“ADP”), from November 2018 until April 2021. Prior to joining ADP, he was a Managing Partner of Psilos Group Managers, a growth equity firm where he specialized in technology-enabled services investments, from January 2017 to October 2018. Prior to joining Psilos Group Managers, he was Executive Vice President and Head of Global Strategy of Aon plc, a leading professional services firm providing a broad range of risk, retirement, and health solutions, from August 2011 to December 2016. Prior to Aon, Mr. Levin served as Senior Vice President of Corporate Development and Strategy for Hewitt Associates, a leader in health, retirement and human capital consulting, and outsourcing services. Mr. Levin holds a master’s degree in business administration from the University of Chicago Booth School of Business and a bachelor’s degree from Northwestern University.

Mr. Levin is 47 years old and has no familial relationships with any executive officer or director of the Company. There have been no transactions in which the Company has participated and in which Mr. Levin had a direct or indirect material interest that would be required to be disclosed under Item 404(a) of Regulation S-K.

On April 29, 2021, Mr. Levin entered into an employment agreement with the Company (the “Levin Employment Agreement”). The Levin Employment Agreement provides that Mr. Levin’s employment is “at will.” His annual base salary is initially \$550,000 and he is eligible to participate in the Company’s short-term incentive program, with a target bonus of 100% of his base salary. Mr. Levin received an initial equity grant of 70% restricted stock units (“RSUs”) and 30% performance stock units (“PSUs”) with a total value of \$5,000,000, totaling 248,826 RSUs and 106,640 PSUs (the “Initial Grant”). The RSU portion of the Initial Grant vests in four equal annual installments beginning on the first anniversary of Mr. Levin’s start date, which is expected to be May 10, 2021 (the “Start Date”). The PSU portion of the Initial Grant will vest in a single installment if the Company’s closing stock price is at least \$23.00 for a period of 20 consecutive trading days occurring after the second anniversary of the Start Date and prior to the fifth anniversary of the Start Date. If this price-based requirement is met before the third anniversary of the Start Date, then the PSU portion of the Initial Grant will vest on the third anniversary of the Start Date, provided that Mr. Levin has remained employed by the Company through such date. If the price-based requirement is met after the third anniversary but prior to the fifth anniversary of the Start Date, then the PSU portion of the Initial Grant will vest on the date the price requirement is met, provided that Mr. Levin has remained employed by the Company through such date. The Initial Grant was made as an inducement grant under NASDAQ Listing Rule 5635(c)(4). Mr. Levin will also receive an annual equity grant for 2021 of 50% RSUs and 50% PSUs with a total value of \$2,400,000 (the “Annual Grant”). The RSU portion of the Annual Grant vests in four equal annual installments beginning on the first anniversary of the Start Date. The PSU portion of the Annual Grant vests over four years based on the achievement of certain specified performance metrics for 2021 plus a requirement of continued employment. The Company will pay Mr. Levin’s reasonable expenses associated with commuting to and from the Company’s primary office and will also provide a corporate apartment in Charleston for a period of 18 months, which may be renewed.

If the Company terminates Mr. Levin without cause or he resigns for good reason within 12 months of a change of control of the Company, he will receive an amount equal to two times his then-current base salary plus two times his then-current target bonus, payable over 12 months; COBRA premium support for 12 months; and full vesting of all of his equity awards (with any performance-based vesting component deemed to vest at the target level). If the Company terminates Mr. Levin without cause or he resigns for good reason at any other time, he will receive an amount equal to his then-current base salary plus his then-current target bonus, payable over 12 months; COBRA premium support for 12 months; and additional vesting of all of his equity awards that would have otherwise vested in the 12 months following his termination, except for the Initial Grant, which will vest in full so long as Mr. Levin has completed 12 months of service (and a reduced amount if he has not). All of the separation benefits are conditioned upon Mr. Levin entering into a general release of claims in favor of the Company. Mr. Levin is subject to confidentiality, non-competition and non-solicitation covenants for one year following the termination of his employment.

As of the Start Date, the Company's current Chief Executive Officer, Stephen M. Swad, will transition to the role of Strategic Advisor to the CEO until September 2, 2021 (the "Separation Date"). Following the Separation Date, Mr. Swad will continue to serve as a Class I director and hold office until the Company's 2023 annual meeting of stockholders or until his successor is duly elected and qualified. Beginning on the Start Date, Mr. Levin will serve as the Company's "principal executive officer" for SEC filing purposes. Mr. Swad's separation was not related to any disagreement with the Company on any matter relating to the Company's operations, policies or practices.

In connection with Mr. Swad's separation from our Company as Chief Executive Officer, on May 3, 2021, the Company and Mr. Swad entered into a second amendment to his employment agreement (the "Swad Second Amendment") originally dated July 2, 2019, and previously amended on August 25, 2020 (the "Original Swad Employment Agreement"). Pursuant to the Swad Second Amendment, following the Separation Date, Mr. Swad will receive separation benefits for being terminated without cause under the Original Swad Employment Agreement, including: (i) continued payment of his base salary for 12 months following the Separation Date; (ii) payment of his 2021 annual bonus on a prorated basis of 75% to align to actual service time; and (iii) COBRA premium support for 12 months following the Separation Date. As of the Separation Date, Mr. Swad will forfeit 75% of the 2021 Long Term Incentive Grant dated April 1, 2021 ("2021 LTI Grant"). Mr. Swad will continue to be eligible to receive 25% of his 2021 LTI Grant to align to actual service time, with the remainder of the 2021 LTI Grant to be comprised of 50% RSUs and 50% PSUs, and will be paid no later than April 1, 2022 based on the Company's performance against targets in accordance with the Company's plans, policies and practices. The material terms of Mr. Swad's previously granted equity awards subject to time-based vesting remain unchanged and will continue to vest for the longer of: (i) his service as a member of the Board, or (ii) for 12-months following the Separation Date. Following the 2023 annual meeting, or earlier removal from the Board without cause or due to a change of control, any remaining unvested equity awards previously granted to Mr. Swad subject to time-based vesting will accelerate and become fully vested. In exchange for these separation benefits, Mr. Swad is entering into a general release of claims in favor of the Company.

The foregoing summary of the material terms of the Levin Employment Agreement and Swad Second Amendment are subject to the full and complete terms of the agreements, copies of which are filed as Exhibit 10.1 and Exhibit 10.2, respectfully, 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

Exhibit No.	Description
10.1	Employment Agreement, dated April 29, 2021, by and between Benefitfocus.com. and Matthew Levin.
10.2	Second Amendment to Employment Agreement, dated May 3, 2021, by and between Benefitfocus.com. and Stephen M. Swad.
99.1	Press release dated May 4, 2021.
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.

BENEFITFOCUS, INC.

Date: May 5, 2021

/s/ Alpana Wegner

Alpana Wegner
Chief Financial Officer

BENEFITFOCUS.COM, INC.

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the “**Agreement**”) is made and entered into this 29th day of April, 2021, by and between Benefitfocus.com, Inc., having its principal place of business at 100 Benefitfocus Way, Charleston, SC 29492 (hereinafter referred to as “**Benefitfocus**” or the “**Company**”, and being wholly owned by Benefitfocus, Inc. (the “**Parent Company**”)), and **Matthew Levin**, (hereinafter referred to as the “**Associate**” or “**you**”).

1. **Employment.** Benefitfocus hereby agrees to employ the Associate upon the terms and conditions set out in this Agreement, and the Associate accepts such employment. Beginning on the Start Date (as defined below), Associate will commence employment as the President and Chief Executive Officer of Benefitfocus and Parent Company (the “**CEO**”), reporting directly to the Board of Directors of the Parent Company (the “**Board**”), and will be a member of the Board. During the period Associate serves as CEO, Associate shall also be a member of the Board.
 2. **Term.** The term of this Agreement shall commence upon execution, and Associate’s employment with Benefitfocus shall commence on May 10, 2021 (the “**Start Date**”). 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 and subject to the terms of Exhibit A. Except as otherwise specified herein, this Agreement shall remain in force until terminated at the will of either party or as described in Section 19 of this Agreement. Subject to Section 27(c) and Section 27(d), this Agreement will terminate and be of no further force or effect if Associate does not commence employment on the Start Date for any reason.
 3. **Duties.** The Associate shall perform duties and responsibilities comparable with the executive duties and authority of chief executive officers of similar businesses of similar size in the United States, subject to reporting to the Board.
 4. **Compensation.** The Associate’s compensation and other terms of employment shall be in accordance with Exhibit A, which is incorporated herein and made a part hereof.
 5. **Extent of Services.** The Associate shall devote his 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 he will perform his duties to the best of his ability, that he will truthfully and accurately maintain all records, preserve all such records, and make all such reports as Benefitfocus may require; that he 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 shall not be a violation of this Agreement for the Associate to (i) serve on one (1) corporate board on or after July 1, 2022; (ii) engage in civic, charitable or professional activities; (iii) deliver lectures, fulfill speaking engagements or teach occasional courses or seminars at educational institutions; or (iv) manage personal investments, so long as such activities under clauses (i), (ii), (iii) and (iv) do not interfere, in any substantial respect, with the Associate’s responsibilities per this Agreement.
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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 recorded and submitted 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 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 (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 himself, 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 his possession or under his control. If requested, Associate shall certify in writing to Benefitfocus that no such materials are in his 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 he 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 he receives any formal or informal discovery request, court order, or subpoena requesting that the Associate disclose Trade Secrets or Confidential Business Information, he 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 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 employee 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 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 employee benefit administration services to companies via a Web-based system.
10. Covenant Not to Compete. The Associate covenants and agrees that during his 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 paragraphs 7, 8, 9, and 10 of 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 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 and Successors. 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 rights or delegate any of his 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. Benefitfocus shall require any successor (whether direct or indirect, by purchase, merger, reorganization, consolidation, acquisition of property or stock, liquidation, or otherwise) to all or a substantial portion of its business and/or assets, by agreement in form and substance reasonably satisfactory to the Associate, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that Benefitfocus would be required to perform this Agreement if no such succession had taken place. Regardless of whether such an agreement is executed, this Agreement shall be binding upon any successor of Benefitfocus and such successor shall be deemed "Benefitfocus" or the "Company" for purposes of this Agreement.
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, subject to the terms of Exhibit A hereto. In the event that Associate chooses to resign his employment, Benefitfocus requests fourteen (14) days written notice to Benefitfocus. In such event, the Associate shall continue (if agreed to by Benefitfocus) to render his services and shall be paid his regular compensation up to the date of termination. 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 and the Parent 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.

20. Entire Agreement; Amendment. Except as otherwise expressly agreed to by the parties in writing, with specific reference to this Section 20, this Agreement and the 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. It may be changed only by an Agreement in writing, signed by the parties hereto. To the extent any other agreement between the parties contains terms related to the subject matter covered by this Agreement that are more onerous to the Associate than this Agreement, this Agreement shall prevail.
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, 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 duties. The Associate acknowledges that he will be subject to business travel, including to the offices in Charleston, South Carolina, as required for the needs of the Company.
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 paragraph 7, 8, 9 or 10 of this Agreement would cause immeasurable and irreparable harm to Benefitfocus. In the event of a breach or threatened breach of any covenant contained therein, Benefitfocus shall be entitled to temporary and permanent injunctive relief, restraining the Associate from violating or threatening to violate any covenant contained therein, 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 such 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 of Associate. The Associate acknowledges and agrees that: (i) the covenants contained in paragraphs 7, 8, 9 and 10 of this Agreement are the essence of this Agreement; (ii) the Associate is receiving good, adequate and valuable consideration for each of such covenants; (iii) each the covenants contained in paragraphs 7, 8, 9 and 10 of this Agreement is reasonable and necessary to protect and preserve the interests and properties of Benefitfocus; (iv) each of the covenants contained in paragraphs 7, 8, 9 and 10 of 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 covenant contained in paragraphs 7, 8, 9 and 10 of this Agreement 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 agrees that his acceptance of employment with Benefitfocus has not been improperly induced with respect to any prior employment, and the performance of his 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 he is a party or is otherwise bound, including any non-solicitation, non-competition, or other similar covenant or agreement of a prior employer.

27. Indemnification.

- a. The Associate has provided the Company with copies of all his agreements with Associate's former employer (the "**Former Employer**") that contain post-termination restrictive covenants (the "**Covenants**"). The Company engaged outside counsel to review the Covenants and, based on this review, believes that the Associate's employment by the Company will not violate the non-competition provisions of the Covenants. In addition, the Associate and the Company agree to comply with the Covenants and to communicate among themselves on a regular basis to ensure such compliance. To that end, the Associate will not take actions or perform any services to the extent such actions or services could reasonably be expected to violate the Covenants, and the Company will not request Associate, nor expect Associate to, take any actions or perform any services to the extent such actions or services could reasonably be expected to violate the Covenants. In addition, the Company may modify the Associate's duties or responsibilities from time to time to ensure compliance with the Covenants, it being understood and agreed that such modification will not constitute Good Reason or a breach of the Agreement and that Associate's compliance with such modification will not constitute Cause or a breach of the Agreement.

- b. Contingent upon the accuracy in all material respects of the first sentence of Section 27(a) (the “**Representation**”), the Company will, in accordance with this Section 27, indemnify, defend, and hold the Associate harmless from and against any and all costs, expenses, liabilities, damages and losses (including, without limitation, attorneys' fees, judgments, interest, expense of investigation, penalties, fines, excise taxes or tax penalties, amounts paid or to be paid in settlement or any expenses, including attorneys' fees), actually incurred at any time with respect to any and all claims threatened to be brought, or brought, by any entity, including the Former Employer, against the Associate arising from or relating to any alleged breach of the Covenants as a result of the Associate's employment by the Company (a “**Covered Claim**”), provided that this provision will not apply to any willful or grossly negligent breach of the Covenants by the Associate; and further provided that any action taken, or not taken, by the Associate based upon the mutual agreement of the parties will in all cases be deemed to be a Covered Claim. The duty to defend includes the payment of court costs and other costs of litigation and reasonable attorneys' fees (including the advancement thereof) incurred by the Associate for counsel of the Associate's choice in defense, and in preparation for the defense, of any such claim, provided that the Associate's choice of counsel is subject to the Company's consent, which consent will not be unreasonably withheld. The duty to indemnify includes the payment of any award imposed by judgment or any amount reached by way of settlement, provided that the Associate will not agree to any such settlement requiring payment by the Associate without the Company's consent, which consent will not be unreasonably withheld. The Associate agrees to reasonably cooperate with the Company in resolving any dispute with his Former Employer and will not unreasonably withhold his consent from any settlement of such a dispute.
- c. In the event that the Company terminates this Agreement before the Start Date for any reason other than a material violation or inaccuracy of the Representation, the provisions of Section 9(b) of Exhibit A will apply in full to the same extent as though the Start Date had previously occurred, the Employment Term had commenced, and the equity-based awards per Sections 4(b) and (c) of Exhibit A had been granted prior to the termination of this Agreement by the Company. In such event, the Associate will be entitled to receive the payments and benefits set forth in Section 9(b) of Exhibit A. The rights to indemnification and to advancement of expenses conferred in this Section 27 are not exclusive of any other right that the Associate may have or hereafter acquire under any statute, by virtue of the governing documents of the Company, any contract with the Company, or otherwise.
- d. The provisions of this Section 27 will survive the termination of this Agreement for any reason.
28. **Execution.** This Agreement may be executed in counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. Counterpart signature pages to this Agreement transmitted by facsimile transmission, by electronic mail in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original signature. Associate and Company are authorized to physically or electronically sign, including through e-signature software, programs and applications such as DocuSign, any document required to execute this Agreement.

29. **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 SUBJECT TO THE TERMS OF EXHIBIT A.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

BENEFITFOCUS.COM, INC.

ASSOCIATE

By: /s/ Mason Holland

Mason Holland

Its: Executive Chairman of the Board

/s/ Matthew Levin

Matthew Levin

BENEFITFOCUS.COM, INC.

**EXHIBIT A TO EMPLOYMENT AGREEMENT
BETWEEN BENEFITFOCUS.COM, INC.
AND MATTHEW LEVIN**

1. *Salary:* As compensation for services rendered by the Associate, Benefitfocus shall pay a salary at an annual rate of \$550,000.00, payable in substantially equal increments in accordance with Benefitfocus' customary payroll practices as in effect from time to time (the "**Base Pay**"). 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.
2. *Annual Review:* Annual salary reviews will occur on or around the annual budget process for Benefitfocus.
3. *2021 Short Term Incentive Program:* Each calendar year that you are employed by Benefitfocus, you will be eligible to participate in the Benefitfocus Short Term Incentive Program at the CEO level, which is an annual target bonus opportunity equal to 100% of your Base Pay, and with a maximum opportunity equal to 150% of your Base Pay, subject to adoption by the Board of Directors from time to time, and conditioned on actual achievement of annual performance targets (the "**STI Incentive**"). The targets for achieving the Bonus will be the set in consultation with you and will be consistent with 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 9 of this Exhibit A. Any Performance Restricted Stock Unit Award issued in connection with your STI Incentive for 2021 will have a grant date of the date of the public announcement of your employment by the Company (the "**Grant Date**").
4. *Long Term Incentive Program.*
 - a) Beginning in 2021, you shall be eligible to participate in the Benefitfocus, Inc. Second Amended and Restated 2012 Stock Plan, or any successor plan (the "**Stock Plan**"), subject to the terms of the Stock Plan as amended or a successor plan, as determined by the Board or the Compensation Committee, in its sole discretion consistent with Company practice, including obtaining advice of an independent compensation consultant and subject to market conditions.
 - b) *Annual Stock Unit Award:* Subject to the Stock Plan, for your annual equity grant made in 2021, you will receive a grant comprised of one-half (1/2 or 50%) of Benefitfocus, Inc. restricted stock units (RSUs) and one-half (1/2 or 50%) of Benefitfocus, Inc. performance stock units (PSUs) with a total combined value of \$2,400,000, measured at the time of the grant utilizing a 20-day running average (or such other method as the Board or its Compensation Committee determines appropriate) (the "**2021 RSU/PSU Award**"). You will receive the formal Annual Award Grant Notice and accompanying documentation upon the Grant Date. The PSUs will include the opportunity to earn 150% of the target number of stock units at maximum performance. The 2021 RSU/PSU Award will have a grant date of the Grant Date. This grant will vest in four (4) equal annual installments beginning on the first anniversary of the Start Date, and will be subject to the terms of an RSU/PSU award agreement between you and Benefitfocus, which shall not be inconsistent with this Agreement. You and Benefitfocus acknowledge that the intended value of your annual equity award, starting with the award made in 2022, is \$3,400,000 with any future annual award subject to the approval of the Board or Compensation Committee.

- c) Initial Stock Unit Award: Upon the Grant Date, you will receive a one-time inducement grant comprised of seven-tenths (7/10 or 70%) of Benefitfocus, Inc. restricted stock units (RSUs) and three-tenths (3/10 or 30%) of Benefitfocus, Inc. performance stock units (PSUs), with a total combined value of \$5,000,000, measured at the time of the grant utilizing a 20-day running average (or such other method as the Board or its Compensation Committee determines appropriate) (the “**Initial RSU/PSU Award**”). You will be receiving the formal Initial RSU/PSU Award Grant Notice and accompanying documentation upon the Grant Date. The RSU portion of this grant will vest in four (4) equal annual installments beginning on the first anniversary of the Start Date. The Initial RSU/PSU Award will be subject to the terms of an RSU award agreement between you and Benefitfocus, which terms shall not be inconsistent with this Agreement.
- d) To the extent the 2021 RSU/PSU Award and Initial RSU/PSU Award have not been fully vested prior your employment terminating due to death or disability (as defined in the Stock Plan) then such 2021 RSU/PSU Award and Initial RSU/PSU Award shall immediately vest in full upon such termination (with any PSUs vesting at target). In the event of any conflict or interpretation issues between this subsection (d), the Stock Plan, or any document setting forth the terms of any such RSU or PSU, the terms of this subsection (d) shall prevail and control.
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 Board.
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.
- During the Associate’s employment by Benefitfocus and for the duration of any statute of limitations or other period during which a claim might be successfully brought against the Associate, the Associate shall be covered to the same extent as officers and/or directors (as the case may be) by any directors’ and officers’ liability insurance policy maintained by Benefitfocus from time to time, and by the exculpation and indemnification provisions of Benefitfocus’ charter documents. For the avoidance of doubt, the obligations pursuant to this paragraph shall continue after the Associate’s employment or directorship ceases.
7. *Travel and Housing.* Until otherwise mutually agreed by you and Benefitfocus, your primary work location during the term of your employment with Benefitfocus will be your residence in Chicago, IL. Benefitfocus will provide for payment of your reasonable and necessary expenses associated with travel to and from the Company’s office in Charleston, South Carolina. The Company will also provide you with a private corporate apartment in Charleston for 18 months, which may be renewed.

8. *Paid Time Off and Paid Holidays:* Your paid time off will follow the Company schedule, as outlined in the benefit summary, except as to the number of days allotted to Associate. Associate shall have thirty (30) Days of Paid Time Off per calendar year, provided that Paid Time Off shall not increase unless and until Associate has met the standard Benefitfocus tenure requirements for the next level of Paid Time Off.
9. *Severance. Change in Control. Without Cause. For Good Reason*
- (a) **CIC-Related Severance.** In the event that (i) Benefitfocus or its successor terminates your employment without Cause (as defined below), or (ii) you resign for Good Reason (as defined below), in each case at the time of, or within twelve (12) months of, a Change in Control (as defined below) (such termination or resignation a “**CIC trigger event**”) then upon your execution of a general release of claims in a form substantially similar to Exhibit B hereto 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 successor will provide you with the following severance benefits:
- (i) an amount equal to the sum of: (A) two (2) times your then-current Base Pay, plus (B) two (2) times your then-current Target Bonus, with such sum paid in substantially equal installments over twelve (12) months in accordance with Benefitfocus’ payroll practice, commencing within 30 days after the release becomes irrevocable;
 - (ii) if you are eligible for, elect and remain eligible for COBRA continuation coverage, Benefitfocus or its successor will pay the same percentage of the premium it was paying prior to termination during the first twelve (12) months of your COBRA period; and
 - (iii) to the extent the 2021 RSU/PSU Award and the Initial RSU/PSU Award, or any other Stock Rights (as that term is defined in the Stock Plan) that have been granted to you have not been fully vested prior to such CIC trigger event, then upon the CIC trigger event all unvested RSUs, PSUs and Stock Rights shall immediately vest in full to you (with any performance based award vesting at target or 100% upon the Change in Control). In the event of any conflict or interpretation issues between this clause (iii), the Plan, or any document setting forth the terms of any such RSU, PSU or Stock Right, the terms of this clause (iii) shall prevail and control.

- (b) **Standard Severance.** In the event that Benefitfocus terminates your employment without Cause, or you resign your employment for Good Reason, and such event is not a CIC trigger event (such termination or resignation a “**Standard trigger event**”), then upon your execution of a general release of claims in a form substantially similar to Exhibit B hereto 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 the following severance benefits:
- (i) an amount equal to the sum of: (A) one (1) time your then-current Base Pay, plus (B) one (1) time your then-current Target Bonus, with such sum paid in substantially equal installments over twelve (12) months in accordance with Benefitfocus’ payroll practice, commencing within 30 days after the release becomes irrevocable;
 - (ii) if you are eligible for, elect and remain eligible for COBRA continuation coverage, Benefitfocus or its successor will pay the same percentage of the premium it was paying prior to termination during the first twelve (12) months of your COBRA period;
 - (iii) to the extent the Initial RSU/PSU Award has not been fully vested prior to such Standard trigger event, then upon the Standard trigger event the unvested portions of the Initial RSU/PSU Award shall vest as follows (with the vesting of PSU at target or 100%): (A) if the Standard trigger date is within twelve (12) months of the Start Date, \$3,750,000 of the unvested Initial RSU/PSU Award will vest; and (B) if the Standard trigger date is after twelve (12) months following the Start Date, the unvested portion of the Initial RSU/PSU Grant will vest in full. In the event of any conflict or interpretation issues between this clause (iii), the Plan, or any document setting forth the terms of any such RSU/PSU award, the terms of this clause (iii) shall prevail and control; and
 - (iv) to the extent any Stock Rights, other than the Initial RSU/PSU Award (the “**Other Stock Rights**”), that have been granted to you have not been fully vested prior to such Standard trigger event, then, upon the Standard trigger event all such unvested Other Stock Rights shall continue to vest until the date twelve (12) months following the date of termination (the “**One-Year Date**”); provided, that if any such Other Stock Right does not have a vesting date occurring in the period from the date of termination or resignation to the One-Year Date, then, on the One-Year Date, you shall vest in a pro-rata portion of such award, with such pro-rata portion equal to the product of: (x) the full award as of the grant date, multiplied by (y) a fraction; with the fraction comprised of a numerator equal to the number of days from the grant date of such award to the One-Year Date and a denominator equal to the number of days in the period from the grant date to first vesting date occurring after the One-Year Date. In the event of any conflict or interpretation issues between this clause (iv), the Plan, or any document setting forth the terms of any such RSU, PSU or Stock Right, the terms of this clause (iv) shall prevail and control.

- (c) “**Cause**” shall mean a reasonable determination by Benefitfocus’ board of directors of any of the following: (i) an act of dishonesty, fraud or misrepresentation made by Associate in connection with your responsibilities as an employee that results in a reasonable probability of material injury to Benefitfocus (whether tangible or reputational); (ii) Associate’s conviction of, or plea of nolo contendere to, a felony or any crime involving fraud, embezzlement or any other act of moral turpitude, (iii) Associate’s proven gross misconduct that results in a reasonable probability of material injury (whether tangible or reputational) to Benefitfocus; (iv) Associate’s proven unauthorized use or disclosure of any proprietary information or trade secrets of Benefitfocus or any other third party to whom Associate owes an obligation of nondisclosure as a result of Associate’s relationship with Benefitfocus; (v) Associate’s proven willful breach of any material obligations under any material written agreement, covenants with Benefitfocus, continued failure to substantially perform his material employment duties or a breach of any fiduciary responsibility and only after Associate: (A) has received a written demand of performance or cure from Benefitfocus which specifically sets forth the factual basis for the Benefitfocus’ reasonable belief that Associate has violated this Section 9(c)(v); and (B) Associate has failed to cure such non-performance to Benefitfocus’ reasonable satisfaction within a reasonable period of time, as agreed upon in good faith by Associate and Benefitfocus. Termination of the Associate’s employment shall not be deemed to be for Cause unless and until written notice is provided to the Associate and the Associate is given an opportunity, together with counsel, to be heard before the Board, such hearing to occur within 5 business days after notice is provided to Associate. Except for a failure, breach or refusal which, by its nature, cannot reasonably be expected to be cured, the Executive shall have five (5) business days from the delivery of written notice by Benefitfocus within which to cure any acts constituting Cause; provided however, that, if Benefitfocus reasonably expects irreparable injury from a delay of five (5) business days, Benefitfocus may give Associate notice of such shorter period within which to cure as is reasonable under the circumstances. Benefitfocus may place the Associate on paid leave for up to 30 days while it is determining whether there is a basis to terminate the Associate’s employment for Cause, which leave shall not constitute Good Reason.
- (d) A “**Change of Control**” shall be deemed to have occurred if any of the following conditions have occurred with respect to the Company and/or Parent Company (“Benefitfocus”): (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 immediately prior to the merger or consolidation hold less than 50% of the voting stock of the surviving entity or (B) its directors immediately 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 immediately after the transaction(s) or within 60 days thereof is comprised of less than a majority of Benefitfocus’ directors serving immediately prior to the transaction(s).
- (e) “**Good Reason**” shall mean the occurrence of any of the following without Associate’s express written consent: (i) a material diminution in Associate’s Base Pay or Target Bonus; (ii) a material diminution in Associate’s authority, duties, or responsibilities; (iii) a material diminution in the authority, duties, or responsibilities of the corporate body to whom Associate is required to report, including a requirement that Associate report to any corporate officer or employee instead of reporting directly to the Board; (iv) a material change in the geographic location at which Associate must perform his services to the Company; (v) Benefitfocus’ failure to use best efforts to maintain Associate on the Board once appointed or elected; or (vi) any other action or inaction that constitutes a material breach of the Employment Agreement by Benefitfocus. Associate may not establish “Good Reason” unless he has provided written notice of the existence of such condition to Benefitfocus within sixty (60) 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 Associate terminates his employment within sixty (60) days after providing written notice of the existence of Good Reason Condition or end of any cure period, whichever is later.

- (f) Noncompete/Nonsolicitation. The receipt of any severance payments or benefits pursuant to this Section will be subject to Associate not violating the covenants contained within Section 7, 8, 9 and 10 of the Employment Agreement. In the event Associate breaches 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 Associate may otherwise be entitled pursuant to this Section 9 without affecting the Associate's release or any other obligations under the release agreement.
- (g) Except as provided per subsection (f) above, the obligation to provide the payments and benefits per this Section 9 shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which Benefitfocus may have against Associate. In no event shall Associate be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to Associate under this Section 9, except as provided per subsection (f) above, and such amounts shall not be reduced whether or not Associate obtains other employment.

10. *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 A 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.

11. *Application of Internal Revenue Code Sections 280G and 4999.* To the extent that any payment or distribution to or for the benefit of the Associate pursuant to the terms of this Agreement or any other plan, arrangement or agreement with the Company, any affiliate, any person whose actions result in a change of ownership or effective control covered by Section 280G(b)(2) of the Internal Revenue Code (the “**Code**”) or any person affiliated with the Company or such person, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise (the “**Payments**”) would be subject to the excise tax (the “**Excise Tax**”) imposed by Section 4999 of the Code, then the Company shall pay or provide to the Associate the greatest of the following, whichever gives the Associate the highest net after-tax amount (after taking into account federal, state, local and social security taxes at the maximum marginal rates): (1) the Payments or (2) one dollar less than the amount of the Payments that would subject the Associate to the Excise Tax (the “**Safe Harbor Cap**”). Unless the Associate shall have given prior written notice specifying a different order to the Company to effectuate the Safe Harbor Cap, the Payments to be reduced hereunder will be determined in a manner which has the least economic cost to the Associate and, to the extent the economic cost is equivalent, will be reduced in the inverse order of when the Payment would have been made to the Associate until the reduction specified herein is achieved. The Associate’s right to specify the order of reduction of the Payments shall apply only to the extent that it does not directly or indirectly alter the time or method of payment of any amount that is deferred compensation subject to (and not exempt from) Section 409A.
12. All determinations required to be made under Section 11, including whether and when the Safe Harbor Cap is required and the amount of the reduction of the Payments pursuant to the Safe Harbor Cap and the assumptions to be utilized in arriving at such determination, shall be made by a certified public accounting firm of national standing (a “**Qualified Firm**”) as mutually agreed to by the Company and the Associate (or, if the Company and the Associate cannot reach such mutual agreement, each shall select a Qualified Firm and such Qualified Firms shall mutually select a third Qualified Firm) and such selected Qualified Firm shall provide detailed supporting calculations both to the Company and the Associate within 15 business days of the receipt of notice from the Associate that there has been a Payment, or such earlier time as is requested by the Company. All fees and expenses of the Qualified Firm selected by the Company (and the third Qualified Firm if one is required to be selected) shall be borne solely by the Company. Any determination by the Qualified Firm shall be binding upon the Company and the Associate. The Associate shall cooperate, to the extent his reasonable out-of-pocket expenses are reimbursed by the Company, with any reasonable requests by the Company in connection with any contests or disputes with the Internal Revenue Service in connection with the Excise Tax.
13. *Beneficiary.* To the extent any compensation or benefits are payable upon the Associate’s death (and, for the avoidance of doubt, any severance pay or benefits that have been triggered under this Agreement prior to the date of the Associate’s death will continue to be payable after his death), such compensation and benefits shall be provide to the Beneficiary. The “**Beneficiary**” will be the beneficiary or beneficiaries named by the Associate to receive any compensation or benefits due under the Agreement following his death, with such designation to be done in a written instrument that must be received by the Company prior to the Associate’s death. In the event there is no such named beneficiary, or no surviving named beneficiary, then the Beneficiary shall be the Associates surviving spouse, or, if none, the Associate’s surviving children *per stirpes*, or, if none, the Associate’s estate.

EXHIBIT B
RELEASE AGREEMENT

This RELEASE AGREEMENT (the “Release”) is hereby made and entered into this ___ day of _____, by and between Matthew Levin, a citizen and resident of _____ (hereinafter “Executive”) and Benefitfocus, Inc., a Delaware corporation, together with its subsidiaries and affiliates, 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 severance pay and benefits per Section _____ of Exhibit A of the Employment Agreement between Executive and the Benefitfocus.com, Inc. (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 the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq.; the Illinois Victims’ Economic Security and Safety Act, 820 ILCS 180/1 et seq.; the Illinois Genetic Information Privacy Act, 410 ILCS 513/1 et seq.; the Illinois Whistleblower Act, 740 ILCS 174/1 et seq.; the Illinois Whistleblower Reward and Protection Act, 740 ILCS 175/1 et seq.; the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 et seq.; the Illinois Wage Payment and Collection Act, 920 ILCS 115/1 et seq; and any other Illinois laws prohibiting discrimination, harassment and retaliation; 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 _____, 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:

Matthew Levin

SECOND AMENDMENT TO EMPLOYMENT AGREEMENT

THIS SECOND AMENDMENT TO EMPLOYMENT AGREEMENT (this "Amendment") is made and entered into this 3rd day of May, 2021 (the "Effective Date") by and between Stephen Swad (hereinafter "Associate"), and Benefitfocus.com, Inc., having its principal place of business at 100 Benefitfocus Way, Charleston, SC 29492 (hereinafter referred to as "Benefitfocus") together with its parent company, Benefitfocus, Inc., its subsidiaries and affiliates (collectively, the "Company").

WHEREAS, in connection with his employment with the Company, Associate executed an Employment Agreement dated on or about July 2, 2019, as amended on August 25, 2020 (the "Employment Agreement"); and

WHEREAS, Associate and Benefitfocus wish to alter certain terms of the Employment Agreement with regard to Associate's title, responsibilities, 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 May 10, 2021 (the "Amendment Effective Date"); and

WHEREAS, Associate's employment will be terminated, effective as of September 2, 2021 (the "Termination Date"); and

WHEREAS, pursuant to the Employment Agreement, upon the separation of his employment under certain circumstances, Associate 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 Amendment will set out the terms of Associate's employment from the Amendment Effective Date through the Termination Date and the terms of Associate's severance benefits, and provide for the general release of the Company by Associate notwithstanding anything to the contrary 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:

I. Amendments to the Employment Agreement.

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 Strategic Advisor to the CEO for the period of May 10, 2021 through September 2, 2021, upon the terms and conditions set out herein, and the Associate accepts such employment.

Associate hereby consents to such amendment to Section 1 of the Employment Agreement, and acknowledges and agrees that nothing in this Amendment shall constitute “Good Reason” as defined in Section 11(e) of Exhibit B to the Employment Agreement, as amended.

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 Strategic Advisor to the CEO, Associate will perform the duties as set out in Exhibit 1 entitled “Strategic Advisor to the CEO 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 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.

II. Separation Provisions.

1. Termination of Employment. Effective as of the Termination Date, Associate’s employment as Strategic Advisor to the CEO 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, Associate will be entitled to no further compensation or employee benefits from the Company. Notwithstanding the foregoing, Associate will remain on the Board of Directors until the Company’s 2023 annual meeting of stockholders or until his successor is duly elected and qualified.

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

a. Separation Pay. In consideration of Associate’s execution of this Amendment and the Release, the Company will pay Associate an amount equal to twelve (12) 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. Associate will be eligible to receive his 2021 Annual Bonus on a prorated basis of 75% to align to actual service time. The 2021 Annual Bonus will be paid in accordance with the Company's plans, policies and practices, minus applicable federal, state and local payroll taxes, at the time 2021 incentive payments are paid to existing Company personnel, but in any event no later than April 1, 2022. Associate will also receive an amount approximating his annual bonus at target paid in a lump sum as soon as reasonably possible following the Termination Date, but in any event no later than April 1, 2022, minus applicable federal, state and local payroll taxes.

c. Benefits. If Associate 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 Associate (and, if they were covered as of the Termination Date, for Associate's spouse and any eligible dependents) during the period in which Associate is receiving Separation Pay; provided, however, the Company has the right to discontinue the payment of the premium and pay to the Associate 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 Associate shall pay Associate's portion of any costs of continuation consistent with the Company's past practices.

d. Equity. 2021 Long Term Incentive Grant. Effective as of the Termination Date, Associate will be forfeit 75% of the 2021 Long Term Incentive Grant dated 4/1/2021. Associate will continue to be eligible to receive 25% of his 2021 Long-Term Incentive Grant to align to actual service time, will remain to be comprised of 50% RSUs and 50% PSUs and will be paid no later than 4/1/2022 based on actual company performance against targets in accordance with the Company's plans, policies and practices.

Effective as of the Termination Date, all equity awards granted to Associate by the Company (including, but not limited to, unvested options, shares of restricted stock, and any and restricted stock units) that are subject to time-based vesting (but not equity subject to unmet performance-based vesting, it being understood that if the performance measurement period ends on or before the Termination Date the relevant performance-based vesting shall be deemed met at the level ultimately determined by the Compensation Committee of the Board of the Company, even if that determination is made after the Termination Date) that would have vested following the Termination Date shall continue to vest while Associate serves as a member of the Company's Board of Directors, but even if he leaves the Board for any reason before then such awards will nevertheless continue to vest for 12 months from the Termination Date, subject to his compliance with the terms hereof.

In the event Associate is removed from his seat on the Board of Directors prior to the 2023 annual meeting of the Company's stockholders without Cause or upon a Change in Control, all of Associate's outstanding equity awards subject to time-based vesting that are outstanding as of the date of this Agreement shall immediately vest in full to Associate. In addition, so long as Associate has continued to serve on the Board of Directors through the 2023 annual meeting of the Company's stockholders, then all of Associate's equity awards that are outstanding as of the date of this Agreement and that are subject only to time-based vesting at the time of the 2023 annual meeting of the Company's stockholders and that have not otherwise been forfeited shall immediately vest in full to Associate.

3. **Release of Claims.** In exchange for the Company's agreement to provide Associate with the Separation Benefits described above, by signing this Amendment, Associate 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 Associate 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, Associate'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. Associate 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.)**

Associate hereby acknowledges that this release applies both to known and unknown claims that may exist between Associate and the Company and the Company Parties. Associate 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 Amendment to claims known or suspected prior to the date he executes this Amendment, and does so understanding and acknowledging the significance and consequences of such specific waiver. Provided, however, that nothing in this Amendment extinguishes any claims Associate may have against the Company for breach of this Amendment.

4. No Admissions. Associate understands, acknowledges and agrees that the release set out above in Section II(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, Associate 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 Amendment.

Notwithstanding the foregoing, nothing in this Amendment prohibits Associate 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 Amendment fully and finally resolves all monetary matters between Associate and the Company and the Company Parties, and by signing this Amendment, Associate 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 Associate or on Associate's behalf, individually or collectively.

5. Cooperation. By signing this Amendment, Associate 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) Associate's employment with the Company, (ii) any other relationship or dealings between Associate and the Company or any of the Company Parties, or (iii) any other matter relating to the Company or any of the Company Parties. Associate's cooperation with the Company shall continue throughout the pendency of any such claim, complaint, charge, suit or action. Further, Associate 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. Associate 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 Associate's employment with the Company, or any act, omission or conduct occurring during Associate's employment with the Company, he will provide reasonable and prompt notice of this fact to the Company. The Company agrees to reimburse Associate for reasonable out-of-pocket expenses as reasonably required for such cooperation and consultation.

Notwithstanding the foregoing, nothing in this Amendment prohibits Associate 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. Associate does not need the prior authorization of the Company to make any such reports or disclosures, and Associate 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 Associate 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 Associate.

6. Return of Property. On or before the Termination Date, Associate 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 Associate, reasonable wear and tear excepted.

7. Confidentiality and Restrictive Covenants. Associate 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. The receipt of any severance payments or benefits pursuant to this Amendment will be subject to Associate's not violating the covenants contained within Sections 7, 8, 9 and 10 of Associate's Employment Agreement. In the event Associate breaches 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 which Associate may otherwise be entitled without affecting the release or any other obligations under the release agreement.

8. No Disparagement. Associate 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 Associate pursuant to this Amendment are intended either to be exempt from Section 409A of the Internal Revenue Code of 1986, as amended, and the regulations and other guidance thereunder and any state law of similar effect (collectively "Section 409A"), 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 Associate 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 Associate pursuant to this Amendment 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 Associate 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 Associate in a lump sum on the New Payment Date.

10. Relief and Enforcement. Associate 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 Amendment by Associate, 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. Associate also understands and agrees that if he violates the terms of Sections II (5), (6), (7) or (8) of this Amendment, Associate 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, Associate agree that if he violates Sections II (5), (6), (7) or (8) of this Amendment, the Company (or the Company Parties) will be entitled as a matter of right to obtain an injunction from a court of law, restraining Associate from any further violation of this Amendment. 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 Amendment may not be assigned by Associate without the prior written consent of the Company. The Company shall have the right to assign this Amendment 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 Amendment cannot be changed or terminated orally, and no modification or waiver of any of the provisions of this Amendment is effective unless in writing and signed by all of the parties hereto. The parties agree that this Amendment is to be governed by and construed in accordance with the laws of the State of South Carolina. This Amendment, 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 ASSOCIATE, THIS AMENDMENT IS REVOCABLE IN WRITING FOR A PERIOD OF SEVEN (7) DAYS (THE “REVOCATION PERIOD”). IN ORDER TO REVOKE HIS ACCEPTANCE OF THIS AMENDMENT, ASSOCIATE MUST DELIVER WRITTEN NOTICE TO THE COMPANY’S LEAD INDEPENDENT DIRECTOR, AND IF THE COMPANY DOES NOT HAVE A LEAD INDEPENDENT DIRECTOR, THEN TO THE CHAIR OF THE COMPANY’S BOARD OF DIRECTORS, AND SUCH WRITTEN NOTICE MUST ACTUALLY BE RECEIVED WITH THE SEVEN (7) DAY REVOCATION PERIOD.

14. Voluntary Execution. By signing below, Associate acknowledges that he has read this Amendment, 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.

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

[Signature page follows.]

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

THE COMPANY:
BENEFITFOCUS, INC. and
BENEFITFOCUS.COM, INC.

By: /s/ Mason R. Holland, Jr.
Name: Mason R. Holland, Jr.
Title: Executive Chairman

ASSOCIATE:

/s/ Stephen Swad
By: Stephen Swad

(Signature Page to Second Amendment to Employment Agreement)

Exhibit 1

**STRATEGIC ADVISOR TO THE CEO JOB
DESCRIPTION**

- Assist the CEO as requested during the period of the transition from May 10, 2021 through Sept 2, 2021.
- Upon request, be available to provide guidance and counsel on matters relating to the operations of the company or matters related to associates, customers, shareholders or other external parties.
- Upon request, be available to join customer or investor calls to ensure a smooth transition.
- Provide any relevant thoughts or materials that would assist the CEO in quickly transitioning successfully.
- Continue normal board duties as assigned.

Exhibit 2

RELEASE AGREEMENT

This RELEASE AGREEMENT (the “Release”) is hereby made and entered into this ____ day of _____, 2021, by and between Stephen Swad (hereinafter “Associate”), and Benefitfocus.com, Inc., having its principal place of business at 100 Benefitfocus Way, Charleston, SC 29492 (hereinafter referred to as “Benefitfocus”) together with its parent company, Benefitfocus, Inc., its subsidiaries and affiliates (collectively, the “Company”).

1. Release of Claims. In exchange for the Company’s providing Associate with the severance pay and benefits per Section 2 of Part II of the Second Amendment to Employment Agreement between Associate and the Benefitfocus.com, Inc. (hereinafter the “Agreement”), by signing this Release, Associate 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 Associate 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, Associate’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. Associate 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.)**

Associate hereby acknowledges that this release applies both to known and unknown claims that may exist between Associate and the Company and the Company Parties. Associate 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 Associate may have against the Company for breach of the Agreement.

2. No Admissions. Associate 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, Associate 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 Associate 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 Associate and the Company and the Company Parties, and by signing this Release, Associate 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 Associate or on Associate'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 ASSOCIATE, 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, ASSOCIATE MUST DELIVER WRITTEN NOTICE TO THE COMPANY'S LEAD INDEPENDENT DIRECTOR, AND IF THE COMPANY DOES NOT HAVE A LEAD INDEPENDENT DIRECTOR, THEN TO THE CHAIR OF THE COMPANY'S BOARD OF DIRECTORS, AND SUCH WRITTEN NOTICE MUST ACTUALLY BE RECEIVED WITH THE SEVEN (7) DAY REVOCATION PERIOD.

5. Voluntary Execution. By signing below, Associate 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.

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

IN WITNESS WHEREOF, Associate 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.

ASSOCIATE:

Stephen Swad

Benefitfocus, Inc.
843-981-8898
pr@benefitfocus.com

Benefitfocus[®]

Investor Relations:
Patti Leahy
843-981-8899
ir@benefitfocus.com

FOR IMMEDIATE RELEASE

**Benefitfocus Appoints Proven Industry Leader Matthew Levin as New CEO
to Further Advance Growth Strategy**

Reiterates Full Year Guidance

Charleston, S.C., May 4, 2021 – Benefitfocus, Inc. (NASDAQ: BNFT), an industry-leading benefits technology platform that simplifies benefits administration for employers, health plans and brokers, announces that Matthew Levin has been appointed president and chief executive officer and to the Benefitfocus board of directors, effective May 10, 2021.

Levin succeeds Stephen Swad, who served as the company’s CFO and was appointed CEO in 2020. In order to ensure a seamless handoff of leadership responsibilities, Swad will serve as an advisor to the CEO until September 2021. Thereafter, Swad will continue to serve as a Benefitfocus board director.

Levin has more than fifteen years of experience in the benefits administration, health insurance and health care technology industries, and a distinguished track record leading growth strategies and building companies into industry leaders. His expertise spans corporate development, strategic planning and developing successful strategies for expansion into growth adjacencies. Levin most recently served as the chief strategy officer of ADP (NASDAQ: ADP), a leading payroll company.

“On behalf of the board and everyone at Benefitfocus, I am delighted to welcome Matt as the company’s next CEO,” said Doug Dennerline, an independent director on the Benefitfocus board who will become chairman at the 2021 Annual Meeting. “Matt is a seasoned leader who has demonstrated his ability to execute innovative growth strategies. He will be an outstanding leader for Benefitfocus, with the skillset and experience to continue advancing the company’s strategy and take its performance to the next level.”

Dennerline added, “We also thank Steve for his willingness to step in and provide leadership to the company during a particularly dynamic and challenging period. Thanks to Steve’s leadership, the company has strengthened its foundation and is now ready for its next chapter. The board and management team are committed to ensuring a smooth transition, and we are all grateful that Benefitfocus will continue to benefit from Steve’s experience and perspective.”

“I am humbled by this opportunity and excited to join the company at a pivotal moment in its history,” said Levin. “I look forward to working with the team to drive innovative growth strategies and build on the company’s strong foundation to unlock even greater value. Thanks to the initiatives Steve and the team have been implementing over the past several quarters, I believe Benefitfocus is poised to create customer value-enhancing opportunities. I am particularly excited to help realize the company’s tremendous upside potential as a partner to employers, health plans and brokers, ensuring employees and members are maximizing the value of their investments in health care.”

“I echo Doug’s enthusiasm in welcoming Matt as Benefitfocus’ next CEO,” said Swad. “The board and I agree he is the right leader to build on our progress and strategy. I’m also pleased to share we are coming off a solid quarter and are reiterating our full year guidance. We have great confidence in the company’s future and look forward to providing more details on our previously scheduled earnings call later today.”

The company will also file a Form 8-K with the United States Securities and Exchange Commission (“SEC”) with additional details regarding the leadership succession.

About Matthew Levin

Matthew Levin joins Benefitfocus from ADP, where he served as Chief Strategy Officer since 2018, and was responsible for strategy, corporate development, ADP Ventures and the ADP Research Institute. Before joining ADP, Levin was a managing partner at Psilos Group Managers, a growth equity firm, where he specialized in technology-enabled health care services investments. Prior to Psilos, Levin was executive vice president and head of global strategy for Aon plc, a leading global professional services firm that provides a broad range of insurance and human capital solutions. Earlier in his career, Levin served as senior vice president of corporate development and strategy for Hewitt Associates, a leader in health, retirement and human capital consulting, and outsourcing services. Levin was a core member of the team that led the \$4.9 billion merger between Aon Consulting and Hewitt Associates, creating an industry-leading benefits and human resources solutions firm. Levin began his career in the First Scholar Program at First Chicago NBD, now JP Morgan Chase. Levin holds a master’s degree in business administration from the University of Chicago Booth School of Business and a bachelor’s degree from Northwestern University. He was also named to *Crain’s Chicago Business* 2011 “40 Under 40” and the World Economic Forum’s “2013 Young Global Leaders” program.

About Benefitfocus

Benefitfocus (NASDAQ: BNFT) unifies the entire benefits industry through innovative technology solutions that bring efficiency, cost savings and simplicity to employee benefits administration. Our powerful cloud-based software, data-driven insights and thoughtfully designed services help employers, insurance brokers, health plans and suppliers address the complexity of benefits enrollment and engagement, while bringing easier access to health, wealth and lifestyle products through a world-class benefits experience. Our mission is simple: to improve lives with benefits. Learn more at www.benefitfocus.com, [LinkedIn](#) and [Twitter](#).

DISCLAIMER REGARDING FORWARD LOOKING STATEMENTS

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: our ability to maintain our culture and recruit, integrate and retain qualified personnel, including on our board of directors; our ability to compete effectively; the need to innovate and provide useful products and services; risks related to changing healthcare and other applicable regulations; the immature and volatile nature of the market for our products and services; privacy; security and other risks associated with our business; management of growth; volatility and uncertainty in the global economy and financial markets in light of the evolving COVID-19 pandemic; 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.

IMPORTANT ADDITIONAL INFORMATION AND WHERE TO FIND IT

The company intends to file a proxy statement on Schedule 14A, an accompanying **WHITE** proxy card and other relevant documents with the SEC in connection with such solicitation of proxies from the company's stockholders for the company's 2021 annual meeting of stockholders. **STOCKHOLDERS OF THE COMPANY ARE STRONGLY ENCOURAGED TO READ THE COMPANY'S DEFINITIVE PROXY STATEMENT (INCLUDING ANY AMENDMENTS OR SUPPLEMENTS THERETO) AND ALL OTHER DOCUMENTS FILED WITH THE SEC CAREFULLY AND IN THEIR ENTIRETY WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION.** Investors and stockholders may obtain a copy of the definitive proxy statement, an accompanying **WHITE** proxy card, any amendments or supplements to the definitive proxy statement and other documents filed by the company with the SEC at no charge at the SEC's website at www.sec.gov. Copies will also be available at no charge in the Investor Relations section of the Benefitfocus website at <https://investor.benefitfocus.com/sec-filings> or by contacting the company's Investor Relations department at ir@benefitfocus.com, as soon as reasonably practicable after such materials are electronically filed with, or furnished to, the SEC.

CERTAIN INFORMATION REGARDING PARTICIPANTS TO THE SOLICITATION

The company, its directors and certain of its executive officers are participants in the solicitation of proxies from the company's stockholders in connection with matters to be considered at the company's 2021 annual meeting of stockholders. Information regarding the direct and indirect interests, by security holdings or otherwise, of the company's directors and executive officers in the company is included in the company's Proxy Statement on Schedule 14A for its 2020 annual meeting of stockholders, filed with the SEC on April 29, 2020, the company's Annual Report on Form 10-K for the year ended December 31, 2020, filed with the SEC on March 10, 2021, the company's Amendment No. 1 to the company's Annual Report on Form 10-K/A for the fiscal year ended December 31, 2021, filed with the SEC on April 30, 2021 and in the company's Current Reports on Form 8-K filed with the SEC from time to time. Changes to the direct or indirect interests of the company's directors and executive officers are set forth in SEC filings on Initial Statements of Beneficial Ownership on Form 3 or Statements of Change in Ownership on Form 4. These documents are available free of charge as described above. Updated information regarding the identities of potential participants and their direct or indirect interests, by security holdings or otherwise, in the company will be set forth in the company's Proxy Statement for its 2021 annual meeting of stockholders and other relevant documents to be filed with the SEC, if and when they become available.
