

SEPARATION AND DISTRIBUTION AGREEMENT

BY AND BETWEEN

BAXTER INTERNATIONAL INC.

AND

BAXALTA INCORPORATED

DATED AS OF [•], 2015

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THIS SEPARATION AND DISTRIBUTION AGREEMENT, dated as of [●], 2015, is by and between Baxter International Inc., a Delaware corporation (“Baxter”), and Baxalta Incorporated, a Delaware corporation (“Baxalta”) (each a “Party” and together, the “Parties”).

#### RECITALS:

WHEREAS, the board of directors of Baxter has determined that it is appropriate and advisable to: (i) separate the Baxalta Business (as defined herein) from the Baxter Business (as defined herein) (the “Separation”); and (ii) in connection with the Separation, make a distribution, on a pro rata basis, to holders of the outstanding common shares of Baxter (the “Baxter Common Shares”) on the Record Date (as defined herein) of more than 80% of the outstanding shares of common stock, par value \$0.01 per share, of Baxalta (the “Baxalta Common Stock”), owned by Baxter (the “Distribution”);

WHEREAS, the Distribution is motivated by the corporate business purposes described in the Registration Statement;

WHEREAS, each of Baxter and Baxalta has determined that it is necessary and advisable to set forth the principal transactions required to effect the Separation and the Distribution and to describe other agreements that shall govern certain other matters prior to and following the Separation and the Distribution;

WHEREAS, the board of directors of Baxter intends for the Separation to be effected in accordance with, among other transactions, the transactions set forth in Schedule 1.01;

WHEREAS, in order to effect the Separation, the board of directors of Baxter have approved the transfer by Baxter of the Baxalta Business, potentially in more than one transaction, to Baxalta in exchange for: (i) the assumption by Baxalta of the Baxalta Liabilities, (ii) the actual or constructive issuance by Baxalta to Baxter of shares of Baxalta Common Stock, (iii) the Baxalta Cash Distribution, and (iv) potentially, certain Baxalta indebtedness (the first such contribution, the “Initial Baxalta Contribution,” and together with any subsequent contributions to Baxalta, the “Baxalta Contributions”);

WHEREAS, after receiving the Baxalta Cash Distribution, and in all events before the 18-month anniversary of the Distribution (the “18-Month Period”), Baxter will transfer an amount of cash equal to the amount of cash received in the Baxalta Cash Distribution (the “Baxalta Cash Amount”) to (i) Baxter creditors, including, potentially, the Baxter International Inc. and Subsidiaries Pension Plan, in satisfaction of Baxter indebtedness, (ii) Baxter shareholders as one or more distribution with respect to Baxter stock, and/or (iii) Baxter shareholders as one or more distribution in redemption of Baxter stock (collectively, the “Cash Amount Purge”);

WHEREAS, after receiving any Baxalta indebtedness, and in all events within the 18-Month Period, Baxter will transfer any Baxalta indebtedness to Baxter creditors in satisfaction of Baxter indebtedness (the “Debt Exchange”);

WHEREAS, any Baxalta Common Stock not distributed in the Distribution (the “Remainder Stock”) is intended to be transferred by Baxter, within the 18-Month Period, to: (i) Baxter creditors, including the Baxter International Inc. and Subsidiaries Pension Plan, in satisfaction of Baxter indebtedness, (ii) Baxter shareholders as one or more distribution with respect to Baxter stock, and/or (iii) Baxter shareholders as a distribution in redemption of Baxter stock (collectively, the “Subsequent Distributions,” and together with the Baxalta Contributions, the Distribution, the Cash Amount Purge, the Debt Exchange, and any Subsequent Distributions, the “Spin-Off”);

WHEREAS, if any portion of the Remainder Stock has not been disposed of pursuant to the Subsequent Distributions within the 18-Month Period, Baxter will dispose of such Remainder Stock in all events within five years of the Distribution (the “Remaining Dispositions”);

WHEREAS, the External Spin-Off is intended to qualify as tax-free to Baxter and its shareholders under Sections 355, 361, and 368 of the Internal Revenue Code of 1986, as amended (the “Code”), except to the extent of any cash received in lieu of fractional shares of Baxalta Common Stock;

WHEREAS, Baxter has received a private letter ruling from the IRS with respect to certain significant issues under, among others, Section 355, Section 361, and certain related provisions of the Code with respect to certain aspects of the External Spin-Off and certain related internal restructuring transactions; and

WHEREAS, this Agreement, together with the other documents implementing the Separation, is intended to be, and is hereby adopted, as a “plan of reorganization” within the meaning of Treas. Reg. section 1.368-2(g).

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained in this Agreement (as defined herein), the Parties hereby agree as follows:

## **ARTICLE I DEFINITIONS**

Section 1.01 Definitions. Reference is made to Section 9.15 regarding the interpretation of certain words and phrases used in this Agreement. In addition, for the purpose of this Agreement, the following terms shall have the meanings set forth below.

“Actual Deferred Taxes” means the deferred Taxes and prepaid Taxes as defined under GAAP as of the Distribution Date.

“Adjustment” has the meaning set forth in Section 2.15.

“Affiliate” (including, with a correlative meaning, “affiliated”) means, when used with respect to a specified Person, a Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified Person. For the purpose of this definition, “control” (including with correlative meanings, “controlled by” and “under common control with”), when used with respect to any specified Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other interests, by contract, agreement, obligation, indenture, instrument, lease, promise,

arrangement, release, warranty, commitment, undertaking or otherwise. The Parties agree that, prior to, at or after the Effective Time and for purposes of this Agreement and the Ancillary Agreements, neither Baxalta nor any of the Baxalta Subsidiaries, including the Transferred Entities, shall be deemed to be an Affiliate of Baxter or any of the Baxter Subsidiaries, and neither Baxter nor any of the Baxter Subsidiaries shall be deemed to be an Affiliate of Baxalta or any of the Baxalta Subsidiaries.

“Agent” means Computershare Trust Company, N.A., or such other trust company or bank duly appointed to act as distribution agent, transfer agent and registrar for the Baxalta Common Stock in connection with the Distribution.

“Agreement” means this Separation and Distribution Agreement and each of the Schedules and Exhibits hereto.

“Ancillary Agreements” means all agreements entered into by the Parties or their Subsidiaries (but as to which no Third Party is a party) in connection with the Separation, the Distribution or the other transactions contemplated by this Agreement.

“Assets” means, with respect to any Person, the assets, rights, interests, claims and properties of all kinds, real and personal, tangible, intangible and contingent, wherever located (including in the possession of suppliers, distributors, other Third Parties or elsewhere), of such Person, including rights and benefits pursuant to any contract, license, permit, indenture, note, bond, mortgage, agreement, concession, franchise, instrument, undertaking, commitment, understanding or other arrangement and any rights or benefits pursuant to any Proceeding.

“Baxalta” has the meaning set forth in the Preamble.

“Baxalta Accounts” has the meaning set forth in Section 2.10(b).

“Baxalta Assets” means only the following Assets:

- (i) all of the issued and outstanding capital stock or other equity interests of the Transferred Entities (excluding, for the avoidance of doubt, the capital stock of Baxalta) that are owned by either Party or any of its Subsidiaries as of the Effective Time or, in the case of a Transferred Entity formed after the Effective Time, as of the date on which such Transferred Entity is transferred from Baxter or a Baxter Subsidiary to Baxalta or a Baxalta Subsidiary;
- (ii) subject to the exceptions described on Schedule 1.01(a), the Assets of either Party or any of its Subsidiaries included or reflected on the Baxalta Pro Forma Balance Sheet or any notes or subledgers thereto, and any such Assets as of the Effective Time that would have been included on such Baxalta Pro Forma Balance Sheet had such Assets existed on the date thereof, it being understood that (x) the Baxalta Pro Forma Balance Sheet and the notes and subledgers thereto shall be used to determine the types of, and methodologies used to determine, those Assets that are included in the definition of Baxalta Assets pursuant to this clause (ii); and (y) the amounts set forth on the Baxalta Pro Forma Balance Sheet with respect to any Assets shall not be treated as minimum or maximum amounts or limitations on the amount of such Assets that are included in the definition of Baxalta Assets pursuant to this clause (ii);

- (iii) the Assets expressly allocated to Baxalta or a Baxalta Subsidiary pursuant to this Agreement or any Ancillary Agreement;
- (iv) all rights, interests and claims of either Party or any of its Subsidiaries as of the Effective Time to the Baxalta Products, including all rights, interests and claims of either Party or any of its Subsidiaries as of the Effective Time to all clinical study data, reports and analyses, product and marketing registrations and applications (which shall include all U.S. Food and Drug Administration and other regulatory drug approvals and licenses related to, and all related applications and other information submitted for the purposes of or prepared in connection with obtaining an approval for, a Baxalta Product) to the extent related to the Baxalta Products; provided that, if the Assets to be transferred pursuant to this paragraph conflict with or expand the transfer of Baxalta Intellectual Property pursuant to clause (vi) of this definition, then clause (vi) and the definition of Baxalta Intellectual Property shall prevail;
- (v) all rights, interests and claims of either Party or any of its Subsidiaries as of the Effective Time under the Baxalta Contracts; provided that if there is deemed to be any inconsistency between this clause (v) and Section 2.12(a), then Section 2.12(a) shall control;
- (vi) all rights, interests and claims of either Party or any of its Subsidiaries as of the Effective Time to any Baxalta Intellectual Property;
- (vii) all other rights, interests and claims of either Party or any of their Subsidiaries as of the Effective Time with respect to Information that is exclusively related to the Baxalta Assets, the Baxalta Liabilities, the Baxalta Business or the Transferred Entities and, subject to the provisions of the applicable Ancillary Agreements, a non-exclusive right for use in the Baxalta Business in the ordinary course to all other Information that is related (but only to the extent so related) to the Baxalta Assets, the Baxalta Liabilities, the Baxalta Business or the Transferred Entities; provided that, if the Information to be transferred pursuant to this paragraph conflicts with or expands the transfer of Baxalta Intellectual Property pursuant to clause (vi) of this definition, then clause (vi) and the definition of Baxalta Intellectual Property shall prevail;
- (viii) all rights, interests and claims of either Party or any of its Subsidiaries as of the Effective Time to the facilities and other real property, including owned and leased real property, listed on Schedule 1.01(b);
- (ix) all approvals, registrations, permits or authorizations issued by any Governmental Authority that relate exclusively to the Baxalta Business or the Baxalta Assets; and

- (x) the Assets of either Party or any of its Subsidiaries as of the Effective Time on Schedule 1.01(c).

The Parties agree that all Delayed Baxalta Assets shall be Baxalta Assets for purposes of this Agreement and the Ancillary Agreements regardless of when such Delayed Baxalta Assets are assumed by Baxalta or a Baxalta Subsidiary or designee. The Parties also agree that, if any Transferred Entity holds a Baxter Asset, such Baxter Asset shall nonetheless be treated as a Baxter Asset and the Parties shall, and shall cause their respective Subsidiaries to, use their commercially reasonable efforts for such Baxter Asset to be transferred to Baxter or a Baxter Subsidiary.

“Baxalta Business” means:

- (i) the business and operations conducted by Baxter and its Subsidiaries prior to the Distribution comprising what is referred to in Baxter’s December 31, 2014 Form 10-K as the BioScience segment, including the Baxalta Products but excluding the BioSurgery commercial franchise described therein; and
- (ii) all of (or, to the extent only a portion thereof is specified in Schedule 1.01(e), such portion of) the business, operations and activities conducted at any time prior to the Effective Time by either Party or any of its Subsidiaries to the extent such business, operations and activities relate to, arise out of or result from a Baxalta Former Business, a Baxalta Discontinued Product, a Baxalta Discontinued Project or a Baxalta Discontinued Facility.

“Baxalta Cash Distribution” has the meaning set forth in Section 2.08(c).

“Baxalta Common Stock” has the meaning set forth in the Recitals.

“Baxalta Contracts” means the following contracts, agreements, arrangements, commitments or understandings to which either Party or any of its Subsidiaries is a party or by which it or its Assets is bound, whether or not in writing, in each case, prior to the Effective Time, except to the extent otherwise described in Schedule 1.01(d):

- (i) any contract, agreement, arrangement, commitment or understanding related exclusively to the Baxalta Business;
- (ii) the portion of any Mixed Contract that relates to the Baxalta Business, including those referenced or included in Schedule 1.01(j);
- (iii) any contract, agreement, arrangement, commitment or understanding or portion thereof that is a Baxalta Liability;
- (iv) any employment, change of control, retention, consulting, indemnification, termination, severance or other similar agreements with any employee or consultant of Baxalta or a Baxalta Subsidiary; and

- (vi) any other contract, agreement, arrangement, commitment or understanding or portion thereof that is otherwise expressly contemplated pursuant to this Agreement or any Ancillary Agreement to be assigned to Baxalta or a Baxalta Subsidiary; provided, however, that (A) such contracts, agreements, arrangements, commitments or understandings or portions thereof that are contemplated to be retained by Baxter or a Baxter Subsidiary pursuant to any provision of this Agreement or any Ancillary Agreement shall not be Baxalta Contracts; (B) such contracts, agreements, arrangements, commitments or understandings or portions thereof that relate to debt instruments, insurance arrangements, or employee benefit plans or programs shall be Baxalta Contracts only to the extent expressly provided for under the terms of this Agreement or any Ancillary Agreement; and (C) the rights and obligations of Baxter and the Baxter Subsidiaries under this Agreement and the Ancillary Agreements shall not be Baxalta Contracts.

“Baxalta Credit Facility” means [●].

“Baxalta Discontinued Facilities” means the closed or divested manufacturing, distribution, warehouse or research and development facilities or other real property operated prior to the Effective Time by either Party or any of its Subsidiaries that were solely or primarily related to the conduct of the any business, operations and activities that was (or would have been had such categories been in effect at the time of such discontinuation) categorized as part of Baxter’s publicly reported BioScience segment, as well as each closed or divested facility or property set forth on Schedule 1.01(e).

“Baxalta Discontinued Products” means any product that was (or would have been had such categories been in effect at the time of such discontinuation) categorized as part of Baxter’s publicly reported BioScience segment if such product, at any time prior to the Effective Time, was owned, licensed by or to, sub-licensed by or to, manufactured, marketed, co-branded, co-promoted or otherwise promoted, distributed or sold anywhere in the world by or on behalf of either Party or any of its Subsidiaries, but in each case that, as of immediately prior to the Effective Time, neither Party nor any of their respective Subsidiaries is marketing, co-promoting, promoting, distributing or selling anywhere in the world, as well as each product not marketed, co-promoted, distributed or sold by either Party of any of its Subsidiaries as of immediately prior to the Effective Time to the extent set forth on Schedule 1.01(e).

“Baxalta Discontinued Projects” means any discovery or research and development projects that were conducted at any time prior to the Effective Time by or on behalf of the business that was (or would have been had such categories been in effect at the time of such discontinuation) categorized as part of Baxter’s publicly reported BioScience segment and that were terminated, divested or discontinued prior to the Effective Time by either Party or any of its Subsidiaries, as well as each terminated, divested or discontinued discovery or research and development project set forth on Schedule 1.01(e).

“Baxalta Former Businesses” means (i) the Former Businesses set forth on Schedule 1.01(e); and (ii) any Former Business to the extent associated with, or to the extent engaged in the discovery, research, development, importation, exportation, manufacture, marketing, distribution, promotion or sale of a Baxalta Discontinued Product.

“Baxalta Indemnifying Party” has the meaning set forth in Section 4.02.

“Baxalta Indemnitees” means (i) Baxalta and each Baxalta Subsidiary; (ii) each of the respective past, present and future directors, officers, employees or agents of the entities described in (i) above, in each case in their respective capacities as such; and (iii) each of the heirs, executors, administrators, successors and assigns of any of the foregoing.

“Baxalta Indemnity Obligations” means all Liabilities to the extent such Liabilities relate to, arise out of or result from, directly or indirectly, any of the following items:

- (i) any Baxalta Liability;
- (ii) any failure of Baxalta or a Baxalta Subsidiary or any other Person to pay, perform or otherwise promptly discharge any Baxalta Liabilities in accordance with their terms, whether prior to, at or after the Effective Time;
- (iii) the conduct of any business, operation or activity by Baxalta or a Baxalta Subsidiary from and after the Effective Time;
- (iv) any breach by Baxalta or a Baxalta Subsidiary of this Agreement or any Ancillary Agreement (subject to limitations, if any, expressly set forth in the applicable Ancillary Agreement); and
- (v) any untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, with respect to all information contained in the Registration Statement or the Information Statement (other than the matters described in clause (v) of the definition of Baxter Indemnity Obligations).

“Baxalta Intellectual Property” means (i) the Patents and Trademarks set forth on Schedule 1.01(f); (ii) the Other Intellectual Property owned by, licensed by or to, or sublicensed by or to either Party or any of its Subsidiaries that, as of the Effective Time, is exclusively used or held for use in the Baxalta Business; (iii) the rights to any Patents, Trademarks, and Other Intellectual Property that are specifically allocated to Baxalta or a Baxalta Subsidiary pursuant to any Ancillary Agreement or to the extent set forth on Schedule 1.01(g); and (iv) to the extent of any Other Intellectual Property not addressed in clauses (i)-(iii) of this paragraph and that is used or held for use in the Baxalta Business as of the Effective Time, the non-exclusive right to such Other Intellectual Property for use in the ordinary course of the Baxalta Business; provided that, for the avoidance of doubt, the right granted pursuant to this clause (iv) shall not in any way expand any rights to intellectual property or other proprietary rights (including Patents, Trademarks and all Other Intellectual Property) that are specifically addressed in this Agreement or any Ancillary Agreement, including with respect to the intellectual property listed or described on Schedule 1.01(h).

“Baxalta Liabilities” means all of the following Liabilities of either Party or any of its Subsidiaries:

- (i) subject to the exceptions described on Schedule 1.01(i), the Liabilities of either Party or any of its Subsidiaries included or reflected on the Baxalta Pro Forma Balance Sheet or any notes or subledgers thereto, and any such Liabilities as of the Effective Time that would have been included on such Baxalta Pro Forma Balance Sheet had such Liabilities existed on the date thereof, it being understood that (x) the Baxalta Pro Forma Balance Sheet and the notes and subledgers thereto shall be used to determine the types of, and methodologies used to determine, those Liabilities that are included in the definition of Baxalta Liabilities pursuant to this clause (i); and (y) the amounts set forth on the Baxalta Pro Forma Balance Sheet with respect to any Liabilities shall not be treated as minimum or maximum amounts or limitations on the amount of such Liabilities that are included in the definition of Baxalta Liabilities pursuant to this clause (i);
- (ii) except as otherwise set forth herein, all Liabilities relating to, arising out of or resulting from actions, inactions, events, omissions, conditions, facts or circumstances occurring or existing prior to, on or after the Effective Time (whether or not such Liabilities cease being contingent, mature, become known, are asserted or foreseen, or accrue, in each case before, at or after the Effective Time), in each case to the extent that such Liabilities relate to, arise out of or result from the Baxalta Business or a Baxalta Asset;
- (iii) all Liabilities for claims made by Third Parties, or the directors, officers, employees, agents of Baxter, Baxalta or their respective Subsidiaries or Affiliates against either Party or any of its Subsidiaries to the extent relating to, arising out of or resulting from the Baxalta Business or the Baxalta Assets;
- (iv) all Liabilities expressly allocated to Baxalta or a Baxalta Subsidiary pursuant to this Agreement or any Ancillary Agreement, and the obligations of Baxalta or a Baxalta Subsidiary under such agreements;
- (v) all Liabilities relating to, arising out of or resulting from (A) the Baxalta Credit Facility or the Financing Arrangements, (B) any other indebtedness of Baxalta or any Baxalta Subsidiary (whether incurred prior to, on or after the Effective Time) or (C) guarantees and obligations of the obligor under letters of credit issued in connection with the Baxalta Business;
- (vi) subject to any additional Liabilities or limitations related to Proceedings set forth on Schedule 1.01(k), the Liabilities relating to, arising out of, or resulting from Proceedings to the extent such Proceedings relate to, arise out of, or result from the Baxalta Business, the Baxalta Assets, or the other Baxalta Liabilities;
- (vii) all Liabilities assumed by Baxalta or a Baxalta Subsidiary from a Third Party after the Effective Time (whether or not such Liabilities initially arose or accrued before the Effective Time);

- (viii) all Liabilities relating to, arising out of, or resulting from the operation or conduct of any business conducted by Baxalta or a Baxalta Subsidiary at any time after the Effective Time;
- (ix) all Liabilities relating to, arising out of, or resulting from any untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, with respect to all information contained in the Registration Statement, the Information Statement (other than the matters described in clause (v) of the definition of Baxter Indemnity Obligations) or any other form, statement, schedule or other material filed with or furnished to (A) the Commission, (B) any other Governmental Authority or (C) holders of any securities of Baxalta or any Baxalta Subsidiary in connection with the registration, sale or distribution of securities or disclosure related thereto (including periodic disclosure obligations); and
- (x) all other Liabilities set forth on Schedule 1.01(l).

The Parties agree that all Delayed Baxalta Liabilities shall be Baxalta Liabilities for purposes of this Agreement and the Ancillary Agreements regardless of when such Delayed Baxalta Liabilities are assumed by Baxalta or a Baxalta Subsidiary or designee. The Parties also agree that, if any Transferred Entity holds a Baxter Liability, such Baxter Liability shall nonetheless be treated as a Baxter Liability and the Parties shall, and shall cause their respective Subsidiaries to, use their commercially reasonable efforts for such Baxter Liability to be assumed by Baxter or a Baxter Subsidiary.

“Baxalta Products” means the products set forth on Schedule 1.01(n).

“Baxalta Pro Forma Balance Sheet” means the pro forma combined balance sheet of Baxalta and the Baxalta Subsidiaries, including any notes or subledgers thereto, as of March 31, 2015, as presented in the Information Statement.

“Baxalta Subsidiary” means any Business Entity that is a Subsidiary of Baxalta prior to, at or after the Effective Time, including the Transferred Entities, which shall be deemed to have been Baxalta Subsidiaries at all times prior to, at and after the Effective Time.

“Baxter” has the meaning set forth in the Preamble.

“Baxter Accounts” has the meaning set forth in Section 2.10(b).

“Baxter Assets” means all Assets of the Parties or their respective Subsidiaries as of the Effective Time, other than the Baxalta Assets. For the avoidance of doubt, the Baxter Assets include those Assets described on Schedule 1.01(m).

“Baxter Business” means all businesses, operations and activities (whether or not such businesses, operations or activities are or have been terminated, divested or discontinued) conducted at any time prior to the Effective Time by either Party or its Subsidiaries, other than the Baxalta Business.

“Baxter Common Shares” has the meaning set forth in the Recitals.

“Baxter Indemnifying Party” has the meaning set forth in Section 4.03.

“Baxter Indemnitees” means (i) Baxter and each Baxter Subsidiary; (ii) each of the respective past, present and future directors, officers, employees or agents of the entities described in (i) above, in each case in their respective capacities as such; and (iii) each of the heirs, executors, administrators, successors and assigns of any of the foregoing.

“Baxter Indemnity Obligations” means all Liabilities to the extent such Liabilities relate to, arise out of or result from, directly or indirectly, any of the following items:

- (i) any Baxter Liability;
- (ii) any failure of Baxter or a Baxter Subsidiary or any other Person to pay, perform or otherwise promptly discharge any Baxter Liabilities in accordance with their terms, whether prior to, at or after the Effective Time;
- (iii) the conduct of any business, operation or activity by Baxter or a Baxter Subsidiary from and after the Effective Time (other than the conduct of business, operations, or activities for the benefit of Baxalta or any of its Subsidiaries pursuant to this Agreement or any Ancillary Agreement);
- (iv) any breach by Baxter or a Baxter Subsidiary of this Agreement or any Ancillary Agreement (subject to limitations, if any, expressly set forth in the applicable Ancillary Agreement); and
- (v) any untrue statement or alleged untrue statement of a material fact made explicitly in Baxter’s name in the Registration Statement or the Information Statement as the same may be amended prior to the Effective Time, or any omission or alleged omission to state a material fact necessary to make any such statement made explicitly in Baxter’s name not misleading.

“Baxter Liabilities” means the Liabilities relating to, arising out of or resulting from actions, inactions, events, omissions, conditions, facts or circumstances occurring or existing prior to the Effective Time (whether or not such Liabilities cease being contingent, mature, become known, are asserted or foreseen, or accrue, in each case before, at or after the Effective Time) of Baxter and the Baxter Subsidiaries and, prior to the Effective Time, Baxalta and the Baxalta Subsidiaries, in each case that are not Baxalta Liabilities or Baxalta Indemnity Obligations.

“Baxter Subsidiary” means any Business Entity that is a Subsidiary of Baxter prior to, at or after the Effective Time (other than Baxalta or a Baxalta Subsidiary).

“Business Entity” means any corporation, general or limited partnership, trust, joint venture, unincorporated organization, limited liability entity or other entity.

“Bylaws” means the Amended and Restated Bylaws of Baxalta, substantially in the form of Exhibit A.

“Certificate of Incorporation” means the Amended and Restated Certificate of Incorporation of Baxalta, substantially in the form of Exhibit B.

“Change of Control” means, with respect to a Party (or a Subsidiary thereof to the extent of any Ancillary Agreement to which such Subsidiary is a party), the occurrence after the Effective Time of any of the following: (i) the sale, conveyance or disposition, in one or a series of related transactions, of all or substantially all of the assets of such Party (or Subsidiary, if applicable) to a Third Party that is not an Affiliate of such Party or other Person prior to such transaction or the first of such related transactions; (ii) the consolidation, merger or other business combination of a Party (or Subsidiary, if applicable) with or into any other Business Entity, immediately following which the then-current stockholders of the Party (or Subsidiary, if applicable), as such, fail to own in the aggregate at least Majority Voting Power of the surviving party in such consolidation, merger or business combination or of its ultimate publicly-traded parent Business Entity; (iii) a transaction or series of transactions in which any Person or “group” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) acquires Majority Voting Power of such Party (or Subsidiary, if applicable) (other than (a) a reincorporation or similar corporate transaction in which each of such Party’s (or Subsidiary’s, if applicable) stockholders owns, immediately thereafter, interests in the new parent company in substantially the same percentage as such stockholder owned in such Party or Person immediately prior to such transaction, or (b) in connection with a transaction described in clause (ii), which shall be governed by such clause (ii)); or (iv) a majority of the board of directors of such Party ceasing to consist of individuals who have become directors as a result of being nominated or elected by a majority of such Party’s directors.

“Code” has the meaning set forth in the Recitals.

“Commission” means the United States Securities and Exchange Commission.

“Consents” means any consents, waivers or approvals from, or notification requirements to, any Third Parties.

“Conveyance and Assumption Instruments” means, collectively, such deeds, bills of sale, asset transfer agreements, business transfer agreements, demerger plans, deeds or agreements, endorsements, assignments, assumptions (including Liability assumption agreements), leases, subleases, affidavits and other instruments of sale, conveyance, contribution, distribution, lease, transfer and assignment between Baxter or, where applicable, a Baxter Subsidiary or designee of Baxter, on the one hand, and Baxalta or, where applicable, a Baxalta Subsidiary, on the other hand, as may be necessary or advisable under the Laws of the relevant jurisdictions to effect the Separation.

“CPR” has the meaning set forth in Section 7.02.

“Custodial Party” has the meaning set forth in Section 6.03(a).

“Deferred Baxalta Local Business” has the meaning set forth in Section 2.03(a).

“Delayed Baxter Asset” has the meaning set forth in Section 2.05(a).

“Delayed Baxter Liability” has the meaning set forth in Section 2.05(a).

“Delayed Baxalta Asset” has the meaning set forth in Section 2.04(a).

“Delayed Baxalta Liability” has the meaning set forth in Section 2.04(a).

“Direct Claim” has the meaning set forth in Section 4.06(b).

“Dispute” has the meaning set forth in Section 7.01.

“Dispute Notice” has the meaning set forth in Section 7.02.

“Distribution” has the meaning set forth in the Recitals.

“Distribution Date” means the date of the consummation of the Distribution, which shall be determined by the board of directors of Baxter in its sole discretion.

“Distribution Ratio” has the meaning set forth in Section 3.02(c).

“Effective Time” means 12:01 a.m. Eastern Time on the Distribution Date.

“Employee Inventor Remuneration Entitlement” has the meaning set forth in Section 5.08(g).

“Employee Matters Agreement” means the Employee Matters Agreement to be entered into by and between Baxter and Baxalta in connection with the Separation, the Distribution or the other transactions contemplated by this Agreement.

“Employment Tax” means withholding, payroll, social security, workers compensation, unemployment, disability and any similar tax imposed by any Tax Authority, and any interest, penalties, additions to tax or additional amounts with respect to the foregoing imposed on any taxpayer or consolidated, combined or unitary group of taxpayers.

“Estimated Deferred Taxes” means the deferred Taxes and prepaid Taxes as defined under GAAP, as reflected on the pro forma balance sheet accounts of Baxalta and the Baxalta Subsidiaries, as of the Distribution Date as determined by the Parties within sixty (60) days after the Distribution Date.

“Exchange Act” means the United States Securities Exchange Act of 1934, as amended, together with the rules and regulations promulgated thereunder.

“Field-of-Use” means, with respect to the Licensed Patent Schedule, the specific field-of-use set forth for each patent or group of patents in such Licensed Patent Schedule.

“Final Adjustment” has the meaning set forth in Section 2.15.

“Financing Arrangements” means the financing arrangements and agreements (other than the Baxalta Credit Facility) to be entered into prior to the Effective Time pursuant to which Baxalta shall be entitled to borrow a principal amount of at least US\$4,000,000,000.

“Force Majeure” means, with respect to a Party, any changes in Law, acts of God, acts of civil or military authority, embargoes, epidemics, war, riots, insurrections or earthquakes.

“Former Business” means any Business Entity, division, business unit or business, including any business within the meaning of Rule 11-01(d) of Regulation S-X promulgated under the Exchange Act (in each case, including any Assets and Liabilities comprising the same) that is not owned, leased or operated by a Party or any of its Subsidiaries as of immediately prior to the Effective Time because it has been sold, conveyed, assigned, transferred or otherwise disposed of or divested to one or more Persons (other than a Party or any of its Subsidiaries) or the operations, activities or production of which has been discontinued, abandoned, completed or otherwise terminated, in each case, prior to the Effective Time.

“GAAP” means U.S. generally accepted accounting principles as applied by Baxter as of the Distribution Date.

“Governmental Authority” means any supranational, international, national, federal, state, provincial or local court, government, department, commission, board, bureau, agency, official or other regulatory, administrative or governmental authority, including the NYSE and any similar self-regulatory body under applicable securities Laws.

“Indemnifying Party” has the meaning set forth in Section 4.04(a).

“Indemnitee” means a Baxalta Indemnitee or a Baxter Indemnitee, as appropriate.

“Indemnity Payment” has the meaning set forth in Section 4.04(a).

“Information” means information in written, oral, electronic or other tangible or intangible forms, including studies, reports, records, books, instruments, surveys, specifications, drawings, blueprints, diagrams, models, prototypes, samples, flow charts, marketing plans, customer names, Privileged Information, and other technical, financial, employee or business information or data, including cost information, sales and pricing data, customer prospect lists, supplier records, customer and supplier lists, customer and vendor data, correspondence and lists, product data and literature, artwork, design, and quality records and reports; provided that “Information” does not include Patents, Trademarks, or Other Intellectual Property.

“Information Statement” means the information statement forming a part of the Registration Statement as the same may be amended or supplemented from time to time prior to the Effective Time.

“Insurance Proceeds” means, with respect to any insured party, those monies, net of any applicable premium adjustments (including reserves and retrospectively rated premium adjustments) and net of any costs or expenses incurred in the collection thereof, which are: (i) received by an insured from an insurance carrier or its estate; or (ii) paid by an insurance carrier or its estate on behalf of the insured.

“International Commercial Operations Agreement” means the International Commercial Operations Agreement to be entered into prior to the Effective Time by and between Baxter and Baxalta or any of their respective Subsidiaries.

“International Transition Period Agreements” means, collectively, the International Commercial Operations Agreement and any applicable portion of the Transition Services Agreement, and all silent partnership agreements, undisclosed agency agreements and other agreements to be entered into by and between Baxter, or where applicable, a Baxter Subsidiary, on the one hand, and Baxalta or, where applicable, a Baxalta Subsidiary, on the other hand, pursuant to which: (i) Baxter or a Baxter Subsidiary manages and operates all or a portion of a Deferred Baxalta Local Business, a Delayed Baxalta Asset or a Delayed Baxalta Liability in order for the rewards and burdens relating to such Deferred Baxalta Local Business, Delayed Baxalta Asset or Delayed Baxalta Liability to inure from and after the Effective Time to Baxalta or a Baxalta Subsidiary; and (ii) Baxter and the Baxter Subsidiaries on the one hand, and Baxalta and the Baxalta Subsidiaries on the other hand, provide certain transitional services to the other.

“Law” means any supranational, international, national, federal, state, provincial, local or similar law (including common law), statute, code, order, ordinance, rule, regulation, treaty (including any Tax treaty), license, permit, authorization, approval, Consent, decree, injunction, binding judicial or administrative interpretation or other requirement, in each case enacted, promulgated, issued or entered by a Governmental Authority; provided that references to any Law shall, unless otherwise specified or unless the context clearly requires otherwise, refer to such Law as amended, modified, codified or reenacted, in whole or in part, and in effect at the time of determining compliance or applicability.

“Liabilities” means all debts, liabilities, obligations, responsibilities, response actions, losses, damages (whether compensatory, punitive, consequential, incidental, treble or other), fines, penalties and sanctions, absolute or contingent, matured or unmatured, liquidated or unliquidated, foreseen or unforeseen, joint, several or individual, asserted or unasserted, accrued or unaccrued, known or unknown, whenever arising, including those arising under or in connection with any Law or other pronouncements of Governmental Authorities having the effect of Law, Proceeding, threatened Proceeding, order or consent decree of any Governmental Authority or any award of any arbitration tribunal, and those arising under any contract, guarantee, commitment or undertaking, whether sought to be imposed by a Governmental Authority, private party, or Party, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, or otherwise, and including any costs, expenses, interest, attorneys’ fees, disbursements and expenses of counsel, expert and consulting fees and costs related thereto or to the investigation or defense thereof.

“Licensed Patents” means, with respect to the Licensed Patent Schedule, any of the following that Licensor or any of its Affiliates, at any time during the term of this Agreement, owns, whether directly or indirectly, and has the right to grant a license as provided for under Section 5.08 without violating the terms of any agreement or other arrangement with any Third Party, in each case to the extent represented on such Licensed Patent Schedule: (i) all national, regional and international patents and patent applications, including provisional patent applications and patent applications filed from an invention disclosure; (ii) all patent applications filed either from the patents, patent applications or provisional applications in clause (i) or from

an application claiming priority from any of these, including divisionals, continuations, converted provisionals, and continued prosecution applications; (iii) claims of continuation-in-part applications to the extent directed to subject matter disclosed in the applications or patents enumerated in clause (i) or (ii); (iv) all patents that have issued or in the future issue from the foregoing patent applications specified in clauses (i) and (ii), including utility models, petty patents and design patents and certificates of invention; (v) all patent term extensions or restorations by existing or future extension or restoration mechanisms, including any supplementary protection certificates and the like, as well as any revalidations, reissues, re-examinations, oppositions and the like of the foregoing patents or patent applications specified in clauses (i), (ii) and (iii); and (vi) all similar rights, including so-called pipeline protection, or any importation, revalidation, confirmation or introduction patent or registration patent or patents of addition to each of such foregoing patent applications and patents.

“Licensed Patent Schedule” has the meaning set forth in Section 5.08(a).

“Licensee” means, with respect to the Licensed Patent Schedule, the licensee of the licenses described in such Licensed Patent Schedule.

“Licensor” means, with respect to the Licensed Patent Schedule, the licensor of the licenses described in such Licensed Patent Schedule.

“Local Closing Date” means the date of consummation of the local closing of any Deferred Baxalta Local Business.

“Long Term Services Agreement” means the Long Term Services Agreement to be entered into by and between Baxter and Baxalta or their respective Subsidiaries in connection with the Separation, the Distribution or the other transactions contemplated by this Agreement.

“Majority Voting Power” means a majority of the ordinary voting power in the election of directors of all the outstanding voting securities of the resulting Business Entity or of the Party, respectively.

“Manufacturing and Supply Agreement” means the Manufacturing and Supply Agreement to be entered into by and between Baxter and Baxalta or their respective Subsidiaries in connection with the Separation, the Distribution or the other transactions contemplated by this Agreement.

“Mixed Account” means an account receivable or account payable relating to both the Baxter Business and the Baxalta Business.

“Mixed Contract” means any contract or agreement to which either Party or any of its respective Subsidiaries and one or more Third Parties are a party as of immediately prior to the Effective Time that inures to the benefit or burden of both the Baxter Business and the Baxalta Business, including those contracts and agreements indicated as “mixed” in Schedule 1.01(o), but in any case excluding those contracts or agreements that are intended to solely be used for the benefit or burden of the Baxter Business following the Separation (including, for example, employment agreements with continuing employees of the Baxter Business).

“Non-Custodial Party” has the meaning set forth in Section 6.03(a).

“Notice” means any written notice, request demand or other communication specifically referencing this Agreement and given in accordance with Section 9.05.

“NYSE” means the New York Stock Exchange.

“Other Intellectual Property” means all rights, title or interest in, under or in respect of: (i) published and unpublished works of authorship and copyrights therein, and all applications, registrations, and renewals in connection therewith; (ii) software and compilations of information; (iii) registered or unregistered Trademarks; and (iv) inventions (whether patentable or not), formulas, processes, developments, technology, trade secrets and know-how.

“Party” or “Parties” has the meaning set forth in the Preamble.

“Patents” means: (i) all national, regional and international patents and patent applications, including provisional patent applications, whether pending, enforced, abandoned or expired; (ii) all patent applications filed either from the patents, patent applications or provisional applications in clause (i) or from an application claiming priority from any of these, including divisionals, continuations, continuations-in-part, converted provisionals, and continued prosecution applications; (iii) all patents that have issued or in the future issue from the foregoing patent applications specified in clauses (i) and (ii), including utility models, petty patents, design patents and certificates of invention; (iv) all patent term extensions or restorations by existing or future extension or restoration mechanisms, including any supplementary protection certificates and the like, as well as any revalidations, reissues, re-examinations, oppositions and the like of the foregoing patents or patent applications specified in clauses (i), (ii) and (iii); and (v) all similar rights, including so-called pipeline protection, or any importation, revalidation, confirmation or introduction patent or registration patent or patents of addition to each of such foregoing patent applications and patents.

“Person” means any (i) individual, (ii) Business Entity or (iii) Governmental Authority, and including any successor or permitted assignee, by merger or otherwise, of any of the foregoing.

“Prime Rate” means the rate per annum publicly announced by Citibank, N.A. (or any successor thereto or other major money center commercial bank agreed to by the Parties) from time to time as its prime lending rate, as in effect from time to time.

“Privileged Information” means any information, in written, oral, electronic or other tangible or intangible forms, including any communications by or to attorneys (including attorney-client privileged communications), memoranda and other materials prepared by attorneys or under their direction (including attorney work product), as to which a Party or its respective Subsidiaries would be entitled to assert or have asserted a privilege, including the attorney-client and attorney work product privileges.

“Proceeding” means any past, present or future suit, countersuit, action, alternative dispute resolution process, claim, counterclaim, demand, hearing, inquiry, investigation or proceeding before a judicial, quasi-judicial, tribunal, arbitration or mediation body, or by or

before a Governmental Authority, in each case involving Baxter, a Baxter Subsidiary, a Baxter Indemnitee (but only if in a capacity entitling such Person to the rights of a Baxter Indemnitee), Baxalta, a Baxalta Subsidiary, or a Baxalta Indemnitee (but only if in a capacity entitling such Person to the rights of a Baxalta Indemnitee), in each case other than any such matter solely between Baxter or any Baxter Subsidiaries, on the one hand, and Baxalta or any Baxalta Subsidiaries, on the other hand, arising with respect to a controversy, dispute or claim under this Agreement or any Ancillary Agreement.

“Prohibited Person” means each Person described on Schedule 1.01(q) to the extent described therein, together with such Person’s Affiliates.

“Record Date” means the close of business on the date to be determined by the Baxter board of directors as the record date for determining holders of Baxter Common Shares entitled to participate in the Distribution.

“Record Holders” means the holders of record of Baxter Common Shares as of the Record Date.

“Records Facility” has the meaning set forth in Section 6.03(a).

“Registration Statement” means the registration statement on Form 10 filed under the Exchange Act on December 10, 2014, pursuant to which the Baxalta Common Stock to be distributed in the Distribution has been registered, together with all amendments and supplements thereto.

“Remuneration Assessment” has the meaning set forth in Section 5.08(g)(ii).

“Representatives” has the meaning set forth in Section 6.08(a).

“Security Interest” means any mortgage, security interest, pledge, lien, charge, claim, option, right to acquire, voting or other restriction, right-of-way, covenant, condition, easement, encroachment, restriction on transfer, or other encumbrance of any nature whatsoever.

“Separation” has the meaning set forth in the Recitals.

“Sold Business” has the meaning set forth in Section 5.08(c).

“Stored Records” has the meaning set forth in Section 6.03(a).

“Subsidiary” or “subsidiary” shall mean, with respect to any Person, any Business Entity of which such Person: (i) beneficially owns, either directly or indirectly, more than fifty percent (50%) of (A) the total combined voting power of all classes of voting securities of such Business Entity; (B) the total combined equity interests; or (C) the capital or profit interests, in the case of a partnership; or (ii) otherwise has the power to vote, either directly or indirectly, sufficient securities to elect a majority of the board of directors or similar governing body.

“Tangible Information” means Information that is contained in written, electronic or other tangible forms.

“Tax” means: (i) any income, net income, gross income, gross receipts, profits, capital stock, franchise, property, ad valorem, stamp, excise, severance, occupation, service, sales, use, license, lease, transfer, import, export, customs duties, value added, alternative minimum, estimated or other similar tax (including any fee, assessment, or other charge in the nature of or in lieu of any tax) imposed by any Tax Authority, and any interest, penalties, additions to tax or additional amounts with respect to the foregoing imposed on any taxpayer or consolidated, combined or unitary group of taxpayers; and (ii) any Employment Tax.

“Tax Authority” means, with respect to any Tax, the Governmental Authority or political subdivision thereof that imposes such Tax, and the agency (if any) charged with the collection of such Tax for such Governmental Authority or subdivision.

“Tax Matters Agreement” means the Tax Matters Agreement to be entered into by and between Baxter and Baxalta or their respective Subsidiaries in connection with the Separation, the Distribution or the other transactions contemplated by this Agreement.

“Territory” means, with respect to a Licensed Patent, except as otherwise set forth on the Licensed Patent Schedule, the entire world.

“Third Party” means any Person other than the Parties or any of their respective Subsidiaries.

“Third Party Claim” has the meaning set forth in Section 4.05(a).

“Trademarks” means all trademarks, trade names, brand names, domain names, service marks, trade dress, logos and all other source indicators, including all goodwill associated therewith and all applications, registrations and renewals in connection therewith.

“Transferred Entities” means the entities set forth on Schedule 1.01(p).

“Transition Committee” has the meaning set forth in Section 2.14.

“Transition Services Agreement” means the Transition Services Agreement to be entered into by and between Baxter and Baxalta or their respective Subsidiaries in connection with the Separation, the Distribution or the other transactions contemplated by this Agreement.

“U.S.” or “United States” means the United States of America, including all territories and possessions of the United States of America.

## **ARTICLE II THE SEPARATION**

### Section 2.01 Governance and Listing of Baxalta.

(a) Adoption of Baxalta’s Charter and Bylaws. On or prior to the Distribution Date, Baxter and Baxalta shall take all necessary actions so that, as of the Effective Time, the Certificate of Incorporation and the Bylaws shall be the certificate of incorporation and bylaws of Baxalta.

(b) Baxalta's Directors and Officers. On or prior to the Distribution Date, Baxter and Baxalta shall take all necessary actions so that as of the Effective Time: (i) the directors and executive officers of Baxalta shall be those set forth in the Information Statement mailed to the Record Holders prior to the Effective Time, unless otherwise agreed by the Parties; and (ii) Baxalta shall have such other officers as Baxalta shall appoint.

(c) NYSE Listing. Baxalta shall prepare and file, and shall use commercially reasonable efforts to have approved prior to the Effective Time, an application for the listing of the Baxalta Common Stock to be distributed in the Distribution and the shares of Baxalta Common Stock to be reserved for issuance pursuant to any director or employee benefit plan or arrangement on the NYSE (and such other stock exchanges as may be necessary or desirable), subject to official notice of distribution.

Section 2.02 The Separation. The Parties acknowledge that the Separation is intended to result in Baxalta owning the Baxalta Assets and assuming the Baxalta Liabilities as set forth below in this Article II and in the applicable Ancillary Agreements. Subject to Sections 2.03, 2.04 and 2.05, on or prior to the Distribution Date, in accordance with the plan of Separation for Baxalta:

(a) Transfer and Assignment of Baxalta Assets. Baxter shall, and shall cause the applicable Baxter Subsidiaries to, contribute, assign, transfer, convey and deliver to Baxalta or the applicable Baxalta Subsidiaries, and Baxalta or such Baxalta Subsidiaries shall accept from Baxter and the applicable Baxter Subsidiaries, all of Baxter's and such Baxter Subsidiaries' respective direct or indirect rights, title and interest in and to all of the Baxalta Assets, including all of the outstanding shares of capital stock or other ownership interests in the Transferred Entities, which shall result in Baxalta owning directly or indirectly all of the Transferred Entities (it being understood that if a Baxalta Asset shall be held by a Transferred Entity or a Subsidiary of a Transferred Entity, such Baxalta Asset may be assigned, transferred, conveyed and delivered for all purposes hereunder as a result of the transfer of all or substantially all of the equity interests in such Transferred Entity to Baxalta or a Baxalta Subsidiary).

(b) Acceptance and Assumption of Baxalta Liabilities. Baxalta and the applicable Baxalta Subsidiaries shall accept, assume and agree faithfully to perform, discharge and fulfill all of the Baxalta Liabilities in accordance with their respective terms, without regard for the manner in which or circumstances under which such Baxalta Liabilities arose or against whom they are asserted. Baxalta and the applicable Baxalta Subsidiaries shall be responsible for all Baxalta Liabilities, regardless of when or where such Baxalta Liabilities arose or arise, or whether the facts on which they are based occurred prior to, at or after the Effective Time, regardless of where or against whom such Baxalta Liabilities are asserted or determined (including any such Baxalta Liabilities arising out of claims made by Baxter's or Baxalta's respective Subsidiaries or Affiliates or by Representatives of Baxter or Baxalta or their respective Subsidiaries or Affiliates against either Party or any of its Subsidiaries or Affiliates) or whether asserted or determined prior to the Effective Time, and regardless of whether arising from or alleged to arise from negligence, gross negligence, willful misconduct, bad faith,

recklessness, violation of Law, fraud or misrepresentation by either Party or any of its Subsidiaries or Affiliates or any of their respective Representatives. The assumption by Baxalta of the Baxalta Liabilities is in partial consideration for the Baxalta Assets being transferred to it in connection with the Separation.

(c) Transfer and Assignment of Baxter Assets. Baxter and Baxalta shall cause Baxalta and any Business Entity that shall be a Baxalta Subsidiary after the Effective Time to contribute, assign, transfer, convey and deliver to Baxter or a Business Entity designated by Baxter that shall be a Baxter Subsidiary after the Effective Time all of Baxalta's and such Baxalta Subsidiary's respective direct or indirect rights, title and interest in and to all Baxter Assets held by Baxalta or a Baxalta Subsidiary.

(d) Acceptance and Assumption of Baxter Liabilities. Baxter and the applicable Baxter Subsidiaries shall accept, assume and agree faithfully to perform, discharge and fulfill, all of the Baxter Liabilities held by Baxalta or any Business Entity that shall be a Baxalta Subsidiary after the Effective Time, and Baxter and the applicable Baxter Subsidiaries shall be responsible for all of such Baxter Liabilities in accordance with their respective terms, without regard for the manner in which or circumstances under which such Baxter Liabilities arose or against whom they are asserted. Baxter and the applicable Baxter Subsidiaries shall be responsible for all Baxter Liabilities, regardless of when or where such Baxter Liabilities arose or arise, or whether the facts on which they are based occurred prior to, at or after the Effective Time, regardless of where or against whom such Baxter Liabilities are asserted or determined (including any such Baxter Liabilities arising out of claims made by Baxter's or Baxalta's respective Subsidiaries or Affiliates or by Representatives of Baxter or Baxalta or their respective Subsidiaries or Affiliates) or whether asserted or determined prior to the Effective Time, and regardless of whether arising from or alleged to arise from negligence, gross negligence, willful misconduct, bad faith, recklessness, violation of Law, fraud or misrepresentation by either Party or any of its Subsidiaries or Affiliates or any of their respective Representatives.

#### Section 2.03 Deferred Baxalta Local Closings.

(a) Deferral of Certain Transfers of Baxalta Assets and Baxalta Liabilities. The Parties acknowledge that due to the requirements of applicable Laws, the need to obtain certain Consents from Governmental Authorities or for other business reasons, the Parties have agreed to defer until after the Effective Time the transfer of legal title to all or a portion of the Baxalta Assets and the assumption of all or a portion of the Baxalta Liabilities from Baxter or the applicable Baxter Subsidiary to Baxalta or the applicable Baxalta Subsidiary or designee in each of the jurisdictions listed on Schedule 2.03(a) (each, a "Deferred Baxalta Local Business").

(b) Treatment of Deferred Baxalta Local Businesses. In each case as set forth in more detail in the International Transition Period Agreements and subject to the terms thereof, from and after the Effective Time, and until such time as the applicable Deferred Baxalta Local Business has been transferred to Baxalta or the applicable Baxalta Subsidiary or designee for the relevant jurisdiction, (i) the Deferred Baxalta Local

Business shall be held by Baxter or, where applicable, by a Baxter Subsidiary or designee, on behalf of and for the benefit of Baxalta or, where applicable, a Baxalta Subsidiary or designee; (ii) Baxter or, where applicable, a Baxter Subsidiary or designee shall pay, perform and discharge fully when due and payable the Liabilities of the Deferred Baxalta Local Business; and (iii) insofar as reasonably practicable and to the extent permitted by applicable Law, Baxter or, where applicable, a Baxter Subsidiary or designee shall manage and operate the applicable Deferred Baxalta Local Business in accordance with the relevant International Transition Period Agreement and take such other actions as may reasonably be requested by Baxalta so that all the rewards and Liabilities relating to such Deferred Baxalta Local Business, including use, risk of loss, potential for gain and control over such Deferred Baxalta Local Business, shall inure from and after the Effective Time to Baxalta or a Baxalta Subsidiary or designee. As and to the extent described in the International Transition Period Agreements, (i) Baxter or, where applicable, a Baxter Subsidiary or designee shall remit to Baxalta or a Baxalta Subsidiary or designee the amounts due in connection with the performance of each Deferred Baxalta Local Business; and (ii) Baxalta or, where applicable, a Baxalta Subsidiary or designee shall reimburse Baxter or a Baxter Subsidiary or designee for all payments made in connection with the performance of each Deferred Baxalta Local Business and the discharge of any Liabilities in connection therewith.

(c) Transfers of Certain Deferred Baxalta Local Businesses. The International Commercial Operations Agreements provides additional detail on the timing of the transfers of each Deferred Baxalta Local Business to (or on behalf of) Baxalta or any Baxalta Subsidiary, and the terms of this Section 2.03 are subject to the terms and conditions set forth in the International Commercial Operations Agreement (including with respect to Baxter's ability, upon certain conditions, to wind down any such Deferred Baxalta Local Business in accordance with the provisions of the applicable International Transition Period Agreement).

#### Section 2.04 Delayed Transfers of Baxalta Assets and Baxalta Liabilities.

(a) Delayed Baxalta Transfers. Subject to Section 2.03 and the terms of the International Transition Period Agreements, if and to the extent that the valid, complete and perfected transfer or assignment to Baxalta or a Baxalta Subsidiary or designee of any Baxalta Assets or the assumption by Baxalta or a Baxalta Subsidiary or designee of any Baxalta Liabilities would be a violation of applicable Law or requires a Consent that has not been obtained as of or prior to the Effective Time or the local closing of a Deferred Baxalta Local Business under the terms of the applicable International Transition Period Agreement, as applicable, then, unless the Parties shall otherwise mutually agree, the transfer or assignment to Baxalta or the applicable Baxalta Subsidiary or designee of such Baxalta Assets or the assumption by Baxalta or the applicable Baxalta Subsidiary or designee of such Baxalta Liabilities shall be automatically deemed deferred and any such purported transfer, assignment or assumption shall be null and void until such time as all legal impediments are removed or such Consent is obtained (any such Baxalta Asset, a "Delayed Baxalta Asset" and any such Baxalta Liability, a "Delayed Baxalta Liability"). Notwithstanding the foregoing, any Delayed Baxalta Assets or Delayed Baxalta Liabilities shall continue to constitute Baxalta Assets or Baxalta Liabilities, respectively, for all other purposes of this Agreement.

(b) Treatment of Delayed Baxalta Assets and Delayed Baxalta Liabilities. Subject to Section 2.03 and the terms of the International Transition Period Agreements, from and after the Effective Time, Baxter shall, and shall cause the Baxter Subsidiaries to, hold on behalf of and for the benefit of Baxalta or, where applicable, a Baxalta Subsidiary or designee, all Delayed Baxalta Assets, and to pay, perform and discharge fully all Delayed Baxalta Liabilities. Baxalta or the applicable Baxalta Subsidiary or designee shall promptly reimburse Baxter or the applicable Baxter Subsidiaries for all payments made in connection with the performance and discharge of such Delayed Baxalta Liabilities. Baxter shall use commercially reasonable efforts to cause each such Delayed Baxalta Asset or Delayed Baxalta Liability to be held by Baxter or, where applicable, a Baxter Subsidiary or designee for, the reward and burden of Baxalta or the applicable Baxalta Subsidiary or designee. Baxter and Baxalta shall, and shall cause their respective Subsidiaries to, take such other actions as may be reasonably requested by the other Party or any of its Subsidiaries (in each case, at Baxalta's cost and expense) in accordance with the provisions of this Agreement so that all the rewards and burdens relating to such Delayed Baxalta Asset and Delayed Baxalta Liability, including expenses, risk of loss, potential for gain and control of such Delayed Baxalta Asset and Delayed Baxalta Liability, shall inure from and after the Effective Time to Baxalta or the applicable Baxalta Subsidiaries or designees, without recourse of any kind to Baxter or any Baxter Subsidiary or designee. Baxalta shall pay or cause to be paid by a Baxalta Subsidiary any registration fees or recordation fees required to be paid to a Governmental Authority in connection with the transfer of a Delayed Baxalta Asset or a Delayed Baxalta Liability.

(c) Transfer of Delayed Baxalta Assets and Delayed Baxalta Liabilities. When and as the Parties agree, subject to Section 2.03 and the terms of the International Transition Period Agreements and provided that, as of such agreed-upon time (i) the necessary Consents for each Delayed Baxalta Asset or Delayed Baxalta Liability shall have been obtained; and (ii) the assumption by Baxalta or a Baxalta Subsidiary or designee of each Delayed Baxalta Asset or Delayed Baxalta Liability is not at such time a violation of applicable Law (or, in the case of a Deferred Baxalta Local Business, if later, upon the consummation of the local closing of such Deferred Baxalta Local Business):

(A) Baxter shall, and shall cause each Baxter Subsidiary to, contribute, assign, transfer, convey and deliver to Baxalta or such Baxalta Subsidiaries or designees as Baxalta may determine, and Baxalta shall, and shall cause such Baxalta Subsidiaries or designees to, accept from Baxter and the Baxter Subsidiaries all of Baxter's and the Baxter Subsidiaries' respective rights, title and interest in and to such Delayed Baxalta Assets; and

(B) Baxalta shall, and shall cause such Baxalta Subsidiaries or designees as Baxalta may determine to, accept, assume and agree faithfully to perform, discharge and fulfill such Delayed Baxalta Liabilities, in accordance with their terms.

## Section 2.05 Delayed Transfers of Baxter Assets and Baxter Liabilities.

(a) Delayed Baxter Transfers. If and to the extent that the valid, complete and perfected transfer or assignment to Baxter or a Baxter Subsidiary or designee of any Baxter Assets or the assumption by Baxter or a Baxter Subsidiary or designee of any Baxter Liabilities would be a violation of applicable Law or require a Consent that has not been obtained as of or prior to the Effective Time or the local closing of a Deferred Baxalta Local Business under the terms of the applicable International Transition Period Agreement, as applicable, then, unless the Parties shall otherwise mutually agree, the transfer or assignment to Baxter or the applicable Baxter Subsidiary or designee of such Baxter Assets or the assumption by Baxter or the applicable Baxter Subsidiary or designee of such Baxter Liabilities shall be automatically deemed deferred and any such purported transfer, assignment or assumption shall be null and void until such time as all legal impediments are removed or such Consent is obtained (any such Baxter Asset, a "Delayed Baxter Asset" and any such Baxter Liability, a "Delayed Baxter Liability"). Notwithstanding the foregoing, any Delayed Baxter Assets or Delayed Baxter Liabilities shall continue to constitute Baxter Assets or Baxter Liabilities, respectively, for all other purposes of this Agreement.

(b) Treatment of Delayed Baxter Assets and Delayed Baxter Liabilities. Except as otherwise provided herein or in any Ancillary Agreement, from and after the Effective Time, Baxalta shall, and shall cause the Baxalta Subsidiaries or designees to, hold on behalf of and for the benefit of Baxter or, where applicable, a Baxter Subsidiary or designee, all Delayed Baxter Assets, and to pay, perform and discharge fully all Delayed Baxter Liabilities. Baxter or the applicable Baxter Subsidiary or designee shall promptly reimburse Baxalta or the applicable Baxalta Subsidiaries or designees for all payments made in connection with the performance and discharge of such Delayed Baxter Liabilities. Baxalta shall use commercially reasonable efforts to cause each such Delayed Baxter Asset or Delayed Baxter Liability to be held by Baxalta or, where applicable, a Baxalta Subsidiary or designee, for the reward and burden of Baxter or the applicable Baxter Subsidiary or designee. Baxter and Baxalta shall, and shall cause their respective Subsidiaries to, take such other actions as may be reasonably requested by the other Party or any of its Subsidiaries in accordance with the provisions of this Agreement so that all the rewards and burdens relating to such Delayed Baxter Asset and Delayed Baxter Liability, including expenses, risk of loss, potential for gain and control of such Delayed Baxter Asset and Delayed Baxter Liability, shall inure from and after the Effective Time to Baxter or the applicable Baxter Subsidiaries or designees, without recourse of any kind to Baxalta or any Baxalta Subsidiary. Baxter shall pay or cause to be paid by a Baxter Subsidiary any registration fees or recordation fees required to be paid to a Governmental Authority in connection with the transfer of a Delayed Baxter Asset or a Delayed Baxter Liability.

(c) Transfer of Delayed Baxter Assets and Delayed Baxter Liabilities. When and as the Parties agree and provided that, as of such agreed-upon time (i) the necessary Consents for each Delayed Baxter Asset or Delayed Baxter Liability shall have been obtained; and (ii) the assumption by Baxter or a Baxter Subsidiary or designee of each

Delayed Baxter Asset or Delayed Baxter Liability is not at such time a violation of applicable Law:

(A) Baxalta shall, and shall cause each Baxalta Subsidiary to, contribute, assign, transfer, convey and deliver to Baxter or such Baxter Subsidiaries or designees as Baxter may determine, and Baxter shall, and shall cause such Baxter Subsidiaries or designees to, accept from Baxalta and the Baxalta Subsidiaries all of Baxalta's and the Baxalta Subsidiaries' respective rights, title and interest in and to such Delayed Baxter Assets; and

(B) Baxter shall, and shall cause such Baxter Subsidiaries or designees as Baxter may determine to, accept, assume and agree faithfully to perform, discharge and fulfill such Delayed Baxter Liabilities, in accordance with their terms.

Section 2.06 Ancillary Agreements. Prior to the Effective Time, the Parties shall execute and deliver, or where applicable shall cause their respective Subsidiaries to execute and deliver, each Ancillary Agreement to which they are intended to be a party; provided, however, that if this Article II calls for an Ancillary Agreement to be executed and delivered on or as of a later time, it shall be executed and delivered on or as of such later time.

Section 2.07 Disclaimer of Representations and Warranties.

(a) EACH OF BAXTER (ON BEHALF OF ITSELF AND EACH OF THE BAXTER SUBSIDIARIES) AND BAXALTA (ON BEHALF OF ITSELF AND EACH OF THE BAXALTA SUBSIDIARIES) UNDERSTANDS AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY ANCILLARY AGREEMENT, NO PARTY TO THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR OTHERWISE, IS: (X) REPRESENTING OR WARRANTING TO ANY OTHER PARTY HERETO OR THERETO IN ANY WAY AS TO (I) THE ASSETS, BUSINESSES OR LIABILITIES TRANSFERRED, LICENSED OR ASSUMED AS CONTEMPLATED HEREBY OR THEREBY; (II) ANY APPROVALS OR NOTIFICATIONS REQUIRED IN CONNECTION HEREWITH OR THEREWITH; (III) THE VALUE OR FREEDOM FROM ANY SECURITY INTERESTS OF, OR ANY OTHER MATTER CONCERNING, ANY ASSETS OF SUCH PARTY; (IV) THE ABSENCE OR PRESENCE OF ANY DEFENSES TO OR RIGHT OF SETOFF AGAINST OR FREEDOM FROM COUNTERCLAIM WITH RESPECT TO ANY PROCEEDING OR OTHER ASSET, INCLUDING ANY ACCOUNTS RECEIVABLE, OF EITHER PARTY; OR (V) THE LEGAL SUFFICIENCY OF ANY CONVEYANCE AND ASSUMPTION INSTRUMENTS OR ANY OTHER ANCILLARY AGREEMENT TO CONVEY TITLE TO ANY ASSET OR THING OF VALUE UPON THE EXECUTION, DELIVERY AND FILING OF SUCH CONVEYANCE AND ASSUMPTION INSTRUMENTS OR SUCH OTHER ANCILLARY AGREEMENTS; OR (Y) MAKING ANY OTHER REPRESENTATIONS OR GRANTING ANY WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE. EACH PARTY SPECIFICALLY DISCLAIMS ANY OTHER

WARRANTIES, WHETHER WRITTEN OR ORAL, OR EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF QUALITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE OR ANY WARRANTY AS TO THE VALIDITY OF ANY PATENTS OR THE NON-INFRINGEMENT OF ANY PATENTS, TRADEMARKS, OR OTHER INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES. EXCEPT AS MAY EXPRESSLY BE SET FORTH IN THIS AGREEMENT OR IN ANY ANCILLARY AGREEMENT, ALL SUCH ASSETS ARE BEING TRANSFERRED OR LICENSED ON AN "AS IS," "WHERE IS" BASIS (AND, IN THE CASE OF ANY REAL PROPERTY, BY MEANS OF A QUITCLAIM OR SIMILAR FORM DEED OR CONVEYANCE) AND THE RESPECTIVE TRANSFEREES OR LICENSEES SHALL BEAR THE ECONOMIC AND LEGAL RISKS THAT (A) ANY CONVEYANCE AND ASSUMPTION INSTRUMENT OR ANY OTHER ANCILLARY AGREEMENT MAY PROVE TO BE INSUFFICIENT TO VEST IN THE TRANSFEREE GOOD AND MARKETABLE TITLE, FREE AND CLEAR OF ALL SECURITY INTERESTS; AND (B) ANY NECESSARY CONSENTS ARE NOT OBTAINED OR THAT ANY REQUIREMENTS OF LAWS, AGREEMENTS, SECURITY INTERESTS OR JUDGMENTS ARE NOT COMPLIED WITH.

(b) Each of Baxter (on behalf of itself and each of the Baxter Subsidiaries) and Baxalta (on behalf of itself and each of the Baxalta Subsidiaries) further understands and agrees that if the disclaimer of express or implied representations and warranties contained in Section 2.07(a) is held unenforceable or is unavailable for any reason under the Laws of any jurisdiction outside the United States or if, under the Laws of a jurisdiction outside the United States, both Baxter or any of the Baxter Subsidiaries, on the one hand, and Baxalta or any of the Baxalta Subsidiaries, on the other hand, are jointly or severally liable for any Baxalta Liability or any Baxter Liability, respectively, then, the Parties intend that, notwithstanding any provision to the contrary under the Laws of such foreign jurisdictions, the provisions of this Agreement and the Ancillary Agreements (including the disclaimer of all representations and warranties, allocation of Liabilities among the Parties and their respective Subsidiaries, releases, indemnification and contribution of Liabilities) shall prevail for any and all purposes among the Parties and their respective Subsidiaries.

(c) Baxalta hereby waives compliance by itself and each and every Baxalta Subsidiary with the requirements and provisions of any "bulk-sale" or "bulk transfer" Laws of any jurisdiction that may otherwise be applicable with respect to the transfer or sale of any or all of the Baxalta Assets to Baxalta or a Baxalta Subsidiary.

(d) Baxter hereby waives compliance by itself and each and every Baxter Subsidiary with the requirements and provisions of any "bulk-sale" or "bulk transfer" Laws of any jurisdiction that may otherwise be applicable with respect to the transfer or sale of any and all of the Baxter Assets to Baxter or a Baxter Subsidiary.

Section 2.08 Credit Facilities; Financing Arrangements; Baxalta Cash Distribution; Use of Proceeds; Use of Retained Baxalta Common Stock.

(a) Credit Facilities. Prior to the Effective Time, Baxter and Baxalta shall enter into the Baxalta Credit Facility. Baxter and Baxalta agree to take all necessary actions to assure the full release and discharge of Baxter and each of the Baxter Subsidiaries from all obligations (including any guarantees) under the Baxalta Credit Facility as of no later than the Effective Time.

(b) Financing Arrangements. Prior to the Effective Time, the Financing Arrangements shall have been consummated. Baxter and Baxalta agree to take all necessary actions to assure the full release and discharge of Baxter and each of the Baxter Subsidiaries from all obligations thereunder as of no later than the Effective Time.

(c) Baxalta Cash Distribution. Prior to the Effective Time, Baxalta shall make a cash distribution to Baxter in an amount equal to approximately \$4 billion in connection with the Separation and the Distribution (the "Baxalta Cash Distribution"). This distribution shall be in partial consideration for the transfer of Baxalta assets to Baxalta in connection with the Separation whenever made.

(d) Use of Proceeds from Baxalta Cash Distribution. As promptly as practicable following the Baxalta Cash Distribution, but in no event later than eighteen (18) months after the Effective Time, Baxter will transfer the Baxalta Cash Amount pursuant to one or more of the following:

(i) to shareholders through the payment of (A) dividends, including regular quarterly dividends or (B) redemptions pursuant to existing, amended, or future stock repurchase programs, including pursuant to open market stock repurchases, accelerated share repurchases, or block purchases;

(ii) to creditors (which may or may not include Affiliates) in full or partial satisfaction of outstanding Baxter debt, including the payment of interest and associated fees, such as consent fees and premiums in excess of the face amount of an instrument, as well as principal and trade payables that have or will have arisen in the ordinary course of business; provided that all or a substantial portion of the Baxter debt to be retired will not have been issued in anticipation of the Separation, but a portion of such debt may be comprised of refinanced debt or other debt issued following Baxter's public announcement of the Separation to the extent that any such debt would have been incurred or refinanced in the same amount if the Separation were not to be consummated, albeit with different terms; or

(iii) to the Baxter International Inc. and Subsidiaries Pension Plan.

(e) Distribution of Retained Baxalta Common Stock. Baxter intends to transfer all of its remaining shares of Baxalta Common Stock not later than eighteen (18) months after the Effective Time pursuant to one or more of the following:

(i) to creditors (which may or may not include Affiliates) to retire outstanding Baxter debt, including the payment of interest and associated fees, such as consent fees and premiums in excess of the face amount of an instrument, as well as principal, and trade payables that have or will have arisen in the ordinary course of business;

(ii) to the Baxter International Inc. and Subsidiaries Pension Plan the Pension Plan, or to satisfy any obligation thereunder; or

(iii) to the extent not transferred pursuant to Sections 2.08(e)(ii) or (iii), to shareholders of Baxter as (A) dividends, including regular quarterly dividends or (B) in redemption of outstanding Baxter Common Shares pursuant to existing, amended, or future stock repurchase programs;

provided that, in the event that Baxter determines that market conditions and sound business judgment do not support the disposition of any portion of the Retained Baxalta Common Stock during the 18-Month Period pursuant to Sections 2.08(e)(i), (ii), or (iii), Baxter will dispose of any remaining shares of Retained Baxalta Common Stock in all events no later than the five-year anniversary of the Distribution.

(f) Preparation of Materials. Prior to the Effective Time, Baxter and Baxalta shall cooperate in the preparation of all materials as may be necessary or advisable to execute the Baxalta Credit Facility and the Financing Arrangements, including rating agency presentations necessary to obtain the requisite ratings needed to secure the financing under any of the Financing Arrangements.

#### Section 2.09 Termination of Agreements.

(a) Termination of Agreements Between Baxter and Baxalta. Except as set forth in Section 2.09(b), the Parties agree that (i) all agreements, arrangements, commitments, courses of dealing or understandings, whether or not in writing, entered into prior to the Effective Time between or among Baxalta or a Baxalta Subsidiary, on the one hand, and Baxter or a Baxter Subsidiary, on the other hand, shall (except as set forth in clause (ii)) be terminated effective as of immediately prior to the Effective Time (including any provision thereof which purports to survive termination); and (ii) all agreements, arrangements, commitments, courses of dealing or understandings, whether or not in writing, entered into prior to a local closing of a Deferred Baxalta Local Business between or among a Transferred Entity that shall be transferred to Baxalta or a Baxalta Subsidiary after the Effective Time as part of a local closing of a Deferred Baxalta Local Business, on the one hand, and Baxter or a Baxter Subsidiary, on the other hand, shall be terminated effective as of immediately prior to such local closing (including any provision thereof which purports to survive termination); provided that the provisions of this Section 2.09(a) shall not terminate any rights or obligations (A) between Baxter and any of the Baxter Subsidiaries; or (B) between Baxalta and any of the Baxalta Subsidiaries. For the avoidance of doubt, no Party or any Subsidiary thereof shall have any Liability to any other Party or any of its Subsidiaries based upon, arising

out of or resulting from any agreement, arrangement, commitment, course of dealing or understanding terminated in accordance with this Section 2.09(a), and any such Liability is hereby irrevocably canceled, released and waived effective as of the time of such termination.

(b) Exceptions. The provisions of Section 2.09(a) shall not apply to any of the following agreements, arrangements, commitments or understandings (or to any of the provisions thereof): (i) this Agreement and the Ancillary Agreements; (ii) any agreements, arrangements, commitments or understandings listed or described on Schedule 2.09(b)(ii); (iii) any agreements, arrangements, commitments or understandings to which any Third Party is a party; and (iv) any agreements, arrangements, commitments or understandings, including any Mixed Contracts, to which any non-wholly owned Subsidiary of Baxter or Baxalta, as the case may be, is a party (it being understood that directors' qualifying shares or similar interests shall be disregarded for purposes of determining whether a Subsidiary is wholly owned). To the extent that the rights and obligations of Baxter or a Baxter Subsidiary under any agreements, arrangements, commitments or understandings not terminated under this Section 2.09 constitute Baxalta Assets or Baxalta Liabilities, they shall be assigned or assumed by Baxalta or the applicable Baxalta Subsidiary or designee pursuant to this Agreement.

#### Section 2.10 Settlement of Accounts between Baxter and Baxalta.

(a) Except as otherwise set forth on Schedule 2.10, Baxter and Baxalta shall cause all intercompany debt and notes (i) as to which there are no Third Parties; and (ii) that are between Baxter or a Baxter Subsidiary, on the one hand, and Baxalta or a Baxalta Subsidiary, on the other hand, that exist as of immediately prior to the Effective Time (or, in the case of any Deferred Baxalta Local Business, as of immediately prior to the Local Closing Date), as of immediately prior to the Effective Time (or, as applicable, such Local Closing Date), to be settled, capitalized or cancelled so that such intercompany debt and notes are no longer between Baxter or a Baxter Subsidiary, on the one hand, and Baxalta or a Baxalta Subsidiary, on the other hand, in each case in the manner determined prior to the Effective Time (or, as applicable, such Local Closing Date) by duly authorized representatives of Baxter and Baxalta. Intercompany trade and other current payables and receivables (excluding the current portion of intercompany debt and notes) that exist as of immediately prior to the Effective Time (or, in the case of any Deferred Baxalta Local Business, as of immediately prior to the Local Closing Date) will be settled in the normal course of business under current customary terms that apply to non-intercompany trade payables and receivables.

(b) Baxter and Baxalta each agrees to take, or cause their respective Subsidiaries to take, prior to the Effective Time (or, in the case of any Deferred Baxalta Local Business, as prior to the Local Closing Date), all actions necessary to amend all Baxalta Contracts governing each bank and brokerage account owned by Baxalta or a Baxalta Subsidiary (collectively, the "Baxalta Accounts"), so that such Baxalta Accounts, if currently linked (whether by automatic withdrawal, automatic deposit or any other authorization to transfer funds from or to, hereinafter "linked") to any bank or brokerage account owned by Baxter or a Baxter Subsidiary (collectively, the "Baxter Accounts") are de-linked from the Baxter Accounts effective at or prior to the Effective Time (or, as applicable, at or prior to the Local Closing Date).

(c) With respect to any outstanding checks issued by Baxter, Baxalta, or any of their respective Subsidiaries prior to the Effective Time (or, in the case of any Transferred Entity transferred as part of a Deferred Baxalta Local Business, prior to the Local Closing Date), such outstanding checks shall be honored following the Effective Time (or, as applicable, following the Local Closing Date) by the Person owning the account on which the check is drawn.

(d) As between Baxter and Baxalta (and their respective Subsidiaries) all payments and reimbursements received after the Effective Time by either Party (or any of its Subsidiaries) in respect or satisfaction of a business, Asset or Liability of the other Party (or any of its Subsidiaries), shall be held by such Party in trust for the use and benefit of the Party entitled thereto and, as promptly as commercially practicable or as otherwise agreed between the Parties (including, in the case of any Deferred Baxalta Local Business, in accordance with the International Commercial Operations Agreement), upon receipt by such Party of any such payment or reimbursement, such Party shall pay over, or shall cause its applicable Subsidiary to pay over, to the other Party the amount of such payment or reimbursement without right of set-off.

(e) The Parties agree that, prior to the Effective Time, Baxter or any Baxter Subsidiary may, unless and except the Parties have agreed otherwise in writing, withdraw any and all cash or cash equivalents from the Baxalta Accounts for the benefit of Baxter or any Baxter Subsidiary and any such cash or cash equivalents so withdrawn shall be a Baxter Asset notwithstanding anything to the contrary contained herein.

#### Section 2.11 Novation of Liabilities; Release of Guarantees.

(a) Novation of Baxalta Liabilities.

(i) Each of Baxter and Baxalta, at the request of the other Party, shall use commercially reasonable efforts to obtain, or cause to be obtained, any Consent, substitution, approval or amendment required to novate or assign all Baxalta Liabilities and obtain in writing the unconditional release of Baxter and each Baxter Subsidiary that is a party to any such arrangements, so that, in any such case, Baxalta and the designated Baxalta Subsidiaries shall be solely responsible for such Baxalta Liabilities; provided, however, that, except as otherwise expressly provided in the Ancillary Agreements, neither Baxter nor Baxalta (nor any of their respective Subsidiaries) shall be obligated to contribute any capital, pay any consideration, grant any concession or incur any additional Liability to any Third Party other than ordinary and customary fees to a Governmental Authority (which shall be payable by Baxalta) from whom such Consents, substitutions, approvals, amendments, terminations or releases are requested.

(ii) If Baxter or Baxalta is unable to obtain, or to cause to be obtained, any such required Consent, substitution, approval, amendment, termination or release, Baxter or the applicable Baxter Subsidiary shall continue to be bound by such arrangement and, unless not permitted by the terms thereof or by Law, Baxalta shall, as agent or subcontractor for Baxter or such Baxter Subsidiary, as the case may be, pay, perform and discharge fully all the obligations or other Liabilities of Baxter or such Baxter Subsidiary, as the case may be, that constitute Baxalta Liabilities thereunder from and after the Effective Time. Baxalta or the applicable Baxalta Subsidiary or designee shall promptly reimburse Baxter or the applicable Baxter Subsidiaries for all payments made in connection with the performance and discharge of any Baxalta Liabilities. Baxter shall cause each Baxter Subsidiary without further consideration, to pay and remit, or cause to be paid or remitted, to Baxalta, promptly all money, rights and other consideration received by it or a Baxter Subsidiary in respect of Baxalta's performance as agent or subcontractor for Baxter or such Baxter Subsidiary, as the case may be, with respect to such Liabilities of Baxter or the applicable Baxter Subsidiary (unless any such consideration is a Baxter Asset). Subject to Section 2.03, with respect to the local closing of a Deferred Baxalta Local Business, if and when any such Consent, substitution, approval, amendment, termination or release shall be obtained or the obligations under such arrangements shall otherwise become assignable or able to be novated, Baxter or the applicable Baxter Subsidiary shall promptly assign or novate, or cause to be assigned or novated, all its obligations and other Liabilities thereunder or any obligations of Baxter or a Baxter Subsidiary to Baxalta or its designated Baxalta Subsidiary without payment of further consideration and Baxalta or such Baxalta Subsidiary shall, without the payment of any further consideration, assume such obligations.

(b) Novation of Baxter Liabilities.

(i) Each of Baxter and Baxalta, at the request of the other Party, shall use commercially reasonable efforts to obtain, or cause to be obtained, any Consent, substitution, approval or amendment required to novate or assign all Baxter Liabilities and obtain in writing the unconditional release of Baxalta and each Baxalta Subsidiary that is a party to any such arrangements, so that, in any such case, Baxter and the designated Baxter Subsidiaries shall be solely responsible for such Baxter Liabilities; provided, however, that, except as otherwise expressly provided in the Ancillary Agreements, neither Baxter nor Baxalta (nor any of their respective Subsidiaries) shall be obligated to contribute any capital, pay any consideration, grant any concession or incur any additional Liability to any Third Party other than ordinary and customary fees to a Governmental Authority (which shall be payable by Baxter) from whom such Consents, substitutions, approvals, amendments, terminations or releases are requested.

(ii) If Baxter or Baxalta is unable to obtain, or to cause to be obtained, any such required Consent, substitution, approval, amendment, termination or release, Baxalta or the applicable Baxalta Subsidiary shall continue to be bound

by such arrangement and, unless not permitted by the terms thereof or by Law, Baxter shall, as agent or subcontractor for Baxalta or such Baxalta Subsidiary, as the case may be, pay, perform and discharge fully all the obligations or other Liabilities of Baxalta or such Baxalta Subsidiary, as the case may be, that constitute Baxter Liabilities, as the case may be, thereunder from and after the Effective Time. Baxter or the applicable Baxter Subsidiary or designee shall promptly reimburse Baxalta or the applicable Baxalta Subsidiaries for all payments made in connection with the performance and discharge of any Baxter Liabilities. Baxalta shall cause each Baxalta Subsidiary without further consideration, to pay and remit, or cause to be paid or remitted, to Baxter, promptly all money, rights and other consideration received by it or a Baxalta Subsidiary in respect of Baxter's performance as agent or subcontractor for Baxalta or such Baxalta Subsidiary, as the case may be, with respect to such Liabilities of Baxalta or the applicable Baxalta Subsidiary (unless any such consideration is a Baxalta Asset). If and when any such Consent, substitution, approval, amendment, termination or release shall be obtained or the obligations under such arrangements shall otherwise become assignable or able to be novated, Baxalta or the applicable Baxalta Subsidiary shall promptly assign or novate, or cause to be assigned or novated, all its obligations and other Liabilities thereunder or any obligations of Baxalta or a Baxalta Subsidiary to Baxter or its designated Baxter Subsidiary without payment of further consideration and Baxter or such Baxter Subsidiary shall, without the payment of any further consideration, assume such obligations.

(c) Release of Guarantees.

(i) Except as otherwise expressly set forth in any International Transition Period Agreement, each of Baxter and Baxalta, at the request of the other Party, shall use commercially reasonable efforts, as soon as is reasonably practicable, to (A) have Baxalta or a Baxalta Subsidiary removed as guarantor of or obligor for any Baxter Liability to the extent that such guarantees or obligations relate to Baxter Liabilities, which shall include the removal of any Security Interest on or in any Baxalta Asset that may serve as collateral or security for any such Baxter Liability; and (B) have Baxter or a Baxter Subsidiary removed as guarantor of or obligor for any Baxalta Liability to the extent that such guarantees or obligations relate to Baxalta Liabilities, which shall include the removal of any Security Interest on or in any Baxter Asset that may serve as collateral or security for any such Baxalta Liability; provided, however, that, except as otherwise expressly provided in the Ancillary Agreements and without limiting the requirements under Section 2.11(c)(ii), the use of commercially reasonable efforts under this Section 2.11(c)(i) shall not obligate either Baxter or Baxalta (nor any of their respective Subsidiaries) to contribute any capital, pay any consideration, grant any concession or incur any additional Liability to any Third Party other than ordinary and customary fees to a Governmental Authority (which shall be payable by the non-guarantor or non-obligor Party) from whom such Consents, substitutions, amendments, terminations or releases are requested.

(ii) To the extent required to obtain a release from a guarantee or other obligation:

(A) of Baxter or a Baxter Subsidiary, Baxalta shall execute a guarantee agreement in the form of the existing guarantee or such other form as is agreed to by the relevant parties to such guarantee agreement, which agreement shall include the removal of any Security Interest on or in any Baxter Asset that may serve as collateral or security for any such Baxalta Liability, except to the extent that such existing guarantee contains representations, covenants or other terms or provisions either with which Baxalta (1) would be reasonably unable to comply or (2) would not reasonably be able to avoid breaching; and

(B) of Baxalta or a Baxalta Subsidiary, Baxter shall execute a guarantee agreement in the form of the existing guarantee or such other form as is agreed to by the relevant parties to such guarantee agreement, which agreement shall include the removal of any Security Interest on or in any Baxalta Asset that may serve as collateral or security for any such Baxter Liability, except to the extent that such existing guarantee contains representations, covenants or other terms or provisions either with which Baxter (1) would be reasonably unable to comply or (2) would not reasonably be able to avoid breaching.

(iii) With respect to the continuing guarantees or obligations which the Parties have agreed, subject to this Section 2.11(c)(iii), will continue following the Effective Time, and with respect to which Baxter or Baxalta is unable to obtain, or to cause to be obtained, any such required removal or release as set forth in clauses (i) and (ii) of this Section 2.11(c), (A) the Party or its relevant Subsidiary that has assumed the Liability underlying such guarantee or obligation shall use commercially reasonable efforts to prevent the guarantor or obligor from incurring any continuing Liability in respect of such guarantee or obligation, and shall indemnify and hold harmless the guarantor or obligor against or from any Liability arising from or relating thereto (in accordance with the provisions of Article IV) and shall or shall cause one of its Subsidiaries, as agent or subcontractor for such guarantor or obligor, to pay, perform and discharge fully all the obligations or other Liabilities of such guarantor or obligor thereunder; and (B) except as otherwise expressly set forth in any International Transition Period Agreement, each of Baxter and Baxalta, on behalf of themselves and their respective Subsidiaries, agree not to renew or extend the term of, increase its obligations under, or transfer to a Third Party, any loan, guarantee, lease, contract or other obligation for which the other Party or such Party's Subsidiaries is or may be liable unless the other Party consents in writing or unless all obligations of such other Party and the Subsidiaries of such other Party with respect thereto are thereupon terminated by documentation reasonably satisfactory in form and substance to such other Party.

Section 2.12 Mixed Contracts; Mixed Accounts.

(a) Mixed Contracts. Except as may otherwise be agreed by the Parties and except as otherwise contemplated by any International Transition Period Agreement, in the case of a Mixed Contract, the Parties shall use commercially reasonable efforts to cause such Mixed Contract to be: (i) assigned in relevant part to Baxalta or a Baxalta Subsidiary (or to Baxter or a Baxter Subsidiary if the contracting party is a Transferred Entity) if so assignable; (ii) appropriately amended, prior to, on or after the Effective Time (or, in the case of a Mixed Contract that inures to the reward or burden of both Baxter or a Baxter Subsidiary, on the one hand, and a Transferred Entity that shall be transferred to Baxalta or a Baxalta Subsidiary after the Effective Time as part of a local closing of a Deferred Baxalta Local Business under the terms of the applicable International Transition Period Agreement, on the other hand, on or after such local closing); or (iii) replaced or otherwise addressed with suitable arrangements, in each case so that each Party or their respective Subsidiaries shall be entitled to the rights and benefits and shall assume the related portion of any obligations and Liabilities inuring to their respective businesses; provided, however, that in no event shall either Party or its respective Subsidiaries be required to assign or amend any Mixed Contract in its entirety or to assign a portion of any Mixed Contract that is not assignable or cannot be amended by its terms (including any terms imposing Consents or conditions on an assignment where such Consents or conditions have not been obtained or fulfilled). If any Mixed Contract cannot be so partially assigned, or cannot be amended, or if such assignment or amendment would impair the benefit the parties thereto derive from such Mixed Contract and such Mixed Contract is not replaced or otherwise addressed with suitable arrangements, Baxter and Baxalta shall, and shall cause each of their respective Subsidiaries to, take such other reasonable and permissible actions to cause (at Baxalta's cost and expense): (A) the Assets associated with that portion of each Mixed Contract that relates to the Baxalta Business to be enjoyed by Baxalta or a Baxalta Subsidiary; (B) the Liabilities associated with that portion of each Mixed Contract that relates to the Baxalta Business to be borne by Baxalta or a Baxalta Subsidiary; (C) the Assets associated with that portion of each Mixed Contract that relates to the Baxter Business to be enjoyed by Baxter or a Baxter Subsidiary; and (D) the Liabilities associated with that portion of each Mixed Contract that relates to the Baxter Business to be borne by Baxter or a Baxter Subsidiary.

(b) Mixed Accounts. Except as may otherwise be agreed by the Parties and except as otherwise contemplated by any International Transition Period Agreement, the Parties shall not seek to assign any Mixed Account. Except as may otherwise be agreed by the Parties and except as otherwise contemplated by any International Transition Period Agreement, Baxter and Baxalta shall, and shall cause each of their respective Subsidiaries to, take such other reasonable and permissible actions to cause (i) the Assets associated with that portion of each Mixed Account that relate to the Baxter Business to be enjoyed by Baxter or a Baxter Subsidiary; (ii) the Liabilities associated with that portion of each Mixed Account that relate to the Baxter Business to be borne by Baxter or a Baxter Subsidiary; (iii) the Assets associated with that portion of each Mixed Account that relate to the Baxalta Business to be enjoyed by Baxalta or a Baxalta Subsidiary; and (iv) the Liabilities associated with that portion of each Mixed Account that relate to the Baxalta Business to be borne by Baxalta or a Baxalta Subsidiary.

(c) No Payments. Except for payments required in accordance with the performance of the applicable Mixed Contract, nothing in this Section 2.12 shall require either Party or any of its Subsidiaries to make any payment (except to the extent advanced, assumed or agreed in advance to be reimbursed by the other Party or any of the other Party's Subsidiaries), incur any obligation or grant any concession for the benefit of the other Party or any of the other Party's Subsidiaries, in each case, in order to effect any transaction (other than the pass-through of rewards and burdens of the applicable portions of the Mixed Contracts or Mixed Accounts in accordance with this Section 2.12).

#### Section 2.13 Further Assurances.

(a) Additional Actions. Except as set forth in Section 3.04 and Article VIII, in addition to the actions specifically provided for elsewhere in this Agreement, each Party shall, and shall cause each of its respective Subsidiaries to, use commercially reasonable efforts, prior to and after the Effective Time to take, or cause to be taken, all actions, and to do, or cause to be done, all things, necessary or advisable under applicable Laws and agreements to consummate the transactions contemplated by this Agreement and the Ancillary Agreements as promptly as reasonably practicable (including, for the avoidance of doubt, the transfer of any Assets or Liabilities that are allocated to a Party hereunder and that have not yet been transferred); provided, however, that neither Baxter nor Baxalta (nor any of their respective Subsidiaries) shall be obligated under this Section 2.13(a) to pay any consideration, grant any concession or incur any additional Liability to any Third Party other than ordinary and customary fees paid to a Governmental Authority.

(b) Cooperation. Without limiting the foregoing and except to the extent otherwise contemplated in connection with a Deferred Baxalta Local Business under Section 2.03, prior to and after the Effective Time, each Party shall, and shall cause each of its Subsidiaries to, cooperate with the other Party without any further consideration to execute and deliver, or use commercially reasonable efforts to cause to be executed and delivered, all Conveyance and Assumption Instruments and to make all filings with, and to obtain all Consents of, any Governmental Authority or any other Person under any permit, license, agreement, indenture or other instrument (including any Consents), and to take all such other actions as such Party may reasonably be requested to take by the other Party from time to time, consistent with the terms of this Agreement and the Ancillary Agreements, in order to effectuate the provisions and purposes of this Agreement and the Ancillary Agreements and the transfers of the Baxalta Assets and the Baxter Assets and the assignment and assumption of the Baxalta Liabilities and the Baxter Liabilities as contemplated by this Agreement and the other transactions contemplated hereby and thereby; provided, however, that neither Baxter nor Baxalta (nor any of their respective Subsidiaries) shall be obligated under this Section 2.13(b) to pay any consideration, grant any concession or incur any additional Liability to any Third Party other than ordinary and customary fees paid to a Governmental Authority.

(c) Misallocations. Except to the extent otherwise contemplated in connection with a Deferred Baxalta Local Business under Section 2.03, a Delayed Baxalta Asset or Delayed Baxalta Liability under Section 2.04 or a Delayed Baxter Asset or Delayed

Baxter Liability under Section 2.05, in the event that, at any time or from time to time (whether prior to, at or after the Effective Time), one Party or any of its Subsidiaries shall receive or otherwise possess any Asset that is allocated to the other Party or any Subsidiary of such other Party pursuant to this Agreement or any Ancillary Agreement, the first Party shall promptly transfer, or cause its Subsidiary to transfer, such Asset to the Party so entitled thereto or such Party's Subsidiary or designee and such Party or such Party's Subsidiary or designee shall accept such Asset; provided that, the terms of this Section 2.13(c) are not intended to limit or otherwise modify in any way the Parties' rights and obligations under this Agreement or the Tax Matters Agreement. Except to the extent otherwise contemplated in connection with a Deferred Baxalta Local Business under Section 2.03, a Delayed Baxalta Asset or Delayed Baxalta Liability under Section 2.04 or a Delayed Baxter Asset or Delayed Baxter Liability under Section 2.05, in the event that, at any time or from time to time (whether prior to, at or after the Effective Time), one Party or any of its Subsidiaries shall receive or otherwise assume any Liability that is allocated to the other Party or any Subsidiary of such other Party pursuant to this Agreement or any Ancillary Agreement, the first Party shall promptly transfer, or cause its Subsidiary to transfer, such Liability to the Party so entitled thereto or such Party's Subsidiary or designee, and such Party or such Party's Subsidiary or designee shall accept, assume and agree faithfully to perform such Liability; provided that, the terms of this Section 2.13(c) are not intended to limit or otherwise modify in any way the Parties' rights and obligations under this Agreement or the Tax Matters Agreement.

Section 2.14 Transition Committee. Prior to the Effective Time, the Parties shall establish a transition committee (the "Transition Committee") that shall consist of an equal number of members designated by Baxter and Baxalta at all times, with each Party having the right to replace the Transition Committee members delegated by it from time to time and taking such efforts as are necessary from time to time to cause the Transition Committee to consist of an equal number of representatives of Baxter and Baxalta (in a total number determined from time to time by the Parties). The Transition Committee shall be responsible for monitoring and managing all matters related to any of the transactions contemplated by this Agreement or any Ancillary Agreements. The Transition Committee shall have the authority to (a) establish one or more subcommittees from time to time as it deems appropriate or as may be described in any Ancillary Agreements, with each such subcommittee comprised of an equal number of members representing each Party, and each such subcommittee having such scope of responsibility as may be determined by the Transition Committee from time to time; (b) delegate to any such committee any of the powers of the Transition Committee; and (c) to combine, modify the scope of responsibility of, and disband any such subcommittees, and to modify or reverse any such delegations. The Transition Committee shall establish general procedures for managing the responsibilities delegated to it under this Section 2.14, and may modify such procedures from time to time. All decisions by the Transition Committee or any subcommittee thereof shall be effective only with majority approval, and any such approval must include the approval of at least one member of the Transition Committee designated by Baxter and at least one member of the Transition Committee designated by Baxalta. The Parties shall utilize the procedures set forth in Article VII to resolve any matters as to which the Transition Committee is not able to reach a decision.

### **ARTICLE III THE DISTRIBUTION**

Section 3.01 Actions Prior to the Distribution. Prior to the Effective Time and subject to the terms and conditions set forth herein, the Parties shall take, or cause to be taken, the following actions in connection with the Distribution:

(a) Notice to NYSE. Baxter shall, to the extent possible, give the NYSE not less than ten (10) days' advance notice of the Record Date in compliance with Rule 10b-17 under the Exchange Act.

(b) Securities Law Matters. Baxalta shall file any amendments or supplements to the Registration Statement as may be necessary or advisable in order to cause the Registration Statement to become and remain effective as required by the Commission or federal, state or other applicable securities Laws. Baxter and Baxalta shall cooperate in preparing, filing with the Commission and causing to become effective registration statements or amendments thereof which are required to reflect the establishment of, or amendments to, any employee benefit and other plans necessary or advisable in connection with the transactions contemplated by this Agreement and the Ancillary Agreements. Baxter and Baxalta shall take all such action as may be necessary or advisable under the securities or blue sky Laws of the United States (and any comparable Laws under any non-U.S. jurisdiction) in connection with the transactions contemplated by this Agreement and the Ancillary Agreements.

(c) Mailing of Information Statement or Notice of Internet Availability of Information Statement. Baxter shall, as soon as is reasonably practicable after the Registration Statement is declared effective under the Exchange Act and the board of directors of Baxter has approved the Distribution, cause the Information Statement or a notice of Internet availability of the Information Statement to be mailed to the Record Holders.

(d) The Distribution Agent. Baxter shall enter into a distribution agent agreement with the Agent or otherwise provide instructions to the Agent regarding the Distribution.

(e) Stock-Based Employee Benefit Plans. At or prior to the Effective Time, Baxter and Baxalta shall take all actions as may be necessary to approve the stock-based employee benefit plans of Baxalta in order to satisfy the requirements of Rule 16b-3 under the Exchange Act and the applicable rules and regulations of the NYSE.

(f) Satisfying Conditions to Distribution. Baxter and Baxalta shall cooperate to cause the conditions to the Distribution set forth in this Article III to be satisfied and to effect the Distribution at the Effective Time.

Section 3.02 The Distribution. Subject to the terms and conditions contained herein:

(a) Delivery of Baxalta Common Stock. On or prior to the Distribution Date, Baxter shall deliver to the Agent, for the benefit of the Record Holders, book-entry transfer authorizations for such number of the outstanding shares of Baxalta Common Stock as is necessary to effect the Distribution.

(b) Effective Time of Distribution. The Distribution shall be effective at the Effective Time.

(c) Distribution of Shares and Cash. Baxter shall instruct the Agent to distribute, as soon as practicable following the Effective Time, to each Record Holder the following:

(i) one share of Baxalta Common Stock for each Baxter Common Share held by such Record Holder as of the Record Date (the number of shares of Baxalta Common Stock received for each Baxter Common Share held by such Record Holder as of the Record Date, the “Distribution Ratio”); and

(ii) cash, if applicable, in lieu of fractional shares obtained in the manner provided in Section 3.03.

(d) Transfer Authorizations. Baxalta agrees to provide all book-entry transfer authorizations for shares of Baxalta Common Stock that Baxter or the Agent shall require (after giving effect to Section 3.03) in order to effect the Distribution.

#### Section 3.03 Fractional Shares; Unclaimed Shares.

(a) No Fractional Shares. Notwithstanding anything herein to the contrary, no fractional shares of Baxalta Common Stock shall be issued in connection with the Distribution, and any such fractional share interests to which a Record Holder would otherwise be entitled shall not entitle such Record Holder to vote or to any other rights as a shareholder of Baxalta. In lieu of any such fractional shares, each Record Holder who, but for the provisions of this Section 3.03, would be entitled to receive a fractional share interest of Baxalta Common Stock pursuant to the Distribution, shall be paid cash, without any interest thereon, as hereinafter provided. Baxter shall instruct the Agent to determine the number of whole shares and fractional shares of Baxalta Common Stock allocable to each Record Holder, to aggregate all such fractional shares into whole shares, to sell the whole shares obtained thereby in the open market at the then-prevailing prices on behalf of each Record Holder who otherwise would be entitled to receive fractional share interests and to distribute to each such Record Holder his, her or its ratable share of the total proceeds of such sale, after making appropriate deductions of the amounts required for U.S. federal income tax withholding purposes and after deducting any applicable transfer Taxes and the costs and expenses of such sale and distribution, including brokers fees and commissions. The sales of fractional shares shall occur as soon after the Effective Time as practicable as determined by the Agent. None of Baxter, Baxalta or the Agent shall guarantee any minimum sale price for such fractional shares. Neither Baxter nor Baxalta shall pay any interest on the proceeds from the sale of fractional shares. The Agent shall have the sole discretion to select the broker-dealers through which to sell the aggregated fractional shares and to determine when, how and at what price to sell such shares. Neither the Agent nor the broker-dealers through which the aggregated fractional shares are sold shall be Affiliates of Baxter or Baxalta.

(b) Beneficial Owners. Solely for purposes of computing fractional share interests pursuant to this Section 3.03, the beneficial owner of Baxter Common Shares held of record in the name of a nominee in any nominee account shall be treated as the holder of record with respect to such shares.

(c) Unclaimed Stock or Cash. Any Baxalta Common Stock or cash in lieu of fractional shares with respect to Baxalta Common Stock that remain unclaimed by any Record Holder one hundred and eighty (180) days after the Distribution Date shall be delivered to Baxalta, Baxalta shall hold such Baxalta Common Stock for the account of such Record Holder and the Parties agree that all obligations to provide such Baxalta Common Stock and cash, if any, in lieu of fractional share interests shall be obligations of Baxalta, subject in each case to applicable escheat or other abandoned property Laws, and Baxter shall have no Liability with respect thereto.

Section 3.04 Sole Discretion of Baxter. Notwithstanding anything to the contrary set forth in this Agreement or in any Ancillary Agreement, until the Effective Time, Baxter shall have the sole discretion to determine whether to proceed with the Distribution and any and all terms of the Distribution, including the form, structure and terms of any transaction(s) or offering(s) to effect the Distribution and the timing of and conditions to the consummation of the Distribution. In addition, Baxter may, in its sole discretion, determine the Distribution Date and may, at any time and from time to time until the Effective Time, modify or change the terms of the Distribution, including by accelerating or delaying the timing of the consummation of the Distribution.

Section 3.05 Conditions to the Distribution.

(a) The Conditions. In addition to Baxter's rights under Section 3.04, the Distribution shall not occur unless each of the following conditions shall have been satisfied (or waived by Baxter, in whole or in part, in its sole discretion):

(i) the transfer of the Baxalta Assets (other than any Delayed Baxalta Asset and any Baxalta Assets deferred as part of a Deferred Baxalta Local Business) and Baxalta Liabilities (other than any Delayed Baxalta Liability and any Baxalta Liabilities deferred as part of a Deferred Baxalta Local Business) contemplated to be transferred from Baxter to Baxalta on or prior to the Distribution Date shall have occurred as contemplated by Section 2.02;

(ii) the Registration Statement shall have been declared effective by the Commission; no stop-order shall be in effect with respect thereto; no Proceeding for that purpose shall have been instituted or threatened by the Commission; and the Information Statement or notice of Internet availability of the Information Statement shall have been mailed to the Record Holders;

(iii) Baxter shall have received the proceeds from the Baxalta Cash Distribution and shall be satisfied in its sole discretion that, as of the Effective

Time, it shall have no further Liability whatsoever under the Baxalta Credit Facility or the Financing Arrangements (including in connection with any guarantees provided by Baxter or a Baxter Subsidiary thereunder);

(iv) the actions and filings with regard to securities and blue sky Laws of the United States (and any comparable Laws under any foreign jurisdictions) described in Section 3.01 shall have been taken and, where applicable, shall have become effective or been accepted;

(v) the Baxalta Common Stock to be distributed in the Distribution shall have been accepted for listing on the NYSE, subject to official notice of issuance;

(vi) no order, injunction or decree issued by any Governmental Authority or other legal restraint or prohibition preventing the consummation of the Distribution or any of the other transactions related thereto, including the Separation, contemplated by this Agreement or any Ancillary Agreement shall be in effect;

(vii) Baxter shall have received an opinion from its outside tax counsel or other Third Party advisor that is in substance and form satisfactory to Baxter in its sole discretion;

(viii) Baxter shall have received a private letter ruling from the U.S. Internal Revenue Service regarding certain U.S. federal income tax consequences of the Separation, the Distribution and certain related transactions with respect to certain significant issues arising under Sections 332, 355, 361 or 368, or related provisions of the Code, and such ruling shall remain valid;

(ix) no events or developments shall have occurred or exist that, in the judgment of the board of directors of Baxter, in its sole discretion, makes it inadvisable to effect the Separation, the Distribution or the other transactions contemplated by this Agreement or any Ancillary Agreement;

(x) the Parties shall have executed and delivered or, where applicable, shall have caused their respective Subsidiaries to execute and deliver, the Ancillary Agreements that are contemplated by this Agreement to be executed and delivered on or prior to the Effective Time; and

(xi) an independent appraisal firm acceptable to Baxter shall have delivered one or more opinions to the board of directors of Baxter confirming the solvency and financial viability of Baxter and Baxalta after consummation of the Distribution, and such opinions shall be acceptable to Baxter in form and substance in Baxter's sole discretion and such opinions shall not have been withdrawn or rescinded.

(b) Conditions for Benefit of Baxter. The foregoing conditions are for the sole benefit of Baxter and not for the benefit of any other Person and shall not give rise to nor create any duty on the part of Baxter or Baxter's board of directors to waive or not waive any such condition or in any way limit Baxter's right to terminate this Agreement as set forth in Article VIII or alter the consequences of any such termination from those specified in such Article VIII. Any determination made by Baxter prior to the Distribution concerning the satisfaction or waiver of any or all of the conditions set forth in this Section 3.05 shall be conclusive and binding on the Parties hereto.

#### **ARTICLE IV MUTUAL RELEASES; INDEMNIFICATION**

##### Section 4.01 Releases.

(a) *Baxalta Release of Baxter*. Except as provided in Section 4.01(c) and in the provisos to this Section 4.01(a), effective as of the Effective Time, Baxalta does hereby, for itself, each of the Baxalta Subsidiaries, and their respective successors and assigns, and, to the extent permitted by Law, all Persons who at any time prior to the Effective Time have been directors, officers, agents or employees of Baxalta or any of the Baxalta Subsidiaries (in each case, in their respective capacities as such), remise, release and forever discharge: (1) Baxter, each Baxter Subsidiary, and their respective successors and assigns; (2) all Persons who at any time are or have been shareholders, directors, officers, agents or employees of Baxter or a Baxter Subsidiary (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns; and (3) all Persons who at any time prior to the Effective Time are or have been shareholders, directors, officers, agents or employees of a Transferred Entity and who are not, as of immediately following the Effective Time, directors, officers or employees of Baxalta or a Baxalta Subsidiary or designated to be employees of Baxalta or a Baxalta Subsidiary upon the transfer to Baxalta of the applicable Deferred Baxalta Local Business, in each such case from:

(i) all Baxalta Liabilities; and

(ii) all Liabilities existing or arising: (A) in connection with the implementation of the Separation and the Distribution; or (B) from actions, inactions, events, omissions, conditions, facts or circumstances occurring or existing prior to the Effective Time (whether or not such Liabilities cease being contingent, mature, become known, are asserted or foreseen, or accrue, in each case before, at or after the Effective Time), in each case to the extent relating to, arising out of or resulting from the Baxalta Business, the Baxalta Assets or the Baxalta Liabilities;

provided, however, that nothing in this Section 4.01(a) shall release the Persons released in this Section 4.01(a) from: (x) any Liability (or right or obligation in respect thereof) expressly allocated to Baxter or a Baxter Subsidiary in this Agreement (including the indemnification obligations in Section 4.03 and the contribution obligations in Section 4.07), any Ancillary Agreement or any other agreement, arrangement, commitment or understanding to the extent

expressly preserved by the express terms of this Agreement; (y) any intercompany receivables or payables that are not settled, capitalized, cancelled, assigned or assumed by Baxalta or one or more Baxalta Subsidiaries prior to the Effective Time; or (z) any Liability the release of which would result in the release of any Person other than the Persons released in this Section 4.01(a), and, provided, further, that nothing in this Section 4.01(a) shall relieve any Person released in this Section 4.01(a) who, after the Effective Time, is a director, officer or employee of Baxalta or a Baxalta Subsidiary and is no longer a director, officer or employee of Baxter or a Baxter Subsidiary from Liabilities arising out of, relating to or resulting from his or her service as a director, officer or employee of Baxalta or any of the Baxalta Subsidiaries after the Effective Time.

(b) *Baxter Release of Baxalta*. Except as provided in Section 4.01(c) and in the proviso to this Section 4.01(b), effective as of the Effective Time, Baxter does hereby, for itself, each of the Baxter Subsidiaries, and their respective successors and assigns, and, to the extent permitted by Law, all Persons who at any time prior to the Effective Time have been directors, officers, agents or employees of Baxter or any of the Baxter Subsidiaries (in each case, in their respective capacities as such), remise, release and forever discharge Baxalta, each Baxalta Subsidiary and their respective successors and assigns from:

(i) all Baxter Liabilities; and

(ii) all Liabilities existing or arising: (A) in connection with the implementation of the Separation and the Distribution; or (B) from actions, inactions, events, omissions, conditions, facts or circumstances occurring or existing prior to the Effective Time (whether or not such Liabilities cease being contingent, mature, become known, are asserted or foreseen, or accrue, in each case before, at or after the Effective Time), in each case to the extent relating to, arising out of or resulting from the Baxter Business, the Baxter Assets or the Baxter Liabilities;

provided, however, that nothing in this Section 4.01(b) shall release the Persons released in this Section 4.01(b) from: (x) any Liability (or right or obligation in respect thereof) expressly allocated to Baxalta or a Baxalta Subsidiary in this Agreement (including the indemnification obligations in Section 4.02 and the contribution obligations in Section 4.07), any Ancillary Agreement or any other agreement, arrangement, commitment or understanding to the extent expressly preserved by the express terms of this Agreement; (y) any intercompany receivables or payables that are not settled, capitalized, cancelled, assigned or assumed by Baxalta or one or more Baxalta Subsidiaries prior to the Effective Time; or (z) any Liability the release of which would result in the release of any Person other than the Persons released in this Section 4.01(b).

(c) *Baxter Obligations Not Affected*. Nothing contained in this Article IV shall release Baxter or a Baxter Subsidiary from honoring its obligations existing immediately prior to the Effective Time to (i) indemnify any director, officer or employee of Baxalta or a Baxalta Subsidiary who was a director, officer or employee of Baxter or a Baxter Subsidiary on or prior to the Effective Time, to the extent such director, officer or employee was entitled in such capacity to such indemnification pursuant to obligations

existing immediately prior to the Effective Time; provided that if a director of Baxalta receives indemnification payments from Baxter or Baxalta, as the case may be, with respect to a particular Liability for which such director is entitled to indemnification, such director shall not be entitled to receive indemnification payments from the other Party with respect to the same Liability to the extent of the indemnification payments previously received by such director from Baxter or Baxalta, as the case may be; provided, further, that (A) to the extent the events underlying an indemnification claim would give rise to a Baxter Liability, then Baxter shall have primary responsibility for the administration of the indemnification claim and (B) to the extent that the events underlying an indemnification claim would give rise to a Baxalta Liability, then Baxalta shall have primary responsibility for the administration of the indemnification claim; or (ii) provide any employment, post-employment or retirement benefits to any director, officer or employee of Baxalta or a Baxalta Subsidiary who was a director, officer or employee of Baxter or a Baxter Subsidiary on or prior to the Effective Time, to the extent such director, officer or employee was entitled to such benefits pursuant to obligations existing immediately prior to the Effective Time, except as otherwise provided in, and subject to the terms and conditions (including with respect to the adjustment, conversion or assignment of any agreements or awards) in, the Employee Matters Agreement.

(d) *No Baxalta Claims.* Without limiting the rights of either Party under Section 4.04, 4.05 or 4.06, Baxalta shall not make, and shall not permit a Baxalta Subsidiary to make, any claim or demand, or commence any Proceeding asserting any claim or demand, including any claim of contribution or indemnification, against Baxter or a Baxter Subsidiary or any other Person released pursuant to Section 4.01(a), with respect to any Liabilities released pursuant to Section 4.01(a).

(e) *No Baxter Claims.* Without limiting the rights of either Party under Section 4.04, 4.05 or 4.06, Baxter shall not make, and shall not permit a Baxter Subsidiary to make, any claim or demand, or commence any Proceeding asserting any claim or demand, including any claim of contribution or indemnification, against Baxalta or a Baxalta Subsidiary or any other Person released pursuant to Section 4.01(b), with respect to any Liabilities released pursuant to Section 4.01(b).

(f) *Subsidiary Releases.* At any time at or after the Effective Time, at the request of either Party, the other Party shall cause its Subsidiaries to execute and deliver releases reflecting the provisions of this Section 4.01.

Section 4.02 Indemnification by Baxalta. Except as otherwise specifically set forth in any provision of this Agreement or of any Ancillary Agreement, Baxalta and each of the Baxalta Subsidiaries (each, a "Baxalta Indemnifying Party") shall, to the fullest extent permitted by Law, indemnify, defend and hold harmless each of the Baxter Indemnitees from and against all Baxalta Indemnity Obligations; provided, however, that the indemnity in this Section 4.02 for Baxalta Liabilities shall not extend to a past, present or future director, officer, employee or agent of Baxalta or a Baxalta Subsidiary to the extent (a) such Person would not be eligible for indemnification under the terms of Baxter's certificate of incorporation or bylaws in connection with the matter for which indemnification is sought due to action or inaction by such Person in connection with such matter or (b) the directors' and officers' insurance policy of Baxter would not cover such Person in connection with the matter for which indemnification is sought due to action or inaction by such Person in connection with such matter.

Section 4.03 Indemnification by Baxter. Except as otherwise specifically set forth in any provision of this Agreement or of any Ancillary Agreement, Baxter and each of the Baxter Subsidiaries (each, a “Baxter Indemnifying Party”) shall, to the fullest extent permitted by Law, indemnify, defend and hold harmless each of the Baxalta Indemnitees from and against all Baxter Indemnity Obligations; provided, however, that the indemnity in this Section 4.03 for Baxter Liabilities shall not extend to a past, present or future director, officer, employee or agent of Baxter or a Baxter Subsidiary to the extent (a) such Person would not be eligible for indemnification under the terms of Baxalta’s certificate of incorporation or bylaws in connection with the matter for which indemnification is sought due to action or inaction by such Person in connection with such matter or (b) the directors’ and officers’ insurance policy of Baxalta would not cover such Person in connection with the matter for which indemnification is sought due to action or inaction by such Person in connection with such matter.

Section 4.04 Indemnification Obligations Net of Insurance Proceeds and Other Amounts.

(a) *Insurance Proceeds and Other Amounts*. The Parties intend that any Liability subject to indemnification or contribution pursuant to this Agreement or any Ancillary Agreement: (i) shall be reduced by any Insurance Proceeds or other amounts actually recovered (net of any out-of-pocket costs or expenses incurred in the collection thereof) from any Person by or on behalf of the Indemnitee in respect of any indemnifiable Liability; (ii) shall not be increased to take into account any Tax costs incurred by the Indemnitee arising from any Indemnity Payments received from the Indemnifying Party (as defined below); and (iii) shall not be reduced to take into account any Tax benefit received by the Indemnitee arising from the incurrence or payment of any Indemnity Payment; provided that, in the event of any conflict between Sections 4.04(a)(ii) and 4.04(a)(iii), on the one hand, and any term or provision of the Tax Matters Agreement, on the other hand, the Tax Matters Agreement shall control. Accordingly, the amount which any Person against whom a claim is made for indemnification in accordance with this Agreement (an “Indemnifying Party”) is required to pay to any Indemnitee shall be reduced by any Insurance Proceeds or any other amounts theretofore actually recovered (net of any out-of-pocket costs or expenses incurred in the collection thereof) by or on behalf of the Indemnitee in respect of the related Liability. If an Indemnitee receives a payment required by this Agreement from an Indemnifying Party in respect of any Liability (an “Indemnity Payment”) and subsequently receives Insurance Proceeds or any other amounts in respect of the related Liability, then the Indemnitee shall pay to the Indemnifying Party an amount equal to the excess of the Indemnity Payment (or such other amounts) received over the amount of the Indemnity Payment that would have been due if the Insurance Proceeds or such other amounts (net of any out-of-pocket costs or expenses incurred in the collection thereof) had been received, realized or recovered before the Indemnity Payment was made.

(b) *Insurers and Other Third Parties Not Relieved*. The Parties hereby agree that an insurer or other Third Party that would otherwise be obligated to pay any amount

shall not be relieved of the responsibility with respect thereto or have any subrogation rights with respect thereto by virtue of any provision contained in this Agreement or any Ancillary Agreement, and that no insurer or any other Third Party shall be entitled to a “windfall” (e.g., a benefit they would not be entitled to receive in the absence of the indemnification or release provisions) by virtue of any provision contained in this Agreement or any Ancillary Agreement. Each Party shall, and shall cause its Subsidiaries to, use commercially reasonable efforts to collect or recover, or allow the Indemnifying Party to collect or recover, any Insurance Proceeds that may be collectible or recoverable respecting the Liabilities for which indemnification may be available under this Article IV. Notwithstanding the foregoing, an Indemnifying Party may not delay making any indemnification payment required under the terms of this Agreement, or otherwise satisfying any indemnification obligation, pending the outcome of any Proceeding to collect or recover Insurance Proceeds, and an Indemnitee need not attempt to collect any Insurance Proceeds prior to making a claim for indemnification or receiving any Indemnity Payment otherwise owed to it under this Agreement or any Ancillary Agreement.

#### Section 4.05 Procedures for Indemnification of Third Party Claims.

(a) *Notice of Claims.* If an Indemnitee receives notice of the assertion or commencement by a Third Party of any Proceeding against the Indemnitee with respect to which the Indemnitee believes that Baxalta (in the case of a Baxter Indemnitee) or Baxter (in the case of a Baxalta Indemnitee) is obligated to provide indemnification to such Indemnitee pursuant to this Agreement or any Ancillary Agreement (collectively, a “Third Party Claim”), such Indemnitee shall (if such notice is received following the date of this Agreement) give such Indemnifying Party Notice thereof within ten (10) days (or sooner if the nature of the Third Party Claim so requires) after becoming aware of such Third Party Claim. The Notice must describe the Third Party Claim in reasonable detail or, in the alternative, include copies of all notices and documents (including court papers) received by the Indemnitee relating to the Third Party Claim. Notwithstanding the foregoing, the failure of any Indemnitee to give the Notice as provided in this Section 4.05(a) shall not relieve the related Indemnifying Party of its obligations under this Article IV, except to the extent that such Indemnifying Party is actually prejudiced by such failure to give the Notice in accordance with this Section 4.05(a).

(b) *Control of Defense.* An Indemnifying Party may elect to defend (and seek to settle or compromise), at its own expense and with its own counsel, any Third Party Claim (or, to the extent possible, only that portion of the Third Party Claim for which indemnification is sought). Within thirty (30) days after the receipt of a Notice from an Indemnitee in accordance with Section 4.05(a) (or sooner, if the nature of the Third Party Claim so requires), the Indemnifying Party shall provide a Notice to the Indemnitee indicating whether the Indemnifying Party shall assume responsibility for defending the Third Party Claim and specifying any reservations or exceptions to its defense. If an Indemnifying Party elects not to assume responsibility for defending any Third Party Claim or fails to notify an Indemnitee of its election within thirty (30) days after receipt of a Notice from an Indemnitee as provided in Section 4.05(a), then the Indemnitee that is the subject of such Third Party Claim shall be entitled to continue to conduct and control the defense of such Third Party Claim.

(c) *Allocation of Defense Costs.* If an Indemnifying Party has elected to assume the defense of a Third Party Claim, whether with or without any reservations or exceptions with respect to such defense, then such Indemnifying Party shall be solely liable for all fees and expenses incurred by it in connection with the defense of such Third Party Claim and shall not be entitled to seek any indemnification or reimbursement from the Indemnitee for any such fees or expenses incurred during the course of its defense of such Third Party Claim, regardless of any subsequent decision by the Indemnifying Party to reject or otherwise abandon its assumption of such defense. If an Indemnifying Party elects not to assume responsibility for defending any Third Party Claim or fails to notify an Indemnitee of its election within thirty (30) days after receipt of a Notice from an Indemnitee as provided in Section 4.05(a), and the Indemnitee conducts and controls the defense of such Third Party Claim, then the Indemnifying Party shall be liable for all fees and expenses incurred by the Indemnitee in good faith in connection with the defense of such Third Party Claim.

(d) *Right to Monitor and Participate.* An Indemnitee that does not conduct and control the defense of any Third Party Claim, or an Indemnifying Party that has failed to elect to defend any Third Party Claim as contemplated hereby, nevertheless shall have the right to employ separate counsel (including local counsel as necessary) of its own choosing to monitor and participate in (but not control) the defense of any Third Party Claim for which it is a potential Indemnitee or Indemnifying Party, but the fees and expenses of such counsel shall be at the expense of such Indemnitee or Indemnifying Party, as the case may be, and the provisions of Section 4.05(c) shall not apply to such fees and expenses. Notwithstanding the foregoing, subject to Sections 6.06 and 6.07, each non-controlling Person shall cooperate with the Person entitled to conduct and control the defense of such Third Party Claim in such defense and make available to the controlling Person, at the non-controlling Person's expense, all witnesses, information and materials in such Person's possession or under such Person's control relating thereto as are reasonably required by the controlling Person. In addition to the foregoing, if any Indemnitee shall in good faith determine that such Indemnitee and the Indemnifying Party have actual or potential differing defenses or conflicts of interest between them that make joint representation inappropriate, then the Indemnitee shall have the right to employ separate counsel (including local counsel as necessary) and to participate in (but not control) the defense, compromise, or settlement thereof, and the Indemnifying Party shall bear the reasonable fees and expenses of such counsel for all Indemnitees.

(e) *No Settlement.* Except with respect to the Indemnitee if the Indemnifying Party has failed to assume the defense of the Third Party Claim in accordance with the terms of this Agreement, no Party (or any Subsidiary thereof) may settle or compromise any Third Party Claim for which any Indemnitee is seeking to be indemnified hereunder without the prior written consent of the other non-Affiliate Party, which consent may not be unreasonably withheld, unless such settlement or compromise is solely for monetary damages, does not involve any finding or determination of wrongdoing or violation of Law by any non-Affiliate Party and provides for a full, unconditional and irrevocable

release of each other non-Affiliate Party from all Liability in connection with the Third Party Claim. The Parties hereby agree that if an Indemnitee presents the other non-Affiliate Party with a Notice containing a proposal to settle or compromise a Third Party Claim for which any Indemnitee is seeking to be indemnified hereunder and the Party receiving such proposal does not respond in any manner to the Party or other Indemnitee presenting such proposal within thirty (30) days (or within any such shorter time period that may be required by applicable Law or court order) of receipt of such proposal, then the Party receiving such proposal shall be deemed to have consented to the terms of such proposal.

(f) *Allocation of Proceeding Liabilities.* The Parties acknowledge that Liabilities for Proceedings (regardless of the parties to the applicable Proceeding) may be partly Baxter Liabilities and partly Baxalta Liabilities. If the Parties cannot agree on an allocation of any such Liabilities for Proceedings (or such matters or types of matters have not been allocated or addressed either in the definition of Baxalta Liabilities, in Schedule 1.01(k), or otherwise as set forth in this Agreement or any Ancillary Agreement), they shall resolve the matter pursuant to the procedures set forth in Article VII. Neither Party shall, nor shall either Party permit its Subsidiaries to, file Third Party claims or cross-claims against the other Party or its Subsidiaries in a Proceeding in which a Third Party Claim is being resolved.

#### Section 4.06 Additional Matters.

(a) *Timing of Payments.* Indemnity Payments or contribution payments in respect of any Liabilities for which an Indemnitee is entitled to indemnification or contribution under this Article IV shall be paid reasonably promptly (but in any event within sixty (60) days of the final determination of the amount that the Indemnitee is entitled to indemnification or contribution under this Article IV) by the Indemnifying Party to the Indemnitee as such Liabilities are incurred upon demand by the Indemnitee, including reasonably satisfactory documentation setting forth the basis for the amount of such Indemnity Payments or contribution payments, including documentation with respect to calculations made and consideration of any Insurance Proceeds that actually reduce the amount of such Liabilities. The indemnity and contribution provisions contained in this Article IV shall remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of any Indemnitee; and (ii) the knowledge by the Indemnitee of Liabilities for which it might be entitled to indemnification or contribution hereunder.

(b) *Notice of Direct Claims.* An Indemnitee shall give the Indemnifying Party notice of any matter that an Indemnitee has determined has given, or will likely give rise to, a right of indemnification under this Agreement or any Ancillary Agreement (other than a Third Party Claim which shall be governed by Section 4.05(a)), within thirty (30) days of such determination, stating the amount being sought, if known, and method of computation thereof, and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed by such Indemnitee or arises; provided, however, that the failure to provide such notice shall not release the Indemnifying Party from any of its obligations except (in the case of a matter that the

Indemnifying Party has determined has given a right of indemnification) to the extent the Indemnifying Party shall have been prejudiced as a result of such failure. The Indemnifying Party will have a period of thirty (30) days after receipt of a notice under this Section 4.05(b) within which to respond thereto. If the Indemnifying Party fails to respond within such period, the Liability specified in such notice from the Indemnitee shall be conclusively determined to be a Liability of the Indemnifying Party hereunder. If such Indemnifying Party responds within such period and rejects such claim in whole or in part, the disputed matter shall be resolved in accordance with Article VII.

(c) *Subrogation*. In the event of payment by or on behalf of any Indemnifying Party to any Indemnitee in connection with any Third Party Claim, such Indemnifying Party shall be subrogated to and shall stand in the place of such Indemnitee as to any events or circumstances in respect of which such Indemnitee may have any right, defense or claim relating to such Third Party Claim against any claimant or plaintiff asserting such Third Party Claim or against any other Person. Such Indemnitee shall cooperate with such Indemnifying Party in a reasonable manner, and at the cost and expense of such Indemnifying Party, in prosecuting any subrogated right, defense or claim.

(d) *Pursuit of Claims Against Third Parties*. If (i) a Party incurs any Liability arising out of this Agreement or any Ancillary Agreement; (ii) an adequate legal or equitable remedy is not available for any reason against the other Party to satisfy the Liability incurred by the incurring Party; and (iii) a legal or equitable remedy may be available to the other Party against a Third Party for such Liability, then the other Party shall use its commercially reasonable efforts to cooperate with the incurring Party, at the incurring Party's expense, to permit the incurring Party to obtain the benefits of such legal or equitable remedy against the Third Party.

(e) *Limitations on Subrogation Rights and Pursuit of Claims*. Notwithstanding Sections 4.06(c) and 4.06(d), without the prior written consent of the Indemnitee (which shall not be unreasonably withheld), no Indemnifying Party shall have the right to pursue claims not directly available to it, or otherwise cause any Indemnitee to pursue any such claims, against Third Parties (other than insurance providers) with whom any Indemnitee (or Affiliate thereof) has a material commercial relationship, if such Indemnitee (or Affiliate thereof) determines in good faith that the pursuit of such claim would reasonably be expected to materially disrupt or diminish the commercial relationship with such Third Party.

#### Section 4.07 Right of Contribution.

(a) *Contribution*. If any right of indemnification contained in Section 4.02 or 4.03 is held unenforceable or is unavailable for any reason, or is insufficient to hold harmless an Indemnitee in respect of any Liability for which such Indemnitee is entitled to indemnification hereunder, then the Indemnifying Party shall contribute to the amounts paid or payable by the Indemnitees as a result of such Liability (or actions in respect thereof) in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and its Subsidiaries, on the one hand, and the Indemnitees entitled to contribution, on the other hand, as well as any other relevant equitable considerations.

(b) *Allocation of Relative Fault.* Solely for purposes of determining relative fault pursuant to this Section 4.07: (i) any fault associated with the business conducted with the Deferred Baxalta Local Businesses, Delayed Baxalta Assets or Delayed Baxalta Liabilities (except for the intentional misconduct of Baxter or a Baxter Subsidiary) or with the ownership, operation or activities of the Baxalta Business prior to the Effective Time shall be deemed to be the fault of Baxalta and the Baxalta Subsidiaries, and no such fault shall be deemed to be the fault of Baxter or a Baxter Subsidiary; (ii) any fault associated with the business conducted with Delayed Baxter Assets or Delayed Baxter Liabilities (except for the intentional misconduct of Baxalta or a Baxalta Subsidiary) or with the ownership, operation or activities of the Baxter Business prior to the Effective Time shall be deemed to be the fault of Baxter and the Baxter Subsidiaries, and no such fault shall be deemed to be the fault of Baxalta or a Baxalta Subsidiary.

(c) *Contribution Procedures.* The provisions of Sections 4.04 through 4.10 and Sections 5.04 through 5.07 shall govern any contribution claims.

Section 4.08 Covenant Not to Sue. Each Party hereby covenants and agrees that none of it, its Subsidiaries or any Person claiming through it shall bring suit or otherwise assert any claim against any Indemnitee, or assert a defense against any claim asserted by any Indemnitee, before any court, arbitrator, neutral mediator or administrative agency anywhere in the world, alleging that: (a) the assumption of any Baxalta Liabilities by Baxalta and the Baxalta Subsidiaries on the terms and conditions set forth in this Agreement and the Ancillary Agreements is void or unenforceable for any reason; (b) the retention of any Baxter Liabilities by Baxter and the Baxter Subsidiaries on the terms and conditions set forth in this Agreement and the Ancillary Agreements is void or unenforceable for any reason, or (c) the provisions of this Article IV are void or unenforceable for any reason.

Section 4.09 Remedies Cumulative. The remedies provided in this Article IV shall be the sole monetary remedies available in respect of this Agreement.

Section 4.10 Survival of Indemnities. The rights and obligations of each of the Parties and their respective Indemnitees under this Article IV shall survive (a) the sale or other transfer by either Party or any of its respective Subsidiaries of any assets or businesses or the assignment by it of any Liabilities; or (b) any merger, consolidation, business combination, sale of all or substantially all of the assets, restructuring, recapitalization, reorganization or similar transaction involving either Party or any of its respective Subsidiaries.

## **ARTICLE V CERTAIN OTHER MATTERS**

Section 5.01 No Right to Use Regulatory Information. Except as otherwise set forth on Schedule 5.01: (a) none of Baxter or any of the Baxter Subsidiaries shall have a right of reference to or otherwise be entitled to use the regulatory filings or other regulatory information to the extent exclusively related to any Baxalta Products; and (b) none of Baxalta or any of the Baxalta Subsidiaries shall have a right of reference to or otherwise be entitled to use the regulatory filings or other regulatory information owned or controlled by Baxter or any of the Baxter Subsidiaries for any products in the Baxter Business.

Section 5.02 Directors and Officers Insurance; Fiduciary Liability Insurance.

(a) Prior to the Effective Time, Baxter shall obtain and fully pay for a directors and officers liability run-off insurance policy, for claims made after the Effective Time covering wrongful acts that have occurred prior to the Effective Time and arising out of or relating to Baxalta and the Baxalta Subsidiaries and the Baxalta Business (as the Baxalta Business exists as of immediately after the Effective Time), with a policy period of at least six (6) years from and after the Effective Time, covering (i) any Persons who, as of or at any time prior to the Effective Time, are or have been directors or officers of Baxter or the Baxter Subsidiaries; (ii) any Persons who, as of or at any time prior to the Effective Time, are or have been directors or officers of Baxalta or the Baxalta Subsidiaries; and (iii) Baxter and the Baxter Subsidiaries and Baxalta and the Baxalta Subsidiaries and the Baxalta Business (as the Baxalta Business exists as of immediately after the Effective Time). Such directors and officers liability run-off insurance policy shall be consistent in all material respects with the directors and officers liability insurance policy maintained by Baxter as of the Effective Time (except for the policy period and provisions excluding coverage for wrongful acts occurring after the Effective Time).

(b) Prior to the Effective Time, Baxter shall obtain and fully pay for a fiduciary liability run-off insurance policy, for claims made after the Effective Time covering wrongful acts that have occurred prior to the Effective Time and arising out of or relating to Baxalta and the Baxalta Subsidiaries and the Baxalta Business (as the Baxalta Business exists as of immediately after the Effective Time), with a policy period of at least six (6) years from and after the Effective Time, covering (i) any Persons who, as of or at any time prior to the Effective Time, are or have been fiduciaries of Baxter or the Baxter Subsidiaries; (ii) any Persons who, as of or at any time prior to the Effective Time, are or have been fiduciaries of Baxalta or the Baxalta Subsidiaries or the Baxalta Business (as the Baxalta Business exists as of immediately after the Effective Time); and (iii) Baxter and the Baxter Subsidiaries and Baxalta and the Baxalta Subsidiaries and the Baxalta Business (as the Baxalta Business exists as of immediately after the Effective Time). Such fiduciary liability run-off insurance policy shall be consistent in all material respects with the fiduciary liability insurance policy maintained by Baxter as of the Effective Time (except for the policy period and provisions excluding coverage for wrongful acts occurring after the Effective Time).

Section 5.03 Insurance Matters.

(a) Baxalta acknowledges and agrees, on its own behalf and on behalf of each of the Baxalta Subsidiaries, that, from and after the Effective Time, neither Baxalta nor any of the Baxalta Subsidiaries shall have any rights to or under any of Baxter's or the Baxter Subsidiaries' insurance policies, except as expressly provided in this Agreement or any Ancillary Agreement.

(b) Notwithstanding Section 5.03(a), from and after the Effective Time, with respect to any Liability incurred by Baxalta or any of the Baxalta Subsidiaries prior to the Effective Time (or, with respect to any Deferred Baxalta Local Business, prior to the

Local Closing Date), to the extent reasonably possible, Baxter will, or will cause the applicable insurance companies or a Baxter Subsidiary that is insured thereunder to (i) continue to provide Baxalta and the Baxalta Subsidiaries with access to and coverage under the applicable insurance policies, and (ii) reasonably cooperate with Baxalta and take commercially reasonable actions as may be necessary or advisable to assist Baxalta in submitting such claims under the applicable insurance policies; provided, that Baxalta shall be responsible for any and all applicable deductibles, self-insured retentions, retrospective premiums, claims-handling charges, co-payments or any other charge or fee legally due and owing relating to such claims and neither Baxter nor the insurance company or any Baxter Subsidiary shall be required to maintain such insurance policies. For the avoidance of doubt, if an occurrence date is after the Effective Time (or, with respect to any Deferred Baxalta Local Business, after the Local Closing Date), then no payment for any damages, costs of defense, or other sums with respect to such claim shall be available to Baxalta under such insurance policies. Neither Baxalta nor any Baxalta Subsidiary, in connection with making a claim under any insurance policy of Baxter or any Baxter Subsidiary pursuant to this Section 5.03(b), shall take any action that would be reasonably likely to: (A) have an adverse impact on the then-current relationship between Baxter or any Baxter Subsidiary, on the one hand, and the applicable insurance company, on the other hand; (B) result in the applicable insurance company terminating or reducing coverage, or increasing the amount of any premium owed by Baxter or any Baxter Subsidiary under the applicable insurance policy; or (C) otherwise compromise, jeopardize or interfere with the rights of Baxter or any Baxter Subsidiary under the applicable insurance policy.

At all times, the Parties shall, and shall cause their respective Subsidiaries to, cooperate with reasonable requests for information by the other Party or the insurance companies regarding any such insurance policy claim.

(c) At the Effective Time, Baxalta shall have in effect all insurance programs required to comply with Baxalta's statutory and contractual obligations and such other insurance policies as reasonably necessary or customary for companies operating a business similar to the Baxalta Business. Such insurance programs include general liability, commercial auto liability, workers' compensation, employers liability, product liability, professional services liability, property, cargo, employment practices liability, employee dishonesty/crime, aircraft hull and liability, directors' and officers' liability, fiduciary liability and special accident.

(d) Baxalta agrees, on its own behalf and on behalf of the Baxalta Subsidiaries, that, from the Effective Time until the sixth (6th) anniversary of the Effective Time, Baxter and the Baxter Subsidiaries shall be named as additional insureds or loss payee, whichever is appropriate, under Baxalta's or the Baxalta Subsidiaries' insurance policies in respect of any Baxter Liabilities arising out of the Baxalta Business or any wrongful acts or omissions prior to the Effective Time to the extent the applicable insurance carrier permits it. Baxalta shall indemnify, hold harmless and reimburse Baxter and the Baxter Subsidiaries for any and all costs incurred by Baxter or the Baxter Subsidiaries to the extent resulting from any of Baxalta's or the Baxalta Subsidiaries' insurance policies in which Baxter or any of the Baxter Subsidiaries are named as additional insureds, including any deductibles, self-insured retentions or uninsured losses.

(e) Neither Baxter nor any of the Baxter Subsidiaries shall have any obligation to secure extended reporting for any claims under any of Baxter's or the Baxter Subsidiaries' claims-made or occurrence-reported liability policies for any acts or omissions by Baxalta or any Baxalta Subsidiary incurred prior to the Effective Time.

(f) This Agreement shall not be considered as an attempted assignment of any policy of insurance or as a contract of insurance and shall not be construed to waive any right or remedy of either Baxter or any Baxter Subsidiary in respect of any of the Baxter insurance policies and programs or any other contract or policy of insurance.

Section 5.04 Late Payments. Except as provided in any Ancillary Agreement, any amount not paid when due pursuant to this Agreement or any Ancillary Agreement (and any amounts billed or otherwise invoiced or demanded and properly payable that are not paid within sixty (60) days of the date of such bill, invoice or other demand) shall accrue interest at a rate per annum equal to 3% per annum, or the maximum legal rate, whichever is lower.

Section 5.05 Treatment of Payments for Tax Purposes. For all Tax purposes, the Parties agree to treat (a) any payment required by this Agreement (other than payments with respect to interest accruing after the Effective Time) as either a contribution by Baxter to Baxalta or a distribution by Baxalta to Baxter, as the case may be, occurring immediately prior to the Effective Time or as a payment of an assumed or retained Liability and (b) any payment of interest as taxable or deductible, as the case may be, to the Party entitled under this Agreement to retain such payment or required under this Agreement to make such payment, in either case except as otherwise required by applicable Law.

Section 5.06 Inducement. Baxalta acknowledges and agrees that Baxter's willingness to cause, effect and consummate the Separation and the Distribution has been conditioned upon and induced by Baxalta's covenants and agreements in this Agreement and the Ancillary Agreements, including Baxalta's assumption of the Baxalta Liabilities pursuant to the Separation and the provisions of this Agreement and Baxalta's covenants and agreements contained in Article IV.

Section 5.07 Post-Effective Time Conduct. The Parties acknowledge that, after the Effective Time, each Party shall be independent of the other Party, with responsibility for its own actions and inactions and its own Liabilities relating to, arising out of or resulting from the conduct of its business, operations and activities following the Effective Time, except as may otherwise be provided herein or in any Ancillary Agreement, and each Party shall (except as otherwise provided in Article IV, including Sections 4.02 and 4.03) use commercially reasonable efforts to prevent such Liabilities from being inappropriately borne by the other Party.

Section 5.08 Licensed Patents. The Parties have determined that certain Patents will need to be used by both Parties after the Separation and therefore wish to establish license terms with respect to such Patents.

(a) *Grant of Rights to Licensee.* Subject to the terms of the applicable section of Schedule 5.08(a) (the “Licensed Patent Schedule”), Licensor shall, and shall cause its controlled group Affiliates to (in each case to the extent each such Affiliate has granting rights), grant to Licensee and its controlled group Affiliates a non-exclusive, perpetual, irrevocable, fully paid and royalty free right and license to make, have made, use, sell, have sold, offer for sale, or import under the Licensed Patents set forth on the applicable section of Schedule 5.08(a) in the Territory in the Field-of-Use.

(b) *Sublicense Rights.* Subject to the terms of the Licensed Patent Schedule, Licensee or its Affiliates may grant sublicenses under the licenses in Section 5.08(a) solely to (i) Third Parties conducting research and development for Licensee or its Affiliates, or (ii) bona fide Third Party collaborators, co-marketers, distributors, contract manufacturers or other commercial partners of Licensee or its Affiliates, in each case, only to the extent such sublicense is: (x) pursuant to a written agreement with Licensee or its Affiliates; and (y) reasonably necessary for and limited to the purpose of the research, development, collaboration, co-marketing, distribution, manufacturing or other similar arrangement with Licensee or its Affiliates in the applicable Field-of-Use (i.e., excluding Third Parties who have no significant relationship with Licensee or its Affiliates other than the sublicense arrangement). Licensee shall provide Notice to Licensor of each sublicense granted hereunder, and shall provide Licensor with the name and address of each sublicensee and a description of the rights granted and the territory covered by each sublicensee; provided such notice requirement does not apply to research agreements, clinical study agreements, investigator initiated studies, service agreements, manufacturing agreements, distribution agreements, promotion agreements and the like that may contain a limited express or implied sublicense to perform the research, study, services or other activities that are the subject of said agreement.

(c) *Sale of Business.* To the extent Licensee sells, divests or otherwise transfers to a Third Party an entire product line, Affiliate, division or other business unit (“Sold Business”) in a transaction that does not constitute a Change of Control of Licensee, and: (i) the activities of the Sold Business, but for the license granted under this Section 5.08, would infringe a claim of a Licensed Patent at the time of the sale or other transfer; and (ii) Licensee maintains a business that, but for the license granted under this Section 5.08, would infringe such Licensed Patent at the time of such sale, divestiture or other transfer, then Licensor shall grant to Licensee the right to grant to the Third Party acquiring such Sold Business a non-exclusive sublicense to said Licensed Patent, subject to the terms and conditions of this Section 5.08 and the applicable Licensed Patent Schedule, and only to the extent the activities of the Sold Business would be infringing such Licensed Patent, but for the foregoing license, at the time of such sale, divestiture or other transfer. Upon any such sale, divestiture or other transfer involving a sublicense grant as contemplated by this Section 5.08(c), Licensee shall provide a Notice to Licensor setting forth the name and address of each such Third Party. In the event Licensee sells, divests or otherwise transfers substantially all of the business related to such Licensed Patent, or engages in a Change of Control, then the rights of the Third Party acquiring such Sold Business shall be determined in accordance with Section 9.03.

(d) *Obligations with Respect to Affiliates.* To the extent that any Affiliate of Licensee exercises any rights or obligations of Licensee under this Section 5.08, Licensee shall ensure that such Affiliate exercises such rights and obligations in a manner consistent with, and subject to the applicable provisions of, this Section 5.08.

(e) *Rights in Bankruptcy.* All Licensed Patents and licenses granted under or pursuant to this Section 5.08 are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the U.S. Bankruptcy Code or any analogous provisions in any other country or jurisdiction, licenses of rights to “intellectual property” as defined under Section 101 of the U.S. Bankruptcy Code. The Parties agree that each of them as a Licensee of such rights under this Section 5.08, as applicable, shall retain and may fully exercise all of their rights and elections under the U.S. Bankruptcy Code or any analogous provisions in any other country or jurisdiction. The Parties further agree that, in the event of the commencement of a bankruptcy proceeding by or against either Party under the U.S. Bankruptcy Code or any analogous provisions in any other country or jurisdiction, the Party that is not a party to such proceeding shall be entitled to a complete duplicate of (or complete access to, as appropriate) any such intellectual property and all embodiments of such intellectual property, which, if not already in the non-subject Party’s possession, shall be promptly delivered to it: (i) upon the subject Party’s receipt of a Notice from the non-subject Party requesting such information, unless the Party subject to such proceeding elects to continue to perform all of its obligations under this Section 5.08; or (ii) if not delivered under clause (i) above, following the rejection of this Section 5.08 by or on behalf of the subject Party upon receipt of a Notice from the non-subject Party requesting such information.

(f) *Prosecution, Maintenance and Enforcement of Patent Rights.* Unless otherwise set forth in the Licensed Patent Schedule and subject to the remainder of this Section 5.08(f), Licensor shall have the sole right, but not the obligation, to prepare, file, prosecute, maintain, enforce and defend the Licensed Patents at Licensor’s sole cost and expense. Notwithstanding any other provision of this Agreement, neither Licensor nor any of its controlled group Affiliates shall abandon the prosecution of any patent application or the maintenance of any Licensed Patent without providing at least ninety (90) days’ prior notice to Licensee. Upon receiving such notice, Licensee (or its designee(s)) may, at Licensee’s (or its designee’s)) sole option, take over the prosecution of any such patent application or maintenance of any such patent. If Licensee (or its designee(s)) files a patent application or takes over the prosecution of any patent application or maintenance of any patent, pursuant to this Section 5.08(f), then Licensor shall, or shall cause its applicable Affiliate to, promptly assign all right, title and interest in and to such patent or application to Licensee (or its designee(s)), and Licensee (or its designee(s)) shall have the sole authority over the prosecution, maintenance, enforcement and defense of such patent application or patent. Licensor shall, and shall cause its controlled group Affiliates to, provide Licensee (or its designee(s)) with all reasonable cooperation and assistance in obtaining such Licensed Patents, including by providing Licensee (or its designee(s)) with copies of all documents, official papers and correspondence related to the prosecution of such Licensed Patents (regardless of whether privileged, confidential or work-product) and reasonable access to Licensor’s and its Affiliates’ personnel with knowledge of such Licensed Patents. Licensor shall,

and shall cause its controlled group Affiliates to, sign and deliver, cause to be signed and delivered, at Licensee's (or its designee(s)) sole cost and expense, all legal documents necessary in connection with such filing, prosecution and maintenance.

(g) *Inventor Remuneration*. If, in respect of an invention underlying any Patent or Other Intellectual Property, any payment is payable from or after the Effective Time by or to Baxter or any Baxter Subsidiary, on the one hand, or Baxalta or any Baxalta Subsidiary, on the other hand, to any current or former employee who is, under the Law of any jurisdiction, entitled to such payment as a remuneration of such employee's contribution to the invention (an "Employee Inventor Remuneration Entitlement"), the following shall apply:

(i) If and to the extent that the actions or events that give rise to an Employee Inventor Remuneration Entitlement relate to the Baxalta Intellectual Property, Baxalta shall indemnify and hold harmless Baxter and the Baxter Subsidiaries from and against the Employee Inventor Remuneration Entitlements resulting from such actions or events. If and to the extent that the actions or events that give rise to an Employee Inventor Remuneration Entitlement are related to any other intellectual property that is or was the property of Baxter or any of its Subsidiaries (but excluding the Baxalta Intellectual Property), Baxter shall indemnify and hold harmless Baxalta and the Baxalta Subsidiaries from and against the Employee Inventor Remuneration Entitlements resulting from such actions and events. If and to the extent that the actions or events that give rise to an Employee Inventor Remuneration Entitlement are related both to Baxalta Intellectual Property and to any other intellectual property that is or was the property of Baxter or any of its Subsidiaries (but excluding the Baxalta Intellectual Property), then the Party who is not legally obligated to pay the Employee Inventor Remuneration Entitlements shall indemnify and hold harmless the other Party and its Subsidiaries from and against the Employee Inventor Remuneration Entitlements resulting from such actions or events on a pro rata basis, taking into account the relative benefit from such actions and events to the Party (or its Affiliates) not legally obligated to pay the Employee Inventor Remuneration Entitlements. Notwithstanding the foregoing, any allocation of responsibility for Employee Inventor Remuneration Entitlements described on Schedule 5.08(g) shall prevail in the event of any conflict with this Section 5.08 (g)(i).

(ii) If the determination, adjustment, adaption or other assessment of an Employee Inventor Remuneration Entitlement is, or becomes after the Effective Time, the subject matter of: (x) any Proceeding; (y) any consultations, negotiations or agreement with the relevant employee or a body of employees; or (z) a unilateral decision of a Party (each of (x) through (z), including any appeals, a "Remuneration Assessment"), the Parties shall cooperate with respect to such Remuneration Assessment in good faith. The Party against which a Remuneration Assessment is made shall: (A) provide Notice to the other Party about, and offer the other Party reasonable opportunity to participate in, the Remuneration Assessment; (B) take the other Party's reasonable comments and requests into due

consideration; and (C) refrain from acknowledging or settling, agreeing to or unilaterally deciding on the relevant Employee Inventor Remuneration Entitlement without the other Party's prior written consent (which consent shall not be unreasonably delayed, conditioned or withheld). The indemnifiable Employee Inventor Remuneration Entitlements described herein shall include reasonable out-of-pockets fees and expenses (including outside counsel fees) related to such Remuneration Assessment); provided that the Party from whom indemnification is sought shall have the right to consult with the Party against which a Remuneration Assessment is made regarding the selection of such counsel, and the Party against which a Remuneration Assessment is made shall act in the ordinary course in incurring such fees and expenses as though the indemnification provided hereunder were not available.

(iii) Each Party shall provide the other Party with any information about the commercial exploitation of the relevant Patent or Other Intellectual Property, including any payments or other economic benefits received from such exploitation, by the Party and its Subsidiaries reasonably requested by the other Party for any determination under subsections (i) and (ii) above.

(h) *License Term.* Each license granted pursuant to this Section 5.08 shall be effective as of the Effective Time and shall continue in full force and effect until the earlier of: (i) the expiration set forth on the Licensed Patent Schedule; (ii) the execution and delivery by each of the Parties of a written agreement terminating such license; or (iii) with respect to the Licensed Patent Schedule, delivery of a Notice by Licensee to Licensor terminating the licenses provided for in the Licensed Patent Schedule. The provisions of Section 5.08(e) and Section 5.08(g) shall survive the expiration or termination of the applicable licenses granted pursuant to this Section 5.08 and shall remain in full force and effect thereafter.

## **ARTICLE VI EXCHANGE OF INFORMATION; CONFIDENTIALITY**

### Section 6.01 Agreement for Exchange of Information; Archives.

(a) *Exchange of Information.* Except as otherwise provided in any Ancillary Agreement, each of Baxter and Baxalta, on behalf of itself and its respective Subsidiaries and Affiliates, shall use commercially reasonable efforts to provide or make available, or cause to be provided or made available, to the other Party or its applicable Subsidiaries, at any time before or after the Effective Time, as soon as reasonably practicable after written request therefor, any Information (or a copy thereof) in the possession or under the control of either Party or any of its Subsidiaries to the extent that (i) such Information relates to the Baxalta Business, or any Baxalta Asset or Baxalta Liability, if Baxalta is the requesting Party, or to the Baxter Business, or any Baxter Assets or Baxter Liability, if Baxter is the requesting Party; (ii) such Information is required by the requesting Party to comply with its (or its applicable Subsidiaries') obligations under this Agreement or any Ancillary Agreement; or (iii) such Information is required by the requesting Party to comply with any obligation imposed by any Governmental Authority; provided, however,

that, in the event that the Party to whom the request has been made determines that any such provision of Information could be commercially detrimental, violate any Law or agreement, or waive any attorney-client privilege, then the Parties shall use commercially reasonable efforts to permit compliance with such obligations to the extent and in a manner that avoids any such harm or consequence. The Party providing Information pursuant to this Section 6.01(a) shall only be obligated to provide such Information in the form, condition and format in which it then exists and in no event shall such Party be required to perform any improvement, modification, conversion, updating or reformatting of any such Information, and nothing in this Section 6.01(a) shall expand the obligations of the Parties under Section 6.03.

(b) *Access to Specified Information.* Without limiting the generality of the foregoing, until the first Baxalta fiscal year end occurring during the year of the Distribution Date (and for a reasonable period of time afterwards as required for each of Baxter and Baxalta to prepare consolidated financial statements or complete a financial statement audit for the fiscal year during which the Distribution Date occurs), each of Baxter and Baxalta shall use its commercially reasonable efforts to cooperate with the other Party's Information requests to enable (i) the other Party to meet its timetable for dissemination of its earnings releases, financial statements and management's assessment of the effectiveness of its disclosure controls and procedures and its internal control over financial reporting in accordance with Items 307 and 308, respectively, of Regulation S-K promulgated under the Exchange Act; and (ii) the other Party's accountants to timely complete their review of the quarterly financial statements and audit of the annual financial statements, including, to the extent applicable to such Party, its auditor's audit of its internal control over financial reporting and management's assessment thereof in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, the SEC's and Public Company Accounting Oversight Board's rules and auditing standards thereunder and any other applicable Laws.

(c) *Compensation for Providing Information.* The Party requesting Information agrees to reimburse the other Party for the reasonable costs, if any, of creating, gathering, copying, transporting and otherwise complying with the request with respect to such Information (including any reasonable costs and expenses incurred in any review of Information for purposes of protecting the Privileged Information of the providing Party or in connection with the restoration of backup media for purposes of providing the requested Information). Except as may be otherwise specifically provided elsewhere in this Agreement or in any Ancillary Agreement, such costs shall be computed in accordance with the providing Party's standard methodology and procedures.

Section 6.02 Ownership of Information. The provision of any Information pursuant to Section 6.01 shall not affect the ownership of such Information (which shall be determined solely in accordance with the terms of this Agreement and the Ancillary Agreements), or constitute the grant of rights in or to any such Information.

### Section 6.03 Stored Records.

(a) The Parties agree and acknowledge that it is not practicable to separate all Tangible Information belonging to the Parties or their Subsidiaries, and that following the Effective Time, each Party (or its Subsidiaries) will have some of the Tangible Information of the other Party and its Subsidiaries stored at internal or Third Party records storage locations (each, a “Records Facility”). Tangible Information held in a Records Facility maintained or arranged for by the Party other than the Party that owns such Tangible Information is referred to as “Stored Records.” The Party that maintains the Records Facility where Stored Records are held is referred to as the “Custodial Party” and the Party that owns the Stored Records held in the other Party’s Records Facility is referred to as the “Non-Custodial Party.”

(b) Each Party shall use commercially reasonable efforts: (i) to maintain the Stored Records as to which it is the Custodial Party in accordance with its regular records retention policies and procedures and the terms of this Section 6.03; and (ii) to comply with the requirements of any “Litigation Hold” that relates to Stored Records as to which it is the Custodial Party that relate to (x) any Proceeding that is pending as of the Effective Time; or (y) any Proceeding that arises or becomes threatened or reasonably anticipated after the Effective Time as to which the Custodial Party has received a Notice of the applicable “Litigation Hold” from the Non-Custodial Party.

Section 6.04 Limitations of Liability. Neither Party shall have any Liability to the other Party in the event that any Information exchanged or provided pursuant to this Agreement is found to be inaccurate in the absence of willful misconduct by the Party providing such Information. Neither Party nor any of its Subsidiaries shall have any Liability to the other Party or any of its Subsidiaries if any Information is destroyed after commercially reasonable efforts by such Party to comply with the provisions of this Article VI.

### Section 6.05 Other Agreements Providing for Exchange of Information.

(a) The rights and obligations set forth under this Article VI are subject to any specific limitations, qualifications or additional provisions on the sharing, exchange, retention or confidential treatment of Information set forth in any Ancillary Agreement.

(b) Either Party that receives, pursuant to a request for Information in accordance with this Article VI, Tangible Information that is not relevant to its request shall (i) return it to the providing Party or, at the providing Party’s request, destroy such Tangible Information; and (ii) deliver to the providing Party a certificate certifying that such Tangible Information was returned or destroyed, as the case may be, which certificate shall be signed by an authorized Representative of the requesting Party.

(c) When any Tangible Information provided by one Party to the other Party (other than Tangible Information provided pursuant to Section 6.03) is no longer needed for the purposes contemplated by this Agreement or any Ancillary Agreement or is no longer required to be retained by applicable Law, the receiving Party shall promptly, after request of the other Party, either return to the other Party all Tangible Information in the

form in which it was originally provided (including all copies thereof and all notes, extracts or summaries based thereon) or, if the providing Party has requested that the other Party destroy such Tangible Information, certify to the other Party that it has destroyed such Tangible Information (and such copies thereof and such notes, extracts or summaries based thereon); provided that this obligation to return or destroy such Tangible Information shall not apply to any Tangible Information solely related to the receiving Party's business, Assets, Liabilities, operations or activities.

Section 6.06 Production of Witnesses; Records; Cooperation. Notwithstanding any provisions of Article VI to the contrary, after the Distribution, each Party shall use commercially reasonable efforts to assist (or cause its Subsidiaries to assist) the other with respect to any Proceeding or potential Proceeding upon the request of such other Party and at such other Party's sole expense. In addition, each Party shall have the right to request in writing (including on behalf of any of its Subsidiaries) that the other Party make available for consultation or witness purposes, its (or its applicable Subsidiary's) directors, officers, employees, consultants or agents who have expertise or knowledge with respect to the other Party's business or products or matters in litigation or alternative dispute resolution to the extent that the requesting Party believes any such persons may reasonably be useful or required in connection with any legal, administrative or other proceedings in which the requesting Party may from time to time be involved. Upon such request, the affected Party shall select a person or persons to provide the requested assistance after conferring in good faith to determine which person or persons should provide such assistance, and if commercially reasonable shall use its efforts to make such person or persons available at the requesting Party's sole expense (at a rate to be mutually and reasonably agreed at such time).

Section 6.07 Privileged Matters.

(a) The Parties recognize that legal and other professional services that have been and shall be provided prior to the Effective Time have been and shall be rendered for the collective benefit of the Parties and their respective Subsidiaries, and that each Party and its respective Subsidiaries should be deemed to be the client with respect to such services for the purposes of asserting all privileges and immunities that may be asserted under applicable Law in connection therewith.

(b) The Parties agree as follows:

(i) Baxter shall be entitled, in perpetuity, to control the assertion or waiver of all privileges and immunities in connection with any Privileged Information that relates solely to the Baxter Business, whether or not the Privileged Information is in the possession or under the control of Baxter or a Baxter Subsidiary or Baxalta or a Baxalta Subsidiary. Baxter shall also be entitled, in perpetuity, to control the assertion or waiver of all privileges and immunities in connection with any Privileged Information that relates solely to any Baxter Liabilities resulting from any Proceedings that are now pending or may be asserted in the future, whether or not the Privileged Information is in the possession or under the control of Baxter or a Baxter Subsidiary or Baxalta or a Baxalta Subsidiary.

(ii) Baxalta shall be entitled, in perpetuity, to control the assertion or waiver of all privileges and immunities in connection with any Privileged Information that relates solely to the Baxalta Business, whether or not the Privileged Information is in the possession or under the control of Baxalta or a Baxalta Subsidiary or Baxter or a Baxter Subsidiary. Baxalta shall also be entitled, in perpetuity, to control the assertion or waiver of all privileges and immunities in connection with any Privileged Information that relates solely to any Baxalta Liabilities resulting from any Proceedings that are now pending or may be asserted in the future, whether or not the Privileged Information is in the possession or under the control of Baxalta or a Baxalta Subsidiary or Baxter or a Baxter Subsidiary.

(iii) If Baxter and Baxalta do not agree as to whether certain information is Privileged Information, then the information shall be treated as Privileged Information, and the Party who believes such information is Privileged Information shall be entitled to control the assertion or waiver of all privileges and immunities in connection with any such information unless the Parties otherwise agree. The Parties shall utilize the procedures set forth in Article VII to resolve any disputes as to whether any information relates solely to the Baxter Business, solely to the Baxalta Business, or to both the Baxter Business and the Baxalta Business.

(c) Subject to Sections 6.07(d) and 6.07(e), the Parties agree that they shall have a shared privilege or immunity with respect to all privileges not allocated pursuant to Section 6.07(b) and all privileges and immunities relating to any Proceedings or other matters that involve both Parties (or one or more of their respective Subsidiaries) and in respect of which both Parties have Liabilities under this Agreement, and that no such shared privilege or immunity may be waived by either Party or any of its Subsidiaries without the consent of the other Party.

(d) If any dispute arises between Baxter and Baxalta, or any of their respective Subsidiaries, regarding whether a privilege or immunity should be waived to protect or advance the interests of either Party and/or their respective Subsidiaries, each Party agrees that it shall (i) negotiate with the other Party in good faith; (ii) endeavor to minimize any prejudice to the rights of the other Party or any of its Subsidiaries; and (iii) not unreasonably withhold consent to any request for waiver by the other Party. Further, each Party specifically agrees that it shall not (and shall cause its Subsidiaries not to) withhold its consent to the waiver of a privilege or immunity for any purpose except to protect its own legitimate interests.

(e) Upon receipt by Baxalta or by any of the Baxalta Subsidiaries of any subpoena, discovery or other request that may reasonably be expected to result in the production or disclosure of information subject to a shared privilege or immunity or as to which Baxter or any of the Baxter Subsidiaries has the sole right hereunder to assert a privilege or immunity, or if Baxalta obtains knowledge that any of its, or the Baxalta Subsidiary's, current or former directors, officers, agents or employees have received any subpoena, discovery or other requests that may reasonably be expected to result in the

production or disclosure of such Privileged Information, Baxalta shall promptly provide Notice to Baxter of the existence of the request (which Notice shall be delivered to Baxter no later than five (5) business days following the receipt of any such subpoena, discovery or other request) and shall provide Baxter a reasonable opportunity to review the information and to assert any rights it or they may have, including under this Section 6.07 or otherwise, to prevent the production or disclosure of such Privileged Information.

(f) Upon receipt by Baxter or by any of the Baxter Subsidiaries of any subpoena, discovery or other request that may reasonably be expected to result in the production or disclosure of information subject to a shared privilege or immunity or as to which Baxalta or any of the Baxalta Subsidiaries has the sole right hereunder to assert a privilege or immunity, or if Baxter obtains knowledge that any of its, or the Baxter Subsidiary's, current or former directors, officers, agents or employees have received any subpoena, discovery or other requests that may reasonably be expected to result in the production or disclosure of such Privileged Information, Baxter shall promptly provide Notice to Baxalta of the existence of the request (which Notice shall be delivered to Baxalta no later than five (5) business days following the receipt of any such subpoena, discovery or other request) and shall provide Baxalta a reasonable opportunity to review the information and to assert any rights it or they may have, including under this Section 6.07 or otherwise, to prevent the production or disclosure of such Privileged Information.

(g) The Parties agree that they have or may in the future have common legal interests in the Baxter Liabilities and any corresponding legal rights, in the Baxalta Liabilities and any corresponding legal rights, in the Privileged Information and in the preservation of the protected status of the Privileged Information. The Parties have disclosed and exchanged and will disclose and exchange certain Privileged Information between and among themselves in order to further the Parties' common legal interests.

(h) Any furnishing of, or access to, information pursuant to this Agreement is made in reliance on the agreement of Baxter and Baxalta set forth in this Section 6.07 and in Section 6.08 to maintain the confidentiality of Privileged Information and to assert and maintain all applicable privileges and immunities. The Parties further agree that (i) the exchange by one Party (or any of its Subsidiaries) to the other Party (or any of its Subsidiaries) of any Privileged Information that should not have been transferred pursuant to the terms of this Article VI shall not be deemed to constitute a waiver of any privilege or immunity that has been or may be asserted under this Agreement or otherwise with respect to such Privileged Information; and (ii) the Party receiving (or for which a Subsidiary has received) such Privileged Information shall promptly return such Privileged Information to the Party (or its applicable Subsidiary) who has the right to assert the privilege or immunity.

(i) In furtherance of, and without limitation to, the Parties' agreement under this Section 6.07, Baxter and Baxalta shall, and shall cause their applicable Subsidiaries to, use reasonable efforts to maintain their respective separate and joint privileges and immunities, including by executing joint defense and/or common interest agreements where necessary or useful for this purpose.

Section 6.08 Confidentiality.

(a) *Confidentiality*. From and after the Effective Time, subject to Section 6.09 and except as contemplated by or otherwise provided in this Agreement or any Ancillary Agreement, Baxter, on behalf of itself and each of the Baxter Subsidiaries, and Baxalta, on behalf of itself and each of the Baxalta Subsidiaries, agrees to hold, and to cause its respective directors, officers, employees, agents, accountants, counsel and other advisors and representatives (each, a “Representative”) to hold, in strict confidence, with at least the same degree of care that applies to Baxter’s confidential and proprietary information pursuant to policies in effect as of the Effective Time, all confidential and proprietary information concerning the other Party (or its business) and the other Party’s Subsidiaries (or their respective businesses) that is either in its possession (including confidential and proprietary information in its possession prior to the Effective Time) or furnished by the other Party or the other Party’s Subsidiaries or their respective Representatives at any time pursuant to this Agreement or any Ancillary Agreement, and shall not use any such confidential and proprietary information other than for such purposes as may be expressly permitted hereunder or thereunder, except, in each case, to the extent that such confidential and proprietary information has been: (i) in the public domain or generally available to the public, other than as a result of a disclosure by such Party or any of its Subsidiaries or any of their respective Representatives in violation of this Agreement; (ii) later lawfully acquired from other sources by such Party or any of its Subsidiaries, which sources are not themselves bound by a confidentiality obligation or other contractual, legal or fiduciary obligation of confidentiality with respect to such confidential and proprietary information; or (iii) independently developed or generated without reference to or use of the respective proprietary or confidential information of the other Party or any of its Subsidiaries. If any confidential and proprietary information of one Party or any of its Subsidiaries is disclosed to another Party or any of its Subsidiaries in connection with providing services to such first Party or any of its Subsidiaries under this Agreement or any Ancillary Agreement, then such disclosed confidential and proprietary information shall be used only as required to perform such services.

(b) *No Release; Return or Destruction*. Each Party agrees not to release or disclose, or permit to be released or disclosed, any information addressed in Section 6.08(a) to any other Person, except its Representatives who need to know such information in their capacities as such, and except in compliance with Section 6.09. Information furnished by the other Party after the Effective Time pursuant to this Agreement or any Ancillary Agreement shall be subject to the provisions of Section 6.03.

(c) *Third-Party Information; Privacy or Data Protection Laws*. Each Party acknowledges that it and its respective Subsidiaries may presently have and, following the Effective Time, may gain access to or possession of confidential or proprietary information of, or personal information relating to, Third Parties (i) that was received under confidentiality or non-disclosure agreements entered into between such Third Parties, on the one hand, and the other Party or the other Party’s Subsidiaries, on the other hand, prior to the Effective Time; or (ii) that, as between the two Parties, was originally collected by the other Party or the other Party’s Subsidiaries and that may be subject to and protected by privacy, data protection or other applicable Laws. As may be

provided in more detail in an applicable Ancillary Agreement, each Party agrees that it shall hold, protect and use, and shall cause its Subsidiaries and its and their respective Representatives to hold, protect and use, in strict confidence the confidential and proprietary information of, or personal information relating to, Third Parties in accordance with privacy, data protection or other applicable Laws and the terms of any agreements that were either entered into before the Effective Time or affirmative commitments or representations that were made before the Effective Time by, between or among the other Party or the other Party's Subsidiaries, on the one hand, and such Third Parties, on the other hand.

Section 6.09 Protective Arrangements. In the event that either Party or any of its Subsidiaries is requested or required (by oral question, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) by any Governmental Authority or pursuant to applicable Law to disclose or provide any confidential or proprietary information of the other Party (other than with respect to any such information furnished pursuant to the provisions of Sections 6.01 through 6.07), as applicable, that is subject to the confidentiality provisions hereof, such Party shall provide the other Party with Notice of such request or demand as promptly as practicable under the circumstances so that such other Party shall have an opportunity to seek an appropriate protective order, at such other Party's own cost and expense. In the event that such other Party fails to receive such appropriate protective order in a timely manner and the Party receiving the request or demand reasonably determines that its failure to disclose or provide such information shall actually prejudice the Party receiving the request or demand, then the Party that received such request or demand may thereafter disclose or provide information to the extent required by such Law (as so advised by counsel) or by lawful process or such Governmental Authority.

## **ARTICLE VII DISPUTE RESOLUTION**

Section 7.01 Disputes. Any controversy or claim arising out of or relating to this Agreement or any Ancillary Agreements, or the breach thereof (a "Dispute"), shall be resolved: (a) first, by negotiation by the applicable local or functional leads (if applicable to any Dispute), and then (if there remains a Dispute) by discussions between the designated leaders of Baxter's and Baxalta's respective Project Management Offices related to the Separation, followed by (if there remains a Dispute) negotiation by and among the members of the Transition Committee, with the possibility of mediation as provided in Section 7.02; and (b) then, if negotiation and mediation fail, by binding arbitration as provided in Section 7.03. Each Party agrees on behalf of itself and each of its Subsidiaries that the procedures set forth in this Article VII shall be the exclusive means for resolution of any Dispute. The initiation of mediation or arbitration hereunder will toll the applicable statute of limitations for the duration of any such proceedings.

Section 7.02 Negotiation and Mediation. If either party serves written notice of a Dispute upon the other party (a "Dispute Notice"), the parties will first attempt to resolve such Dispute by direct discussions and negotiation (including as set forth in Section 7.01 above or, as applicable, in accordance with the applicable Ancillary Agreement). If the parties to the Dispute agree, the parties may also attempt to resolve the Dispute by a mediation administered by the International Institute for Conflict Prevention & Resolution ("CPR") under its Mediation Procedure.

Section 7.03 Arbitration.

(a) If a Dispute is not resolved within 45 days (or later if mutually agreed by the Parties) after the service of a Dispute Notice, either party shall have the right to commence arbitration. The arbitration shall be administered by the CPR pursuant to its Arbitration Rules and Procedures. References herein to any arbitration rules or procedures mean such rules or procedures as amended from time to time, including any successor rules or procedures, and references herein to the CPR include any successor thereto. The arbitration shall be before three (3) arbitrators. Each party shall designate one arbitrator in accordance with the “screened” appointment procedure provided in Rule 5.4 of the CPR Rules. The two party-appointed arbitrators will select the third, who will serve as the panel’s chair or president. This arbitration provision, and the arbitration itself, shall be governed by the laws of Delaware and the Federal Arbitration Act, 9 U.S.C. §§ 1-16.

(b) Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the other with copies of documents on which the producing party may rely in support of or in opposition to any claim or defense. At the request of a party, the arbitrators shall have the discretion to order examination by deposition of witnesses to the extent the arbitrator deems such additional discovery relevant and appropriate. Depositions shall be limited to a maximum of five per party and shall be held within 45 days of the grant of a request. Additional depositions may be scheduled only with the permission of the arbitrators, and for good cause shown. Each deposition shall be limited to a maximum of one day’s duration. All objections are reserved for the arbitration hearing except for objections based on privilege and proprietary or confidential information. **The parties shall not utilize any other discovery mechanisms, including international processes and U.S. federal statutes, to obtain additional evidence for use in the arbitration.** Any Dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrators, which determination shall be conclusive. All discovery shall be completed within 60 days following the appointment of the arbitrators. All costs and fees relating to the retrieval, review and production of electronic discovery shall be paid by the party requesting such discovery.

(c) The panel of arbitrators shall have no power to award non-monetary or equitable relief of any sort. The arbitrators shall have no power or authority, under the CPR Rules for Non-Administered Arbitration or otherwise, to relieve the parties from their agreement hereunder to arbitrate or otherwise to amend or disregard any provision of this Agreement or any Ancillary Agreement. The award of the arbitrators shall be final, binding and the sole and exclusive remedy to the parties. Either party may seek to confirm and enforce any final award entered in arbitration, in any court of competent jurisdiction.

(d) If an arbitral award does not impose an injunction on the losing party or contain a money damages award in excess of \$25,000,000, then the arbitral award shall not be appealable and shall only be subject to such challenges as would otherwise be permissible under the Federal Arbitration Act, 9 U.S.C. §§ 1-16. In the event that the arbitration does result in an arbitral award, which imposes an injunction or a monetary award in excess of \$25,000,000, such award may be appealed to a tribunal of appellate arbitrators via the CPR Arbitration Appeal Procedure.

(e) Except as may be required by Law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

Section 7.04 Interim Relief. At any time during the resolution of a Dispute between the parties, either party has the right to apply to any court of competent jurisdiction for interim relief, including pre-arbitration attachments or injunctions, necessary to preserve the parties' rights or to maintain the parties' relative positions until such time as the arbitration award is rendered or the Dispute is otherwise resolved.

Section 7.05 Remedies. The arbitrators shall have no authority or power to limit, expand, alter, amend, modify, revoke or suspend any condition or provision of this Agreement or any Ancillary Agreement nor any right or power to award punitive, exemplary or treble damages (or other multiple damages that are not actual damages).

Section 7.06 Expenses. Each party shall bear its own costs, expenses and attorneys' fees in pursuit and resolution of any Dispute; provided, however, that, in the event of any arbitration pursuant to Section 7.03, the non-prevailing party shall bear both parties' costs, expenses and attorneys' fees incurred in connection with such arbitration (including the fees of any arbitrator).

Section 7.07 Continuation of Services and Commitments. Unless otherwise agreed in writing, the Parties shall, and shall cause their respective Subsidiaries to, continue to honor all commitments under this Agreement and each Ancillary Agreement to the extent required by such Agreements during the course of dispute resolution pursuant to the provisions of this Article VII with respect to all matters related to such Dispute.

## **ARTICLE VIII TERMINATION**

Section 8.01 Termination. This Agreement and all Ancillary Agreements may be terminated and the Distribution may be amended, modified or abandoned at any time prior to the Effective Time by and in the sole discretion of Baxter without the approval of any Person, including Baxalta. In the event of such termination, this Agreement shall become null and void and no Party, nor any of its directors, officers or employees, shall have any Liability of any kind to any Person by reason of this Agreement. After the Effective Time, this Agreement may not be terminated except by an agreement in writing signed by a duly authorized officer of each of the Parties.

**ARTICLE IX  
MISCELLANEOUS**

Section 9.01 Counterparts; Entire Agreement; Corporate Power; Facsimile Signatures.

(a) *Counterparts.* This Agreement and each Ancillary Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement.

(b) *Entire Agreement.* This Agreement, the Ancillary Agreements and the exhibits, schedules and annexes hereto and thereto contain the entire agreement between the Parties and their Subsidiaries with respect to the subject matter hereof, supersede all previous agreements, negotiations, discussions, writings, understandings, commitments and conversations with respect to such subject matter and there are no agreements or understandings between the Parties or their Subsidiaries other than those set forth or referred to herein or therein. It is the intention of the Parties that the Conveyance and Assumption Instruments shall be consistent with the terms of this Agreement and the other Ancillary Agreements. In the event of any conflict between the Conveyance and Assumption Instruments and this Agreement, the provisions of this Agreement shall control. The Parties agree (including on behalf of their Subsidiaries) that the Conveyance and Assumption Instruments are not intended and shall not be construed in any way to enhance, modify or decrease any of the rights or obligations of Baxter, any Baxter Subsidiary, Baxalta or any Baxalta Subsidiary from those contained in this Agreement and the other Ancillary Agreements. This Agreement is not intended to address, and should not be interpreted to address, the matters specifically and expressly covered by the Ancillary Agreements (excluding the Conveyance and Assumption Instruments and other Ancillary Agreements effecting the express terms of this Agreement). Except as otherwise expressly provided in this Agreement, in the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of an Ancillary Agreement (other than any Conveyance and Assumption Instruments), the provisions of such Ancillary Agreement shall control over the inconsistent provisions of this Agreement as to matters specifically addressed in such Ancillary Agreement. Notwithstanding the foregoing, to the extent that any Transition Services Agreement, Long Term Services Agreement or Manufacturing and Supply Agreement becomes effective prior to the Effective Time, the producer or provider (or any of its controlled group Affiliates) thereunder or with respect thereto shall have no Liability with respect to performance or non-performance during any period preceding the Effective Time (as though such agreements for that purpose had only become effective as of the Effective Time) in light of the Parties' intent for any and all Liabilities related to the operation of the Baxalta Business (including intercompany services related thereto) prior to the Effective Time to remain with Baxalta and its Subsidiaries and for all Liabilities related to the operation of the Baxter Business (including intercompany services related thereto) prior to the Effective Time to remain with Baxter and its Subsidiaries; provided that, for the avoidance of doubt, the recipient or purchaser under such agreements shall continue to be responsible to the provider or producer for payment and other obligations set forth in such agreements from the effective times of such agreements in accordance with the terms thereof. For the avoidance of doubt, the immediately preceding sentence is

intended to achieve the same result as would have occurred had Baxter and Baxalta entered into the applicable Ancillary Agreement covering only the period prior to the Effective Time (and as though such agreement were not considered an “Ancillary Agreement” hereunder) and a new Ancillary Agreement covering the period after the Effective Time (with the latter being the only such Ancillary Agreement that controls in the event of a conflict between such Ancillary Agreement and this Agreement). For the avoidance of doubt, the Tax Matters Agreement shall govern all matters (including any indemnities and payments among the Parties and each of their Subsidiaries and the allocation of any rights and obligations pursuant to agreements entered into with Third Parties) relating to Taxes to the extent specifically addressed in the Tax Matters Agreement.

(c) *Corporate Power.* Baxter represents on behalf of itself and, to the extent applicable, each Baxter Subsidiary, and Baxalta represents on behalf of itself and, to the extent applicable, each Baxalta Subsidiary as follows:

(i) each such Person has the requisite corporate or other power and authority and has taken all corporate or other action necessary in order to execute, deliver and perform this Agreement and each Ancillary Agreement to which it is a party and to consummate the transactions contemplated hereby and thereby; and

(ii) this Agreement and each Ancillary Agreement to which it is a party has been duly executed and delivered by it and constitutes a valid and binding agreement of it enforceable in accordance with the terms thereof.

(d) *Signatures and Delivery.* Each Party acknowledges that it and its Subsidiaries and the other Party and its Subsidiaries may execute this Agreement and any Ancillary Agreement to which it is a party by manual, stamp or mechanical signature, and that delivery of an executed counterpart of a signature page to this Agreement or any Ancillary Agreement (whether executed by manual, stamp or mechanical signature) by facsimile or by email or other electronic delivery in portable document format (PDF) or other electronic format shall be effective as delivery of such executed counterpart of this Agreement or any Ancillary Agreement. Each Party (including on behalf of its Subsidiaries) expressly adopts and confirms a stamp or mechanical signature (regardless of whether delivered in person, by mail, by courier, by facsimile or by email or other electronic delivery in portable document format (PDF) or other electronic format) made in its name as if it were a manual signature delivered in person, agrees that it shall not assert that any such signature or delivery is not adequate to bind such Party or party to the same extent as if it were signed manually and delivered in person and agrees that, at the reasonable request of the other Party at any time, it shall as promptly as reasonably practicable cause each such Agreement and Ancillary Agreement to be manually executed (any such execution to be as of the date of the initial date thereof) and delivered in person, by mail or by courier.

Section 9.02 Governing Law. This Agreement and, unless expressly provided therein, each Ancillary Agreement, shall be governed by and construed and interpreted in accordance with the Laws of the State of Delaware, irrespective of the choice of Laws and principles of the State of Delaware, as to all matters, including matters of validity, construction, effect, enforceability, performance and remedies.

Section 9.03 Assignability. Except as set forth in any Ancillary Agreement, this Agreement and each Ancillary Agreement shall be binding upon and inure to the benefit of the Parties and the parties thereto, respectively, and their respective successors and permitted assigns; provided, however, that neither Party nor any such party thereto may assign its rights or delegate its obligations under this Agreement or any Ancillary Agreement without the express prior written consent of the other Party hereto or the other parties thereto. Notwithstanding the foregoing (but subject to any exceptions or specific restrictions or exceptions set forth in any Ancillary Agreement), no such consent shall be required for the assignment of any party's rights and obligations under this Agreement or the Ancillary Agreements (except as may be otherwise provided in any such Ancillary Agreement) in whole in connection with a Change of Control of a party in which such party is not the surviving Business Entity, so long as the resulting, surviving or transferee Person assumes all the obligations of the relevant party thereto by operation of Law or pursuant to an agreement in form and substance reasonably satisfactory to the other Party.

Section 9.04 Third Party Beneficiaries. Except for the indemnification rights under this Agreement of an Indemnitee under this Agreement, (a) the provisions of this Agreement and each Ancillary Agreement are solely for the benefit of the Parties and their respective Subsidiaries, after giving effect to the Distribution, and their permitted successors and assigns, and are not intended to confer upon any Person except the Parties and their respective Subsidiaries, after giving effect to the Separation, and their permitted successors and assigns, any rights or remedies hereunder; and (b) there are no other third-party beneficiaries of this Agreement or any Ancillary Agreement and neither this Agreement nor any Ancillary Agreement shall provide any other Third Party with any remedy, claim, Liability, reimbursement, claim of action or other right in excess of those existing without reference to this Agreement or any Ancillary Agreement.

Section 9.05 Notices. All Notices and, to the extent applicable and unless otherwise provided therein, under each of the Ancillary Agreements shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by overnight courier service, by e-mail (followed by delivery of an original via overnight courier service) or by registered or certified mail (postage prepaid, return receipt requested) to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a Notice):

If to Baxter:

Baxter International Inc.  
One Baxter Parkway  
Deerfield, Illinois 60015  
Attn: General Counsel  
E-mail: [general\\_counsel@baxter.com](mailto:general_counsel@baxter.com)

If to Baxalta:

Baxalta Incorporated  
One Baxter Parkway  
Deerfield, Illinois 60015  
Attn: General Counsel  
E-mail: general\_counsel@baxalta.com

Either Party may, by Notice to the other Party, change the address to which such Notices are to be given.

Section 9.06 Severability. In the event that any one or more of the terms or provisions of this Agreement or any Ancillary Agreement or the application thereof to any Person or circumstance is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or any Ancillary Agreement, or the application of such term or provision to Persons or circumstances or in jurisdictions other than those as to which it has been determined to be invalid, illegal or unenforceable, and the Parties shall (and shall cause their applicable Subsidiaries to) use their commercially reasonable efforts to substitute one or more valid, legal and enforceable terms or provisions into this Agreement (or the applicable Ancillary Agreement) which, insofar as practicable, implement the purposes and intent of the Parties. Any term or provision of this Agreement or any Ancillary Agreement held invalid or unenforceable only in part, degree or within certain jurisdictions shall remain in full force and effect to the extent not held invalid or unenforceable to the extent consistent with the intent of the parties as reflected by this Agreement. To the extent permitted by applicable Law, each party waives any term or provision of Law which renders any term or provision of this Agreement to be invalid, illegal or unenforceable in any respect.

Section 9.07 Force Majeure. No Party or other Person shall be deemed in default of this Agreement or, unless otherwise expressly provided therein, any Ancillary Agreement for failure to fulfill any obligation (other than a payment obligation) so long as and to the extent to which any delay or failure in the fulfillment of such obligations is prevented, frustrated, hindered or delayed as a consequence of circumstances of Force Majeure. In the event of any such excused delay, the time for performance shall be extended for a period equal to the time lost by reason of the delay. A Party or other Person claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of any such event, (a) provide Notice to the other Party or Parties of the nature and extent of any such Force Majeure condition; and (b) use commercially reasonable efforts to remove any such causes and resume performance under this Agreement or any Ancillary Agreement as soon as reasonably practicable.

Section 9.08 No Set Off. Except as set forth in any Ancillary Agreement or as otherwise mutually agreed to in writing by the Parties, neither Party nor any of its Subsidiaries shall have any right of set off or other similar rights with respect to (a) any amounts received pursuant to this Agreement or any Ancillary Agreement; or (b) any other amounts claimed to be owed to the other Party or any of its Subsidiaries arising out of this Agreement or any Ancillary Agreement.

Section 9.09 Responsibility for Expenses.

(a) *Expenses Incurred on or Prior to the Effective Time.* Except as otherwise expressly set forth in this Agreement or any Ancillary Agreement, or as otherwise agreed to in writing by the Parties, all costs and expenses incurred on or prior to the Effective Time in connection with the preparation, execution, delivery and implementation of this Agreement and any Ancillary Agreement, the Separation, the Registration Statement, the plan of Separation and the Distribution and the consummation of the transactions contemplated hereby and thereby shall be charged to and paid by Baxter.

(b) *Expenses Incurred or Accrued After the Effective Time.* Except as otherwise expressly set forth in this Agreement, Schedule 9.09(b) to this Agreement, or any Ancillary Agreement, or as otherwise agreed to in writing by the Parties, each Party and its Subsidiaries shall bear its own costs and expenses incurred or accrued after the Effective Time; provided that: (i) any costs and expenses incurred in obtaining any Consent or novation from a Third Party in connection with the assignment to and assumption by a Party or its Subsidiary of any contracts, commitments or understandings in connection with the Separation shall be borne by the Party or its Subsidiary to which such contract, commitment or understanding is being assigned; and (ii) the Parties intend that ongoing cost obligations that each (or any of its Subsidiaries) may have as a provider of services under any International Transition Period Agreement following termination of such services shall be shared for a period of time, on terms to be agreed from time to time between the Parties (or its applicable Subsidiaries).

Section 9.10 Headings. The Article, Section and Paragraph headings contained in this Agreement and in the Ancillary Agreements are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement or any Ancillary Agreement.

Section 9.11 Survival of Covenants. Except as expressly set forth in this Agreement or any Ancillary Agreement, the covenants and other agreements contained in this Agreement and each Ancillary Agreement, and liability for the breach of any obligations contained herein or therein, shall survive the Effective Time and shall remain in full force and effect thereafter.

Section 9.12 Subsidiaries and Employees. Baxter shall cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth herein to be performed by a Baxter Subsidiary (including the employees thereof) and Baxalta shall cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth herein to be performed by a Baxalta Subsidiary (including the employees thereof).

Section 9.13 Waivers. Waiver by either Party or any of its Subsidiaries of any default by the other Party or any of its Subsidiaries of any provision of this Agreement or any Ancillary Agreement shall not be deemed a waiver by the waiving Party or Person of any subsequent or other default, nor shall it prejudice the rights of the waiving Party or Person. No provisions of this Agreement or any Ancillary Agreement shall be deemed waived unless such waiver is in writing and signed by the authorized representative of the Party or relevant Subsidiary against whom it is sought to be enforced. No failure or delay of any Party (or any of its Subsidiaries) in exercising any right or remedy under this Agreement or any Ancillary Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any

abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power.

Section 9.14 Amendments. No provisions of this Agreement or any Ancillary Agreement shall be deemed amended, supplemented or modified unless such amendment, supplement or modification is in writing and signed by an authorized representative of both Parties or their relevant Subsidiaries, as the case may be.

Section 9.15 Interpretation. Words in the singular shall be deemed to include the plural and vice versa and words of one gender shall be deemed to include the other genders as the context requires. The terms “hereof,” “herein,” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including all of the Schedules and Exhibits hereto and thereto) and not to any particular provision of this Agreement. Article, Section, Exhibit and Schedule references are to the Articles, Sections, Exhibits, and Schedules to this Agreement unless otherwise specified. Unless otherwise stated, all references to any agreement shall be deemed to include the exhibits, schedules and annexes to such agreement. The word “including” and words of similar import when used in this Agreement shall mean “including, without limitation,” unless the context otherwise requires or unless otherwise specified. The word “or” shall not be exclusive. Unless otherwise specified in a particular case, the word “days” refers to calendar days. References herein to this Agreement or any Ancillary Agreement shall be deemed to refer to this Agreement or such Ancillary Agreement as of the date on which it is executed and as it may be amended, modified or supplemented thereafter, unless otherwise specified. References to the performance, discharge or fulfillment of any Liability in accordance with its terms shall have meaning only to the extent such Liability has terms. If the Liability does not have terms, the reference shall mean performance, discharge or fulfillment of such Liability.

Section 9.16 Public Announcements. From and after the Effective Time, Baxter and Baxalta shall consult with each other before issuing, and give each other the opportunity to review and comment upon, that portion of any press release or other public statements that relates to the transactions contemplated by this Agreement or the Ancillary Agreements, and shall not issue any such press release or make any such public statement prior to such consultation, except as may be required by applicable Law, court process or by obligations pursuant to any listing agreement with any national securities exchange or national securities quotation system.

Section 9.17 Specific Performance. Subject to the provisions of Article VII, in the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of this Agreement or any Ancillary Agreement, the Party or Parties who are or are to be thereby aggrieved shall have the right to specific performance and injunctive or other equitable relief (on an interim or permanent basis) of its rights under this Agreement or the Ancillary Agreements, in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative. The Parties agree that the remedies at law for any breach or threatened breach, including monetary damages, may be inadequate compensation for any loss and that any defense in any Proceeding for specific performance that a remedy at Law would be adequate is waived.

Section 9.18 Mutual Drafting. This Agreement and the Ancillary Agreements shall be deemed to be the joint work product of the Parties and any rule of construction that a document shall be interpreted or construed against a drafter of such document shall not be applicable.

\* \* \* \* \*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

**BAXTER INTERNATIONAL INC.**

**BAXALTA INCORPORATED**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*[Signature Page to Separation and Distribution Agreement]*

**FORM OF  
AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
BAXALTA INCORPORATED  
Pursuant to Sections 228, 242 and 245 of the  
Delaware General Corporation Law**

Baxalta Incorporated (hereinafter in this Amended and Restated Certificate of Incorporation called the “Corporation”), a corporation organized and existing under the General Corporation Law of the State of Delaware (the “DGCL”), does hereby certify as follows:

(1) The name of the Corporation is Baxalta Incorporated. The original Certificate of Incorporation of the Corporation was filed with the office of the Secretary of State of the State of Delaware on September 8, 2014.

(2) This Amended and Restated Certificate of Incorporation was duly adopted by the Board of Directors of the Corporation (the “Board of Directors”) in accordance with Sections 242 and 245 of the DGCL and by the written consent of the sole stockholder of the Corporation in accordance with Section 228 of the DGCL.

(3) This Amended and Restated Certificate of Incorporation restates and integrates and amends the Certificate of Incorporation of the Corporation.

(4) The text of the Certificate of Incorporation is amended and restated in its entirety as follows:

FIRST The name of the Corporation is Baxalta Incorporated.

SECOND The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of the registered agent of the Corporation is The Corporation Trust Company. The Corporation may have such other offices, either within or without the State of Delaware, as the Board of Directors may designate or as the business of the Corporation may from time to time require.

THIRD The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

FOURTH (a) Authorized Capital Stock. The total number of shares of stock which the Corporation shall have authority to issue is two billion, six hundred million (2,600,000,000) shares of capital stock, consisting of (i) two billion, five hundred million (2,500,000,000) shares of common stock, par value \$0.01 per share (the “Common Stock”), and (ii) one hundred million (100,000,000) shares of preferred stock, par value \$0.01 per share (the “Preferred Stock”).

(b) Common Stock. The Common Stock shall be subject to the express terms of the Preferred Stock and any series thereof. Except as may otherwise be provided in this Amended and Restated Certificate of Incorporation, or as required by law, the holders of outstanding shares of Common Stock shall have the right to vote on all questions brought before the Corporation’s stockholders at a meeting of stockholders to the exclusion of all other stockholders, each holder of record of Common Stock being entitled to one vote in person or by proxy for each share of Common Stock standing in the name of the stockholder on the books of the Corporation.

(c) Preferred Stock. The Board of Directors (or any committee to which it may duly delegate the authority granted in this Article Fourth) is hereby expressly authorized to provide for the issuance of all or any shares of the Preferred Stock in one or more classes or

series, and to fix for each such class or series such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof to the fullest extent now or hereafter permitted by the laws of the State of Delaware, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors (or such committee thereof) providing for the issuance of such class or series. Without limiting the generality of the grant of authority contained in the preceding sentence, the Board of Directors (or any committee to which it may duly delegate the authority granted in this Article Fourth) is authorized to determine any or all of the following, and the shares of each series may vary from the shares of any other series in any or all of the following respects:

(1) The number of shares of such series (which may subsequently be increased, except as otherwise provided by the resolutions of the Board of Directors (or such committee thereof) providing for the issue of such series, or decreased to a number not less than the number of shares then outstanding) and the distinctive designation thereof;

(2) The dividend rights, if any, of such series, the dividend preferences, if any, as between such series and any other class or series of stock, whether and the extent to which shares of such series shall be entitled to participate in dividends with shares of any other series or class of stock, whether and the extent to which dividends on such series shall be cumulative, and any limitations, restrictions or conditions on the payment of such dividends;

(3) The time or times during which, the price or prices at which, and any other terms or conditions on which the shares of such series may be redeemed, if redeemable;

(4) The rights of such series, and the preferences, if any, as between such series and any other class or series of stock, in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation and whether and the extent to which shares of any such series shall be entitled to participate in such event with any other class or series of stock;

(5) The voting powers, if any, in addition to the voting powers prescribed by law of shares of such series, and the terms of exercise of such voting powers;

(6) Whether shares of such series shall be convertible into or exchangeable for shares of any other series or class of stock, or any other securities, and the terms and conditions, if any, applicable to such rights;

(7) The terms and conditions, if any, of any purchase, retirement or sinking fund which may be provided for the shares of such series.

(d) Power to Sell and Purchase Shares. Subject to the requirements of applicable law, the Corporation shall have the power to issue and sell all or any part of any shares of any class of stock herein or hereafter authorized to such persons, and for such

consideration, as the Board of Directors (or any committee to which it may duly delegate the authority granted in this Article Fourth) shall from time to time, in its discretion, determine, whether or not greater consideration could be received upon the issue or sale of the same number of shares of another class, and as otherwise permitted by law. Subject to the requirements of applicable law, the Corporation shall have the power to purchase any shares of any class of stock herein or hereafter authorized from such persons, and for such consideration, as the Board of Directors (or such committee thereof) shall from time to time, in its discretion, determine, whether or not less consideration could be paid upon the purchase of the same number of shares of another class, and as otherwise permitted by law.

FIFTH The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

(a) The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

(b) The Board of Directors shall consist of not less than four (4) nor more than thirteen (13) members, the exact number of which shall be fixed from time to time exclusively pursuant to a resolution adopted by the affirmative vote of a majority of the entire Board of Directors, and subject to the rights of the holders of the Preferred Stock, if any, the exact number may be increased or decreased (but not to less than four (4) or more than thirteen (13)).

(c) The directors shall be divided into three classes. Each class shall consist, as nearly as may be possible, of one-third of the total number of directors constituting the entire Board of Directors. The term of the first class of directors shall expire on the date of the 2016 annual meeting of stockholders; the term of the second class of directors shall expire on the date of the 2017 annual meeting of stockholders; and the term of the third class of directors shall expire on the date of the 2018 annual meeting of stockholders or, in each case, or thereafter in each case until the directors' respective successors are elected and qualified. At each succeeding annual meeting of stockholders beginning with the annual meeting of stockholders to occur in 2016, successors to the class of directors whose term expires at that annual meeting shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election and until his or her respective successor has been duly elected and qualified. If the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, and any additional director of any class elected to fill a vacancy resulting from an increase in such class or from the removal from office, death, disability, resignation or disqualification of a director or other cause shall hold office for a term that shall coincide with the remaining term of that class, but in no case will a decrease in the number of directors have the effect of removing or shortening the term of any incumbent director.

(d) Subject to the terms of any one or more classes or series of the Preferred Stock, any vacancy on the Board of Directors that results from an increase in the number of directors or the death, resignation, retirement, disqualification, removal from office or other cause may be filled only by a majority of the Board of Directors then in office, in their sole discretion, even if less than a quorum, or by a sole remaining director, in his or her sole

discretion. Any director appointed to fill a vacancy on the Corporation's Board of Directors will be appointed for a term expiring at the next election of the class for which such director has been appointed, and until his or her successor has been elected and qualified. Except as otherwise required by applicable law and subject to the rights, if any, of the holders of shares of the Preferred Stock then outstanding, any or all of the directors of the Corporation may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least a majority of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors. Notwithstanding the foregoing, whenever the holders of any one or more classes or series of the Preferred Stock issued by the Corporation shall have the right, voting separately by class or series, to elect directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of this Amended and Restated Certificate of Incorporation and the resolution or resolutions adopted by the Board of Directors providing for the issuance of such class or series, and such directors so elected shall not be divided into classes pursuant to this Article Fifth unless expressly provided by such terms.

(e) The Board of Directors shall have such powers as are permitted by the DGCL, including, without limitation, without the assent or vote of the stockholders, to make, alter, amend, change, add to, or repeal the bylaws of the Corporation; to fix and vary the amount to be reserved as working capital; to authorize and cause to be executed mortgages and liens upon all the property of the Corporation, or any part thereof; to determine the use and disposition of any surplus or net profits over and above the capital stock paid in; and to fix the times for the declaration and payment of dividends

SIXTH To the fullest extent permitted by the DGCL, as the same exists or may hereafter be amended, a director of the Corporation shall not be personally liable either to the Corporation or to any of its stockholders for monetary damages for breach of fiduciary duty as a director. If the DGCL is amended hereafter to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent authorized by the DGCL, as so amended. No repeal or modification of this Article Sixth, nor any adoption of or amendment to any provision of this Amended and Restated Certificate of Incorporation, shall adversely affect any right or protection of a director of the Corporation existing at the time of such repeal, modification, adoption or amendment with respect to acts or omissions occurring prior to such repeal, modification, adoption or amendment.

SEVENTH The Corporation shall indemnify its and any of its subsidiaries' directors and officers to the fullest extent authorized or permitted by law, as now or hereafter in effect, and such right to indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation or any such subsidiary and shall inure to the benefit of his or her heirs, executors and personal and legal representatives; provided, however, that, except for proceedings to enforce rights to indemnification, the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or personal or legal representatives) in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors. The right to indemnification conferred by this Article Seventh shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any proceeding in advance of its final disposition, subject to receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation.

The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation, or to those persons serving at the Corporation's request as a director, officer, employee or agent of, or in a fiduciary capacity with respect to, another corporation, partnership, joint venture, trust or other enterprise, similar to those conferred in this Article Seventh to directors and officers of the Corporation.

The Corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer of the Corporation, or is or was a director, officer or employee of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of, or in a fiduciary capacity with respect to, another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article Seventh.

The rights to indemnification and to the advancement of expenses conferred in this Article Seventh shall not be exclusive of any other right which any person may have or hereafter acquire under this Amended and Restated Certificate of Incorporation, the Bylaws of the Corporation, any statute, agreement, vote of stockholders or disinterested directors or otherwise.

Any repeal or modification of any provision of this Article Seventh shall not adversely affect any rights to indemnification and to the advancement of expenses of a director or officer of the Corporation existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

EIGHTH Except as otherwise expressly provided by the terms of any series of Preferred Stock permitting the holders of such series of Preferred Stock to act by written consent, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation, and may not be effected by any consent in writing by such stockholders.

NINTH Subject to the rights of the holders of any series of Preferred Stock with respect to such series of Preferred Stock, special meetings of stockholders, for any purpose or purposes, may be called by either (i) the Chairman of the Board of Directors or (ii) the Chief Executive Officer of the Corporation, and shall be called by the Chief Executive Officer or the Corporate Secretary of the Corporation at the request in writing made pursuant to a resolution of a majority of the members of the Board of Directors. The ability of the stockholders to call a special meeting of stockholders is hereby specifically denied. At a special meeting of stockholders, only such business shall be conducted as shall be specified in the notice of meeting (or any supplement thereto). To be properly brought before a special meeting, proposals of business must be (a) specified in the Corporation's notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, or (b) otherwise properly brought before the special meeting, by or at the direction of the Board of Directors.

TENTH Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the DGCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

ELEVENTH In furtherance and not in limitation of the powers conferred upon it by the laws of the State of Delaware, the Board of Directors shall have the power, without the assent or vote of the stockholders, to adopt, amend, alter or repeal the Corporation's Bylaws, except to the extent the Bylaws or this Amended and Restated Certificate of Incorporation otherwise provide. The affirmative vote of at least a majority of the entire Board of Directors shall be required to adopt, amend, alter or repeal the Corporation's Bylaws. The Corporation's Bylaws also may be adopted, amended, altered or repealed by the affirmative vote of the holders of at least eighty percent (80%) of the voting stock then outstanding at any annual meeting of stockholders or of any special meeting of the stockholders of the Corporation if notice of such proposed adoption, amendment, alteration or repeal is contained in the notice of such special meeting.

TWELFTH Unless the Board of Directors otherwise determines, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought or purporting to be brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director or officer of the Corporation to the Corporation or the Corporation's stockholders, creditors or other constituents, (iii) any action asserting a claim against the Corporation or any current or former director or officer of the Corporation arising pursuant to any provision of the DGCL or the Amended and Restated Certificate of Incorporation or Bylaws (as either may be amended from time to time), or (iv) any action asserting a claim against the Corporation or any current or former director or officer of the Corporation that relates to the internal affairs or governance of the Corporation that arises under or by virtue of the laws of the State of Delaware; provided, that, if (and only if) the Court of Chancery of the State of Delaware dismisses any such action for lack of subject matter jurisdiction, such action may be brought in another state court sitting in the State of Delaware. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article Twelfth.

THIRTEENTH The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation in the manner now or hereafter prescribed in this Amended and Restated Certificate of Incorporation, the Corporation's Bylaws or the DGCL, and all rights, preferences and privileges herein conferred upon stockholders are granted subject to such reservation; provided, however, that, notwithstanding any other provision of this Amended and Restated Certificate of Incorporation (and in addition to any other vote that may be required by law), the affirmative vote of the holders of at least eighty percent (80%) of the voting stock then outstanding shall be required to amend, alter, change or repeal, or to adopt any provision as part of this Amended and Restated Certificate of Incorporation inconsistent with the purpose and intent of Articles Fifth, Sixth, Seventh, Eighth, Ninth and Eleventh of this Amended and Restated Certificate of Incorporation or this Article Thirteenth.

\* \* \* \*

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be executed on its behalf this [Day] day of [Month], [Year].

**BAXALTA INCORPORATED**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BYLAWS**  
**OF**  
**BAXALTA INCORPORATED**

(As Amended and Restated Effective [        ])

**ARTICLE I**  
**SHAREHOLDERS**

**SECTION 1. PLACE OF MEETINGS.** The Board of Directors may designate the place of meeting for any meetings of shareholders, but if no designation is made the place of meeting shall be the principal executive offices of the Corporation.

**SECTION 2. ANNUAL MEETINGS; NOTICE OF SHAREHOLDER PROPOSALS OF BUSINESS.**

(a) The annual meeting of shareholders for the election of directors and the transaction of other business shall be held at such date and time as determined by the Board of Directors. The Board of Directors may postpone, reschedule or cancel any annual meeting of shareholders previously scheduled by the Board of Directors.

(b) No business may be transacted at an annual meeting of shareholders other than business that is (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (ii) otherwise properly brought before the annual meeting by or at the direction of the Board of Directors or (iii) otherwise properly brought before the annual meeting by any shareholder of the Corporation (A) who is a shareholder of record on the date of the giving of the notice provided for in this Section 2 and on the record date for the determination of shareholders entitled to vote at such annual meeting, (B) who is entitled to vote at such meeting and (C) who complies with the procedures set forth in this Section 2. Section 2(b)(iii) of this Article I shall be the exclusive means for a shareholder to make business proposals (other than matters properly brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and included in the Corporation's notice of meeting) before an annual meeting of shareholders.

(c) In addition to any other applicable requirements, for business to be properly brought before an annual meeting by a shareholder, such shareholder must have given timely notice thereof in proper written form to the Corporate Secretary of the Corporation and comply with the other procedures set forth in this Section 2.

(d) To be timely, a shareholder's notice to the Corporate Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding annual meeting of shareholders; provided, however, that in the event that the annual meeting is called for a date that is not within thirty (30) days before or sixty (60) days after such anniversary date, or in the case of the Corporation's 2016 annual meeting of shareholders, notice by the shareholder in order to be timely must be so received not earlier than the close of business on the 120th day prior to the date of such annual meeting and not later than (i) the close of business on the 90th day prior to the date of such annual meeting or (ii) only if the first public disclosure of the date of such annual meeting is less than 100 days prior to the date of such annual meeting, the 10th day following the day on which public disclosure of the date of such meeting is first made by the Corporation. In no event shall an adjournment or postponement of an annual meeting, or the public disclosure of such an adjournment or postponement, commence a new time period (or extend any time period) for the giving of a shareholder's notice as described above.

(e) To be in proper written form, a shareholder's notice to the Corporate Secretary must set forth as to each matter such shareholder proposes to bring before the annual meeting a brief description of the business desired to be brought before the annual meeting, the reasons for conducting such business at the annual meeting and the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such proposal or business includes a proposal to amend the bylaws of the Corporation, the text of the proposed amendment) and, as to the shareholder giving the notice and any Shareholder Associated Person (as defined below), (i) the name and record address of such person, (ii) the class or series and number of shares of capital stock of the Corporation which are, directly or indirectly, owned of record or beneficially (within the meaning of Rule 13d-3 under the Exchange Act) by such person, (iii) the nominee holder for, and number of, shares owned beneficially but not of record by such person, (iv) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of, or any other agreement, arrangement or understanding (including but not limited to any derivative or short positions, profit interests, options, warrants, stock appreciation or similar rights, swaps, hedging transactions or borrowed or loaned shares) has been made, the effect or intent of which is to manage the risk or benefit of share price changes in the stock price of the Corporation for such person, to mitigate loss to such person with respect to any share of stock of the Corporation, or to increase or decrease the voting power of such person with respect to any share of stock of the Corporation, (v) to the extent known by the shareholder giving the notice, the name and address of any other shareholder supporting the proposal of business on the date of such shareholder's notice, (vi) a description of all arrangements or understandings, whether written or oral, between or among one or more such persons or any other person or persons or entity or entities (including their names) in connection with the proposal of such business by such person and any material interest in such business (the disclosures to be made pursuant to the foregoing clauses (i) through (vi) are referred to as "Shareholder Information and Disclosable Interests"), (vii) any other information relating to such proposing person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies in support of the proposal pursuant to Section 14 of the Exchange Act, (viii) a representation (A) that the shareholder giving the notice is a holder of record of stock of the Corporation entitled to vote at the annual meeting and intends to appear in person or by proxy at the annual meeting to bring such business before the meeting and (B) whether the shareholder intends to continue to hold the shares through the date of the meeting, and (ix) a representation whether the shareholder intends or is part of a group which intends (A) to deliver a proxy statement or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock which, together with the holdings of such shareholder and all such beneficial owners, is sufficient to approve or adopt the proposal or (B) otherwise to solicit proxies from shareholders in support of such proposal. A shareholder providing notice of business proposed to be brought before an annual meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2 shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof. Such update and supplement shall be delivered to the Corporate Secretary not later than five (5) business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight (8) business days prior to the date for the meeting or, if the meeting is adjourned or postponed, on the first practicable date after any adjournment or postponement thereof (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof). In addition, a shareholder seeking to submit business at an annual meeting shall promptly provide any other information reasonably requested by the Corporation.

(f) No business shall be conducted at the annual meeting of shareholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 2 (including the provision of the information required pursuant to the immediately preceding paragraph). If the proposing shareholder does not appear or send a qualified representative to present such proposal at such annual meeting or if any information provided pursuant to the immediately preceding paragraph contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading, the Corporation need not present such proposal for a vote at such meeting, notwithstanding that proxies in respect of such vote may have been received by the Corporation. If the person presiding over the annual meeting determines that business was not properly brought before the annual meeting in accordance with the foregoing procedures, the presiding person shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted. For purposes of this paragraph, to be considered a qualified representative of a shareholder, a person must be a duly authorized officer, manager or partner of such shareholder or must be authorized by a writing executed by such shareholder or an electronic transmission delivered by such shareholder to act for such shareholder as proxy at the annual meeting and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the annual meeting.

(g) For purposes of Sections 2, 3 and 4 of Article I of these Bylaws:

“public disclosure” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

“Shareholder Associated Person” of any shareholder proposing business to be brought at an annual meeting, nominating a person for election as a director or requesting (in the case of any holders of shares of Preferred Stock having the right to request) a special meeting, as applicable, shall mean (i) any person acting in concert, directly or indirectly, with such shareholder, (ii) the beneficial owner or beneficial owners of capital stock of the Corporation, if different, on whose behalf the notice of business to be brought before an annual meeting or a request for a special meeting of shareholders is being made, (iii) any affiliate or associate (each within the meaning of Rule 12b-2 under the Exchange Act) of such shareholder or any such beneficial owner, and (iv) any other person or entity with whom such shareholder or any such beneficial owner (or any of their respective affiliates and associates) is acting in concert.

### **SECTION 3. SPECIAL MEETINGS.**

(a) Special meetings of the shareholders may be called only by the Chairman of the Board, the Chief Executive Officer and President, or by the Corporate Secretary of the Corporation at the direction of the Board of Directors. Subject to the rights of the holders of any shares of Preferred Stock, special meetings of the shareholders may not be called by any other person or persons.

(b) Special meetings of shareholders shall be held at such places and times as determined by the Board of Directors in their discretion. At any special meeting of the shareholders, only such business shall be conducted or considered as shall have been properly brought before the meeting pursuant to the Corporation’s notice of meeting. To be properly brought before a special meeting, proposals of business must be (i) specified in the Corporation’s notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors or (ii) otherwise properly brought before the special meeting, by or at the direction of the Board of Directors. The Board of Directors may postpone, reschedule or cancel any special meeting of shareholders previously scheduled by the Board of Directors.

(c) No business shall be conducted at a special meeting of shareholders except business brought before the special meeting in accordance with the procedures set forth in this Section 3 and, if applicable, Section 4 of this Article I. If the person presiding over the special meeting determines that business was not properly brought before the special meeting in accordance with the foregoing procedures, the presiding person shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted.

### **SECTION 4. NOTICE OF SHAREHOLDER NOMINATIONS OF DIRECTORS; ELECTION OF DIRECTORS.**

(a) Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided in the Amended and Restated Certificate of Incorporation of the Corporation (the “Certificate of Incorporation”) with respect to the right of holders of Preferred Stock of the Corporation to nominate and elect a specified number of directors in certain circumstances. Nominations of persons for election to the Board of Directors may be made at any annual meeting of shareholders, or at any special meeting of shareholders called for the purpose of electing directors (i) by or at the direction of the Board of Directors or (ii) by any shareholder of the Corporation (A) who is a shareholder of record on the date of the giving of the notice provided for in this Section 4 and on the record date for the determination of shareholders entitled to vote at such meeting, (B) who is entitled to vote at such meeting and (C) who complies with the procedures set forth in this Section 4. The foregoing clause (ii) shall be the exclusive means for a shareholder to make any nomination of a person or persons for election to the Board of Directors at an annual or special meeting.

(b) In addition to any other applicable requirements, for a nomination to be made by a shareholder, such shareholder must have given timely notice thereof in proper written form to the Corporate Secretary of the Corporation and comply with the other procedures set forth in this Section 4.

(c) For the notice described in the immediately preceding paragraph to be timely, a shareholder's notice to the Corporate Secretary must be delivered to or mailed and received at the principal executive offices of the Corporation (i) in the case of an annual meeting, not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding annual meeting of shareholders; provided, however, that in the event that the annual meeting is called for a date that is not within thirty (30) days before or sixty (60) days after such anniversary date, or in the case of the Corporation's 2016 annual meeting of shareholders, notice by the shareholder in order to be timely must be so received not earlier than the close of business on the 120th day prior to the date of such annual meeting and not later than (A) the close of business on the 90th day prior to the date of such annual meeting or (B) only if the first public disclosure of the date of such annual meeting is less than 100 days prior to the date of such annual meeting, the 10th day following the day on which public disclosure of the date of such meeting is first made by the Corporation; and (ii) in the case of a special meeting of shareholders called for the purpose of electing directors, not earlier than the close of business on the 120th day prior to the date of such special meeting and not later than (A) the close of business on the 90th day prior to the date of such special meeting or (B) only if the first public disclosure of the date of such special meeting is less than 100 days prior to the date of such special meeting, the 10th day following the day on which public disclosure of the date of such meeting is first made by the Corporation and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall any adjournment or postponement, or the public disclosure of such an adjournment or postponement, of an annual or special meeting of shareholders commence a new time period for the giving of a shareholder's notice as described above.

(d) To be in proper written form, a shareholder's notice to the Corporate Secretary regarding a nomination must set forth as to each person whom the shareholder proposes to nominate for election as a director and as to the shareholder giving the notice and any Shareholder Associated Person (as defined above) (i) the name and record address of such person and, only with respect to the proposed nominee, such person's age, business address and residence address, (ii) the principal occupation or employment of the proposed nominee, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such person, (iv) any information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act, and the rules and regulations promulgated thereunder, (v) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such shareholder and beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Rule 404 or any successor provision promulgated under Regulation S-K if the shareholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant, (vi) the nominee holder for, and number of, shares owned beneficially but not of record by such person, (vii) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of, or any other agreement, arrangement or understanding (including any derivative or short positions, profit interests, options or borrowed or loaned shares) has been made, the effect or intent of which is to manage the risk or benefit of share price changes in the stock price of the Corporation for such person, to mitigate loss to such person with respect to any share of stock of the Corporation, or to increase or decrease the voting power of such person with respect to any share of stock of the Corporation, (viii) to the extent known by the shareholder giving the notice, the name and address of any other shareholder supporting the nominee for election or reelection as a director on the date of such shareholder's notice, (ix) a description of all arrangements or understandings, whether written or oral, between or among one or more such persons or any other person or persons or entity or entities (including their names) pursuant to which the nomination(s) are to be made by the shareholder, and any relationship between or among the shareholder giving notice and any Shareholder Associated Person, on the one hand, and each proposed nominee, on the other hand, (x) a representation (A) that the shareholder giving the notice is a holder of record of stock of the Corporation entitled to vote at the applicable meeting and intends to appear in person or by proxy at the meeting to nominate the persons named in its notice and (B) whether the shareholder giving the notice intends to continue to hold the shares through the date of the applicable meeting, and (xi) a representation whether the shareholder intends or is part of a group which intends (A) to deliver a proxy statement or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock which, together with the holdings of such shareholder and all such beneficial owners, is sufficient to elect the nominee or (B) otherwise to solicit proxies from shareholders in support of such nomination. A shareholder providing notice of a nomination proposed to be made at a meeting shall further update and supplement

such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 4 shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof. Such update and supplement shall be delivered to the Corporate Secretary not later than five (5) business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight (8) business days prior to the date for the meeting or, if the meeting is adjourned or postponed, on the first practicable date after any adjournment or postponement thereof (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof). Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable shareholder's understanding of the independence, or lack thereof, of such nominee. With respect to each person, if any, whom the shareholder proposes to nominate for election or reelection to the Board of Directors, a shareholder's notice must, in addition to the other matters set forth in these Bylaws, also include a completed and signed questionnaire, representation and agreement required by paragraph (g) of this Section 4.

(e) No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 4 (including the provision of the information required pursuant to the immediately preceding paragraph). If the person presiding over the meeting determines that a nomination was not made in accordance with such procedures, the presiding person shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded.

(f) Except as provided in the Certificate of Incorporation, each director shall be elected by the vote of the majority of the votes cast with respect to that director's election at any meeting for the election of directors at which a quorum is present, provided that if the number of nominees at any such meeting, as determined by the Corporate Secretary of the Corporation, exceeds the number of directors to be elected at the meeting, the directors shall be elected by the vote of a plurality of the shares represented in person or by proxy at any such meeting and entitled to vote on the election of directors. For purposes of this Section, a majority of the votes cast means that the number of shares voted "for" exceeds fifty percent (50%) of the number of votes cast with respect to such nominee. Votes cast with respect to a nominee shall exclude abstentions with respect to such nominee. If a nominee for director is not elected and that nominee is an incumbent director, the director shall promptly tender his or her resignation to the Board of Directors, subject to acceptance by the Board of Directors. The Corporate Governance Committee will make a recommendation to the Board of Directors on whether to accept or reject the resignation, or whether other action should be taken. The Board of Directors will act on the tendered resignation, taking into account the Corporate Governance Committee's recommendation, and publicly disclose its decision and the rationale behind it within 90 days from the date of the certification of the election results. The director who tenders his or her resignation will not participate in the decision of the Board of Directors or the recommendation of the Corporate Governance Committee.

(g) To be eligible to be a nominee for election or reelection as a director of the Corporation, a person nominated by a shareholder for election or reelection to the Board of Directors must deliver (in accordance with the time periods prescribed for delivery of notice under this Section 4 of Article I of these Bylaws) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request), and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (i) is not and will not become a party to (A) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (B) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, (ii) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, (iii) will comply with the Corporation's stock ownership guidelines for directors, if any, and has disclosed therein whether all or any portion of securities of the Corporation were purchased with any financial assistance provided by any other person and whether any other person has any interest in such securities, and (iv) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance,

if elected as a director of the Corporation, and will comply, with all applicable corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation publicly disclosed from time to time.

#### **SECTION 5. VOTING RIGHTS; PROXIES; QUORUM.**

(a) Each shareholder entitled to vote in accordance with the terms of the Certificate of Incorporation, these Bylaws or the General Corporation Law of the State of Delaware (the “DGCL”) shall be entitled to one vote, in person or by proxy executed in writing (or in such manner prescribed by the DGCL) by the shareholder or such shareholder’s duly authorized attorney in fact, for each share of stock entitled to vote held by such shareholder, unless otherwise provided by law or the Certificate of Incorporation.

(b) All matters presented to shareholders at a meeting at which a quorum is present, other than the election of directors, shall be decided by the affirmative vote of a majority of shares present in person or represented by proxy at any meeting duly called and entitled to be voted at such meeting, unless otherwise provided in these Bylaws, the Certificate of Incorporation or applicable laws.

(c) The holders of a majority of the shares of the Corporation entitled to vote, present in person or represented by proxy, at any meeting duly called, shall constitute a quorum. Any meeting at which a quorum is not present may be adjourned from time to time to some other time by a majority of the shareholders present or represented and entitled to vote at such meeting, but no other business shall be transacted at such meeting. At an adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the original meeting.

**SECTION 6. NOTICES OF MEETINGS.** Written or printed notice, stating the place, date and hour of the meeting, the means of remote communications, if any, by which shareholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered by the Corporation not less than ten (10) days nor more than sixty (60) days before the date of the meeting, either personally, by electronic transmission in the manner provided in Section 232 of the DGCL (except to the extent prohibited by Section 232(e) of the DGCL) or by mail, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail with postage thereon prepaid, addressed to the shareholder at his or her address as it appears on the stock transfer books of the Corporation. If notice is given by electronic transmission, such notice shall be deemed to be given at the times provided in the DGCL. Such further notice shall be given as may be required by law. Meetings may be held without notice if all shareholders entitled to vote are present, or if notice is waived by those not present in accordance with Section 6 of Article IX of these Bylaws. Any previously scheduled meeting of the shareholders may be postponed, and, unless the Certificate of Incorporation otherwise provides, any special meeting of the shareholders may be cancelled, by resolution of the Board of Directors upon public notice given prior to the date previously scheduled for such meeting of shareholders.

**SECTION 7. CONDUCT OF MEETINGS.** The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of shareholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding over any meeting of shareholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the presiding person of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting, (ii) rules and procedures for maintaining order at the meeting and the safety of those present, (iii) limitations on attendance at or participation in the meeting to shareholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine, (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof, and (v) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of shareholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and shall not be transacted or considered.

## **SECTION 8. GENERAL.**

(a) Notwithstanding the provisions of these Bylaws, a shareholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to any shareholder proposal or nomination otherwise permitted pursuant to these Bylaws; provided, however, that any references in these Bylaws to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the separate and additional requirements set forth in these Bylaws with respect to nominations or proposals as to any other business to be considered pursuant these Bylaws.

(b) Nothing in these Bylaws shall be deemed to affect any rights of the holders of any series of Preferred Stock if and to the extent provided for under law, the Certificate of Incorporation or these Bylaws. Subject to Rule 14a-8 under the Exchange Act, nothing in these Bylaws shall be construed to permit any shareholder, or give any shareholder the right, to include or have disseminated or described in the Corporation's proxy statement any nomination of director or directors or any other business proposal.

(c) Subject to the rights of the holders of any series of Preferred Stock with respect to such series of Preferred Stock, any action required or permitted to be taken by the shareholders of the Corporation must be effected at an annual or special meeting of shareholders of the Corporation and may not be effected by any consent in writing by such shareholders.

(d) In advance of any meeting of the shareholders, the Board of Directors, by resolution, the Chairman of the Board or the Chief Executive Officer and President shall appoint one or more inspectors to act at the meeting and make a written report thereof. One or more other persons may be designated as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of the shareholders, the chair of the meeting shall appoint one or more inspectors to act at the meeting. Unless otherwise required by applicable law, inspectors may be officers, employees or agents of the Corporation. Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. The inspector shall have the duties prescribed by law and shall take charge of the polls and, when the vote is completed, shall make a certificate of the result of the vote taken and of such other facts as may be required by applicable law.

## **ARTICLE II**

### **DIRECTORS**

**SECTION 1. GENERAL POWERS.** The business and affairs of the Corporation shall be managed under the direction of the Board of Directors. In addition to the powers and authorities by these Bylaws expressly conferred upon them, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or the Certificate of Incorporation or by these Bylaws required to be exercised or done by the shareholders.

**SECTION 2. QUORUM.** A majority of the total number of the directors in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but in the absence of a quorum a majority of those present (or if only one is present, then that one) may adjourn the meeting without notice until such time as a quorum is present. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. The directors present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum.

**SECTION 3. REGULAR MEETINGS.** Regular meetings may be held without notice at such time and place as shall from time to time be determined by the Board of Directors.

**SECTION 4. SPECIAL MEETINGS; NOTICE.** Special meetings of the Board of Directors may be called at any time by the Corporate Secretary at the direction of the Chairman of the Board, the Chief Executive Officer and President, or a majority of the directors then in office. The person or persons authorized to call special meetings of the Board of Directors may fix the time and place of any such meeting. Notice of each special meeting of the Board of

Directors shall be given by overnight delivery service or mailed to each director, in either case addressed to such director at such director's residence or usual place of business, at least two days before the day on which the meeting is to be held or shall be sent to such director at such place by telecopy or by electronic transmission or shall be given personally or by telephone, not later than the day before the meeting is to be held. Unless otherwise required by these Bylaws, every such notice shall state the time and place but need not state the purpose of the meeting. A written waiver of notice signed by the director entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except when the director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors need be specified in any written waiver of notice.

**SECTION 5. ACTION WITHOUT A MEETING.** Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

**SECTION 6. PRESENCE AT A MEETING.** Members of the Board of Directors, or of any committee thereof, may participate in meetings by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

**SECTION 7. COMPENSATION OF DIRECTORS.** Directors may receive compensation for services to the Corporation in their capacities as directors or otherwise in such manner and in such amounts as may be fixed from time to time by resolution of the Board of Directors. Nothing contained in this Section 7 shall preclude any director from serving the Corporation or any of its subsidiaries in any other capacity and receiving compensation therefor.

**SECTION 8. RECORDS.** The Board of Directors shall cause to be kept a record containing the minutes of the proceedings of the meetings of the Board of Directors and of the shareholders, appropriate stock books and registers and such books of records and accounts as may be necessary for the proper conduct of the business of the Corporation.

### ARTICLE III

#### COMMITTEES

**SECTION 1.** The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee to the extent provided in the resolutions creating the committee and to the extent permitted by law, shall have and may exercise all the powers and authority of the Board of Directors in the business and affairs of the Corporation. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors.

**SECTION 2.** The following provisions shall apply to all committees of the Board of Directors:

(a) The Board of Directors shall appoint the members and chairperson of each committee. The members shall serve until their successors are appointed and qualified or until the committee is dissolved by a majority of the whole Board of Directors. The chairperson of the committee shall, if present, preside at all meetings of a committee.

(b) Each committee shall keep regular minutes of its proceedings and shall report its actions and recommendations to the Board of Directors at the next meeting of the Board of Directors following each committee meeting.

(c) The Board of Directors shall have the power at any time to change the membership of a committee, and any member of a committee may be removed at any time with or without cause by resolution adopted by a majority of the Board of Directors.

(d) The lesser of a majority of the members or two members of a committee shall constitute a quorum for the transaction of business at any meeting thereof, and action of a committee must be authorized by the affirmative vote of a majority of the members present at a meeting at which a quorum is present. A committee may act by unanimous consent in writing without a meeting. Committee meetings may be called by the Chairman of the Board of Directors, the chairman of the committee, or any two of the committee's members. The time and place of committee meetings shall be designated in the notice of such meeting consistent with the requirements of Article II. Notice of each committee meeting shall be given to each committee member consistent with the requirements of Article II. Each Committee shall keep minutes of its proceedings.

(e) The Board of Directors shall appoint such committees as are required by the New York Stock Exchange (or any other principal United States exchange upon which the shares of the Corporation may be listed).

## ARTICLE IV

### OFFICERS

**SECTION 1. GENERAL.** The officers of the Corporation shall be elected by the Board of Directors and shall consist of a Chairman of the Board, a Chief Executive Officer and President, a Chief Financial Officer, one or more Executive Vice Presidents, one or more Senior Vice Presidents, a Treasurer, a Corporate Secretary and such other officers as in the judgment of the Board of Directors may be necessary or desirable. Vice Presidents, Assistant Corporate Secretaries or Assistant Treasurers may be appointed as in the judgment of the Chief Executive Officer and President may be necessary or desirable, subject to the oversight of the Board of Directors. The officers of the Corporation shall have such powers and perform such duties as generally pertain to their respective offices, subject to the control of the Board of Directors. Any officer of the Corporation may sign any deeds, mortgages, bonds, contracts or other instruments that the Board of Directors or a committee thereof has authorized to be executed or are in the ordinary course of business of the Corporation. The Chief Executive Officer and President, Chief Financial Officer, Treasurer or the Corporate Secretary may vote, either in person or by proxy, all the shares of the capital stock of any company that the Corporation owns or is otherwise entitled to vote at any and all meetings of the shareholders of such company and shall have the power to accept or waive notice of such meetings. Any one person may hold any number of offices of the Corporation unless specifically prohibited by law. Each officer shall hold office until his or her successor shall have been duly elected and qualified or until his or her earlier death, resignation or removal. Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Corporation will be served thereby. Any officer appointed by the Chairman of the Board may be removed by the Chairman of the Board whenever, in the Chairman of the Board's judgment, the best interests of the Corporation will be served thereby.

**SECTION 2. CHAIRMAN OF THE BOARD.** The Chairman of the Board shall be a member of the Board of Directors and, subject to the direction of the Board of Directors, shall perform such executive, supervisory and management functions and duties, if any, as may be assigned to him or her from time to time by the Board of Directors. The Chairman of the Board shall, when present, preside at all meetings of the shareholders and of the Board of Directors. He or she shall act as spokesman for the Board of Directors and as a liaison between the Board of Directors and the Corporation. The Chairman of the Board shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

**SECTION 3. CHIEF EXECUTIVE OFFICER AND PRESIDENT.** The Chief Executive Officer and President shall in general supervise and control all of the business affairs of the Corporation, subject to the direction of the Board of Directors. The Chief Executive Officer and President shall, in the absence of the Chairman of the Board, preside at all meetings of the shareholders and of the Board of Directors. Unless otherwise designated by the Board of Directors, the Chief Executive Officer shall also be the President of the Corporation.

**SECTION 4. CHIEF FINANCIAL OFFICER.** The Chief Financial Officer shall have responsibility for the financial affairs of the Corporation and shall exercise supervisory responsibility for the performance of the duties of the Treasurer and the Controller.

**SECTION 5. EXECUTIVE VICE PRESIDENTS.** Any Executive Vice President shall have such powers and shall discharge such duties as may be further delegated to him or her from time to time by the Chief Executive Officer and President.

**SECTION 6. SENIOR VICE PRESIDENTS.** Any Senior Vice President shall have such powers and shall discharge such duties as may be further delegated to him or her from time to time by the Chief Executive Officer and President or any Executive Vice President.

**SECTION 7. TREASURER.** The Treasurer shall have charge of the funds and securities of the Corporation and shall disburse the funds of the Corporation as may be ordered by the Board of Directors.

**SECTION 8. CORPORATE SECRETARY.** The Corporate Secretary shall give, or cause to be given, notice of all meetings of shareholders and the Board of Directors, and all other notices required by law or these Bylaws, and in the case of his or her absence or refusal or neglect so to do, and if there be no Assistant Corporate Secretary, any such notice may be given as directed by the person or persons upon whose request the meeting is called pursuant to these Bylaws. The Corporate Secretary shall record the actions of the shareholders and Board of Directors in minutes retained under his or her direction. The Corporate Secretary shall have the custody of the seal of the Corporation and shall affix the same to all instruments requiring it and may attest the same.

## ARTICLE V

### RESIGNATIONS; FILLING OF VACANCIES

**SECTION 1. RESIGNATIONS.** Any director, member of a committee or officer may resign at any time. Such resignations shall be made in writing and shall take effect at the time specified therein and, if no time be specified, at the time of the receipt of such resignation by the Chairman of the Board, the Chief Executive Officer and President, or the Corporate Secretary. The acceptance of the resignation shall not be necessary to make it effective.

**SECTION 2. FILLING OF VACANCIES.** If any office of the Corporation becomes vacant, the vacancy may be filled by the Board of Directors in accordance with the Certificate of Incorporation.

## ARTICLE VI

### CAPITAL STOCK

**SECTION 1. CERTIFICATED AND UNCERTIFICATED STOCK; TRANSFERS.** The interest of each shareholder of the Corporation may be evidenced by certificates for shares of stock in such form as the appropriate officers of the Corporation may from time to time prescribe or be uncertificated. The shares of the stock of the Corporation shall be transferred on the books of the Corporation, in the case of certificated shares of stock, by the holder thereof in person or by his or her attorney duly authorized in writing, upon surrender for cancellation of certificates for at least the same number of shares, with an assignment and power of transfer endorsed thereon or attached thereto, duly executed, with such proof of the authenticity of the signature as the Corporation or its agents may reasonably require; and, in the case of uncertificated shares of stock, upon receipt of proper transfer instructions from the registered holder of the shares or by such person's attorney duly authorized in writing, and upon compliance with appropriate procedures for transferring shares in uncertificated form. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred. The certificates of stock shall be signed, countersigned and registered in such manner as the Board of Directors may by resolution prescribe, which resolution may permit all or any of the signatures on such certificates to be in facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue. Notwithstanding anything to the contrary in these Bylaws, at all times that the Corporation's stock is listed on a stock exchange, the shares of the stock of the Corporation shall comply with all direct registration system eligibility requirements established by such exchange, including any requirement that shares of the

Corporation's stock be eligible for issue in book-entry form. All issuances and transfers of shares of the Corporation's stock shall be entered on the books of the Corporation with all information necessary to comply with such direct registration system eligibility requirements, including the name and address of the person to whom the shares of stock are issued, the number of shares of stock issued and the date of issue. The Board of Directors shall have the power and authority to make such rules and regulations as it may deem necessary or proper concerning the issue, transfer and registration of shares of stock of the Corporation in both the certificated and uncertificated form.

**SECTION 2. LOST, STOLEN OR DESTROYED CERTIFICATES.** The Board of Directors may direct a new certificate or certificates or uncertificated shares to be issued in place of any certificate or certificates previously issued by the Corporation and alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming that the certificate of stock has been lost, stolen or destroyed. When authorizing such issuance of a new certificate or certificates or uncertificated shares, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of the lost, stolen or destroyed certificate or certificates, or such owner's legal representative, to indemnify the Corporation in such manner as the Board of Directors shall require and to give the Corporation a bond, in such form and amount as the Board of Directors may direct, as indemnity against any claim that may be made against the Corporation with respect to the certificate or certificates alleged to have been lost, stolen or destroyed.

**SECTION 3. RECORD DATE.** For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or for the purpose of determining shareholders entitled to receive payment of any dividend or allotment of any rights, or for the purpose of any other action, the Board of Directors may fix, in advance, a date as the record date for any such determination of shareholders. Such date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action. When a determination of shareholders of record entitled to notice of or to vote at any meeting of shareholders has been made as provided in this Section, such determination shall apply to any adjournment thereof, unless the Board of Directors may fix a new record date under this Section for the adjourned meeting.

**SECTION 4. RECORD OWNERS.** The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

**SECTION 5. TRANSFER AND REGISTRY AGENTS.** The Corporation may from time to time maintain one or more transfer offices or agencies and registry offices or agencies at such place or places as may be determined from time to time by the Board of Directors.

**SECTION 6. DIVIDENDS.** Dividends upon the capital stock of the Corporation, subject to the requirements of the DGCL and the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting of the Board of Directors (or any action by written consent in lieu thereof in accordance with Article II, Section 5), and may be paid in cash, in property, or in shares of the Corporation's capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for purchasing any of the shares of capital stock, warrants, rights, options, bonds, debentures, notes, scrip or other securities or evidences of indebtedness of the Corporation, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board of Directors may modify or abolish any such reserve.

## ARTICLE VII

### INDEMNIFICATION

**SECTION 1. POWER TO INDEMNIFY IN ACTIONS NOT BY OR IN THE RIGHT OF THE CORPORATION.** Subject to Section 3 of this Article VII, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director, officer or employee of

the Corporation serving at the request of the Corporation as a director, officer, employee or agent of, or in a fiduciary capacity with respect to, another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

**SECTION 2. POWER TO INDEMNIFY IN ACTIONS BY OR IN THE RIGHT OF THE CORPORATION.** Subject to Section 3 of this Article VII, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director, officer or employee of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of, or in a fiduciary capacity with respect to, another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; provided that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

**SECTION 3. AUTHORIZATION OF INDEMNIFICATION.** Any indemnification under this Article VII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer or employee is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VII, as the case may be. Such determination shall be made, with respect to a person who is a director, officer or employee at the time of such determination, (a) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, (b) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, (c) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion or (d) by the shareholders. Such determination shall be made, with respect to present or former employees or former directors and officers, by any person or persons having the authority to act on the matter on behalf of the Corporation. To the extent, however, that a present or former director, officer or employee of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

**SECTION 4. GOOD FAITH DEFINED.** For purposes of any determination under Section 3 of this Article VII, a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The provisions of this Section 4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VII, as the case may be.

**SECTION 5. INDEMNIFICATION BY A COURT.** Notwithstanding any contrary determination in the specific case under Section 3 of this Article VII, and notwithstanding the absence of any determination thereunder, any director, officer or employee may apply to the Court of Chancery of the State of Delaware or any other court of competent jurisdiction in the State of Delaware for indemnification to the extent otherwise permissible under Section 1 or Section 2 of this Article VII. The basis of such indemnification by a court shall be a determination by such court that indemnification of the director, officer or employee is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VII, as the case may be. Neither a contrary determination in the specific case under Section 3 of this Article VII nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the director, officer or employee seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Section 5 shall be given to the Corporation promptly upon the filing of such application. If successful, in whole or in part, the director, officer or employee seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

**SECTION 6. EXPENSES PAYABLE IN ADVANCE.** Expenses (including attorneys' fees) incurred by a current or former director or officer or employee entitled to indemnification under this Article VII in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such current or former director, officer or employee to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article VII. Such expenses may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate.

**SECTION 7. NONEXCLUSIVITY OF INDEMNIFICATION AND ADVANCEMENT OF EXPENSES.** The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation, these Bylaws, any statute, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in Section 1 and Section 2 of this Article VII shall be made to the fullest extent permitted by law. The provisions of this Article VII shall not be deemed to preclude the indemnification of any person who is not specified in Section 1 or Section 2 of this Article VII but whom the Corporation has the power or obligation to indemnify under the provisions of the DGCL, or otherwise. Any repeal or modification of any provision in this Article VII shall not adversely affect any rights to indemnification and to the advancement of expenses of any person hereunder in respect of any occurrence or matter arising prior to any such repeal or modification.

**SECTION 8. SEVERABILITY.** If any provision or provisions of this Article VII is held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Article VII (including, without limitation, each portion of any paragraph of this Article VII containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article VII (including, without limitation, each such portion of any paragraph of this Article VII containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision or provisions held invalid, illegal or unenforceable.

**SECTION 9. SURVIVAL.** The rights to indemnification and advancement of expenses conferred by this Article VII shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and personal and legal representatives of such a person.

**SECTION 10. CERTAIN DEFINITIONS.** For purposes of this Article VII, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers, so that any person who is or was a director or officer of such constituent corporation, or is or was a director or officer of such constituent corporation or is or was a director, officer or employee of such constituent corporation serving at the request of such constituent corporation as a director, officer, employee or agent of, or in a fiduciary capacity with respect to, another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article VII with respect to the resulting or

surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. The term “another enterprise” as used in this Article VII shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee, fiduciary or agent. For purposes of this Article VII, references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the Corporation” shall include any service as a director, officer, employee or agent of, or fiduciary with respect to, another enterprise which imposes duties on, or involves services by, such director, officer or employee with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this Article VII.

## **ARTICLE VIII**

### **AMENDMENTS**

Except as otherwise provided herein, the Board of Directors shall have the power to adopt, amend, alter or repeal the Bylaws of the Corporation. The Bylaws may be amended or repealed by the affirmative vote of at least eighty percent (80%) of the shares present in person or by proxy and entitled to vote on the matter at any regular meeting of the shareholders or any special meeting of the shareholders, in each case if notice of such proposed amendment or repeal is contained in the notice of such meeting.

## **ARTICLE IX**

### **MISCELLANEOUS PROVISIONS**

**SECTION 1. SEAL.** The corporate seal shall have the name of the Corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board of Directors. Such seal may be used by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced.

**SECTION 2. FISCAL YEAR.** The fiscal year of the Corporation shall be the calendar year unless otherwise determined by resolution of the Board of Directors.

**SECTION 3. ELECTRONIC TRANSMISSION.** When used in these Bylaws, the terms “written” and “in writing” shall include any “electronic transmission,” as defined in Section 232(c) of the DGCL, including without limitation any telegram, cablegram, facsimile transmission and communication by electronic mail.

**SECTION 4. REGISTERED OFFICE.** Except as otherwise determined by the Board of Directors, the registered office shall be established and maintained at the office of The Corporation Trust Company, in the City of Wilmington and County of New Castle, and such company shall be the registered agent of the Corporation.

**SECTION 5. CONSTRUCTION.** In the event of any conflict between the provisions of these Bylaws as in effect from time to time and the provisions of the Certificate of Incorporation as in effect from time to time, the provisions of the Certificate of Incorporation shall be controlling.

**SECTION 6. NOTICES.** Whenever written notice is required by law, the Certificate of Incorporation or these Bylaws to be given to any director, member of a committee or shareholder, such notice may be given either personally by mail, facsimile or other means of electronic communication or by other lawful means. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to such director, member of a committee or shareholder, at such person’s address as it appears on the records of the Corporation, with postage thereon prepaid. If notice be by facsimile or other means of electronic communication, such notice shall be deemed to be given at the time provided in the DGCL. Such further notice shall be given as may be required by law. Whenever any notice is required by applicable law, the Certificate of Incorporation or these Bylaws to be given to any director, member of a committee or shareholder, a waiver thereof in writing, signed by the person or persons entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting, present in person or

represented by proxy, shall constitute a waiver of notice of such meeting, except where the person attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any annual meeting or special meeting of shareholders or any regular or special meeting of the directors or members of a committee of directors need be specified in any written waiver of notice unless so required by law, the Certificate of Incorporation or these Bylaws.

**SECTION 7. CONTRACTS.** Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, any contracts or other instruments may be executed and delivered in the name and on the behalf of the Corporation by such officer or officers of the Corporation as the Board of Directors may from time to time direct. Such authority may be general or confined to specific instances as the Board of Directors may determine. The Chairman of the Board, the Chief Executive Officer and any President, and any Executive Vice President or Senior Vice President may execute bonds, contracts, deeds, leases and other instruments to be made or executed for or on behalf of the Corporation. Subject to any restrictions imposed by the Board of Directors or the Chairman of the Board, the Chief Executive Officer and President, or any Executive Vice President or Senior Vice President of the Corporation may delegate contractual powers to others under his or her jurisdiction, it being understood, however, that any such delegation of power shall not relieve such officer of responsibility with respect to the exercise of such delegated power.

**SECTION 8. PROXIES.** Unless otherwise provided by resolution adopted by the Board of Directors, the Chairman of the Board, the Chief Executive Officer and President, or any Executive Vice President or Senior Vice President may from time to time appoint an attorney or attorneys or agent or agents of the Corporation, in the name and on behalf of the Corporation, to cast the votes which the Corporation may be entitled to cast as the holder of stock or other securities in any other corporation, any of whose stock or other securities may be held by the Corporation, at meetings of the holders of the stock or other securities of such other corporation, or to consent in writing, in the name of the Corporation as such holder, to any action by such other corporation, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent, and may execute or cause to be executed in the name and on behalf of the Corporation and under its corporate seal or otherwise, all such written proxies or other instruments as he or she may deem necessary or proper in the premises.

**FORM OF INTERNATIONAL COMMERCIAL OPERATIONS AGREEMENT**

**BY AND AMONG**

**BAXALTA WORLD TRADE LLC**

**BAXALTA GMBH**

**BAXALTA HOLDING B.V.**

**BAXTER WORLD TRADE CORPORATION**

**BAXTER HEALTHCARE SA**

**AND**

**BAXTER HOLDING B.V.**

**DATED AS OF [•], 2015**

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THIS INTERNATIONAL COMMERCIAL OPERATIONS AGREEMENT, dated as of [●], 2015, is by and among Baxalta World Trade LLC, a limited liability company organized under the laws of Delaware, United States of America (“Baxalta US”), Baxalta GmbH, a limited liability company organized under the laws of Switzerland (“Baxalta Swiss”), Baxalta Holding B.V., a private company with limited liability organized under the laws of the Netherlands (“Baxalta Netherlands” and, together with Baxalta US and Baxalta Swiss, “Baxalta Parties”), Baxter World Trade Corporation, a corporation organized under the laws of Delaware, United States of America (“Baxter US”), Baxter Healthcare SA, a stock company organized under the laws of Switzerland (“Baxter Swiss”) and Baxter Holding B.V., a private company with limited liability organized under the laws of the Netherlands (“Baxter Netherlands” and, together with Baxter US and Baxter Swiss, “Baxter Parties”).

RECITALS:

WHEREAS, Baxter International Inc., a Delaware corporation (“Baxter”) announced its plan to separate (the “Separation”) into two publicly traded companies, one focused on lifesaving medical products and the other focused on developing and marketing innovative biopharmaceuticals. The medical products company shall retain the Baxter name. The biopharmaceuticals company will be named Baxalta Incorporated, a Delaware corporation (“Baxalta”);

WHEREAS, in connection with the Separation, Baxter and Baxalta have entered into a Separation and Distribution Agreement (as may be amended from time to time, the “Separation and Distribution Agreement”) to govern the overall terms of the Separation;

WHEREAS, Baxter is the direct or indirect parent of each entity holding Assets (as defined in the Separation and Distribution Agreement) or Liabilities (as defined in the Separation and Distribution Agreement) of a Deferred Baxalta Local Business (as defined in the Separation and Distribution Agreement), including those listed on Schedule 1.01 (each, a “Baxter Local Entity”);

WHEREAS, Baxter and Baxalta have agreed that the Baxalta Assets and the Baxalta Liabilities of the Baxalta Business (each as defined in the Separation and Distribution Agreement) conducted by the Baxter Local Entities shall be transferred, directly or indirectly, to a Baxalta Local Entity;

WHEREAS, in accordance with the terms of the Separation and Distribution Agreement, due to the requirements of applicable Laws, the need to obtain certain Consents (as defined in the Separation and Distribution Agreement) from local Governmental Authorities (as defined in the Separation and Distribution Agreement) or for other business reasons, Baxter and Baxalta have agreed (a) to defer until after the Distribution Date (as defined in the Separation and Distribution Agreement) the direct or indirect transfer of the Assets and the assumption of the Liabilities of each Deferred Baxalta Local Business and (b) to cause certain funds to be transferred between Baxter US and Baxalta US, Baxter Swiss and Baxalta Swiss, and Baxter Netherlands and Baxalta Netherlands, in each case in accordance with the terms and conditions of this Agreement; and

WHEREAS, for U.S. federal Income Tax purposes, the Parties intend for the (a) transfer of payments between Baxter US and Baxalta US, (b) transfers of Assets or payments between Baxter Swiss and Baxalta Swiss and (c) transfers of Assets or payments between Baxter Netherlands and Baxalta Netherlands, to be treated as occurring on the same date as the date of the US Agreement, the Swiss Agreement and the Dutch Agreement, respectively.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained in this Agreement (as defined herein), the Parties (as defined herein) hereby agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01 Definitions.** Reference is made to Section 9.15 of the Separation and Distribution Agreement (as incorporated by reference in Section 6.01 of this Agreement) regarding the interpretation of certain words and phrases used in this Agreement. Capitalized terms defined in this Agreement shall have the meanings set forth herein; provided that, as and to the extent the context requires, any capitalized terms within definitions otherwise incorporated by reference from the Separation and Distribution Agreement shall have the meanings set forth in the Separation and Distribution Agreement. Capitalized terms used herein (or within any definition in the Separation and Distribution Agreement) but not otherwise defined herein shall have the meanings set forth in the Separation and Distribution Agreement.

“Accounts Payable” has the meaning set forth in Schedule 2.05(b).

“Accounts Receivable” has the meaning set forth in Schedule 2.05(b).

“Accrued Taxes” has the meaning set forth in Schedule 2.05(b).

“Actual Tax Amount” has the meaning set forth in Schedule 2.05(b).

“Additional Income Taxes” has the meaning set forth in Section 3.06(b).

“Adjusted Actual Tax Amount” has the meaning set forth in Schedule 2.05(b).

“Aggregate Modified Net Working Capital Adjustment Amount” has the meaning set forth in Schedule 2.05(b).

“Aggregate Net Income Amount” has the meaning set forth in Schedule 2.05(b).

“Agreement” means this International Commercial Operations Agreement and each of the Schedules hereto.

“Baxalta” has the meaning set forth in the Recitals.

“Baxalta Brazil” has the meaning set forth in Section 3.02(a)(ii).

“Baxalta China” has the meaning set forth in Section 3.02(a)(i).

“Baxalta India” has the meaning set forth in Section 3.02(a)(i).

“Baxalta Local Entity” means each Baxalta Subsidiary (which, for the avoidance of doubt, may include each Baxalta Party) or designee that acquires legal title to any Assets or Liabilities of a Deferred Baxalta Local Business or the equity interests of a Transferring Entity in accordance with the terms of this Agreement.

“Baxalta Malaysia” has the meaning set forth in Section 3.02(a)(i).

“Baxalta Netherlands” has the meaning set forth in the Preamble.

“Baxalta Swiss” has the meaning set forth in the Preamble.

“Baxalta Party” or “Baxalta Parties” has the meaning set forth in the Preamble.

“Baxalta US” has the meaning set forth in the Preamble.

“Baxter” has the meaning set forth in the Recitals.

“Baxter Brazil” means Baxter Hospitalar Ltda.

“Baxter China” means Baxter Healthcare Trading (Shanghai) Co., Ltd.

“Baxter India” means Baxter (India) Private Limited.

“Baxter Local Entity” has the meaning set forth in the Recitals.

“Baxter Malaysia” means Baxter Healthcare (Malaysia) Sdn Bhd.

“Baxter Netherlands” has the meaning set forth in the Preamble.

“Baxter Party” or “Baxter Parties” has the meaning set forth in the Preamble.

“Baxter Swiss” has the meaning set forth in the Preamble.

“Baxter US” has the meaning set forth in the Preamble.

“Business Day” means any day other than a Saturday, Sunday or other day on which the banks in New York are authorized by Law or executive order to be closed.

“CPR” has the meaning set forth in Section 5.02.

“Deferred Baxalta Business Report” has the meaning set forth in Section 2.04(a).

“Dispute” has the meaning set forth in Section 5.01.

“Dispute Notice” has the meaning set forth in Section 5.02.

“Distribution” has the meaning set forth in Schedule 2.05(b).

“Dutch Aggregate Net Income Amount” has the meaning set forth in Schedule 2.05(b).

“Dutch Agreement” means the Conveyance and Assumption Instrument by and between Baxter Netherlands and Baxalta Netherlands entered into consistent with the terms of the Separation and Distribution Agreement.

“Dutch Local Entity” means, except for Baxter Swiss and the Swiss Group, each Baxter Local Entity owned directly or indirectly by Baxter Netherlands.

“Dutch Group” means, collectively, the Dutch Local Entities.

“Employee Matters Agreement” means the Employee Matters Agreement to be entered into by and between Baxter and Baxalta in connection with the Separation, the Distribution or the other transactions contemplated by the Separation and Distribution Agreement.

“Exchange Rate” means, at any time, Baxter’s most recent monthly transaction rate, as determined in the ordinary course of business consistent with past practice.

“Final Determination” has the meaning set forth in the Tax Matters Agreement.

“Income Tax” has the meaning set forth in the Tax Matters Agreement.

“Independent Accounting Firm” has the meaning set forth in Section 2.06(d).

“International Operations Transition Period” means the period commencing on the Effective Time and ending on the Termination Date.

“Inventory” has the meaning set forth in Schedule 2.05(b).

“Local Closing” has the meaning set forth in Section 3.01.

“Local Closing Date” has the meaning set forth in Section 3.01.

“Local Currency” has the meaning set forth in Section 3.02(b).

“Modified Net Working Capital” has the meaning set forth in Schedule 2.05(b).

“Modified Net Working Capital Adjustment Amount” has the meaning set forth in Schedule 2.05(b).

“Net Income Amount” has the meaning set forth in Schedule 2.05(b).

“Net Income Dispute Notice” has the meaning set forth in Section 2.06(b)(ii).

“Notice” means any written notice, request demand or other communication specifically referencing this Agreement and given in accordance with Section 6.03.

“NWC Closed Baxter Local Entity” has the meaning set forth in Schedule 2.05(b).

“Parties” means the Baxter Parties and the Baxalta Parties.

“Profit Determination” has the meaning set forth in Schedule 2.05(b).

“Purchase Price Loan” has the meaning set forth in Section 3.02(a)(iii).

“Report” has the meaning set forth in Section 2.06(a)(ii).

“Restructuring” has the meaning set forth in Section 3.06(c).

“Restructuring Income Taxes” has the meaning set forth in Section 3.06(c).

“Separation” has the meaning set forth in the Recitals.

“Separation and Distribution Agreement” has the meaning set forth in the Recitals.

“Swiss Aggregate Net Income Amount” has the meaning set forth in Schedule 2.05(b).

“Swiss Agreement” means the Conveyance and Assumption Instrument by and between Baxter Swiss and Baxalta Swiss entered into consistent with the terms of the Separation and Distribution Agreement.

“Swiss Local Entity” means any Baxter Local Entity owned directly or indirectly by Baxter Swiss.

“Swiss Group” means, collectively, the Swiss Local Entities.

“Tax Matters Agreement” means the Tax Matters Agreement to be entered into by and between Baxter and Baxalta or their respective Subsidiaries in connection with the Separation, the Distribution or the other transactions contemplated by the Separation and Distribution Agreement.

“Tax Return” has the meaning set forth in the Tax Matters Agreement.

“Termination Date” means the date that is the second anniversary of the Distribution Date; provided that, to the extent a Local Closing has not been initiated before the date that is ninety (90) days prior to the Termination Date as a result of the failure of Baxalta and its Affiliates to receive necessary regulatory approvals despite the use of commercially reasonable efforts by them to obtain such approvals, then the “Termination Date” shall be extended by an additional one-year period. For the avoidance of doubt, additional one-year extensions (following the first or any later one-year extensions) will further extend the Termination Date to the extent that a Local Closing has not been initiated before the date that is ninety (90) days prior to the then-current Termination Date as a result of the failure of Baxalta and its Affiliates to receive necessary regulatory approvals despite the use of commercially reasonable efforts by them to obtain such approvals.

“Transferring Entity” means an entity formed or acquired by a Baxter Party or such other Baxter Subsidiary designated by a Baxter Party for the purpose of acquiring the Assets and assuming the Liabilities of the Deferred Baxalta Local Business of a Baxter Local Entity, the equity interests of which shall transfer to a Baxalta Party or a Baxalta Local Entity as part of a Local Closing following the transfer of such Assets and the assumption of such Liabilities, including each of Baxalta China, Baxalta India, Baxalta Malaysia and Baxalta Brazil.

“Transfer Taxes” has the meaning set forth in the Tax Matters Agreement.

“Unresolved Disputes” has the meaning set forth in Section 2.06(d).

“US Aggregate Net Income Amount” has the meaning set forth in Schedule 2.05(b).

“US Agreement” means the Conveyance and Assumption Instrument by and between Baxter US and Baxalta US entered into consistent with the terms of the Separation and Distribution Agreement.

“US Local Entity” means, except for Baxter Netherlands, the Dutch Group, Baxter Swiss and the Swiss Group, any Baxter Local Entity owned directly or indirectly by Baxter US.

“US Group” means, collectively, the US Local Entities.

“Valuation Firm” has the meaning set forth in Section 3.05(a).

## ARTICLE II

### INTERNATIONAL TRANSITION PERIOD

**Section 2.01 Legal Title.** Upon the consummation of each Local Closing pursuant to Article III, legal title to all of the Baxalta Assets that are held at such time by each Baxter Local Entity with respect to such Local Closing, and all of the Baxalta Liabilities of any Baxter Local Entity with respect to such Local Closing that are outstanding at such time, shall transfer to the applicable Baxalta Local Entity upon such Local Closing. Until such time, legal title to such Baxalta Assets and Baxalta Liabilities shall remain with the applicable Baxter Local Entity. Each of the Swiss Agreement and the Dutch Agreement contain an obligation on Baxter Swiss and Baxter Netherlands, respectively, to transfer all of the Baxalta Assets and Baxalta Liabilities to Baxalta Swiss and Baxalta Netherlands, respectively.

### **Section 2.02 Treatment of Deferred Baxalta Local Businesses.**

(a) From and after the Effective Time until the consummation of the applicable Local Closing pursuant to Article III: (i) the Deferred Baxalta Local Businesses shall be held by the applicable Baxter Local Entity on behalf of and for the benefit of Baxalta or, where applicable, a Baxalta Subsidiary or designee; (ii) Baxter, a Baxter Local Entity or, where applicable, a designee shall pay, perform and discharge fully when due and payable the Liabilities of the Deferred Baxalta Local Businesses; and (iii) insofar as reasonably practicable and to the extent permitted by applicable Law, Baxter, a Baxter Local Entity or, where applicable, a designee shall manage and operate each Deferred Baxalta Local Business in

accordance with this Agreement and take such other actions as may reasonably be requested by a Baxalta Party so that all of the rewards and Liabilities attributable to the Deferred Baxalta Local Businesses, including use, risk of loss, potential for gain, and control over such Deferred Baxalta Local Businesses, shall inure from and after the Effective Time to Baxalta or, where applicable, a Baxalta Subsidiary or designee.

(b) If, after giving effect to the transactions contemplated by this Agreement, the Parties determine that the intent of the Parties set forth in Section 2.02(a) has not been achieved, the Parties shall use their commercially reasonable efforts to mutually agree upon alternative arrangements to implement the purposes and intent of the Parties set forth in Section 2.02(a).

### **Section 2.03 Operation of Deferred Baxalta Local Businesses.**

(a) Subject to the terms and conditions of the Employee Matters Agreement, each Baxter Party shall use, or cause the applicable Baxter Local Entity to use, commercially reasonable efforts until the applicable Local Closing to manage and operate each Deferred Baxalta Local Business as may reasonably be requested by a Baxalta Party from time to time. Unless otherwise instructed by a Baxalta Party, each Baxter Party shall cause each Baxter Local Entity to operate the applicable Deferred Baxalta Local Business in a manner that is based on past practice and that is substantially similar in nature, quality and timeliness to the analogous operations conducted by the applicable Baxter Local Entity prior to the Effective Time. Each Baxter Party shall cause each applicable Baxter Local Entity to perform its duties and responsibilities hereunder in good faith.

(b) Until each Local Closing, Baxalta: (i) shall be subject to all of the risks and burdens associated with all distributions, shipments and sales of Baxalta Products made by a Baxter Party or the applicable Baxter Local Entity to Third Party customers, including risk of loss of Baxalta Product, product liability claims and failure of collection of any accounts receivable arising from sales of Baxalta Products to Third Party customers; (ii) shall be entitled to all benefits generated by all sales of Baxalta Products made by a Baxter Party or the applicable Baxter Local Entity to Third Party customers; and (iii) shall direct all marketing, sales and pricing functions for Baxalta Products, including price modifications and rebates, in accordance with applicable Laws.

(c) Nothing in this Agreement shall require any Baxter Party (or any other Person) to cause any Baxter Local Entity to operate any Deferred Baxalta Local Business to the extent the manner of such operations would constitute a violation of applicable Laws, Baxter's (or any Baxter Local Entity's) policies or internal compliance guidelines or requirements or any existing Contract with a Third Party. If any Baxter Party is or becomes aware of any such restriction on a Baxter Local Entity, such Baxter Party shall use commercially reasonable efforts to promptly provide Notice of any such restriction to the Baxalta Parties. The Parties agree to cooperate and use commercially reasonable efforts to obtain any necessary Consents required under any existing Contract with a Third Party to allow a Baxter Local Entity to operate the applicable Deferred Baxalta Local Business in accordance with the standards set forth in this Section 2.03. If the Parties, despite the use of such commercially reasonable efforts, are unable to obtain a required Consent or the operation of a Deferred Baxalta Local Business by a Baxter

Local Entity would constitute a violation of applicable Laws or Baxter's (or any Baxter Local Entity's) policies or internal compliance guidelines or requirements or any existing Contract with a Third Party, the Baxter Parties shall use commercially reasonable efforts in good faith to cause the Baxter Local Entity to operate the applicable Deferred Baxalta Local Business in a manner as closely as possible to the standards described in this Section 2.03 that would apply absent the exception provided for in the first sentence of this Section 2.03(c).

**Section 2.04 Deferred Baxalta Business Report.**

(a) Not later than forty-five (45) days after the Distribution Date, the Baxter Parties shall prepare and deliver to the Baxalta Parties a financial report (the "Deferred Baxalta Business Report") setting forth the Baxalta Assets and Baxalta Liabilities of each Deferred Baxalta Local Business held by each Baxter Local Entity as of the Effective Time. The Deferred Baxalta Business Report shall be prepared on a country-by-country basis in the applicable Local Currency in accordance with the principles used in the Baxalta Pro Forma Balance Sheet, using GAAP applied on a basis consistent to the extent such Baxalta Pro Forma Balance Sheet was prepared in accordance with GAAP, and with the same level of detail as used by Baxter in the preparation of Baxter's monthly financial reporting package and the standard financial reports used by Baxter on the Distribution Date.

(b) If the Baxalta Parties disagree with any amount set forth in the Deferred Baxalta Business Report, the Baxalta Parties shall give Notice to the Baxter Parties within fifteen (15) days of receipt of the Deferred Baxalta Business Report stating the specific reasons for their disagreement. If the Baxter Parties and Baxalta Parties are unable to resolve any disagreement, the disagreement shall be resolved pursuant to the procedures set forth in Section 2.06(d) and Section 2.06(e).

**Section 2.05 Aggregate Net Income Amount.**

(a) Subject to Section 2.06 and Section 2.07, if on a monthly basis during the International Operations Transition Period, in connection with the operation of the Deferred Baxalta Local Businesses during such period:

(i) the Swiss Aggregate Net Income Amount is a positive number, Baxter Swiss (on behalf of the Swiss Group) shall remit to Baxalta Swiss the Swiss Aggregate Net Income Amount; or

(ii) the Swiss Aggregate Net Income Amount is a negative number, Baxalta Swiss shall remit to Baxter Swiss (on behalf of the Swiss Group) the Swiss Aggregate Net Income Amount; and

(iii) the Dutch Aggregate Net Income Amount is a positive number, Baxter Netherlands (on behalf of the Dutch Group) shall remit to Baxalta Netherlands the Netherlands Aggregate Net Income Amount; or

(iv) the Dutch Aggregate Net Income Amount is a negative number, Baxalta Netherlands shall remit to Baxter Netherlands (on behalf of the Dutch Group) the Dutch Aggregate Net Income Amount; and

(v) the US Aggregate Net Income Amount is a positive number, Baxter US (on behalf of the US Group) shall remit to Baxalta US the US Aggregate Net Income Amount; or

(vi) the US Aggregate Net Income Amount is a negative number, Baxalta US shall remit to Baxter US (on behalf of the US Group) the US Aggregate Net Income Amount.

(b) The Aggregate Net Income Amount (and, accordingly, each of the Swiss Aggregate Net Income Amount, the Dutch Aggregate Net Income Amount and the US Aggregate Net Income Amount) shall be calculated in accordance with the principles set forth on Schedule 2.05(b).

**Section 2.06 Reporting; Disputes; Aggregate Net Income Amount Mechanics.**

(a) Not later than the eighth (8th) Business Day of each calendar month during the International Operations Transition Period (or, if later, the eighth (8th) Business Day following delivery of the Deferred Baxalta Business Report in accordance with the terms of Section 2.04(a)), and, in the calendar month immediately following the last calendar month of the International Operations Transition Period if the results of all operations of each Deferred Baxalta Local Business prior to the expiration of the International Operations Transition Period have not been included in the Aggregate Net Income Amount for a prior calendar month, the Baxter Parties shall prepare and deliver to the Baxalta Parties in writing, for each Baxter Local Entity for which a Local Closing has not occurred, or for which a Local Closing has occurred but for which the results of all operations of the Deferred Baxalta Local Business prior to such Local Closing have not been included in the Aggregate Net Income Amount for a prior calendar month, in each case attributable to the Deferred Baxalta Local Business operated by the applicable Baxter Local Entity for the prior calendar month, each of the following:

(i) a profit and loss statement and a balance sheet; provided, however, that a balance sheet shall only be prepared and delivered in each calendar month for which the calculation of the Aggregate Net Income Amount of the prior calendar month includes an adjustment for the Aggregate Modified Net Working Capital Adjustment Amount; and

(ii) a report (each, a “Report”) setting forth the Aggregate Net Income Amount, the Swiss Aggregate Net Income Amount, the Dutch Aggregate Net Income Amount and the US Aggregate Net Income Amount.

Each profit and loss statement and balance sheet and Report shall be prepared in accordance with the principles set forth on Schedule 2.05(b). Each profit and loss statement and balance sheet shall include amounts specifically identifiable to the Deferred Baxalta Local Business or allocated to the Deferred Baxalta Local Business in accordance with the principles set forth on Schedule 2.05(b), segregated in unique accounts within each Baxter Local Entity’s financial systems.

(b) Within ten (10) days after the delivery of each Report, the Baxalta Parties shall deliver to the Baxter Parties a Notice in which the Baxalta Parties shall either:

(i) agree in writing with the Aggregate Net Income Amount (and, accordingly each of the Swiss Aggregate Net Income Amount, the Dutch Aggregate Net Income Amount and the US Aggregate Net Income Amount), in which case such calculation shall be final and binding on the Parties; or

(ii) dispute the Aggregate Net Income Amount (or any component thereof) by delivering to the Baxter Parties a Notice (a “Net Income Dispute Notice”) setting forth in reasonable detail the basis for such dispute and certifying that such disputed Aggregate Net Income Amount is being disputed in good faith.

For purposes of this Section 2.06(b), the Baxalta Parties may only deliver a Net Income Dispute Notice on the basis that the Baxter Parties’ calculation of the Aggregate Net Income Amount (or any component thereof): (1) was not in accordance with the principles set forth on Schedule 2.05(b); or (2) contains mathematical errors in its calculation.

(c) If the Baxalta Parties fail to provide a Net Income Dispute Notice within ten (10) days after delivery of the Report, then the Baxalta Parties shall be deemed to have irrevocably accepted the Aggregate Net Income Amount (and, accordingly each of the Swiss Aggregate Net Income Amount, the Dutch Aggregate Net Income Amount and the US Aggregate Net Income Amount), in which case, the Aggregate Net Income Amount (and, accordingly each of the Swiss Aggregate Net Income Amount, the Dutch Aggregate Net Income Amount and the US Aggregate Net Income Amount) shall be final and binding on the Parties.

(d) If the Baxalta Parties timely deliver a Net Income Dispute Notice to the Baxter Parties or there is otherwise a dispute between the Parties with respect to the matters set forth in Section 2.04(b) or with respect to any of the information delivered pursuant to Section 2.06, then the Baxter Parties and the Baxalta Parties shall attempt in good faith, for a period of thirty (30) days, to resolve the dispute between the Parties. Any resolution by the Baxter Parties and the Baxalta Parties during such thirty (30) day period as to any items in dispute shall be final and binding on the Parties. If the Baxter Parties and the Baxalta Parties do not resolve all such items in dispute by the end of such thirty (30) day period, then the Baxter Parties and the Baxalta Parties shall engage a mutually agreeable independent accounting firm of recognized international standing (or such other firm as agreed by the Parties), which firm is not the regular auditing firm of either Baxter or Baxalta, and shall submit to such independent accounting firm the remaining items in dispute (the “Unresolved Disputes”) for resolution. If the Baxter Parties and the Baxalta Parties are unable to jointly select such independent accounting firm within fifteen (15) days after such thirty (30) day period, the Baxter Parties, on the one hand, and the Baxalta Parties, on the other hand, shall each select an independent accounting firm of recognized international standing and each such selected accounting firm shall select a third independent accounting firm of recognized international standing, which firm is not the regular auditing firm of either Baxter or Baxalta (such selected independent accounting firm, whether pursuant to this sentence or the preceding sentence, the “Independent Accounting Firm”). The Independent Accounting Firm shall act as an accounting expert, but not as an arbitrator, to determine based solely on the provisions of this Section 2.06 (or Section 2.04(b)) and the presentations by the Baxter Parties and the Baxalta Parties, and not by independent review, only the Unresolved Disputes and only as to whether such amounts were arrived at in conformity with Section 2.06 and Schedule 2.05(b) (or Section 2.04(b)). The Baxter Parties and the Baxalta

Parties shall instruct the Independent Accounting Firm to render its determination with respect to the Unresolved Disputes in a written report that specifies the conclusions of the Independent Accounting Firm as to each Unresolved Dispute. The Baxter Parties and the Baxalta Parties shall each use their commercially reasonable efforts to cause the Independent Accounting Firm to render its determination within ten (10) days after referral of the Unresolved Disputes to such firm or as soon thereafter as reasonably practicable. The Independent Accounting Firm's determination as set forth in its report shall be final and binding on the Parties. The fees and expenses of the Independent Accounting Firm shall be allocated by the Independent Accounting Firm between the Baxter Parties and the Baxalta Parties based on the relative merits of their respective positions in respect of the Unresolved Dispute.

(e) For purposes of complying with this Section 2.06, the Baxter Parties and the Baxalta Parties shall furnish to each other and to the Independent Accounting Firm such work papers and other documents and information relating to the Unresolved Dispute as the Independent Accounting Firm may request and are available to such Parties (or their independent public accountants) and shall be afforded the opportunity to present to the Independent Accounting Firm any material related to the Unresolved Dispute and to discuss any items relating to the Unresolved Dispute with the Independent Accounting Firm. The Parties shall require that the Independent Accounting Firm enter into a reasonable engagement letter and customary confidentiality agreement with respect to the work papers and other documents and information provided to the Independent Accounting Firm pursuant to this Section 2.06.

(f) Within five (5) Business Days after the Aggregate Net Income Amount (and, accordingly each of the Swiss Aggregate Net Income Amount, the Dutch Aggregate Net Income Amount and the US Aggregate Net Income Amount) has become final and binding with respect to any month: (i) Baxter Swiss shall pay to Baxalta Swiss (if the Swiss Aggregate Net Income Amount is a positive number) or Baxalta Swiss shall pay to Baxter Swiss (if the Swiss Aggregate Net Income Amount is a negative number) the Swiss Aggregate Net Income Amount by wire transfer (or such other method of payment as may be agreed between Baxter Swiss and Baxalta Swiss) in Euros; (ii) Baxter Netherlands shall pay to Baxalta Netherlands (if the Dutch Aggregate Net Income Amount is a positive number) or Baxalta Netherlands shall pay to Baxter Netherlands (if the Dutch Aggregate Net Income Amount is a negative number) the Dutch Aggregate Net Income Amount by wire transfer (or such other method of payment as may be agreed between Baxter Netherlands and Baxalta Netherlands) in Euros; and (iii) Baxter US shall pay to Baxalta US (if the US Aggregate Net Income Amount is a positive number) or Baxalta US shall pay to Baxter US (if the US Aggregate Net Income Amount is a negative number) the US Aggregate Net Income Amount by wire transfer (or such other method of payment as may be agreed between Baxter US and Baxalta US) in Dollars; provided that if the amount related to any Deferred Local Baxalta Business is the subject of an Unresolved Dispute, the Swiss Aggregate Net Income Amount, the Dutch Aggregate Net Income Amount or the US Aggregate Net Income Amount, as applicable, calculated excluding only such entities that are the subject of such Unresolved Disputes shall be paid in accordance with this paragraph (with the Swiss Aggregate Net Income Amount, the Dutch Aggregate Net Income Amount or the US Aggregate Net Income Amount, as applicable, with respect to any entities subject to an Unresolved Dispute paid within five (5) Business Days after such amount has become final and binding).

**Section 2.07 Late Payments.** Any amount not paid when due pursuant to this Agreement (and any amounts billed or otherwise invoiced or demanded and properly payable that are not paid within five (5) Business Days of the date of such bill, invoice or other demand) shall accrue interest at a rate per annum equal to the rate of 3% per annum, or the maximum legal rate, whichever is lower.

**Section 2.08 Disclaimer of Representations and Warranties.**

(a) EACH BAXTER PARTY (ON BEHALF OF ITSELF AND EACH OF THE APPLICABLE BAXTER LOCAL ENTITIES) AND EACH BAXALTA PARTY (ON BEHALF OF ITSELF AND EACH OF THE APPLICABLE BAXALTA LOCAL ENTITIES) UNDERSTANDS AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN, NO PARTY TO THIS AGREEMENT OR OTHERWISE, IS REPRESENTING OR WARRANTING TO ANY OTHER PARTY HERETO IN ANY WAY AS TO: (I) THE ASSETS, BUSINESSES OR LIABILITIES TRANSFERRED OR ASSUMED AS CONTEMPLATED HEREBY; (II) ANY APPROVALS OR NOTIFICATIONS REQUIRED IN CONNECTION HERewith; (III) THE VALUE OR FREEDOM FROM ANY SECURITY INTERESTS OF, OR ANY OTHER MATTER CONCERNING, ANY ASSETS OF SUCH PARTY; (IV) THE ABSENCE OF ANY DEFENSES TO OR RIGHT OF SETOFF AGAINST OR FREEDOM FROM COUNTERCLAIM WITH RESPECT TO ANY PROCEEDING OR OTHER ASSET, INCLUDING ANY ACCOUNTS RECEIVABLE, OF EITHER PARTY; OR (V) THE LEGAL SUFFICIENCY OF ANY CONVEYANCE AND ASSUMPTION INSTRUMENTS TO CONVEY TITLE TO ANY ASSET OR THING OF VALUE UPON THE EXECUTION, DELIVERY AND FILING OF SUCH CONVEYANCE AND ASSUMPTION INSTRUMENTS. EXCEPT AS MAY EXPRESSLY BE SET FORTH IN THIS AGREEMENT, ALL SUCH ASSETS ARE BEING TRANSFERRED ON AN "AS IS," "WHERE IS" BASIS (AND, IN THE CASE OF ANY REAL PROPERTY, BY MEANS OF A QUITCLAIM OR SIMILAR FORM DEED OR CONVEYANCE) AND THE RESPECTIVE TRANSFEREES SHALL BEAR THE ECONOMIC AND LEGAL RISKS THAT (A) ANY CONVEYANCE AND ASSUMPTION INSTRUMENT MAY PROVE TO BE INSUFFICIENT TO VEST IN THE TRANSFEREE GOOD AND MARKETABLE TITLE, FREE AND CLEAR OF ALL SECURITY INTERESTS; AND (B) ANY NECESSARY CONSENTS ARE NOT OBTAINED OR THAT ANY REQUIREMENTS OF LAWS, AGREEMENTS, SECURITY INTERESTS OR JUDGMENTS ARE NOT COMPLIED WITH.

(b) EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, EACH PARTY ACKNOWLEDGES AND AGREES THAT ALL SERVICES AND PRODUCTS ARE PROVIDED ON AN "AS-IS" BASIS FOR PURPOSES OF THIS AGREEMENT, THAT EACH PARTY ASSUMES ALL RISK AND LIABILITY ARISING FROM OR RELATING TO ITS USE OF AND RELIANCE UPON THE SERVICES PROVIDED HEREUNDER, AND THAT EACH PARTY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES AND PRODUCTS PROVIDED HEREUNDER, AND HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT OR ANY OTHER WARRANTY WHATSOEVER.

(c) Each Baxter Party (on behalf of itself and each of the applicable Baxter Local Entities) and each Baxalta Party (on behalf of itself and each of the Baxalta Local Entities) further understands and agrees that if the disclaimer of express or implied representations and warranties contained in this Section 2.08 is held unenforceable or is unavailable for any reason under the Laws of any jurisdiction outside the United States or if, under the Laws of a jurisdiction outside the United States, both a Baxter Local Entity, on the one hand, and a Baxalta Local Entity, on the other hand, are jointly or severally liable for any Liability of the Deferred Baxalta Local Business or any other Liability of the Baxter Local Entity, respectively, then, the Parties intend that, notwithstanding any provision to the contrary under the Laws of such foreign jurisdictions, the provisions of this Agreement (including the disclaimer of all representations and warranties, allocation of Liabilities among the Parties and their respective Subsidiaries, releases, indemnification and contribution of Liabilities) shall prevail for any and all purposes among the Parties, the Baxter Local Entities and the Baxalta Local Entities, as applicable.

### ARTICLE III

#### TRANSFER OF DEFERRED BAXALTA LOCAL BUSINESSES

**Section 3.01 General.** With respect to the Deferred Baxalta Local Business of each Baxter Local Entity, on or before the Termination Date: (a) a Baxalta Party may exercise the right to obtain legal title to the Assets and the Liabilities of such Deferred Baxalta Local Business (whether by directly acquiring such Assets and Liabilities or as a result of acquiring from a Baxter Local Entity the equity interests of a Transferring Entity) from such Baxter Local Entity pursuant to Section 3.02; (b) a Baxalta Party may elect that such Assets and Liabilities of such Deferred Baxalta Local Business be transferred to a distributor pursuant to Section 3.03; or (c) at the request of a Baxalta Party, or in accordance with Section 3.04(b) and Section 3.04(c), the applicable Baxter Local Entity shall use commercially reasonable efforts to sell to a Third Party or wind-down the Assets and the Liabilities of such Deferred Baxalta Local Business on terms reasonably acceptable to the applicable Baxter Party and the applicable Baxalta Party (each of (a), (b) and (c), a "Local Closing"). A Baxalta Party shall only be entitled to initiate a Local Closing by providing the Baxter Parties at least ninety (90) days' prior Notice of the anticipated date (which date shall not be later than the Termination Date) of consummation of such Local Closing; provided, however, that, except with respect to a Local Closing pursuant to Section 3.04, the actual closing date for any Local Closing shall be mutually agreed upon in advance between the Baxter Parties and the Baxalta Parties (the "Local Closing Date").

#### **Section 3.02 Transfer to Baxalta Local Entity.**

(a) If a Baxalta Party initiates a Local Closing by electing to exercise its right to obtain legal title to the Assets and the Liabilities of the Deferred Baxalta Local Business from a Baxter Local Entity (whether by directly acquiring such Assets and Liabilities or as a result of acquiring from a Baxter Local Entity the equity interests of a Transferring Entity), such right may be transferred by the applicable Baxalta Party to a duly formed Baxalta Local Entity. At such Local Closing, the Baxter Local Entity holding, directly or as a result of its equity interest in the Transferring Entity holding, legal title to the Assets and Liabilities of the applicable Deferred Baxalta Local Business shall sell, transfer, convey and deliver to the applicable Baxalta Local Entity, and the applicable Baxalta Local Entity shall purchase and accept delivery of, all

such Assets or equity interests and the applicable Baxalta Local Entity shall accept, assume and agree faithfully to perform, discharge and fulfill all such Liabilities in exchange for a purchase price, if required, equal to the fair market value of such Deferred Local Baxalta Business as of the Local Closing Date. The Conveyance and Assumption Instruments for a Local Closing shall be substantially in the same form as those used by Baxter and Baxalta or their respective Subsidiaries, as applicable, in connection with the contribution, assignment, transfer, conveyance and delivery of the Assets (including equity interests) and the transfer of the Liabilities of the Baxalta Business prior to the Distribution Date.

(i) The Parties agree that for the Deferred Baxalta Local Businesses of each of Baxter China, Baxter India, and Baxter Malaysia, Baxter Swiss shall form or acquire separate entities (“Baxalta China”, “Baxalta India” and “Baxalta Malaysia”) into which the Assets and the Liabilities of the Deferred Baxalta Local Business of each of Baxter China, Baxter India and Baxter Malaysia shall be transferred, respectively, prior to Baxter Swiss transferring the equity interests in each of Baxalta China, Baxalta India and Baxalta Malaysia to Baxalta Swiss.

(ii) The Parties agree that for the Deferred Baxalta Local Business of Baxter Brazil, Baxter Netherlands has formed an entity (“Baxalta Brazil”) into which the Assets and the Liabilities of the Deferred Baxalta Local Business of Baxter Brazil shall be transferred prior to Baxter Netherlands transferring the equity interests in Baxalta Brazil to Baxalta Netherlands.

(iii) Prior to the acquisition of the Assets and the Liabilities of any Deferred Baxalta Local Business of a Baxter Local Entity by a Transferring Entity, the Baxter Parties shall consult with and obtain the prior written consent of the Baxalta Parties in connection with the amount of any loan to be provided (each, a “Purchase Price Loan”) and the amount of equity to be injected into the Transferring Entity by a Baxter Party or such other Baxter Subsidiary designated by a Baxter Party to fund the purchase price to be paid by the applicable Transferring Entity for such Assets and Liabilities. To the extent that a Purchase Price Loan is provided by a Baxter Party or a Baxter Subsidiary designated by a Baxter Party, in addition to the equity interests of the Transferring Entity being transferred to a Baxalta Party or a Baxalta Local Entity upon the applicable Local Closing, the loan receivable Asset of the applicable Baxter Party or the applicable Baxter Subsidiary designated by a Baxter Party in connection with such Purchase Price Loan shall also be transferred to the applicable Baxalta Party or Baxalta Local Entity as part of the applicable Local Closing and such loan receivable Asset shall for purposes of this Agreement be considered an Asset of the Deferred Baxalta Local Business.

(b) Subject to Section 3.05, a Baxalta Party shall pay or cause a Baxalta Local Entity to pay the purchase price, if required, to the Baxter Local Entity (or a Baxter Party or such other Baxter Subsidiary designated by the applicable Baxter Party to the extent permitted by applicable Law) on the applicable Local Closing Date in accordance with payment instructions to be provided in writing by the applicable Baxter Party. The purchase price, if required, shall be paid in the local currency of the jurisdiction in which the applicable Baxter Local Entity selling the Assets and the Liabilities of the Deferred Baxalta Local Business (or the equity interests of the Transferring Entity) has its principal place of business (“Local Currency”), or such other

currency as elected by the applicable Baxter Party if so permitted by applicable Law, by converting the applicable amount of Local Currency using (i) the Exchange Rate if the Parties mutually agree upon the purchase price or (ii) the corresponding exchange rate used by the Valuation Firm if the purchase price is determined by the Valuation Firm.

### **Section 3.03 Transfer to Distributor**

(a) If a Baxalta Party initiates a Local Closing by electing to exercise its right to appoint a distributor (which may include a Baxter Local Entity or other Baxter Subsidiary if such entity reaches a separate agreement with a Baxalta Party to be appointed as distributor) to operate the Deferred Local Baxalta Business, at such Local Closing, the Baxter Local Entity holding legal title to the Assets and Liabilities of the applicable Deferred Baxalta Local Business shall sell, transfer, convey and deliver to (i) the distributor, if the distributor is not a Baxter Local Entity or other Baxter Subsidiary or (ii) unless otherwise agreed by the Parties, a Baxalta Party or Baxalta Local Entity if the distributor is a Baxter Local Entity or other Baxter Subsidiary, and the applicable distributor or Baxalta Party or Baxalta Local Entity shall purchase and accept delivery of, all such Assets and the applicable distributor or Baxalta Party or Baxalta Local Entity shall accept, assume and agree faithfully to perform, discharge and fulfill all such Liabilities in exchange for a purchase price, if required, equal to the fair market value of such Deferred Local Baxalta Business as of the Local Closing Date, or, to the extent that not all of the Assets and Liabilities of the Deferred Local Baxalta Business are to be acquired by the distributor or a Baxalta Party or Baxalta Local Entity, the fair market value of the applicable Assets and Liabilities as of the Local Closing Date. If any Third Party distributor requires that the applicable Baxter Local Entity indemnify such distributor in connection with the purchase of the applicable Assets and the assumption of the applicable Liabilities of the Deferred Local Baxalta Business, then the applicable Baxalta Party shall indemnify, hold harmless and otherwise guarantee without limitation the applicable Baxter Local Entity for any actions or claims brought against such Baxter Local Entity by the distributor pursuant to such indemnification, provided, however, that the applicable Baxter Local Entity shall not provide any indemnification to any distributor without the prior written consent of a Baxalta Party.

(b) The purchase price shall be paid to the Baxter Local Entity (or a Baxter Party or such other Baxter Subsidiary designated by the applicable Baxter Party to the extent permitted by applicable Law) by or on behalf of (i) a Third Party distributor or (ii) a Baxalta Party or Baxalta Local Entity (if the distributor is a Baxter Local Entity or other Baxter Subsidiary) on the applicable Local Closing Date in accordance with payment instructions to be provided in writing by the applicable Baxter Party. The purchase price shall be paid at the election of the applicable Baxter Party by or on behalf of the distributor or the Baxalta Party or Baxalta Local Entity in the Local Currency, or such other currency as elected by the applicable Baxter Party if so permitted by applicable Law, by converting the applicable amount to Local Currency using (1) the Exchange Rate if the Parties mutually agree upon the purchase price or (2) the corresponding exchange rate used by the Valuation Firm if the purchase price is determined by the Valuation Firm.

(c) To the extent that not all of the Assets and Liabilities of the Deferred Local Baxalta Business of a Baxter Local Entity are acquired by the distributor or a Baxalta Party or Baxalta Local Entity in connection with a Local Closing pursuant to Section 3.03 (a) and

are not otherwise acquired and assumed by a Baxalta Party or a Baxalta Local Entity prior to the Termination Date, the applicable Baxter Party shall proceed to use commercially reasonable efforts in accordance with Section 3.04 to (i) sell to a Third Party the remaining Assets and Liabilities of the Deferred Local Baxalta Business or (ii) wind-down and liquidate all of the remaining Assets and pay (subject to Section 3.04(d)) all of the remaining Liabilities of such Deferred Baxalta Local Business which are not acquired or assumed (as applicable).

### **Section 3.04 Sale or Wind-Down.**

(a) If, before the date that is ninety (90) days prior to the Termination Date, the Baxalta Parties initiate a Local Closing and request pursuant to Section 3.01(c) that the applicable Baxter Local Entity sell to a Third Party one or more of the Assets and Liabilities of a Deferred Baxalta Local Business or wind-down a Deferred Baxalta Local Business, then the following shall apply:

(i) the applicable Baxter Local Entity shall use commercially reasonable efforts in order to sell to a Third Party one or more of the Assets and Liabilities of the applicable Deferred Baxalta Local Business or wind-down the applicable Deferred Baxalta Local Business and liquidate all of the remaining Assets and pay (subject to Section 3.04(d)) all of the remaining Baxalta Liabilities of such applicable Deferred Baxalta Local Business; and

(ii) the applicable Baxalta Party shall use commercially reasonable efforts, and shall cooperate in good faith, to assist the applicable Baxter Local Entity with such sale or wind-down for the applicable Deferred Baxalta Local Business.

(b) If a Local Closing has not taken place pursuant to Section 3.02, Section 3.03 or Section 3.04(a) for any Baxter Local Entity on or before the Termination Date, or if the Baxalta Parties have not initiated a Local Closing for any Baxter Local Entity on or before the date that is ninety (90) days prior to the Termination Date in accordance with Section 3.01, then the Baxter Parties may deliver to the Baxalta Parties a Notice setting forth: (i) the name of the Baxter Local Entity or Baxter Local Entities holding any remaining Deferred Baxalta Local Business; (ii) the estimated fair market value of each such remaining Deferred Baxalta Local Business; and (iii) the nature of all Assets and Liabilities of each such remaining Deferred Baxalta Local Business.

(c) If the Baxalta Parties have not delivered the Baxter Parties a Notice, within ten (10) days of receiving the Notice from the Baxter Parties pursuant to Section 3.04(b), that one or more of the Baxalta Parties desires to acquire the Assets and the Liabilities of each such remaining Deferred Baxalta Local Business in accordance with Section 3.02, then the following shall apply:

(i) the applicable Baxter Local Entity shall proceed to use commercially reasonable efforts in order to sell to a Third Party one or more of the Assets and Liabilities of each applicable Deferred Baxalta Local Business or wind-down each Deferred Baxalta Local Business and liquidate all of the remaining Assets and pay (subject to Section 3.04(d)) all of the remaining Baxalta Liabilities of each such Deferred Baxalta Local Business;

(ii) the applicable Baxalta Party shall use commercially reasonable efforts, and shall cooperate in good faith, to assist the applicable Baxter Local Entity with such sale or wind-down for each applicable Deferred Baxalta Local Business;

(iii) except as set forth in Section 3.04(c)(i), the Baxter Parties and the Baxter Local Entities shall not be required to incur any Liability with respect to the Assets and Liabilities of each remaining Deferred Baxalta Local Business; and

(iv) until the sale, wind-down or liquidation of the remaining Assets or, as applicable, the Deferred Baxalta Local Businesses for which no Local Closing has occurred, the Aggregate Net Income Amount (and, accordingly the Swiss Aggregate Net Income Amount, the Dutch Aggregate Net Income Amount or the US Aggregate Net Income Amount, as applicable) shall continue to be calculated and satisfied monthly in the same manner as was required hereunder prior to the Termination Date.

(d) In the event of any sale, wind-down or liquidation of the Assets of any Deferred Baxalta Local Business pursuant to this Agreement that results in proceeds or Assets (i) in excess of the sum of (1) the cost of such sale, wind-down or liquidation and (2) the Baxalta Liabilities of each such Deferred Baxalta Local Business, the applicable Baxter Party shall pay such excess to a Baxalta Party to the extent it is able to remit outside of its jurisdiction of incorporation all or a part of such amount reasonably proximate to the time of completing such sale, wind-down or liquidation, and (ii) that are insufficient to satisfy the sum of (1) the cost of such sale, wind-down or liquidation and (2) the remaining Baxalta Liabilities of each such Deferred Baxalta Local Business, the Baxalta Parties shall promptly upon request by the Baxter Parties satisfy or cause a Baxalta Local Entity to satisfy the unpaid cost of such sale, wind-down or liquidation and such remaining Baxalta Liabilities (or reimburse or indemnify the Baxter Party or the applicable Baxter Local Entity elected by the Baxter Parties in respect of such cost and remaining Baxalta Liabilities).

### **Section 3.05 Local Closing Purchase Price.**

(a) No later than sixty days (60) days prior to the anticipated date of a Local Closing, the Parties shall determine the fair market value for the Deferred Baxalta Local Business held by the applicable Baxter Local Entity or, to the extent that not all of the Assets and Liabilities of the Deferred Local Baxalta Business are to be acquired by the distributor with respect to a Local Closing pursuant to Section 3.03(a), the fair market value of the applicable Assets and Liabilities. If the Parties are unable to mutually agree upon such fair market value or mutually agree that such fair market value should be determined by an independent accounting or valuation firm, then no later than forty-five (45) days prior to the anticipated date of a Local Closing, the Parties shall engage a mutually agreeable independent accounting or valuation firm of recognized national standing (or such other firm as agreed by the Parties) to determine the fair market value for the Deferred Baxalta Local Business held by the applicable Baxter Local Entity (the "Valuation Firm"). The terms of the appointment and engagement of the Valuation Firm shall be as mutually agreed upon between the Baxter Parties and the Baxalta Parties. If the

Baxter Parties and the Baxalta Parties are unable to jointly select or mutually agree upon the appointment and engagement terms of the Valuation Firm, the Baxalta Parties shall select, appoint and engage the Valuation Firm. No report of the Valuation Firm shall be subject to dispute by the Parties except in the case of manifest error.

(b) If, pursuant to Section 3.05(a), the Baxalta Parties select, appoint and engage the Valuation Firm, then no later than fifteen (15) days prior to the Local Closing Date with respect to a Local Closing pursuant to Section 3.02(a) or Section 3.03(a), the Baxalta Parties shall deliver to the Baxter Parties (and the distributor with respect to a Local Closing pursuant to Section 3.03(a)) a report prepared by the Valuation Firm setting forth the fair market value in U.S. dollars and the applicable Local Currency for the applicable Deferred Baxalta Local Business or, to the extent that not all of the Assets and Liabilities of the Deferred Local Baxalta Business are to be acquired by the distributor with respect to a Local Closing pursuant to Section 3.03(a), the fair market value of the applicable Assets and Liabilities.

(c) In connection with the Local Closing involving the purchase of the equity interests of each of Baxalta China, Baxalta India and Baxalta Malaysia and, if applicable, the loan receivable Asset of Baxter Swiss in connection with a Purchase Price Loan, the amount equal to the purchase price payable pursuant to Section 3.02(b) by Baxalta Swiss to Baxter Swiss for each such Local Closing shall be deemed satisfied in full by Baxter Swiss reducing the outstanding principal and accrued interest payable by Baxter Swiss to Baxalta Swiss pursuant to a multicurrency revolving credit agreement dated March 27, 2014, from Baxalta Swiss to Baxter Swiss and the Parties agree that if the amount of the purchase price payable pursuant to Section 3.02(b) for any or all of such Local Closings exceeds or is less than the outstanding principal and accrued interest under such multicurrency revolving credit agreement, then no additional amounts shall be payable by Baxalta Swiss for such excess, and no amount shall be payable by Baxter Swiss for such shortfall.

(d) In connection with the Local Closing involving the purchase of (i) the equity interests of Baxalta Brazil and (ii) the applicable Assets and the assumption of the applicable Liabilities of any other Dutch Local Entity, whether by directly acquiring such Assets and Liabilities or as a result of acquiring from a Baxter Local Entity the equity interests of a Transferring Entity in the Dutch Group, on the Local Closing Date for such Local Closing, Baxter Netherlands shall remit to Baxalta Netherlands an amount equal to the purchase price paid by Baxalta Netherlands to Baxter Netherlands for such Local Closing pursuant to Section 3.02(b). The amount payable by Baxalta Netherlands to Baxter Netherlands pursuant to Section 3.02(b) may be set off against any amount payable by Baxter Netherlands to Baxalta Netherlands pursuant to this Section 3.05(d).

### **Section 3.06 Taxes.**

(a) Subject to Section 3.06(b) and Section 3.06(c), any Income Taxes incurred by a Baxter Local Entity attributable to, resulting from, or arising out of, any gain attributable to the transfer of the Deferred Baxalta Local Business at the Local Closing shall be borne by the applicable Baxter Local Entity.

(b) If a Tax Authority challenges the purchase price for any Local Closing and, as a result of a subsequent Final Determination related thereto, additional Income Taxes are incurred by a Baxter Local Entity, the Baxter Parties shall provide the Baxalta Parties with Notice of the amount of such additional Income Taxes, together with any interest, fines, additions to Tax, penalties or additional amounts imposed by a Taxing Authority relating thereto (“Additional Income Taxes”), together with reasonably supporting documentary evidence thereof. Within thirty (30) days of receipt of such Notice, a Baxalta Party or a Baxalta Local Entity shall reimburse the Baxter Local Entity for the Additional Taxes; provided, however, that neither the Baxalta Parties nor any Baxalta Local Entity shall have any obligation to pay any additional purchase price as a result of such challenge and Final Determination. The Baxter Parties and the applicable Baxter Local Entity shall use commercially reasonable efforts to minimize any Additional Income Taxes.

(c) Upon the written request of the Baxalta Parties, the Baxter Parties shall use commercially reasonable efforts to (i) prior to the applicable Local Closing for the transfer of the Assets and the Liabilities of the Deferred Baxalta Local Business or the equity interests of a Transferring Entity in the Dutch Group, transfer such Assets and Liabilities or equity interests (the “Restructuring”) in a manner that results in Baxalta Netherlands being obligated, or permitted to satisfy the obligation, to pay any required purchase price in connection with such Local Closing and (ii) reduce any Income Taxes attributable to, resulting from, or arising out of the Restructuring (“Restructuring Income Taxes”). Within thirty (30) days of any payment by Baxter for any Restructuring Income Taxes incurred in connection with the Restructuring (but without modifying the responsibility for Income Taxes in connection with the subsequent Local Closing as set forth in Section 3.06(a)), a Baxalta Party shall reimburse the Baxter Local Entities for such Restructuring Income Taxes to the extent Baxalta has consented in advance to the Restructuring and the estimated amount of the Restructuring Incomes Taxes to be incurred in connection therewith.

(d) Any Transfer Taxes together with any notarial and registry fees and recording costs imposed by any Tax Authority or other Governmental Authority arising or attributable to the transfer of the Deferred Baxalta Local Business at the Local Closing shall be borne by the party primarily responsible under applicable Law for such Transfer Taxes; provided, however, that the other party shall pay and be solely responsible for all Transfer Taxes that are recoupable by such party. To the extent that one party claims any exemptions from any Transfer Taxes, such party shall provide to the other party the appropriate exemption certificates or any other documentation that evidences such exemption. The Baxter Local Entity and the Baxalta Local Entity shall cooperate in timely making and filing all Tax Returns that may be required to comply with applicable Law relating to the Transfer Taxes.

## ARTICLE IV

### TERM

**Section 4.01 Term.** This Agreement shall become effective at the Effective Time and shall remain in effect for a term expiring on the earlier of (i) the date of the consummation of the last Local Closing for the applicable Baxter Local Entity and (ii) the Termination Date.

**Section 4.02 Survival.** The provisions of Section 2.06, Section 2.07, Section 2.08, Section 3.03(c), Section 3.04, Section 3.06, this Section 4.02, Article V and Article VI of this Agreement, any outstanding payment obligations under Article II and any outstanding payment and wind-down obligations under Article III shall survive the termination of this Agreement and shall remain in full force and effect thereafter.

## ARTICLE V

### DISPUTE RESOLUTION

**Section 5.01 Dispute Resolution.** Other than as set forth in Section 2.06, in the event of any dispute, controversy or claim arising out of or relating to the transactions contemplated by this Agreement, or the validity, interpretation, breach or termination of any provision of this Agreement, including claims seeking redress or asserting rights under any Law (each, a “Dispute”), such Dispute shall be resolved: (a) first, by negotiation by the applicable local or functional leads (if applicable to any Dispute), and then (if there remains a Dispute) by discussions between the designated leaders of Baxter’s and Baxalta’s respective Project Management Offices related to the Separation, followed by (if there remains a Dispute) negotiation by and among the members of the Transition Committee, with the possibility of mediation as provided in Section 5.02; and (b) then, if negotiation and mediation fail, by binding arbitration as provided in Section 5.03. Each Party agrees on behalf of itself and each of its Subsidiaries that the procedures set forth in this Article V shall be the exclusive means for resolution of any Dispute. The initiation of mediation or arbitration hereunder will toll the applicable statute of limitations for the duration of any such proceedings.

**Section 5.02 Negotiation and Mediation.** If a Party serves written notice of a Dispute upon another Party (a “Dispute Notice”), the Parties will first attempt to resolve such Dispute by direct discussions and negotiation (including as set forth in Section 5.01 above). If the Parties to the Dispute agree, the Parties may also attempt to resolve the Dispute by a mediation administered by the International Institute for Conflict Prevention & Resolution (“CPR”) under its Mediation Procedure.

#### **Section 5.03 Arbitration.**

(a) If a Dispute is not resolved within forty-five (45) days (or later if mutually agreed by the Parties) after the service of a Dispute Notice, each Party shall have the right to commence arbitration. The arbitration shall be administered by the CPR pursuant to its Arbitration Rules and Procedures. References herein to any arbitration rules or procedures mean such rules or procedures as amended from time to time, including any successor rules or procedures, and references herein to the CPR include any successor thereto. The arbitration shall be before three (3) arbitrators. The Baxter Parties and the Baxalta Parties shall each designate one arbitrator in accordance with the “screened” appointment procedure provided in Rule 5.4 of the CPR Rules. The two party-appointed arbitrators will select the third, who will serve as the panel’s chair or president. This arbitration provision, and the arbitration itself, shall be governed by the laws of Delaware and the Federal Arbitration Act, 9 U.S.C. §§ 1-16.

(b) Consistent with the expedited nature of arbitration, each Party will, upon the written request of the other Parties, promptly provide the other Parties with copies of documents on which the producing Party may rely in support of or in opposition to any claim or defense. At the request of a Party, the arbitrators shall have the discretion to order examination by deposition of witnesses to the extent the arbitrator deems such additional discovery relevant and appropriate. Depositions shall be limited to a maximum of five (5) for each of the Baxter Parties and the Baxalta Parties and shall be held within forty-five (45) days of the grant of a request. Additional depositions may be scheduled only with the permission of the arbitrators, and for good cause shown. Each deposition shall be limited to a maximum of one day's duration. All objections are reserved for the arbitration hearing except for objections based on privilege and proprietary or confidential information. The Parties shall not utilize any other discovery mechanisms, including international processes and U.S. federal statutes, to obtain additional evidence for use in the arbitration. Any Dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrators, which determination shall be conclusive. All discovery shall be completed within sixty (60) days following the appointment of the arbitrators. All costs and fees relating to the retrieval, review and production of electronic discovery shall be paid by the Party requesting such discovery.

(c) The panel of arbitrators shall have no power to award non-monetary or equitable relief of any sort. The arbitrators shall have no power or authority, under the CPR Rules for Non-Administered Arbitration or otherwise, to relieve the Parties from their agreement hereunder to arbitrate or otherwise to amend or disregard any provision of this Agreement. The award of the arbitrators shall be final, binding and the sole and exclusive remedy to the Parties. Each Party may seek to confirm and enforce any final award entered in arbitration, in any court of competent jurisdiction.

(d) If an arbitral award does not impose an injunction on the losing Party or contain a money damages award in excess of \$25,000,000, then the arbitral award shall not be appealable and shall only be subject to such challenges as would otherwise be permissible under the Federal Arbitration Act, 9 U.S.C. §§ 1-16. In the event that the arbitration does result in an arbitral award, which imposes an injunction or a monetary award in excess of \$25,000,000, such award may be appealed to a tribunal of appellate arbitrators via the CPR Arbitration Appeal Procedure.

(e) Except as may be required by Law, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of all Parties.

**Section 5.04 Interim Relief.** At any time during the resolution of a Dispute between the Parties, each Party has the right to apply to any court of competent jurisdiction for interim relief, including pre-arbitration attachments or injunctions, necessary to preserve the Parties' rights or to maintain the Parties' relative positions until such time as the arbitration award is rendered or the Dispute is otherwise resolved.

**Section 5.05 Remedies.** The arbitrators shall have no authority or power to limit, expand, alter, amend, modify, revoke or suspend any condition or provision of this Agreement nor any right or power to award punitive, exemplary or treble damages (or other multiple damages that are not actual damages).

**Section 5.06 Expenses.** Each Party shall bear its own costs, expenses and attorneys' fees in pursuit and resolution of any Dispute; provided, however, that, in the event of any arbitration pursuant to Section 5.03, the non-prevailing Party shall bear all costs, expenses and attorneys' fees incurred in connection with such arbitration (including the fees of any arbitrator).

**Section 5.07 Continuation of Commitments.** Unless otherwise agreed in writing, the Parties shall, and shall cause their respective Subsidiaries to, continue to honor all commitments under this Agreement to the extent required by this Agreement during the course of dispute resolution pursuant to the provisions of this Article V with respect to all matters related to such Dispute.

## ARTICLE VI

### MISCELLANEOUS

**Section 6.01 Incorporation by Reference.** Article IX (other than Section 9.02) of the Separation and Distribution Agreement is hereby incorporated into this Agreement by reference and made applicable to the Parties hereto in such manner as the context requires in order to give effect to such provisions within this Agreement.

**Section 6.02 Governing Law.** This Agreement shall be governed by and construed and interpreted in accordance with the Laws of the State of Delaware, irrespective of the choice of Laws and principles of the State of Delaware, as to all matters, including matters of validity, construction, effect, enforceability, performance and remedies.

**Section 6.03 Notice.** Notwithstanding the foregoing, any Notice required hereunder shall be given, in addition to the Notices required under Section 9.05 of the Separation and Distribution Agreement, to a Baxter Party and a Baxalta Party at the following addresses. Each Party shall be permitted to change the addresses set forth below in the same manner as the parties to the Separation and Distribution Agreement are permitted to notify the other of a change of address under the Separation and Distribution Agreement.

If to a Baxter Party:

c/- Baxter International Inc.  
One Baxter Parkway  
Deerfield, Illinois 60015  
Attn: General Counsel  
E-mail: general\_counsel@baxter.com

If to a Baxalta Party:

c/- Baxalta Incorporated  
One Baxter Parkway  
Deerfield, Illinois 60015  
Attn: General Counsel  
E-mail: general\_counsel@baxalta.com

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

**BAXTER WORLD TRADE CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BAXTER HEALTHCARE SA**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BAXTER HOLDING B.V.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BAXALTA WORLD TRADE LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BAXALTA GMBH**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BAXALTA HOLDING B.V.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*[Signature Page to International Commercial Operations Agreement]*

**Baxalta Incorporated**  
**List of Subsidiaries**

The following entities are expected to be subsidiaries of Baxalta Incorporated upon completion of the distribution described in the information statement. Where ownership of a subsidiary is less than 100% by Baxalta Incorporated or a Baxalta Incorporated subsidiary, such has been noted by designating the percentage of ownership.

<u>Domestic Subsidiary</u>	<u>Incorporation</u>
Baxalta Export Corporation	Delaware
Baxalta Holdings LLC	Delaware
Baxalta Mexico Holding LLC	Delaware
Baxalta Singapore Holding LLC	Delaware
Baxalta US Inc.	Delaware
Baxalta World Trade LLC	Delaware
Baxalta Worldwide LLC	Delaware
BioLife Plasma LLC	Delaware
BioLife Plasma Services L.P.	Pennsylvania
Laboratorios Baxalta S.A.	Delaware
<u>Foreign Subsidiary</u>	<u>Incorporation</u>
Baxalta Australia Pty. Ltd.	Australia
Baxalta Belgium Manufacturing SA	Belgium
Baxalta Belgium SPRL	Belgium
Baxalta Biociencia Worldwide Ltda.	Brazil
Baxalta Canada Corporation	Canada
Baxalta Colombia S.A.S.	Colombia
Baxalta Czech spol s.r.o.	Czech Republic
Baxalta Bioscience s.r.o.	Czech Republic
Baxalta Denmark A/S	Denmark
Baxalta Deutschland GmbH	Germany
Baxalta Finland Oy	Finland
Baxalta France S.A.S.	France
Baxalta GmbH	Switzerland
Baxalta Holding B.V.	Netherlands
Baxalta Innovations GmbH	Austria
Baxalta Investments B.V.	Netherlands
Baxalta Ireland Financing Limited	Ireland
Baxalta Italy Holding S.r.l.	Italy
Baxalta Italy S.r.l.	Italy
Baxalta Japan Limited	Japan
Baxalta Korea Limited	Korea
Baxalta Manufacturing S.à r.l.	Switzerland
Baxalta Mexico, S. de R.L. de C.V.	Mexico
Baxalta Netherlands B.V.	Netherlands
Baxalta Netherlands Holding B.V.	Netherlands
Baxalta Netherlands Investments B.V.	Netherlands
Baxalta New Zealand Limited	New Zealand
Baxalta Norway AS	Norway
Baxalta Österreich GmbH	Austria
Baxalta Polska, sp z.o.o.	Poland
Baxalta Portugal, Unipessoal, Lda.	Portugal
Baxalta Recombinant S.à r.l.	Switzerland
Baxalta Schweiz AG	Switzerland
Baxalta Services Europe SPRL	Belgium
Baxalta Singapore Pte. Ltd.	Singapore
Baxalta Spain, S.L.	Spain
Baxalta Sweden AB	Sweden
Baxalta UK Holdco Limited	United Kingdom
Baxalta UK Investments Ltd.	United Kingdom
Baxalta UK Limited	United Kingdom
Baxalta, S. de R.L. de C.V.	Mexico

Baxter AG  
Baxter Czech spol s.r.o.  
Baxter Manufacturing, S.p.A  
Baxter Polska sp z.o.o.  
Navillus Insurance Company, Ltd.  
SuppreMol GmbH

Austria  
Czech Republic(1)  
Italy  
Poland(2)  
Ireland  
Germany

- (1) 34.15% current ownership interest
- (2) 23.73% current ownership interest