





Notice of the Annual Stockholders' Meeting  
on Friday, April 25, 2003

This is to give Notice of our  
Annual Stockholders' Meeting to be held  
**on Friday, April 25, 2003 at 10:00 a.m.**  
in the Congress Hall (Hall 8)  
of the Exhibition Center in Cologne-Deutz.

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## 1. Submission of the confirmed Financial Statements of Bayer AG, the Consolidated Financial Statements of the Bayer Group approved by the Supervisory Board, the Management Reports of Bayer AG and the Bayer Group, and the Report of the Supervisory Board for 2002; resolution on distribution of the profit

The Board of Management and the Supervisory Board propose that the balance sheet profits of €657,307,728.00 be used to pay a dividend of €0.90 per share and that May 2, 2003 be set as the due date for the pay-out.

The amount distributed to the shareholders shall be reduced by aggregate dividends notionally allocated to company shares that are not entitled to dividends pursuant to Art. 71b of the German Stock Corporation Act (*Aktiengesetz*). Such partial amount shall be carried forward as profit to new account.

## 2. Ratification of the actions of the members of the Board of Management

The Board of Management and the Supervisory Board propose that the actions of the members of the Board of Management who held office during the 2002 fiscal year be ratified with respect to that year.

## 3. Ratification of the actions of the members of the Supervisory Board

The Board of Management and the Supervisory Board propose that the actions of the members of the Supervisory Board who held office during the 2002 fiscal year be ratified with respect to that year.

## 4. Elections to the Supervisory Board

Dr. Wolfgang Reitzle is resigning from office as member representing the stockholders with effect as of the end of the 2003 Annual Stockholders' Meeting.

The Supervisory Board proposes that

[Dr. E.h. Jürgen Weber](#)

Chairman of the Management Board of Deutsche Lufthansa AG, Cologne

be elected to succeed the resigning member Dr. Wolfgang Reitzle for the remaining term of office, i.e. until the end of the Annual Stockholders' Meeting that resolves on the ratification of the actions of the members of the Supervisory Board with respect to the 2006 fiscal year, as representative of the stockholders.

The Supervisory Board further proposes that

[Jochen Appell](#)

General Counsel of Commerzbank AG, Frankfurt am Main

and

[Dr. Hans-Dirk Krekeler](#)

General Counsel of Deutsche Bank AG, Frankfurt am Main

be elected simultaneously as substitute members, who would, in the above order, succeed the elected stockholders' representative should he cease to be a member of the Supervisory Board.

Pursuant to §§ 96, para. 1 and 101, para. 1 of the German Stock Corporation Act (*Aktiengesetz*) and § 7, para. 1, sentence 1, no. 3 of the German Co-determination Act of 1976 (*Mitbestimmungsgesetz*), the Supervisory Board is composed of 10 members representing the stockholders and 10 members representing the employees. The stockholders' representatives are elected by the Annual Stockholders' Meeting, which is not bound by nominations.

The persons proposed for election to the Supervisory Board as stockholders' representatives or substitutes hold offices as members of supervisory boards (required by law to be established) or comparable supervisory bodies of the following German or foreign corporations:

[Dr. E.h. Jürgen Weber](#)

Member of supervisory boards required by law to be established:

Allianz Lebensversicherungs AG

KarstadtQuelle AG

Thomas Cook AG

Lufthansa Technik AG

LSG Lufthansa Service Holding AG

Lufthansa Cargo AG

Loyalty Partner GmbH

## 5. Change of the Articles of Incorporation with regard to Article 3, para. 2; Article 10, Article 11 para. 1; Article 12; Article 14; the heading of Article 16, para. 3; Article 18, para. 1 and 2; Article 19, para. 3 (Adaptations caused by statutory adjustments and by the German Corporate Governance Code)

Since the end of the 2002 Annual Stockholders' Meeting several changes in law became effective, especially the Transparency and Company Disclosure Act (*Transparenz- und Publizitätsgesetz*) of June 19, 2002. Further, the German Corporate Governance Code has been enacted. To adapt the Articles of Incorporation to the new statutory rules and the recommendations of the German Corporate Governance Code as well as to clarify some existing articles, the Board of Management and the Supervisory Board propose that

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- a) Article 3, para. 2 of the Articles of Incorporation is revised as follows:
- “(2) Notices of the Company are published in the electronic Gazette of the Federal Republic of Germany (*elektronischer Bundesanzeiger*).”
- b) Article 10 of the Articles of Incorporation is revised as follows:
- “(1) The Chairman of the Supervisory Board shall convene and chair the meetings of the Supervisory Board. The Supervisory Board shall meet twice per calendar half-year. It shall also meet if required by law or if deemed appropriate for business reasons.
- (2) The members of the Board of Management may attend meetings of the Supervisory Board unless the Chairman of the Supervisory Board determines otherwise.
- (3) The Supervisory Board shall constitute a quorum if at least one half of the number of members of which it is required to consist participate in voting. A member also participates in the passing of the resolution if he abstains from voting. Absent members of the Supervisory Board may participate in the passing of a resolution if they arrange for written votes to be cast by other members of the Supervisory Board. A vote sent by fax or by another commonly used means of communication shall also be deemed to be a written vote.
- (4) If, at a meeting of the Supervisory Board, the number of stockholder representatives and the number of employee representatives who participate in voting are not equal, a revote shall be taken if so requested by two members of the Supervisory Board. Such revote shall be taken at the next regular meeting, unless a special meeting of the Supervisory Board is convened. Thereafter, no further revote shall be permitted to take place at the request of only a minority of the members.
- (5) At the instigation of the Chairman, the Supervisory Board may also pass resolutions by casting votes verbally, by telephone, in writing, by fax, or via another common communication medium. Such resolutions shall be confirmed in writing by the Chairman and recorded in the minutes of the next meeting.
- (6) Resolutions of the Supervisory Board shall be passed by a majority of the votes cast, except where otherwise provided by law. In case of a tie, the Chairman of the Supervisory Board shall have the casting vote, if the stalemate continues after a second voting on the same subject matter.
- (7) Minutes of the deliberations and resolutions of the Supervisory Board are to be recorded and filed. They must be signed by the chairman.
- (8) Declarations of intent by the Supervisory Board and its committees shall be made by the Chairman on behalf of the Supervisory Board. The Chairman, but not the other members, shall be authorized to receive declarations on behalf of the Supervisory Board.
- (9) The Supervisory Board may resolve amendments to these Articles of Incorporation which relate solely to their wording.”
- c) Article 11, para. 1 of the Articles of Incorporation is revised as follows:
- “(1) The Supervisory Board shall decide on its own Rules of Procedure.”
- d) Article 12 of the Articles of Incorporation is revised as follows:
- “(1) Apart from reimbursement of his or her expenses, each member of the Supervisory Board shall receive a fixed annual remuneration in the amount of €5,000.00, plus €3,500.00 for every €0.05 by which the dividend per share exceeds €0.15.
- (2) The Chairman shall receive three times the amount stated in paragraph 1; the Vice Chairman shall receive on-and-a-half times the amount stated in paragraph 1. Members of the Supervisory Board who also are members of a committee shall receive an additional quarter of the amount stated in paragraph 1. In addition, Supervisory Board members who chair a committee shall receive an additional quarter of the amount stated in paragraph 1. A member of the Supervisory Board, however, shall not receive in total an annual remuneration exceeding four times the aggregate annual amount stated in paragraph 1.
- (3) Supervisory Board members who have only been members of the Supervisory Board or of one of its committees, or, who have chaired one of its committees only for a part of the fiscal year shall receive a lower remuneration on a pro rata basis.
- (4) The Company shall reimburse the Supervisory Board members their expenses incurred through the exercise of their office, including any turnover tax (value added tax) payable based on their remuneration and on the reimbursement of their expenses.
- (5) The Company may purchase liability insurance for the members of the Supervisory Board to cover their legal liability arising from their activities as members of the Supervisory Board.”

- e) Article 14 of the Articles of Incorporation is revised as follows:
- “Insofar as no other persons are legally authorized to do so, the notice of the Annual Stockholders’ Meeting shall be given by the Board of Management. The notice must be published in the electronic Gazette of the Federal Republic of Germany (*elektronischer Bundesanzeiger*) at least one month before the latest day for the deposition of shares pursuant to Article 15. For the calculation of this period of one month, the day of the notice or the latest day for the deposition of shares shall not be calculated.”
- f) The headline of Article 16 of the Articles of Incorporation is revised as follows:
- “Article 16 Conduct of the Stockholders’ Meeting”
- g) Article 16 of the Articles of Incorporation shall be amended by inserting the following new paragraph 3:
- “(3) The Stockholders’ Meeting may be transmitted in whole or in parts in sound and vision. The details of the transmission in sound and vision shall be published together with the convening of the Stockholders’ Meeting in the Legal Gazette of the Company. ”
- h) Article 18 para. 1 and 2 of the Articles of Incorporation is revised as follows:
- “(1) The Board of Management shall prepare the annual financial statements of Bayer AG and the Bayer Group, the Management Reports of Bayer AG and the Bayer Group for the preceding fiscal year within the statutory deadline and shall submit them immediately after their preparation to the Supervisory Board and to the auditors. The Board of Management shall at the same time submit to the Supervisory Board a proposal for distribution of the balance sheet profit.
- (2) The annual financial statements of Bayer and the Bayer Group shall be prepared in accordance with the statutory provisions and accepted accounting principles.”
- i) Article 19 of the Articles of Incorporation shall be amended by inserting the following new paragraph 3:
- “(3) The Stockholders’ Meeting may decide to distribute the balance sheet profit partly or in total to the stockholders by way of distribution in kind.”
- 6. Authorization to buy back and sell the Company’s own shares, excluding subscription rights**
- The Board of Management and the Supervisory Board propose the following resolution:
- a) The Board of Management is authorized until October 24, 2004 to buy back shares representing up to 10 percent of the Company’s capital stock. Where the purchase is made through the stock exchange, the price paid per share (excluding incidental costs of purchase) shall not vary by more than 10 percent either way from that in the closing auction of the Xetra trading system (or such similar system as may replace it) on the Frankfurt Stock Exchange on the trading day prior to the conclusion of the respective transaction entailing an obligation to purchase shares of the Company. The current authorization to buy back shares, valid until October 25, 2003, shall cease upon this new authorization coming into effect.
- b) The authorization may be exercised wholly or in several installments. The authorization can be exercised for any legally permissible purpose and in pursuit of one or several of the purposes mentioned in paragraphs c), d), e) and f). Where it is used for one or several of the purposes mentioned in paragraphs c), d) or e), the subscription rights of the stockholders are excluded.
- c) The Board of Management is authorized to sell the shares acquired under this authorization other than through the stock exchange or through an offering to all stockholders, provided that the sale is made for cash and at a price that is not significantly below the stock market value of the Company’s shares at the time of sale. The relevant stock market value within the meaning of the foregoing provision is deemed to be the arithmetic mean of the closing auction price of the Xetra trading system (or any similar system replacing it) on the Frankfurt Stock Exchange over the five trading days preceding the sale. This authorization is limited to a total of 10 percent of the Company’s capital stock.
- d) The Board of Management is authorized to transfer the shares acquired under this authorization to third parties, provided this is for the purpose of acquiring companies, parts of companies or interests in companies, or consummating mergers.
- e) The Board of Management is authorized to offer the shares acquired under this authorization to managerial employees of the Company and of direct and indirect subsidiaries and to employees of the Company and of direct and indirect subsidiaries within the context of stock option programs (hereafter called the “stock compensation programs”), in the manner described in paragraph h) below, and to transfer them to such persons.
- f) The Board of Management is authorized to redeem the shares acquired under the above authorization without a further resolution of the Stockholders’ Meeting.

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- g) The Board of Management may only exercise the authorizations in paragraphs c) and d) with the consent of the Supervisory Board. Furthermore, the Supervisory Board may determine that actions of the Board of Management based on this resolution of this Stockholders' Meeting may be undertaken only with its consent.
- h) The shares acquired under this authorization may be used for two different types of stock compensation program: Module 1 of the stock participation program (hereafter called "SPP") and the stock incentive program (hereafter called "SIP"). These stock compensation programs must satisfy the following essential requirements:

## *Stock options*

Each participant in a stock compensation program is eligible to receive shares of the Company under the following terms and conditions. Any right to receive shares of the Company is hereafter referred to as a "stock option". Stock options under the stock compensation programs can be issued within a three-month period following the Annual Stockholders' Meeting in the years up to 2006.

## *Persons eligible to participate*

Persons eligible to participate in the SPP are, in principle, all employees of the Company covered by collective bargaining agreements and managerial employees of management levels 1 to 3, provided that they are permanently employed by the Company and not under notice at the time of the commitment, and in the previous year received a variable one time compensation component. The granting of a variable one time compensation component in 2000 shall be taken as the above criteria in so far as the SPP tranche for the year 2002 for managerial employees is concerned and no variable one time compensation component was granted in 2001. The same shall apply to employees of direct and indirect subsidiaries, in so far as a SPP is also offered by such subsidiaries. For the SPP and hence for all persons eligible to participate in the SPP, a total volume of up to 1.5 million shares of the Company will be available, to be divided among all the annual tranches.

Persons eligible to participate in the SIP are all managerial employees of management levels 4 and 5, provided that they are permanently employed by the Company and not under notice at the time of the commitment, and in the previous year received a variable one time compensation component. The granting of a variable one time compensation component in 2000 shall be taken as the above criteria in so far as the SIP tranche for the year 2002 for managerial employees is concerned and no variable one time compensation component was granted in the 2001.

The same applies to managerial employees with comparable functions in direct and indirect subsidiaries taking part in the program. For the SIP and hence for all persons eligible to participate in the SIP, a total volume of up to 600,000 shares of the Company will be available, to be divided among all the annual tranches.

## *Conditions of participation*

It is a condition of participation in the stock compensation programs that the participant makes a personal investment in shares of the Company (hereafter called "investment shares"). The maximum number of investment shares depends on the variable compensation component of each eligible participant and on the share price at the time of the commitment.

For every ten (10) of his own investment shares, a participant in Module 1 of the SPP receives five (5) stock options, each entitling the participant to receive one share. For every ten (10) of his own investment shares, a participant in the SIP receives ten (10) stock options, each entitling the participant to receive one share.

## *Term / Content of the program*

Both stock compensation programs (SPP Module 1, SIP) run for a total period of 10 years.

During the term of the program, each participant can receive further shares of the Company free of charge (hereafter called "incentive shares") for every ten investment shares; in the case of the SPP, this is limited to a maximum of five incentive shares, and in the case of the SIP, a maximum of ten incentive shares. It is a condition of the foregoing that the participant's own investment shares must remain in his special deposit account from the start of the program until the relevant distribution date. In the case of the SIP, the distribution of incentive shares is subject to a further condition. Incentive shares are only granted if the performance of the shares of the Company (measured as the total return) exceeds that of the Dow Jones EURO STOXX 50<sup>SM</sup> performance index. The performance of the share compared with the performance of the index is determined on the basis of the average prices over the ten trading days preceding the start of the program or the appropriate distribution date in the closing auction of Xetra trading on the Frankfurt Stock Exchange. Not only the trading price of the shares of the Company, but also dividend payments, the value of subscription rights and other special rights are taken into account, according to the same criteria as in the Dow Jones EURO STOXX 50<sup>SM</sup> performance index.

Stock options can be exercised after a waiting period of two years, then after a total period of six years and finally after ten years. If the aforesaid conditions are met, participants are granted, for every ten deposited investment shares, the following incentive shares on the dates indicated:

<i>Distribution date at end of:</i>	<i>SPP [No. incentive shares]</i>	<i>SIP [No. incentive shares]</i>
• 2 years	1	2
• 6 years	2	4
• 10 years	2	4

Incentive shares are granted to all eligible participants free of charge.

#### *Non-transferability/Employee status*

The stock options, i.e. the rights to receive incentive shares, cannot be transferred by act of a party. In principle, they can only be granted provided that the participant is employed by the Company or by a direct or indirect subsidiary of the Company on the distribution date and is not under notice. In the event of death, retirement and other circumstances, including dismissal for operational reasons, or in the event the company or business is no longer part of the Bayer Group, special arrangements, including extended deadlines for exercising the options, may be agreed.

#### *Further exercise conditions*

Details regarding the granting of subscription rights and the further conditions of the stock compensation programs are determined by the Board of Management of the Company, which, insofar as legally necessary, makes decisions in agreement with the managing bodies of the subsidiaries responsible for the remuneration of the eligible participants. Such details include, in particular, and within the scope of the aforesaid criteria, the annual decision regarding the issue of further tranches of the SPP and SIP and regarding their structure and the group of persons eligible to participate, defining procedures for the execution of programs and the allocation of incentive shares, rules for dealing with special cases, and defining any lock-up periods, technical regulations for personal investment shares and defining the usual anti-dilution clauses. The program conditions may also allow the Company to pay out the cash value of the shares rather than to deliver the shares themselves.

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#### **Statement by the Board of Management to the Annual Stockholders' Meeting regarding Item 6 of the Agenda**

Section 71, para. 1, no. 8 of the German Stock Corporation Act allows stock corporations to buy back shares representing up to 10 percent of the Company's capital stock on the basis of an authorization from the Annual Stockholders' Meeting. Item 6 of the Agenda contains a proposal to grant an appropriate authorization, limited to a period of 18 months. This will enable the Board of Management, in the interest of the Company and of its stockholders, to buy back in the market shares representing up to 10 percent of the Company's current capital stock. The shares bought back by the Company can be sold again in the market or through a public offering to all stockholders. These possibilities ensure that the principle of equality of treatment of stockholders is respected both in the purchase and the reissue of the shares.

Furthermore, the Company may also sell the bought-back shares outside the market, without a public offering to all stockholders, provided that the price of the shares is not significantly lower than the trading price at the time of sale. This authorization takes advantage of the possibility allowed under § 71, para. 1, no. 8 of the German Stock Corporation Act in conjunction with § 186, para. 3, sentence 4 of the German Stock Corporation Act for simplified exclusion of subscription rights. In particular, in the interest of the Company, it will be possible to offer shares of the Company to institutional investors in Germany and abroad and to broaden the stockholder base. The requested authorization will allow the Company to respond quickly and flexibly to favorable stock market conditions. The interests of stockholders with regard to their assets and voting rights will be duly respected. The authorization based on § 186, para. 3, sentence 4 of the German Stock Corporation Act to exclude subscription rights upon the sale of the Company's own shares, including any authorizations to issue new shares or convertible bonds and excluding subscription rights under § 186, para. 3, sentence 4 of the German Stock Corporation Act is limited to a maximum of 10 percent of the Company's capital stock. The aim of protecting stockholders from dilution is achieved by stipulating that the shares may only be sold for a price that is not significantly lower than the definitive trading price. The selling price of the bought-back shares shall be set just before the sale. The Board of Management shall endeavor – taking account of current market circumstances – to keep any discount on the trading price as low as possible. Interested stockholders can maintain their participation quota through purchases in the market at essentially identical conditions.

The Company shall furthermore be allowed to offer its own shares by way of payment in the context of mergers with other companies or upon the acquisition of companies or parts of companies or interests in companies. International competition and the globalization of industry increasingly demand this method of acquisition financing, which has been made easier for the Company with regard to acquisition efforts in the United States by the recent listing of Bayer stock on the New York Stock Exchange. The proposed authorization should give the Company the necessary scope to exploit quickly and flexibly any acquisition opportunities that arise. The proposed exclusion of subscription rights will enhance this aim.

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When determining the valuation, the Board of Management will ensure that the interests of stockholders are duly upheld. As a rule, it will base its assessment of the value of shares offered by way of payment on the trading price of the shares of the Company. However, the intention is not to link the value rigidly to a trading price, particularly so as to prevent the outcome of negotiations, once achieved, from being jeopardized by fluctuations in the trading price. The Company is not planning any specific acquisitions at the present time.

Furthermore, under the provisions of paragraphs e) and h), the Company should be able to use its own shares for stock compensation programs. All of the main rules of the stock compensation programs in question are set forth in the proposed resolution. Therefore, only the most important aspects of these rules are outlined below:

Granting stock options or subscription rights to employees and managerial employees, entitling them to subscribe to shares of the Company subject to certain conditions, is an internationally recognized method of remuneration. Such method of remuneration has also become increasingly widespread in Germany in recent years. Such schemes create incentives to enhance performance, thereby further increasing corporate value and boosting the Company's share price as compared to that of other companies in the interest of the Company and stockholders alike. At the same time it allows the Company to keep pace with international competition by attracting outstanding employees and managerial employees and binding them to the Company, both in Germany and abroad. In view of the strong international alignment of the business activities of the Bayer Group, the attraction and long-term retention of qualified employees and managerial employees is especially important for the Company, and is expected by the capital market. In view of the aims described above, shares acquired for the purposes of the stock compensation programs can only be offered for sale to eligible participants rather than to stockholders.

The Company has developed three different stock compensation programs, whose key aspects were described in the 1999 and 2000 and 2001 Annual Reports and which, due to their special qualities, have been very well received both by employees and managerial employees and by the capital markets. For example, in April 1999, Germany's leading financial magazine Capital compared the Company's stock option program with the stock option programs operated by other DAX 30 companies and placed it in the top group, rating it "Very good". In addition, the Union Asset Management Holding AG rated the aforesaid stock option program in its comprehensive survey concerning stock option programs of DAX companies in 2002 among the top 5.

Besides the two stock compensation programs covered by this resolution, the Company has also introduced a third stock compensation program known as the SOP (Stock Option Program) for the members of the Board of Management and senior executives of management level 6. As in the programs covered by this resolution, it requires participants to have made a personal investment in shares of the Company. It allows eligible individuals to receive an

additional remuneration component, the amount of which depends on the performance of the trading price of the shares of the Company, both in absolute terms and in comparison with the Dow Jones EURO STOXX 50<sup>SM</sup> performance index, and on an additional individual performance component known as the delta cash value added, which is Bayer's internal measure of value creation. The SOP is to be paid in cash, since only employees but not members of the Board of Management benefit from the tax advantages relating to the granting of shares (§ 19a of the German Income Tax Act). Responsibility for such payment lies exclusively with the Supervisory Board (for members of the Board of Management) or with the Board of Management (for senior executives of management level 6), but not with the Stockholders' Meeting. Therefore the SOP is not covered by the resolution presented the Stockholders' Meeting and is mentioned here merely for the sake of completeness.

The proposed authorization should allow the Company to use its own shares for Module 1 of the SPP and the SIP and to issue stock options according to the terms of the authorization granted by the Stockholders' Meeting.

The stock compensation programs using the Company's own shares, for which it is proposed that the Stockholders' Meeting grant authorization, have two or three features which are in the particular interests of the Company and its stockholders.

The first feature relates to the defined retention periods, whereby managerial employees and employees are bound to the Bayer Group for the medium to long term. These retention periods are longer than those stipulated by the stock option programs of other companies, in some cases significantly so.

The second feature relates to the participant's personal investment. Only if eligible employees and managerial employees invest for their own account and hence at their own risk in shares of the Company, can they participate in the stock compensation programs as described above. This gives the stock compensation programs particular significance and particular weight, in a way that distinguishes them from many other stock compensation programs of other companies. Employees and managerial employees not only have the opportunity to share in the growing value of the Company through their own individual performance. They also – like the stockholders – participate in the risk, by investing their own money.

Finally, the third feature relates to the further conditions of exercise.

Two modules are available to participants in the SPP. While Module 2, on which it is not necessary to pass a resolution here, has the format of a normal employee share ownership scheme benefiting from tax concessions under § 19 a of the German Income Tax Act, and which under § 71, para. 1, no. 2 of the German Stock Corporation Act uses the Company's own shares, acquired in the market by the Board of Management, Module 1 goes beyond § 71, para. 1, no. 2 of the German Stock Corporation Act and is an innovative type of employee share ownership scheme which makes the

granting of further shares in the Company conditional on the employee remaining with the Bayer Group and on making a personal investment.

Participants in the SIP only receive incentive shares if the performance of the shares of the Company (measured as the total return) exceeds that of the Dow Jones EURO STOXX 50<sup>SM</sup> performance index over the reference period. The managerial employees of the Bayer Group are therefore willing to measure their performance against that of other leading listed companies in the European Economic Area.

The stock compensation programs represent remuneration elements which, in the interest of enhancing motivation, increase the proportion of existing flexible remuneration components and should help enhance Bayer's corporate value in the long term. At the time the incentive shares are granted, the managerial employee has already earned this remuneration, i.e. the shares of the Company, through his own efforts, so that the shares are issued to him free of charge.

The total intrinsic value of all entitlements to incentive shares under the appropriate program can be estimated on the basis of the current share price, by multiplying the maximum number of incentive shares to be issued by the current trading price of the shares of the Company. Based on the average trading price in the closing auction in the calendar weeks 4 to 6 of 2003, the intrinsic value is calculated as follows:

<i>Program</i>	<i>Calculated intrinsic value (€)</i>
<i>Module 1 of SPP</i>	<i>12,622,000</i>
<i>SIP</i>	<i>3,725,000</i>

The use of the own shares of the Company or a corresponding cash settlement makes it possible, compared to the use of conditional capital, to take advantage of tax concessions by the formation of tax-deductible personnel expenses. The aggregate amount of 52,393 bonus shares were issued under the ABP Module 1 Incentive Scheme in 2002. Under the AIP Incentive Scheme the aggregate amount of 18,224 bonus shares were issued to managerial employees in 2002.

Finally, the authorization allows the Company to buy back shares without a further resolution of the Stockholders' Meeting. Such an authorization is usual. It allows the Company to react appropriately and flexibly to the individual capital market situation.

The Board of Management shall inform the Stockholders' Meeting as and when it exercises the authorization.

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## **7. Consent to the Hive-Down and Transfer Agreement between the Company and Bayer HealthCare Aktiengesellschaft**

The Board of Management and the Supervisory Board propose that the Meeting consent to the Hive-Down and Transfer Agreement between the Company and Bayer HealthCare AG entered into on March 11, 2003.

The Company and Bayer HealthCare AG have entered into a Hive-Down and Transfer Agreement on March 11, 2003 before the Notary Dr. Dieter Janke in Leverkusen. Under this Hive-Down and Transfer Agreement the Company hives down as a whole all assets and liabilities together with all rights and obligations allocated to the HealthCare business area to Bayer HealthCare AG (hive-down for acquisition pursuant to § 123, para. 3, no. 1 German Transformation Act; "Umwandlungsgesetz"). The hive-down shall have economic retroactive effect as of January 1, 2003, 00.00 hours.

*The essential content of the Hive-Down and Transfer Agreement is as follows:*

### **HIVE-DOWN AND TRANSFER AGREEMENT**

between  
Bayer Aktiengesellschaft, Leverkusen ("BAG")  
and  
Bayer HealthCare Aktiengesellschaft, Leverkusen ("BHC")

#### **I. Preliminary Remarks**

- 0.1 BAG has its registered office in Leverkusen. The share capital of the Company on the date of the execution of this Agreement amounts to €1,869,675,315.20 and is divided into 730,341,920 no par value shares.
- 0.2 BHC has its registered office in Leverkusen. The share capital of the company on the date of the execution of this Agreement amounts to €50,900 and is divided into 50,900 no par value shares. BAG is the sole stockholder of BHC.
- 0.3 The HealthCare business area of BAG is comprised of the Pharmaceuticals, Consumer Care, Diagnostics, Animal Health and Biological Products divisions. As of July 1, 2002, the HealthCare business area has been organizationally combined with the related service functions of the central service and corporate divisions of BAG and shall now be transferred to a separate legal entity. The HealthCare business area shall be transferred to BHC by hive-down for acquisition pursuant to the German Transformation Act ("Umwandlungsgesetz", "UmwG").

NOW THEREFORE, BAG and BHC agree to the following:

## II. Hive-Down, Effective Date and Balance Sheet

### § 1 Hive-Down

- 1.1 BAG transfers, as part of its undertaking, all of the assets and liabilities together with all rights and obligations allocated to the HealthCare business area (hereinafter referred as a whole as the “Undertaking” or the “HealthCare business area”) in their entirety to BHC by hive-down for acquisition pursuant to § 123, para. 3, no. 1 UmwG and as consideration for the assignment of shares of BHC to BAG pursuant to § 19. § 1.2 shall remain unaffected.
- 1.2 Items of the assets and liabilities and other rights and obligations of BAG which are not allocated to the HealthCare business area pursuant to this Agreement or which are expressly precluded from the transfer in this Agreement shall not be transferred to BHC.
- 1.3 If the scope of the use of the assets becomes relevant pursuant to this Agreement, the scope of the use of the assets by the HealthCare business area or other business or service areas as of January 1, 2003, shall be decisive, except as otherwise provided in this Agreement. § 3.2 shall remain unaffected.

### § 2 Effective Date

- 2.1 The transfer of the Undertaking described in § 1 and specified in §§ 4 – 13 shall occur between BAG and BHC with economic effect as of January 1, 2003, 00.00 hours (“Effective Date”). From the Effective Date all actions and business transactions of BAG with regard to the parts of the Undertaking allocated to the HealthCare business area shall be deemed to be made for the account of BHC.
- 2.2 If the hive-down is not registered in the commercial register of BAG by February 29, 2004, then, in deviation from § 2.1, the Effective Date shall be deemed to be January 1, 2004, 00.00 hours. In case of a further delay of the registration beyond February 28 of the following year, the Effective Date shall be postponed respectively in accordance with the aforementioned provision by one year. In case of such postponement of the Effective Date, the Hive-Down Balance Sheet pursuant to § 3.1 shall remain relevant.

### § 3 Hive-Down Balance Sheet and Adjustment

- 3.1 It shall be determined on the basis of the Hive-Down Balance Sheet for the HealthCare business area as of January 1, 2003, 00.00 hours, developed on the basis of the Final Balance Sheet (§ 3.3) of BAG as of December 31, 2002, 24.00 hours pursuant to Annex 3.1 (“Hive-Down Balance Sheet”), which items of the assets and liabilities are allocated to the HealthCare business area. BAG also

transfers to BHC all assets not required to be reported, not reportable or not actually reported in the balance sheet and other rights and liabilities which, according to origin or purpose, are to be allocated to the HealthCare business area, unless it is otherwise expressly stated in this Agreement.

- 3.2 Any additions or disposals of assets and liabilities in the time period between the Effective Date and the Closing Date (§ 14.1) as well as other rights (including surrogate rights such as, e.g. compensation claims, etc.) and obligations are also transferred. Accordingly, BAG transfers to BHC also those assets and liabilities allocated to the HealthCare business area with respect to origin and purpose as well as all other rights and obligations which are received by the HealthCare business area during the time period between the Effective Date and the Closing Date or which came into existence during this time period. Accordingly, those items of assets and liabilities and other rights and obligations which are sold or otherwise transferred in the time period between the Effective Date and the Closing Date or which no longer exist at this point in time are not transferred to BHC. The aforesaid provisions shall apply respectively to changes of the scope of use of assets.
- 3.3 The audited balance sheet of BAG as of December 31, 2002, 24.00 hours, shall be the final balance sheet of BAG for the hive-down pursuant to §§ 125, 17, para. 2 UmwG (“Final Balance Sheet”).
- 3.4 BHC shall be obligated to continue the book values of the transferred assets and liabilities in its commercial balance sheet, as reported in the Final Balance Sheet upon which the Hive-Down Balance Sheet is based. The same shall apply regarding the continuation of the book value in the tax balance sheet.

## III. Subject Matter of the Hive-Down

In particular, the assets and obligations described in more detail *infra* in §§ 4 – 13 of this Agreement, are part of the Undertaking.

### § 4 Industrial Property Rights

The domestic and foreign patents, utility models and trademarks and applications for such industrial property rights (hereinafter referred to as “Industrial Property Rights”) are not transferred to BHC.

- 4.1 On the Closing Date (§ 14.1), a Trust Agreement as set forth in Annex 4.1 comes into effect between BAG and BHC with regard to the Industrial Property Rights, which exclusively or primarily serve the HealthCare business area and are listed in Annexes 1 and 2 to the Trust Agreement, with retroactive economic effect as of the

Effective Date. Under the Trust Agreement, BAG shall hold those Industrial Property Rights in trust for BHC. BAG shall retain a right of use to the Industrial Property Rights which are primarily allocated to the HealthCare business area.

- 4.2 On the Closing Date (§ 14.1), a License Agreement as set forth in Annex 4.2 comes into effect between BAG and BHC with regard to the Industrial Property Rights listed in the Annex to the License Agreement, which, although also serving the HealthCare business area, primarily serve other business or service areas of BAG, with retroactive economic effect as of the Effective Date. BAG shall grant BHC a right of use therein for the industrial activities and the performance of services in the HealthCare business area.
- 4.3 On the Closing Date (§ 14.1), a Joint Use Agreement as set forth in Annex 4.3 comes into effect between BAG and BHC with regard to the Company name “Bayer” and the Group trademarks “Bayer” and the Bayer Cross symbol, with retroactive economic effect as of the Effective Date. BAG shall grant BHC therein the right to jointly use the Company name and the trademarks.

## § 5 Know-How

With regard to the know-how related to the HealthCare business area consisting, in particular, of

- (i) know-how relevant for research and development, for example:
  - (a) biological knowledge in the genomic and proteomic area, of target molecules, testing systems, cells, tissue, organs and/or animals;
  - (b) chemical knowledge of fundamental and strategic research for discovering active components for drugs, development of types of pharmaceutical substances for application on humans and animals and development of reagents for diagnostic purposes and data on chemical media related thereto;
  - (c) results of preclinical and clinical studies on effectiveness;
- (ii) medical knowledge of the prophylactic, diagnostic and therapeutic treatment of human and animal bodies, including genetic therapy and pharmacological and toxicological results involving active components of medication for humans and animals;
- (iii) knowledge of construction of machines for the production of testers for diagnostic research and testers for the application of upcoming reagents;

- (iv) knowledge of the technological process of process development, master production and all processes allocated to the property, plant and equipment in § 8, including all product specifications and plant calculations, plant construction and plans of current and previous production plants;
- (v) media materials (photos, videos, graphics, sound materials, etc.) which were administered by the HealthCare business area or (co-) produced by it;
- (vi) marketing know-how;

which is allocated to the HealthCare business area (collectively, “Know-How”), the Parties agree to the following:

- 5.1 BAG transfers to BHC the entire Know-How exclusively allocated to the HealthCare business area as well as all confidential business inventions exclusively allocated to the HealthCare business area pursuant to Annex 5.1 which are treated as confidential business inventions by BAG.
- 5.2 BAG transfers to BHC the entire Know-How primarily allocated to the HealthCare business area subject to the provision that BAG shall retain an exclusive, transferable, no cost, and non-terminable right of use for all of its other current business and service areas, including the right to sub-license.
- 5.3 If BAG is only jointly entitled to the Know-How and the confidential business inventions transferred pursuant to §§ 5.1 and 5.2, BAG transfers the respective joint entitlement pursuant to §§ 5.1 and 5.2.
- 5.4 The entire other Know-How which, even if also related to the HealthCare business area, is allocated primarily to other business or service areas of BAG, is not transferred to BHC. With respect to the entire other Know-How, BAG transfers to BHC an exclusive, transferable and non-terminable right of use limited to the HealthCare business area at no cost (subject to § 5.7), including the right to sub-license within the HealthCare business area. § 5.3 shall apply respectively.
- 5.5 BAG grants BHC an exclusive, transferable and non-terminable right of use to all existing databases of BAG limited to the industrial activities and the performance of services in the HealthCare business area at no cost (subject to § 5.7), insofar as such are not already transferred to BHC under this Agreement.

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- 5.6 BHC obtains the possession of all recordings, technical documents and other data carriers upon which the intangible assets transferred to BHC are stored. However, BHC shall merely be granted access to the central data storage of BAG. With regard to the central data storage of companies of the Bayer Group, BAG transfers the part of the access right to which BAG is entitled.
- 5.7 If BAG owes compensation to third parties for the transferred Know-How, BHC shall reimburse BAG for all compensation accruing for the time period as of the Effective Date pro rata for the use of BHC. Furthermore, BHC shall pay the pro rata amount of administrative costs attributed to the use of the databases listed in § 5.5 by BHC accruing for the time period beginning on the Effective Date.

## § 6 Software

- 6.1 BAG transfers to BHC all rights to the software that has been exclusively developed for or licensed in the HealthCare business area and all updates of this software.
- 6.2 On the Closing Date (§ 14.1), BAG hereby grants BHC, with retroactive effect as of the Effective Date, an irrevocable, no cost right of joint use to the general license to SAP-R3 obtained under the contract dated June 17/30, 1997, according to the implementation status achieved on the Effective Date and to the extent it is used in the HealthCare business area or, respectively, will be used. BHC shall reimburse BAG the pro rata service, maintenance and further development costs attributable to the use by BHC and for the time period beginning on the Effective Date.
- 6.3 BAG grants BHC sub-licenses in all remaining other software which is installed on the IT hardware transferred to BHC pursuant to § 8.1 or on leased IT hardware for which the leasing contract shall be transferred to BHC pursuant to § 12.1 and to which BAG holds the licenses or has installed on central IT hardware for the use of BHC. The licenses themselves shall remain with BAG. BHC shall reimburse BAG the royalties (with regard to royalties payable on a regular basis by BAG and with regard to one time payments, in an amount corresponding to the depreciation costs) attributed to the use by BHC for the time period beginning on the Effective Date.
- 6.4 On the Closing Date (§ 14.1), BAG hereby grants BHC, with retroactive effect as of the Effective Date, an irrevocable, no cost right of joint use to the general license to all software developed by it and all continuing development of software pursuant to § 6.3 for which BAG holds a license and that is tailored to not only the HealthCare business area but to at least one other business or service area according to the implementation status as of the Effective Date and to the extent it is used in the HealthCare business area or, respectively, will be used.

BHC shall reimburse BAG the pro rata service, maintenance and further development costs attributable to the use by BHC and for the time period beginning on the Effective Date.

- 6.5 BHC shall be granted access to the central data storage of BAG. With respect to the central data storage of companies of the Bayer Group, BAG transfers its respective part of the access right.

## § 7 Public Law Approvals and Qualifications

BAG transfers to BHC all rights and obligations from public law approvals, permits and similar entitlements which are allocated to the HealthCare business area, in particular:

- 7.1 all rights and obligations pursuant to all German approvals and all other public law entitlements to pharmaceuticals, cosmetics and medical products, including in-vitro-diagnostics, insecticides, animal health products, animal feed and animal care products (collectively referred to as “Products”) which are allocated to the HealthCare business area, as well as all applications of BAG for authorization and extensions of authorization and registration updates for products which are allocated to the HealthCare business area. Also transferred are all rights in the related authorization documents (authorization files, authorization orders and other authorization documents, regardless of whether they are located at BAG, with the respective authorities or other third parties), including the protection rights of the authorization documents against reference by subsequent applicants;
- 7.2 all rights and obligations from declarations, in particular, notifications to the responsible authorities which refer to products or active components or additives and substances contained in the products of BAG which are allocated to the HealthCare business area;
- 7.3 all rights and obligations pursuant to all foreign authorizations as well as pursuant to all public law qualifications regarding products of BAG, which are allocated to the HealthCare business area. As far as foreign admissions and foreign authorizations (collectively referred to as “Foreign Authorizations”) are not transferable, BAG shall be obligated with regard to BHC to maintain the Foreign Authorizations for a term until BHC has received respective new Foreign Authorizations. BAG agrees to dispose of the non-transferable Foreign Authorizations only upon instruction of BHC, to make changes to the non-transferable Foreign Authorizations only upon instruction of BHC and to make declarations to the authorities only in coordination with and upon instruction of BHC. The maintenance costs of the Foreign Authorizations as well as costs

of their continuation by BAG shall be borne by BHC. BHC shall indemnify BAG for all liability claims which are made against BAG based on the continuation of the non-transferable Foreign Authorizations;

- 7.4 all rights and obligations from the inclusion of active components for Animal Health Products in Annexes I to III of the Council Regulation 2377/90 dated July 26, 1990, which BAG has obtained as applicant, as well as all applications for inclusion which BAG has filed and on which no decision has yet been made and all notifications and applications for the inclusion of biocide active components in Annex I of the Directive 98/8/EEC dated February 16, 1998, which BAG has filed and which are allocated to the HealthCare business area. This includes, in particular, all rights to the submitted scientific files, documents and documentation, in particular, the rights of protection against reference by third parties;
- 7.5 all rights and obligations pursuant to applications and notifications in accordance with the German Chemical Act ("*Chemikaliengesetz*", "ChemG"), including all rights to the submitted scientific files, documents, documentation and approved records, in particular, the rights to protection against reference by third parties or to remuneration by reason of reference of entitled second applicants which are allocated to the HealthCare business area;
- 7.6 all rights and obligations pursuant to all approvals for the plants requiring official approval which are transferred to BHC pursuant to this Agreement. BAG shall notify the responsible authority of the change of the plant operator; pursuant to § 52a German Federal Protection Against Emissions Act ("*Bundes-Immissionsschutzgesetz*") BHC shall inform the responsible authority of the authorized body which is in charge of fulfilling the obligations of a plant operator.
- 7.7 BAG and BHC together shall coordinate the procedural steps necessary to be taken for the implementation of the transfers described in §§ 7.1 – 7.6 and for the assumption of all obligations associated herewith and shall agree to a procedure which is commercially acceptable and reasonable for both Parties. This shall apply, in particular, to the transfer of applications and notifications pursuant to the German Chemical Act, the granting of a right to make reference by BHC or BAG and the stipulation regarding distribution and selling products labeled with the name BAG in order to ensure uninterrupted sale of the products taken over by BHC in accordance with public law labeling provisions.

- 7.8 Insofar as entitlements and obligations accruing out of public law authorizations, permissions and similar entitlements within the meaning of this § 7 (collectively referred as "Entitlements") not only serve the HealthCare business area but also other business or service areas of BAG, to the extent legally permissible, the part of the Entitlements belonging to the HealthCare business area is transferred. Insofar as a separation of the Entitlements is contrary to public law provisions, the Entitlements as a whole are transferred to BHC if the respective Entitlement primarily serves the HealthCare business area. Insofar as the Entitlements do not serve the HealthCare business area primarily, they shall not be transferred to BHC. The Parties shall place each other in such position as if the Entitlements pursuant to this § 7 would have been transferred. Insofar as Entitlements within the meaning of this § 7 are not transferable, BAG shall support BHC to obtain these Entitlements.

#### *§ 8 Transfer of the Property, Plant and Equipment*

BAG transfers to BHC all property, plant and equipment allocated to the HealthCare business area unless it is otherwise expressly stated in this Agreement. Included herein are, in particular:

- 8.1 all constructional and technical plants and machinery, including plants in construction and including all claims from payments on account made thereon, the office and plant equipment and all operating facilities which are exclusively or primarily allocated to the HealthCare business area, particularly those listed in Annex 8.1, and which are not integral parts of the real estate/buildings which are subject to the land use contracts transferred pursuant to § 12.1, or which are subject to land use contracts transferred to another business area or service company. As far as property, plant and equipment are used by other business or service areas of BAG in addition to the HealthCare business area, BAG transfers the joint ownership corresponding to the scope of use of those assets by the HealthCare business area;
- 8.2 all vehicles which are exclusively or primarily allocated to the HealthCare business area;
- 8.3 all minor assets and other operating resources existing in connection with the property, plant and equipment transferred to BHC.

Insofar as items of the property, plant and equipment are subject to a retention of ownership or BAG has transferred the ownership by way of security to third parties, BAG transfers to BHC all claims existing in this connection, including all expectancy rights and rights to recover possession.

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## § 9 Transfer of the Investments

BAG transfers to BHC all investments allocated to the HealthCare business area. Included herein are in particular:

- 9.1 all shareholdings that exclusively or primarily are related to the HealthCare business area. Annex 9.1 sets forth those shareholdings. The transfer shall include all rights and obligations associated therewith, in particular, all entitlements to profits insofar as no distribution has been resolved upon as of the Effective Date. BHC shall, therewith, be entitled to all profit distributions, including tax credits existing in connection therewith, which were resolved upon or after the Effective Date regardless of the time period to which they refer. All consortium agreements, other shareholder agreements and enterprise agreements shall be transferred together with the shareholdings. The Parties shall carry out all other actions necessary or expedient for transfer pursuant to § 14. The Parties shall place each other in such position as if the shareholdings were transferred as of the Effective Date;
- 9.2 all loan receivables, in particular, house building loan receivables which are allocated to the HealthCare business area pursuant to Annex 9.2.

## § 10 Transfer of the Current Assets

BAG transfers to BHC all current assets allocated to the HealthCare business area. These shall include, in particular:

- 10.1 all inventories allocated to the HealthCare business area consisting of raw materials and supplies, in particular, the existing test substances and other goods in stock which serve the HealthCare business area, goods in progress, work in progress, finished goods and goods for resale, including payments on account. The essential items of the current assets to be transferred are listed in Annex 10.1;
- 10.2 all of the trade receivables allocated to the HealthCare business area pursuant to Annex 10.2;
- 10.3 all receivables due from affiliated companies and companies in which participations are held pursuant to Annex 10.3;
- 10.4 all other items of the current assets allocated to the HealthCare business area pursuant to Annex 10.4;
- 10.5 liquid assets pursuant to Annex 10.5.

If the aforementioned items are subject to a retention of ownership or BAG has transferred the ownership by way of security to third parties, BAG transfers to BHC all claims existing in this connection, including all expectancy rights and rights to recover possession.

## § 11 Transfer of Obligations and Reserves; Taxes

BAG transfers to BHC all obligations, with the exception of existing pension obligations which are covered by § 13, allocated to the HealthCare business area. Included herein are, in particular:

- 11.1 all contingent liabilities of the HealthCare business area pursuant to Annex 11.1 for which provisions have been established and all other obligations that result from the previous business activity of the HealthCare business area, which are not required to be reported, not reportable or not actually reported in the balance sheet;
- 11.2 all trade payables which are allocated to the HealthCare business area pursuant to Annex 11.2;
- 11.3 all payables towards affiliated companies or companies in which a participation is held pursuant to Annex 11.3;
- 11.4 all obligations resulting from existing stock option plans of BAG regarding employees who are transferred to BHC pursuant to § 613a German Civil Code (*"Bürgerliches Gesetzbuch"*, "BGB") and regarding employees of the HealthCare business area whose employment is terminated in the time period between the Effective Date and the Closing Date (§ 14.1);
- 11.5 all other liabilities which are allocated to the HealthCare business area pursuant to Annex 11.5, in particular, liabilities from wage taxes and liabilities within the framework of social insurance.
- 11.6 Claims of tax reimbursements and obligations for payment of taxes for prior years which relate to the HealthCare business area, as well as reimbursements and obligations to pay taxes for prior years in connection with social insurance claims, shall remain with BAG, insofar as they concern the time period up until the Effective Date. Increased or reduced taxes, including tax supplementary payments from tax audit determinations for time periods up until the Effective Date, shall be borne by BAG or, respectively, BAG shall be entitled thereto. Insofar as these tax audit determinations, in the time period after the Effective Date, cause reduced taxes by reverse effects, including tax supplementary payments for BHC, BHC shall reimburse BAG the cash value of the tax reduction effect (discounted with 6% to the due date of the additional taxes) insofar as this reduction effect is not

attributed to BAG for tax purposes through a single entity relationship. BHC shall inform BAG of the issuance of the respective tax assessment notices. Upon demand of BAG, BHC shall be obligated – at the cost of BAG – to file a legal remedy against a tax assessment notice.

## § 12 *Transfer of Contracts and Other Rights*

12.1 BAG transfers to BHC all contracts and contract offers exclusively allocated to the HealthCare business area, unless this Agreement states otherwise. The essential contracts (with the exception of leasing contracts and land use contracts stated in Annex 12.1.2) transferred pursuant to § 12.1, sentence 1, are listed in Annex 12.1.1. Furthermore, all leasing contracts are transferred for items such as, e.g. office equipment and furnishings, cars, etc., which are exclusively allocated to the HealthCare business area or exclusively used by employees of the HealthCare business area.

Insofar as the transferred contracts and contract offers are subject to litigation or arbitration disputes, these dispute relationships are also transferred.

Finally, the land use contracts between Bayer Industry Services GmbH & Co. OHG as lessor and BAG as lessee listed in Annex 12.1.2 are transferred.

BAG grants a right of use to BHC at no cost of all operating facilities, used by the HealthCare business area which are integral parts of the real estate/buildings which are subject to the land use contracts transferred to BHC pursuant to Annex 12.1.2 or which are subject to land use contracts transferred to another business area or service company. On the Closing Date (§ 14.1), a Special Right of Use Contract as set forth in Annex 12.1.3 shall come into effect between the Parties with retroactive economic effect as of the Effective Date. The essential operating facilities are listed in an annex to the Special Right of Use Contract.

BAG retains ownership in these areas, real estate and buildings as well as in the operating facilities.

12.2 BAG transfers to BHC all contracts and contract offers which also concern other business or service areas of BAG but are primarily allocated to the HealthCare business area, unless this Agreement states otherwise. The

essential contracts (with the exception of leasing contracts) which are transferred pursuant to § 12.2, sentence 1, are listed in Annex 12.2. § 12.2, sentence 1, also applies to all leasing contracts which are transferred for items such as, e.g. office equipment and furnishings, cars, etc., which are primarily attributed to the HealthCare business area or are used primarily by employees of the HealthCare business area.

Insofar as the transferred contracts and contract offers are subject to litigation or arbitration disputes, these dispute relationships are also transferred.

The Parties shall decide jointly whether they will discuss with the respective contract partner to amend the contracts listed in § 12.2, sentence 1, and to conclude new contracts so that in the future BHC and BAG or those companies to which the respective business or service areas are hived-down will be entitled and obligated by their own respective contracts. Until then, BHC shall exercise all rights and obligations from the contracts listed in § 12.2, sentence 1, to the extent legally permissible. In their internal relationship, BAG shall be entitled to the rights from these contracts on a pro rata basis, i.e. to the extent that they are not applicable to BHC. In its internal relationship to BHC, BAG shall perform all obligations under or resulting from these contracts to the same extent.

12.3 Contracts and contract offers primarily allocated to other business areas of BAG but which nevertheless also affect the HealthCare business area shall not be transferred to BHC. The essential contracts (with the exception of leasing contracts) primarily allocated to other business or service areas of BAG but which nevertheless also affect the HealthCare business area are listed in Annex 12.3. Contracts and contract offers primarily allocated to the HealthCare business area, but which nevertheless also affect one or more service areas of BAG and which are required by one or more service areas for performing mandatory or optional services to the business or service areas are also not transferred to BHC.

The Parties shall decide jointly whether they will discuss with the respective contract partner to amend the contracts listed in § 12.3, sentences 1 and 3, and to conclude new contracts in such a way that in the future BHC and BAG, or, if the respective contract is transferred to a business area or service company by way of hive-down, the respective company will be entitled and obligated from their own respective contracts. Until then, BAG shall exercise all rights and obligations from the contracts listed in § 12.3, sentences 1 and 3, to the extent legally per-

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missible. In their internal relationship, BHC is entitled to the rights from these contracts on a pro rata basis, i.e. to the extent that they are applicable to the HealthCare business area. In its internal relationship to BAG, BHC shall perform all obligations under or resulting from these contracts to the same extent.

- 12.4 Insurance contracts are not subject to this Agreement. The Parties shall jointly notify the insurance company, Pallas Versicherung AG, with respect to the extension of the insurance coverage to BHC under the existing Bayer Group provisions.
- 12.5 BAG transfers to BHC all memberships and other legal positions in the syndicates, associations and other organizations listed in Annex 12.5.
- 12.6 BAG transfers to BHC all enterprise agreements that exist with German affiliates pursuant § 9.1. The transferred enterprise agreements are listed in Annex 12.6.

## § 13 Pension Liabilities and Pension Provisions

- 13.1 Pension Liabilities to Current Employees and to Employees No Longer Employed as of July 1, 2002
  - 13.1.1 On the Closing Date (§ 14.1), all rights and obligations from existing pension commitments of BAG (pensions and similar obligations, particularly transitional payments for early retirement and interim pensions) to those employees of the HealthCare business area whose employment relationships exist on the Closing Date, are transferred to BHC pursuant to §§ 324 UmwG, 613a, para. 1 BGB.
  - 13.1.2 Furthermore, BAG transfers to BHC all rights and obligations from existing pension commitments of BAG (current pensions, vested pension rights and similar obligations, particularly transitional payments for early retirement and interim pensions) to those employees of the HealthCare business area whose employment is terminated in the time period between July 1, 2002, and the Closing Date or will terminate in this time period, and their surviving dependents.
  - 13.1.3 Provisions for the obligations from the pension commitments listed in § 13.1.1 and § 13.1.2 shall be established accordingly by BHC. The respective pension reserves are contained in the assets transferred to BHC under this Agreement.
  - 13.1.4 In addition, BAG shall be jointly and severally liable for all pension commitments listed in § 13.1.1 and § 13.1.2 pursuant to § 133, para. 1 and para. 3 UmwG for a period of five years from the date the registration of the hive-down in the commercial register of BAG is deemed to be published.
  - 13.1.5 BHC shall indemnify BAG for all claims arising from the pension commitments listed in § 13.1.1 and § 13.1.2 which are asserted against BAG referring to the time period after the Effective Date.
- 13.2 Pension Liabilities to Employees Whose Employment Contracts Were Terminated Prior to July 1, 2002
  - 13.2.1 Obligations from the existing pension commitments of BAG (current pensions, vested pension rights and similar obligations, particularly transitional payments for early retirement and interim pensions) to those employees whose employment contracts were terminated prior to July 1, 2002 and who would have been allocated to the HealthCare business area, and their surviving dependents are not transferred pursuant to §§ 324 UmwG, 613a, para. 1 BGB to BHC and shall also not be transferred to BHC under this Agreement.
  - 13.2.2 Accordingly, the provisions for the obligations from the pension commitments listed in § 13.2.1 shall continue to be established by BAG.
  - 13.2.3 BHC shall reimburse BAG the proportional costs necessary to carry out the pension commitments listed in § 13.2.1 to the extent such costs are not covered by provisions in the Final Balance Sheet, and all proportional administrative costs accruing to the pension commitments as from the Effective Date, including the costs of expert opinions and contributions to the Mutual Benefit Association for Pension Security. The pro rata costs to be borne by BHC which are not covered by the provisions – minus the pro rata amount of the costs borne by Bayer CropScience AG – corresponds to the proportion of the gross remuneration total of 2002 of the employees allocated to the HealthCare business area as of July 1, 2002, in relation to the gross remuneration total of 2002 of all employees of BAG that not have been allocated to the CropScience business area.

## IV. Terms of the Transfer

### § 14 Closing Date

- 14.1 The transfer of the Undertaking, i.e. items of the assets and liabilities affected by the hive-down and the other rights and obligations of BAG, will be effective *in rem* on the date of registration of the hive-down in the commercial register of BAG ("Closing Date").
- 14.2 Possession to movable goods is transferred to BHC on the Closing Date. Insofar as movable goods are in possession of third parties, BAG transfers its claim for recovery to BHC with effect as of the Closing Date.

### § 15 Catch-all Provision

- 15.1 Insofar as certain assets and liabilities and other rights and obligations, in particular, from contracts, shareholdings, memberships or administrative actions which should be transferred to BHC pursuant to this Agreement, are not already transferred to BHC by operation of law with the registration of the hive-down, BAG shall transfer these items of the assets and liabilities and the other rights and obligations to BHC. Should a transfer to BHC externally not be possible or only be possible with a disproportionately high expenditure or should such transfer be unreasonable, the Parties shall place themselves in such position as if the transfer had occurred also externally as of the Effective Date.
- 15.2 Insofar as the transfer of certain assets and liabilities or other rights and obligations or the taking over of contracts requires the approval of third parties or a public law permit, BAG and BHC shall endeavor to obtain the respective approval or permit. If such approval or permit cannot be obtained or can only be obtained with a disproportionately high expenditure, § 15.1, sentence 2, shall apply accordingly regarding the internal relationship of the two companies.
- 15.3 Insofar as certain assets and liabilities or other rights and obligations pursuant to this Agreement shall not be transferred but are transferred by operation of law, BHC shall retransfer the rights or, if appropriate, indemnify BAG, and BAG shall agree to the retransfer of the obligations or, if appropriate, indemnify BHC. The Parties shall undertake all measures necessary and expedient in this connection and cooperate in all legal actions which are necessary and expedient in order to retransfer such rights and obligations to BAG. In their internal relationship, the Parties

shall act as if the rights and obligations mentioned in § 15.3, sentence 1, were not transferred. The aforementioned regulation of this § 15.3 shall apply accordingly if assets and liabilities or other rights and obligations which were allocated to the HealthCare business area by mistake of the Parties are transferred pursuant to this Agreement.

### § 16 Cooperation Obligations

- 16.1 BAG and BHC shall make all declarations, issue all documents and undertake all other actions which are still necessary or expedient in connection with the transfer of the Undertaking.
- 16.2 As of the Closing Date, BHC shall receive all business documents held by BAG allocated to the HealthCare business area or in connection herewith, in particular, contracts and approval documents, shop regulations, construction and building plans, operation handbooks and personnel documents. BHC shall also receive all documents which are necessary for the claim of the rights transferred to it under this Agreement. BHC shall store the books and other records within the statutory record retention period for BAG and shall ensure that BAG can inspect and copy these business documents. Business and trade secrets are to be treated confidentially.
- 16.3 With respect to proceedings conducted by authorities, particularly tax audits and tax and other litigation which concern the Undertaking, the Parties shall mutually support each other until December 31, 2010. In particular, they shall reciprocally make available all information and documents which are necessary or expedient for the performance of tax or other authority demands or for the provision of proof to tax authorities or other authorities or courts and shall reciprocally work towards obtaining reasonable support from their employees.

### § 17 Creditor Protection and Internal Compensation

Unless this Agreement provides any other distribution of burdens and liabilities arising from or in connection with the Undertaking, the following shall apply:

- 17.1 If and insofar as claims are enforced against BAG by creditors for obligations on the basis of the provisions in § 133 UmwG or other provisions and such obligations are transferred to BHC pursuant to the terms of this Agreement or claims are enforced against BAG for obligations resulting

from future statutory relationships which were, are or will be established in connection with the business activities of the HealthCare business area, BHC shall indemnify BAG for the respective obligation upon first demand. The same shall apply if a claim for provision of security is enforced against BAG by such creditors.

17.2 If and insofar as in the opposite case claims are enforced against BHC by creditors for obligations on the basis of the provisions in § 133 UmwG or other provisions and such obligations are not transferred to BHC pursuant to the terms of this Agreement or claims are enforced against BHC for obligations resulting from future statutory relationships which were, are or will be established in connection with other business areas, service areas, business area companies or service companies other than the HealthCare business area, BAG shall indemnify BHC for the respective obligation upon first demand. The same shall apply if a claim for provision of security is enforced against BHC by such creditors.

17.3 Insofar as claims are enforced against BHC by creditors for obligations transferred by this Agreement which are covered by the Bayer Group insurance agreement, BAG will transfer all insurance payments received by it to BHC.

## § 18 Preclusion of Claims; Environment

18.1 Claims and rights of BHC against BAG of all kinds and regardless of their legal basis with respect to quality and the status of the assets and liabilities as well as the Undertaking as a whole transferred by BAG under this Agreement are herewith expressly precluded. This shall also apply in particular to claims for pre-contractual or contractual breach of duties and the breach of statutory obligations.

18.2 In the internal relationship between BAG and BHC, BHC shall be fully liable only for such contamination of soil and ground water caused by BHC, the HealthCare business area of BAG or a predecessor business unit.

## V. Counter-Performance and Capital Measures

### § 19 Granting of Individual Share Certificates and Capital Measures

19.1 BAG, as the sole stockholder of BHC, shall receive as consideration for the hive-down of the HealthCare business area to BHC a total of 9,949,100 new individual bearer no par value shares of BHC.

19.2 BHC shall increase its share capital by €9,949,100 (in words: Euro nine million nine hundred forty-nine thousand one hundred) to implement the hive-down. Each no par value share of BHC represents €1 in the increased share capital.

19.3 The new shares shall be issued with a profit participation right as of January 1, 2003. If the Effective Date pursuant to § 2.2 is postponed, the commencement of the profit participation right of the new shares shall be postponed accordingly.

19.4 The total value at which the contribution in kind performed by BAG shall be assumed by BHC corresponds to the commercial law book value of the transferred net assets as of the Effective Date as reported in the Final Balance Sheet of BAG as of December 31, 2002, 24.00 hours. To the extent this value exceeds the amount of the increase in share capital according to § 19.2, the excess amount shall be allocated to the capital reserves pursuant to § 272, para. 2, no. 1 German Commercial Code (*“Handelsgesetzbuch”*).

19.5 If the value of the contribution in kind prior to the Closing Date does not correspond to the value of the minimum amount of all new shares issued by BHC, BAG is obliged to make a payment to the bank account of Commerzbank AG in Cologne, stated in Annex 10.5, in the amount that is necessary so that the value of the contribution in kind on the Closing Date reaches the value of the minimum amount of all new shares issued by BHC. If BAG is required to make such payment, the amount of the payment shall be determined in coordination with the auditor required for contributions in kind (*“Sacheinlagenprüfer”*). BAG's total liability shall not exceed 25% of the balance sheet total as stated in the Hive-Down Balance Sheet. Any claims of such liability may not be asserted after the registration of the hive-down in the commercial register of BAG.

### § 20 Special Rights and Advantages

20.1 No granting of rights or other measures for individual stockholders or for owners of special rights in terms of § 126, para. 1, no. 7 UmwG, except for those granted under the regulation in § 11.4 for stock option programs, are planned.

20.2 No special advantages in terms of § 126, para. 1, no. 8 UmwG for members of the Board of Management or the Supervisory Board of the companies participating in the hive-down or an auditor of a participating company shall be granted.

## VI. Consequences of the Hive-Down for the Employees and their Representatives

### § 21 *Transfer of the Employment Relationships*

- 21.1 On the Closing Date, all employment relationships currently existing with BAG and allocated to the HealthCare business area are transferred to BHC with all rights and obligations pursuant to the provisions of §§ 324 UmwG, 613a BGB. The employees who are allocated to the HealthCare business area are listed in Annex 21.1.
- 21.2 Pursuant to §§ 324 UmwG, 613a, para. 4 BGB, no employment relationship may be terminated due to the transfer of the business operation via hive-down.
- 21.3 The content of the transferred employment relationships shall be determined by their legal status on the Closing Date. Type of work, salary, as well as other employment terms, are not changed by the hive-down. The employment term served with and recognized by BAG shall be taken into account in its entirety with respect to all regulations dependent upon the term of employment.
- 21.4 The legal situation regarding the pension commitments is described in § 13. Irrespective of the aforesaid, the employees remain, as before, ordinary members of the Bayer Pension Fund.
- 21.5 The collective bargaining agreement commitment to date of BAG also applies to BHC. Prior to the Closing Date of the hive-down, BHC shall join the regional Employer Associations of the Chemical Industry (“*Arbeitgeberverbände der Chemischen Industrie*”) and, thereby, be bound by such collective bargaining agreement.
- 21.6 In connection with the hive-down of the business and service areas of BAG to separate legal entities under the joint holding company of the Bayer Group, BAG and the union named “*Industriegewerkschaft Bergbau Chemie Energie*” (hereinafter referred to as “*IG BCE*”) entered into a collective bargaining agreement on January 10, 2002 (the “*Collective Bargaining Agreement*”) which contains detailed regulations concerning the labor management relations within the framework of the rearrangement of the Bayer Group (see in detail § 22.1). The Collective Bargaining Agreement provides that the shop agreements and the central shop agreements existing with BAG for employees transferred to BHC shall be replaced according to collective bargaining law by agreements with BHC having the same content. As a result, the shop agreements and the central shop agreements remain in place for the employees being transferred to BHC. This is also the content of a central shop agreement between BAG and the central works council of BAG of July 16, 2002.

Adjustments to the shop agreements and the central shop agreements due to the hive-down insofar as employees transferred to BHC are affected, employees remaining with BHC are affected or employees remaining with BAG are affected, shall be mutually agreed upon by BAG together with the respective works council or central works council.

### § 22 *Representation of Employees Pursuant to the Employees’ Representation Law*

#### 22.1 Works Council and Central Works Council

Under the Collective Bargaining Agreement, BAG and IG BCE have agreed that the existing works council structures in effect up to then in BAG locations should essentially remain unchanged after the hive-down to BHC and the other planned hive-downs of the remaining business and service areas of BAG in 2003. The Collective Bargaining Agreement contains, in particular, the following regulations (with regard to the treatment of the existing shop agreements, see *supra* § 21.6) for the works constitution before and after the hive-down:

22.1.1 Within the rotational works councils’ elections in March 2002, as done previously, works councils were elected in each of the five German BAG locations in Leverkusen, Dormagen, Uerdingen, Elberfeld and Brunsbüttel (hereinafter referred to as “*Works Councils on Location*”). All employees entitled to vote at the respective location shall be entitled to vote for the Works Council on Location, regardless of whether they are transferred via the hive-down or remain with BAG.

22.1.2 The Works Councils on Location were elected, as done previously, for the full term of four years. The Works Councils on Location to be elected in March 2002, as well as the Central Works Council (§ 22.1.4), shall also remain in office after the hive-down.

22.1.3 The Works Councils on Location shall be responsible for all matters resulting from the Employees’ Representation Act (“*Betriebsverfassungsgesetz*”) insofar as such relate to the respective location. The responsibility shall be irrespective of the legal structures of the respective location, i.e. it shall apply for the matters of all companies of the Bayer Group at the respective location. The Works Council on Location shall continue to observe the interests of all employees of BAG employed at the respective location regardless of whether they are transferred via hive-down to BHC, remain with BAG or have been transferred or will be transferred by the additional hive-downs to other companies of the Bayer Group.

22.1.4 The Works Councils on Location shall form, as done previously, a Central Works Council and a Central Works Council Committee. The Central Works Council shall be responsible for all issues which cannot be regulated by the individual Works Councils on Location as they relate to more than one location.

22.1.5 The Collective Bargaining Agreement came into effect on the date of its execution. It has a fixed term until May 31, 2006. Should a party to the Collective Bargaining Agreement come to the conclusion during the term that the co-determination structure laid down in the Collective Bargaining Agreement has not proved successful in practice and these doubts cannot be dispelled by mutual agreement, such party shall have the right to terminate the Collective Bargaining Agreement with effect as of December 31, 2004. After the termination of the Collective Bargaining Agreement, the statutory works constitution shall apply, i.e. the Works Councils in BHC and BAG shall then be elected separately.

## 22.2 Representative Committees of Executive Employees and Central Representative Committee of Executive Employees

With regard to the representation of the executive employees, BAG and the Central Representative Committee of Executive Employees of BAG have agreed to the following:

22.2.1 Shortly after the Closing Date (§ 14.1), BHC shall hold an election for a Company Representative Committee of Executive Employees. The Company Representative Committee of Executive Employees shall replace the previous representative committee of executive employees at the five BAG locations for the executive employees who are transferred to BHC and shall replace the Central Representative Committee of Executive Employees. The statutory duties of the Company Representative Committee of Executive Employees shall refer to the entire company of BHC; contrary to the duties of the previous representative committee of executive employees of BAG, they are, therefore, not limited to the respective location.

22.2.2 Up until the election of a Company Representative Committee of Executive Employees of BHC but for a maximum transitory period of one year after the Closing Date, the works councils elected within the rotational election in March 2002, as well as the Central Representative Committee of Executive Employees of BAG, shall receive an interim mandate for the observance of the interests of the executive employees transferred to BHC.

22.2.3 After the election of the Company Representative Committee of Executive Employees of BHC, the Group Representative Committee of Executive Employees of BAG shall be supplemented by a representative of the Company Representative Committee of Executive Employees of BHC. The personnel composition of the Group Representative Committee of Executive Employees shall be adjusted accordingly as soon as the hive-downs of the remaining business and service areas of BAG to new companies planned for 2003 are executed and Company Representative Committees of Executive Employees are also formed therein. Up until its new formation, the Group Representative Committee of Executive Employees shall remain in existence as formed upon conclusion of the rotational elections in March 2002.

## § 23 Supervisory Board

23.1 The hive-down has no effect on the legal status, composition and term of the Supervisory Board of BAG. The representatives of employees in the Supervisory Board of BAG shall be elected by the employees of all German companies belonging to the Bayer Group so that the employees transferred to BHC retain their voting rights.

23.2 When the hive-down becomes legally effective, BHC shall be subject to co-determination pursuant to the German Co-determination Act (“*Mitbestimmungsgesetz*”) of 1976. For this purpose, the Supervisory Board of BHC, currently composed of three persons, shall be newly composed in a composition proceeding pursuant to §§ 97 et seq. German Stock Corporation Act (“*Aktiengesetz*”). The newly composed Supervisory Board of BHC will have twelve members of which six shall be stockholder representatives and six shall be employee representatives.

## VII. Miscellaneous

### § 24 Costs and Taxes

The costs and taxes accruing, now and in the future, in connection with the notarization of this Agreement and its performance shall be borne by BHC. The costs of the respective annual stockholders’ meeting and the costs of filing and registration shall be borne by each Party itself.

### § 25 Sales and Services Contracts

25.1 BAG is prepared to provide BHC in the future all sales and services it has performed to date for the Bayer Group in the HealthCare business area with economic effect as from the Effective Date and at arm’s length terms. Such sales and services can also be performed by a subsidiary of BAG.

- 25.2 BHC undertakes the obligation to obtain, at market conditions from BAG or a subsidiary of BAG, infrastructure services regarding specific locations (in particular, road and way services, canalization and sewage treatment, water and energy lines, plant and fire protection) which it requires for the plant locations.
- 25.3 BHC is prepared to provide BAG all sales and services performed to date by the HealthCare business area within the Bayer Group for BAG or its subsidiaries with economic effect as from the Effective Date at arm's length terms.

## § 26 Final Provisions

- 26.1 Jurisdiction for all legal disputes arising from this Agreement shall be in Leverkusen, Germany.
- 26.2 Amendments and supplements to this Agreement must be in writing, including a waiver of this provision itself, insofar as more extensive form requirements are not required.
- 26.3 Should one or more provisions of this Agreement be void in whole or in part, invalid or unenforceable, the validity of this Agreement and its remaining provisions shall not be affected thereby. Instead of the void, invalid or unenforceable provision, a provision shall apply which comes closest in terms of form, content, time, measure and scope of application to what was desired according to the economic sense and meaning of the void, invalid or unenforceable provision. The same shall apply for any gaps in this Agreement.

The Annexes referred to in the Hive-Down and Transfer Agreement, done by the notary Dr. Dieter Janke, in Leverkusen, Germany, recorded as a reference document on March 7, 2003, and that, by reference, became part of the Hive-Down and Transfer Agreement, have the following essential content:

- Annex 3.1 contains the Hive-Down Balance Sheet for the HealthCare business area as of January 1, 2003, 00.00 hours. The Hive-Down Balance Sheet shows the assets and liabilities of the HealthCare business area. The Hive-Down Balance Sheet was prepared on the basis of the book values reported in the Final Balance Sheet of Bayer AG as of December 31, 2002, 24.00 hours.
- Annex 4.1 contains a Trust Agreement with regard to the Industrial Property Rights that comes into effect as of the Effective Date, i.e. as of the date of the registration of the hive-down in the commercial register of Bayer AG and has economic retroactive effect as of January 1, 2003, 00.00 hours. Under the Trust Agreement, Bayer AG and Bayer HealthCare AG agree that Bayer AG holds the Industrial Property Rights which exclusively or primarily serve the HealthCare business area in trust for Bayer HealthCare AG.

The individual Industrial Property Rights are listed in Annexes to the Trust Agreement. Among others, the Industrial Property Rights contain the right to use the trademarks "Bayer" and the Bayer Cross symbol, but only relating to the business area for pain relievers within the United States. In economic terms, Bayer HealthCare AG will be the sole owner of the Industrial Property Rights. The legal ownership of the Industrial Property Rights remains in each case with Bayer AG. With respect to the Industrial Property Rights that primarily serve the HealthCare business area but at the same time also serve other business or service areas of Bayer AG, Bayer AG retains the right to use them for its other business and service areas.

Bayer AG is obliged, as the sole legal owner of the Industrial Property Rights, to administrate them as a trustee in its own name but exclusively for the interest and the account of Bayer HealthCare AG. Bayer HealthCare AG is entitled at any time to claim the transfer and change of registration of individual or all Industrial Property Rights from Bayer AG to its own name. Regarding the Industrial Property Rights that primarily serve Bayer HealthCare AG, Bayer HealthCare AG in this case is obliged to grant to Bayer AG exclusive, no cost, non-terminable grant-back licenses to use these Industrial Property Rights for its other business and service areas, limited to the current scope of use by the Company. With regard to business or service areas, which at this time already have been hived down and transferred into separate companies, Bayer HealthCare AG is obliged to grant equivalent licenses directly to these companies.

Bayer AG has the right to prohibit the use of the trademarks that contain the elements "Bay" or "Bayer" by Bayer HealthCare AG if Bayer AG is no longer a majority stockholder in Bayer HealthCare AG.

- Annex 4.2 contains a License Agreement that will become effective between Bayer AG and Bayer HealthCare AG as of the Closing Date, i.e. the date of the registration of the hive-down in the commercial register of Bayer AG, and has economic retroactive effect as of January 1, 2003, 00.00 hours. Under this License Agreement, Bayer AG grants Bayer HealthCare AG a license for Industrial Property Rights that although also serving the HealthCare business area, primarily serve other business or service areas of Bayer AG. The Industrial Property Rights are listed in an Annex to the License Agreement. The license covers industrial activities and the performance of services in the HealthCare business area. The license comprises a no cost, exclusive, transferable and non-terminable right of use for the Industrial Property Rights. Actions that affect the legal constitution of the Industrial Property Rights partly or in whole may be taken by Bayer AG only in understanding with Bayer HealthCare AG and at the same time by taking into account the interests of the other business and service areas.

# Agenda

- Annex 4.3 contains a Joint Use Agreement that becomes effective as of the Closing Date, i.e. the date of the registration of the hive-down in the commercial register of Bayer AG, and has economic retroactive effect as of January 1, 2003, 00.00 hours. Under this Joint Use Agreement, Bayer AG grants Bayer HealthCare AG an exclusive and no cost right for the HealthCare business area to jointly use the name "Bayer" as part of its own company name and the trademarks "Bayer" and the Bayer Cross symbol on a world-wide basis for labeling the products of Bayer HealthCare AG, identifying its services and its general business transactions. The ownership of the Company name and the Group trademarks remain with Bayer AG. As far as the trademarks "Bayer" and the Bayer Cross symbol concern the business area for pain relievers within the United States, they are governed by the Trust Agreement in Annex 4.1. The right of joint use is, in principle, non-terminable. However, it may be terminated with immediate effect if Bayer AG is no longer the majority stockholder in Bayer HealthCare AG. In such case Bayer HealthCare AG is entitled to an indemnification which is equal to the going concern tax value.
- Annex 5.1 contains a listing of all confidential business inventions that are allocated exclusively to the HealthCare business area and that, by decision of Bayer AG, are treated as confidential business inventions and shall not be filed for registration. The annex lists the confidential business inventions by their internal file numbers, the dates the inventions were notified and their internal abbreviations.
- Annex 8.1 contains a list of all constructional and technical plants and machinery, other constructions and office and plant equipment, including plants in construction and all claims from payments on accounts made hereto and all operating facilities that are exclusively or primarily allocated to the HealthCare business area and that are not integral parts of the real estate/buildings that are transferred to Bayer HealthCare AG pursuant to the Hive-Down Agreement or which are subject to land use contracts that are transferred to other business area or service companies. The annex lists the individual property, plant and equipment by their commission and record numbers.
- Annex 9.1 lists the shareholdings to be allocated exclusively or primarily to the HealthCare business area that are transferred to Bayer HealthCare AG. The annex shows the book values of the shareholdings and the main attributes of the businesses (name of the company, registered office, capital of the company and share of the capital belonging to Bayer AG) in which a shareholding exists.
- Annex 9.2 shows the value of the loans receivable that are transferred from Bayer AG to Bayer HealthCare AG.
- Annex 10.1 contains a list of the essential inventory assets of Bayer AG that are transferred to Bayer HealthCare AG. The annex shows the book values of the inventories as well as claims from payments on account made for the inventories and specifies each inventory by its material number.
- Annex 10.2 contains a listing of trade receivables that are transferred from Bayer AG to Bayer HealthCare AG and the book values that are reported in the Hive-Down Balance Sheet for such trade receivables. The individual trade receivables are broken down by their allocation to certain non-personal accounts (short and long-term receivables from third parties, receivables from subsidiaries and other affiliated companies as well as value adjustments) and they are specified by partner numbers that are used internally by Bayer AG.
- Annex 10.3 lists the receivables from affiliated companies and from companies in which participations are held and that are transferred from Bayer AG to Bayer HealthCare AG. The annex shows the book values reported in the Hive-Down Balance Sheet for these receivables. The receivables are specified by partner numbers internally used by Bayer AG.
- Annex 10.4 names other items of the current assets of Bayer AG that are transferred to Bayer HealthCare AG. These items concern, *inter alia*, factory insurance premiums and license expenses. In general, these items are listed by partner numbers internally used by Bayer AG.
- Annex 10.5 shows the liquid assets that are transferred to Bayer HealthCare AG.
- Annex 11.1 contains a listing of all contingent liabilities of the HealthCare business area for which provisions have been established and that are transferred from Bayer AG to Bayer HealthCare AG. The listing sets forth the respective liabilities by the underlying business transactions and by their designated partner numbers internally used by Bayer AG.
- Annex 11.2 contains a listing of trade payables that are transferred from Bayer AG to Bayer HealthCare AG and shows the book values reported in the Hive-Down Balance Sheet for these payables. The individual payables are broken down by their allocation to certain non-personal accounts (short-term liabilities to third parties, liabilities to subsidiaries and liabilities for freight and customs duties) and are specified by their partner numbers.

- Annex 11.3 shows the payables due to affiliated companies or companies in which a participation is held and that are transferred from Bayer AG to Bayer HealthCare AG. The annex shows the book values as reported in the Hive-Down Balance Sheet for these payables. The annex is broken down by the type of payables and by partner numbers for the payables.
  - Annex 11.5 lists other liabilities that are transferred from Bayer AG to Bayer HealthCare AG. They cover, *inter alia*, damages arising out of business interruptions and liabilities for wage and church taxes. The liabilities are specified by partner numbers.
  - Annex 12.1.1 contains a list of essential contracts (excluding leasing contracts and land use contracts) that are allocated exclusively to the HealthCare business area and that are transferred from Bayer AG to Bayer HealthCare AG.
  - Annex 12.1.2 contains a list of land use contracts that were agreed upon by Bayer AG and Bayer Industry Services GmbH & Co. OHG and that are transferred from Bayer AG to Bayer HealthCare AG. The contracts are identified, in particular, by the respective site of the HealthCare business area, the pieces of land stated in the contract and the total amount of land that is left for use.
  - Annex 12.1.3 contains a Special Right of Use Agreement that becomes effective between Bayer AG and Bayer HealthCare AG as of the Closing Date, i.e. the date of the registration of the hive-down in the commercial register of Bayer AG, and has economic retroactive effect as of January 1, 2003, 00.00 hours. Under this Special Right of Use Agreement, Bayer AG grants Bayer HealthCare AG a right of use of all operating facilities which are integral part of the real estate and buildings to which land use contracts are transferred to Bayer HealthCare AG pursuant to the Hive-Down Agreement or under which land use contracts are transferred to other business area or service companies. The use of the operating facilities is free of charge. To the extent that real estate and/or buildings are no longer used, the Special Right of Use Agreement terminates. In this case, Bayer HealthCare AG has a right to demand removal of the operating facilities, to limit its scope of use or to claim reimbursement for the residual value of the relinquished operating facilities. The costs for the removal are to be borne by Bayer HealthCare AG and Bayer AG in equal amounts.
  - Annex 12.2 contains a list of essential contracts (excluding leasing contracts) that primarily are allocated to the HealthCare business area and that are transferred from Bayer AG to Bayer HealthCare AG.
  - Annex 12.3 contains a list of the essential contracts (excluding leasing contracts) that also can be allocated to the HealthCare business area but primarily are allocated towards other business or service areas.
  - Annex 12.5 shows all memberships in syndicates, associations and other organizations that are allocated to the HealthCare business area and that are transferred from Bayer AG to Bayer HealthCare AG.
  - Annex 12.6 contains a list of all enterprise agreements which exist between domestic participations related to the HealthCare business area and Bayer AG and which are transferred from Bayer AG to Bayer HealthCare AG.
  - Annex 21.1 contains a listing of all employees that are allocated to the HealthCare business area. The respective employees are specified by their personal numbers.
- The Hive-Down and Transfer Agreement has been submitted to the commercial register of the Company prior to the calling of the Stockholders' Meeting.
- The hive-down of the HealthCare business area is explained and substantiated in more detail in the Joint Hive-Down Report of the Boards of Management of the Company and of Bayer HealthCare AG.

## **8. Consent to the Hive-Down and Transfer Agreement between the Company and Bayer Polymers Aktiengesellschaft**

The Board of Management and the Supervisory Board propose that the Meeting consent to the Hive-Down and Transfer Agreement between the Company and Bayer Polymers AG entered into on March 11, 2003.

The Company and Bayer Polymers AG have entered into a Hive-Down and Transfer Agreement on March 11, 2003, before the Notary Dr. Dieter Janke in Leverkusen. Under this Hive-Down and Transfer Agreement the Company hives down as a whole all assets and liabilities together with all rights and obligations allocated to the Polymers business area to Bayer Polymers AG (hive-down for acquisition pursuant to § 123, para. 3, no. 1 German Transformation Act; "*Umwandlungsgesetz*"). The hive-down shall have economic effect as of October 1, 2003, 00.00 hours.

*The essential content of the Hive-Down and Transfer Agreement is as follows:*

## **HIVE-DOWN and TRANSFER AGREEMENT**

between  
Bayer Aktiengesellschaft,  
Leverkusen (“BAG”)  
and  
Bayer Polymers Aktiengesellschaft,  
Leverkusen (“BPO”)

### **I. Preliminary Remarks**

- 0.1 BAG has its registered office in Leverkusen. The share capital of the Company on the date of the execution of this Agreement amounts to €1,869,675,315.20 and is divided into 730,341,920 no par value shares.
- 0.2 BPO has its registered office in Leverkusen. The share capital of the company on the date of the execution of this Agreement amounts to €50,700 and is divided into 50,700 no par value shares. BAG is the sole stockholder of BPO.
- 0.3 The Polymers business area of BAG consists of the five Organizational Units Innovation, Information and Services, Global Operations, Region EMEA (Europe/Middle East/Africa), Region Americas and Region Asia Pacific, which comprise the activities of the following former business groups: Plastics (*Kunststoffe*), Rubber (*Kautschuk*), Polyurethanes (*Polyurethane*), Coatings (*Lackrohstoffe und Sondergebiete*), as well as Fibers (*Fasern*) and the Electrolysis Business Unit of the former Basic and Fine Chemicals Business Group. As of July 1, 2002, the Polymers business area has been organizationally combined with the related service functions of the central service and corporate divisions of BAG and shall now be transferred to a separate legal entity. The Polymers business area shall be transferred to BPO by hive-down for acquisition pursuant to the German Transformation Act (“*Umwandlungsgesetz*”, “UmwG”).

NOW THEREFORE, BAG and BPO agree to the following:

### **II. Hive-Down, Effective Date and Balance Sheet**

#### *§ 1 Hive-Down*

- 1.1 BAG transfers, as part of its undertaking, all of the assets and liabilities together with all rights and obligations allocated to the Polymers business area (hereinafter referred as a whole as the “Undertaking” or the “Polymers business area”) in their entirety to BPO by hive-down for

acquisition pursuant to § 123, para. 3, no. 1 UmwG and as consideration for the assignment of shares of BPO to BAG pursuant to § 19. § 1.2 shall remain unaffected.

- 1.2 Items of the assets and liabilities and other rights and obligations of BAG which are not allocated to the Polymers business area pursuant to this Agreement or which are expressly precluded from the transfer in this Agreement shall not be transferred to BPO.
- 1.3 If the scope of the use of the assets becomes relevant pursuant to this Agreement, the scope of the use of the assets by the Polymers business area or other business or service areas as of January 1, 2003, shall be decisive, except as otherwise provided in this Agreement. § 3.2 shall remain unaffected.

#### *§ 2 Effective Date*

- 2.1 The transfer of the Undertaking described in § 1 and specified in §§ 4 – 13 shall occur between BAG and BPO with economic effect as of October 1, 2003, 00.00 hours (“Effective Date”). From the Effective Date all actions and business transactions of BAG with regard to the parts of the Undertaking allocated to the Polymers business area shall be deemed to be made for the account of BPO.
- 2.2 If the hive-down is not registered in the commercial register of BAG by February 29, 2004, then, in deviation from § 2.1, the Effective Date shall be deemed to be January 1, 2004, 00.00 hours. In case of a further delay of the registration beyond February 28 of the following year, the Effective Date shall be postponed respectively in accordance with the aforementioned provision by one year. In case of such postponement of the Effective Date, the Hive-Down Balance Sheet pursuant to § 3.1 shall remain relevant.

#### *§ 3 Hive-Down Balance Sheet and Adjustment*

- 3.1 It shall be determined on the basis of the Hive-Down Balance Sheet for the Polymers business area as of January 1, 2003, 00.00 hours, developed on the basis of the Annual Balance Sheet of BAG as of December 31, 2002, 24.00 hours pursuant to Annex 3.1 (“Hive-Down Balance Sheet”), which items of the assets and liabilities are allocated to the Polymers business area. BAG also transfers to BPO all assets not required to be reported, not reportable or not actually reported in the balance sheet and other rights and liabilities which, according to origin or purpose, are to be allocated to the Polymers business area, unless it is otherwise expressly stated in this Agreement.
- 3.2 Any additions or disposals of assets and liabilities in the time period between January 1, 2003 and the Closing Date (§ 14.1) as well as other rights (including surrogate

rights such as, e.g. compensation claims, etc.) and obligations are also transferred. Accordingly, BAG transfers to BPO also those assets and liabilities allocated to the Polymers business area with respect to origin and purpose as well as all other rights and obligations which are received by the Polymers business area during the time period between January 1, 2003 and the Closing Date or which came into existence during this time period. Accordingly, those items of assets and liabilities and other rights and obligations which are sold or otherwise transferred in the time period between January 1, 2003 and the Closing Date or which no longer exist at this point in time are not transferred to BPO. The aforesaid provisions shall apply respectively to changes of the scope of use of assets.

- 3.3 The audited interim balance sheet of BAG as of September 30, 2003, 24.00 hours, shall be the final balance sheet of BAG for the hive-down pursuant to §§ 125, 17, para. 2 UmwG (“Final Balance Sheet”). BAG is obligated to prepare the Final Balance Sheet in compliance with the provisions regarding the annual balance sheet and its auditing and to have it audited.
- 3.4 BPO shall be obligated to continue the book values of the transferred assets and liabilities in its commercial balance sheet, as reported in the Final Balance Sheet upon which the Hive-Down Balance Sheet is based. The same shall apply regarding the continuation of the book value in the tax balance sheet.

### III. Subject Matter of the Hive-Down

In particular, the assets and obligations described in more detail *infra* in §§ 4 to 13 of this Agreement, are part of the Undertaking.

#### § 4 Industrial Property Rights

The domestic and foreign patents, utility models and trademarks and applications for such industrial property rights (hereinafter referred to as “Industrial Property Rights”) are not transferred to BPO.

- 4.1 On the Closing Date (§ 14.1), a Trust Agreement as set forth in Annex 4.1 comes into effect between BAG and BPO with regard to the Industrial Property Rights, which exclusively or primarily serve the Polymers business area and are listed in Annexes 1 and 2 to the Trust Agreement, with retroactive economic effect as of the Effective Date. Under the Trust Agreement, BAG shall hold those Industrial Property Rights in trust for BPO. BAG shall retain a right of use to the Industrial Property Rights which are primarily allocated to the Polymers business area.

- 4.2 On the Closing Date (§ 14.1), a License Agreement as set forth in Annex 4.2 comes into effect between BAG and BPO with regard to the Industrial Property Rights listed in the Annex to the License Agreement which, although also serving the Polymers business area, primarily serve other business or service areas of BAG, with retroactive economic effect as of the Effective Date. BAG shall grant BPO a right of use therein for the industrial activities and the performance of services in the Polymers business area.

- 4.3 On the Closing Date (§ 14.1), a Joint Use Agreement as set forth in Annex 4.3 comes into effect between BAG and BPO with regard to the Company name “Bayer” and the Group trademarks “Bayer” and the Bayer Cross symbol, with retroactive economic effect as of the Effective Date. BAG shall grant BPO therein the right to jointly use the Company name and the trademarks.

#### § 5 Know-How

With regard to the know-how related to the Polymers business area consisting, in particular, of

- (i) the entire processing know-how, plant calculations, plant constructions and plans related to the property, plant and equipment pursuant to § 8;
- (ii) the entire processing know-how, plant calculations, plant constructions and plans related to planned production or production of a predecessor business unit, allocated to the Polymers business area;
- (iii) the entire processing know-how, plant calculations, plant constructions and plans related to technologies of the Polymers business area that had been made accessible to third parties;
- (iv) the entire product specifications;
- (v) data on chemical substances, formulas and data sheets on products;
- (vi) research reports;
- (vii) know-how on development and research;
- (viii) media materials (photos, videos, graphics, sound materials, etc.) which were administered by the Polymers business area or (co-) produced by it;
- (ix) all technical surveys and other inspections of all products and substances in the development stage;

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which is allocated to the Polymers business area (collectively, “Know-How”), the Parties agree to the following:

- 5.1 BAG transfers to BPO the entire Know-How exclusively allocated to the Polymers business area as well as all confidential business inventions exclusively allocated to the Polymers business area pursuant to Annex 5.1 which are treated as confidential business inventions by BAG.
- 5.2 BAG transfers to BPO the entire Know-How primarily allocated to the Polymers business area subject to the provision that BAG shall retain an exclusive, transferable, no cost, and non-terminable right of use for all of its other current business and service areas, including the right to sub-license.
- 5.3 If BAG is only jointly entitled to the Know-How and the confidential business inventions transferred pursuant to §§ 5.1 and 5.2, BAG transfers the respective joint entitlement pursuant to §§ 5.1 and 5.2.
- 5.4 The entire other Know-How which, even if also related to the Polymers business area, is allocated primarily to other business or service areas of BAG, is not transferred to BPO. With respect to the entire other Know-How, BAG transfers to BPO an exclusive, transferable and non-terminable right of use limited to the Polymers business area at no cost (subject to § 5.7), including the right to sub-license within the Polymers business area. § 5.3 shall apply respectively.
- 5.5 BAG grants BPO an exclusive, transferable and non-terminable right of use to all existing databases of BAG limited to the industrial activities and the performance of services in the Polymers business area at no cost (subject to § 5.7), insofar as such are not already transferred to BPO under this Agreement.
- 5.6 BPO obtains the possession of all recordings, technical documents and other data carriers upon which the intangible assets transferred to BPO are stored. However, BPO shall merely be granted access to the central data storage of BAG. With regard to the central data storage of companies of the Bayer Group, BAG transfers the part of the access right to which BAG is entitled.
- 5.7 If BAG owes compensation to third parties for the transferred Know-How, BPO shall reimburse BAG for all compensation accruing for the time period as of the Effective Date pro rata for the use of BPO. Furthermore, BPO shall pay the pro rata amount of administrative costs attributed to the use of the databases listed in § 5.5 by BPO accruing for the time period beginning on the Effective Date.

## § 6 Software

- 6.1 BAG transfers to BPO all rights to the software that has been exclusively developed for or licensed in the Polymers business area and all updates of this software.
- 6.2 On the Closing Date (§ 14.1), BAG hereby grants BPO, with retroactive effect as of the Effective Date, an irrevocable, no cost right of joint use to the general license to SAP-R3 obtained under the contract dated June 17/30, 1997, according to the implementation status achieved on the Effective Date and to the extent it is used in the Polymers business area or, respectively, will be used. BPO shall reimburse BAG the pro rata service, maintenance and further development costs attributable to the use by BPO and for the time period beginning on the Effective Date.
- 6.3 BAG grants BPO sub-licenses in all remaining other software which is installed on the IT hardware transferred to BPO pursuant to § 8.1 or on leased IT hardware for which the leasing contract shall be transferred to BPO pursuant to § 12.1 and to which BAG holds the licenses or has installed on central IT hardware for the use of BPO. The licenses themselves shall remain with BAG. BPO shall reimburse BAG the royalties (with regard to royalties payable on a regular basis by BAG and with regard to one time payments, in an amount corresponding to the depreciation costs) attributed to the use by BPO for the time period beginning on the Effective Date.
- 6.4 On the Closing Date (§ 14.1), BAG hereby grants BPO, with retroactive effect as of the Effective Date, an irrevocable, no cost right of joint use to the general license to all software developed by it and all continuing development of software pursuant to § 6.3 for which BAG holds a license and that is tailored to not only the Polymers business area but to at least one other business or service area according to the implementation status as of the Effective Date and to the extent it is used in the Polymers business area or, respectively, will be used. BPO shall reimburse BAG the pro rata service, maintenance and further development costs attributable to the use by BPO and for the time period beginning on the Effective Date.
- 6.5 BPO shall be granted access to the central data storage of BAG. With respect to the central data storage of companies of the Bayer Group, BAG transfers its respective part of the access right.

## § 7 Public Law Approvals and Qualifications

BAG transfers to BPO all rights and obligations from public law approvals, permits and similar entitlements which are allocated to the Polymers business area, in particular:

- 7.1 all rights and obligations pursuant to all approvals and all other rights to substances and preparations, especially new substances according to the German Chemical Act (“*Chemikaliengesetz*”) which are allocated to the Polymers business area, as well as all applications of BAG for authorization for substances and preparations which are allocated to the Polymers business area. Also transferred are all rights in the related authorization documents (authorization files, authorization orders and other authorization documents, regardless of whether they are located at BAG, with the respective authorities or other third parties), including the protection rights of the authorization documents against reference by subsequent applicants;
- 7.2 all rights and obligations from declarations and notifications to the responsible authorities which refer to substances and preparations pursuant to § 7.1 of BAG which are allocated to the Polymers business area, in particular the respective rights, to place into circulation the stated items (including the rights following from the listing of the stated substances and preparations in public lists or applications to such listings);
- 7.3 all rights and obligations pursuant to all foreign authorizations, applications, declarations, notifications as well as pursuant to all public law qualifications regarding substances and preparations, which are allocated to the Polymers business area. As far as foreign admissions and foreign authorizations (collectively referred as “Foreign Authorizations”) are not transferable, BAG shall be obligated with regard to BPO to maintain the Foreign Authorizations for a term until BPO has received respective new Foreign Authorizations. BAG agrees to dispose of the non-transferable Foreign Authorizations only upon instruction of BPO, to make changes to the non-transferable Foreign Authorizations only upon instruction of BPO and to make declarations to the authorities only in coordination with and upon instruction of BPO. The maintenance costs of the Foreign Authorizations as well as costs of their continuation by BAG shall be borne by BPO. BPO shall indemnify BAG for all liability claims which are made against BAG based on the continuation of the non-transferable Foreign Authorizations;
- 7.4 all rights and obligations from the inclusion of substances and preparations in Annex A of the Directive 90/128/EEC dated February 23, 1990 (Directive about products and objects made of plastics that are intended for contact with food) which BAG has obtained as applicant, as well as all applications for inclusion in Annex A of the designated Directive which BAG has filed and on which no decision has yet been made. This includes, in particular, all rights to the submitted scientific files, documents and documentation, in particular, the rights of protection against reference by third parties;
- 7.5 all rights and obligations pursuant to all approvals for the plants requiring official approval which are transferred to BPO pursuant to this Agreement. BAG shall notify the responsible authority of the change of the plant operator; pursuant to § 52a German Federal Protection Against Emissions Act (“*Bundes-Immissionsschutzgesetz*”) BPO shall inform the responsible authority of the authorized body which is in charge of fulfilling the obligations of a plant operator.
- 7.6 BAG and BPO together shall coordinate the procedural steps necessary to be taken for the implementation of the transfers described in §§ 7.1 – 7.5 and for the assumption of all obligations associated herewith and shall agree to a procedure which is commercially acceptable and reasonable for both Parties. This shall apply, in particular, to the transfer of applications and notifications pursuant to the German Chemical Act, the granting of a right to make reference by BPO or BAG and the stipulation regarding distribution and selling substances and preparations labeled with the name BAG in order to ensure uninterrupted sale of the substances and preparations taken over by BPO in accordance with public law labeling provisions.
- 7.7 Insofar as entitlements and obligations accruing out of public law authorizations, permissions and similar entitlements within the meaning of this § 7 (collectively referred as “Entitlements”) not only serve the Polymers business area but also other business or service areas of BAG, to the extent legally permissible, the part of the Entitlements belonging to the Polymers business area is transferred. Insofar as a separation of the Entitlements is contrary to public law provisions, the Entitlements as a whole are transferred to BPO if the respective Entitlement primarily serves the Polymers business area. Insofar as the Entitlements do not serve the Polymers business area primarily, they shall not transfer to BPO. The Parties shall place each other in such position as if the Entitlements pursuant to this § 7 would have been transferred. Insofar as Entitlements within the meaning of this § 7 are not transferable, BAG shall support BPO to obtain these Entitlements.

## § 8 *Transfer of the Property, Plant and Equipment*

BAG transfers to BPO all property, plant and equipment allocated to the Polymers business area unless it is otherwise expressly stated in this Agreement. Included herein are, in particular:

- 8.1 all constructional and technical plants and machinery, including plants in construction and including all claims from payments on account made thereon, the office and

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plant equipment and all operating facilities, which are exclusively or primarily allocated to the Polymers business area, particularly those listed in Annex 8.1, and which are not integral parts of the real estate/buildings which are subject to the land use contract transferred pursuant to § 12.1, or which are subject to land use contracts transferred to another business area or service company. As far as property, plant and equipment are used by other business or service areas of BAG in addition to the Polymers business area, BAG transfers the joint ownership corresponding to the scope of use of those assets by the Polymers business area;

- 8.2 all vehicles which are exclusively or primarily allocated to the Polymers business area;
- 8.3 all minor assets and other operating resources existing in connection with the property, plant and equipment transferred to BPO.

Insofar as items of the property, plant and equipment are subject to a retention of ownership or BAG has transferred the ownership by way of security to third parties, BAG transfers to BPO all claims existing in this connection, including all expectancy rights and rights to recover possession.

## § 9 Transfer of the Investments

BAG transfers to BPO all investments allocated to the Polymers business area. Included herein are, in particular:

- 9.1 all shareholdings that exclusively or primarily are related to the Polymers business area. Annex 9.1 sets forth those shareholdings. The transfer shall include all rights and obligations associated therewith, in particular, all entitlements to profits insofar as no distribution has been resolved upon as of the Effective Date. BPO shall, therewith, be entitled to all profit distributions, including tax credits existing in connection therewith, which were resolved upon or after the Effective Date regardless of the time period to which they refer. All consortium agreements, other shareholder agreements and enterprise agreements shall be transferred together with the shareholdings. The Parties shall carry out all other actions necessary or expedient for transfer pursuant to § 14. The Parties shall place each other in such position as if the shareholdings were transferred as of the Effective Date;
- 9.2 all loan receivables, in particular, house building loan receivables which are allocated to the Polymers business area pursuant to Annex 9.2.

## § 10 Transfer of the Current Assets

BAG transfers to BPO all current assets allocated to the Polymers business area. These shall include, in particular:

- 10.1 all inventories allocated to the Polymers business area consisting of raw materials and supplies, in particular, the existing test substances and other goods in stock which serve the Polymers business area, goods in progress, work in progress, finished goods and goods for resale, including payments on account. The essential items of the current assets to be transferred are listed in Annex 10.1;
- 10.2 all of the trade receivables allocated to the Polymers business area pursuant to Annex 10.2;
- 10.3 all receivables from affiliated companies and companies in which participations are held pursuant to Annex 10.3;
- 10.4 all other items of the current assets allocated to the Polymers business area pursuant to Annex 10.4;
- 10.5 liquid assets pursuant to Annex 10.5.

If the aforementioned items are subject to a retention of ownership or BAG has transferred the ownership by way of security to third parties, BAG transfers to BPO all claims existing in this connection, including all expectancy rights and rights to recover possession.

## § 11 Transfer of Obligations and Reserves; Taxes

BAG transfers to BPO all obligations, with the exception of existing pension obligations which are covered by § 13, allocated to the Polymers business area. Included herein are, in particular:

- 11.1 all contingent liabilities of the Polymers business area pursuant to Annex 11.1 for which provisions have been established and all other obligations that result from the previous business activity of the Polymers business area, which are not required to be reported, not reportable or not actually reported in the balance sheet;
- 11.2 all trade payables which are allocated to the Polymers business area pursuant to Annex 11.2;
- 11.3 all payables towards affiliated companies or companies in which a participation is held pursuant to Annex 11.3;

- 11.4 all obligations resulting from existing stock option plans of BAG regarding employees who are transferred to BPO pursuant to § 613a German Civil Code (*“Bürgerliches Gesetzbuch”*, “BGB”) and regarding employees of the Polymers business area whose employment is terminated in the time period between the Effective Date and the Closing Date (§ 14.1);
- 11.5 all other liabilities which are allocated to the Polymers business area pursuant to Annex 11.5, in particular, liabilities from wage taxes and liabilities within the framework of social insurance.
- 11.6 Claims of tax reimbursements and obligations for payment of taxes for prior years which relate to the Polymers business area, as well as reimbursements and obligations to pay taxes for prior years in connection with social insurance claims, shall remain with BAG, insofar as they concern the time period up until the Effective Date. Increased or reduced taxes, including tax supplementary payments from tax audit determinations for time periods up until the Effective Date, shall be borne by BAG or, respectively, BAG shall be entitled thereto. Insofar as these tax audit determinations, in the time period after the Effective Date, cause reduced taxes by reverse effects, including tax supplementary payments for BPO, BPO shall reimburse BAG the cash value of the tax reduction effect (discounted with 6% to the due date of the additional taxes) insofar as this reduction effect is not attributed to BAG for tax purposes through a single entity relationship. BPO shall inform BAG of the issuance of the respective tax assessment notices. Upon demand of BAG, BPO shall be obligated – at the cost of BAG – to file a legal remedy against a tax assessment notice.

## § 12 *Transfer of Contracts and Other Rights*

- 12.1 BAG transfers to BPO all contracts and contract offers exclusively allocated to the Polymers business area, unless this Agreement states otherwise. The essential contracts (with the exception of leasing contracts and the land use contract stated in Annex 12.1.2) transferred pursuant to § 12.1, sentence 1, are listed in Annex 12.1.1. Furthermore, all leasing contracts are transferred for items such as, e.g. office equipment and furnishings, cars, etc., which are exclusively allocated to the Polymers business area or exclusively used by employees of the Polymers business area.

Insofar as the transferred contracts and contract offers are subject to litigation or arbitration disputes, these dispute relationships are also transferred.

Finally, the land use contract between Bayer Industry Services GmbH & Co. OHG as lessor and BAG as lessee listed in Annex 12.1.2 is transferred.

BAG grants a right of use to BPO at no cost of all operating facilities, used by the Polymers business area which are integral parts of the real estate/buildings which are subject to the land use contract transferred to BPO pursuant to Annex 12.1.2 or which are subject to land use contracts transferred to another business area or service company. On the Closing Date (§ 14.1), a Special Right of Use Contract as set forth in Annex 12.1.3 shall come into effect between the Parties with retroactive economic effect as of the Effective Date. The essential operating facilities are listed in an annex to the Special Right of Use Contract.

BAG retains ownership in these areas, real estate and buildings as well as in the operating facilities.

- 12.2 BAG transfers to BPO all contracts and contract offers which also concern other business or service areas of BAG but are primarily allocated to the Polymers business area, unless this Agreement states otherwise. The essential contracts (with the exception of leasing contracts) which are transferred pursuant to § 12.2, sentence 1, are listed in Annex 12.2. § 12.2, sentence 1, also applies to all leasing contracts which are transferred for items such as, e.g. office equipment and furnishings, cars, etc., which are primarily attributed to the Polymers business area or are used primarily by employees of the Polymers business area.

Insofar as the transferred contracts and contract offers are subject to litigation or arbitration disputes, these dispute relationships are also transferred.

The Parties shall decide jointly whether they will discuss with the respective contract partner to amend the contracts listed in § 12.2, sentence 1, and to conclude new contracts so that in the future BPO and BAG or those companies to which the respective business or service areas are hived-down will be entitled and obligated by their own respective contracts. Until then, BPO shall exercise all rights and obligations from the contracts listed in § 12.2, sentence 1, to the extent legally permissible. In their internal relationship, BAG shall be entitled to the rights from these contracts on a pro rata basis, i.e. to the extent that they are not applicable to BPO. In its internal relationship to BPO, BAG shall perform all obligations under or resulting from these contracts to the same extent.

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12.3 Contracts and contract offers primarily allocated to other business areas of BAG but which nevertheless also affect the Polymers business area shall not be transferred to BPO. The essential contracts (with the exception of leasing contracts) primarily allocated to other business or service areas of BAG but which nevertheless also affect the Polymers business area are listed in Annex 12.3. Contracts and contract offers primarily allocated to the Polymers business area, but which nevertheless also affect one or more service areas of BAG and which are required by one or more service areas for performing mandatory or optional services to the business or service areas are also not transferred to BPO.

The Parties shall decide jointly whether they will discuss with the respective contract partner to amend the contracts listed in § 12.3, sentences 1 and 3, and to conclude new contracts in such a way that in the future BPO and BAG, or, if the respective contract is transferred to a business area or service company by way of hive-down, the respective company will be entitled and obligated from their own respective contracts. Until then, BAG shall exercise all rights and obligations from the contracts listed in § 12.3, sentences 1 and 3, to the extent legally permissible. In their internal relationship, BPO is entitled to the rights from these contracts on a pro rata basis, i.e. to the extent that they are applicable to the Polymers business area. In its internal relationship to BAG, BPO shall perform all obligations under or resulting from these contracts to the same extent.

12.4 Insurance contracts are not subject to this Agreement. The Parties shall jointly notify the insurance company, Pallas Versicherung AG, with respect to the extension of the insurance coverage to BPO under the existing Bayer Group provisions.

12.5 BAG transfers to BPO all memberships and other legal positions in the syndicates, associations and other organizations listed in Annex 12.5.

## *§ 13 Pension Liabilities and Pension Provisions*

13.1 Pension Liabilities to Current Employees and to Employees No Longer Employed as of July 1, 2002

13.1.1 On the Closing Date (§ 14.1), all rights and obligations from existing pension commitments of BAG (pensions and similar obligations, particularly transitional payments for early retirement and interim

pensions) to those employees of the Polymers business area whose employment relationships exist on the Closing Date, are transferred to BPO pursuant to §§ 324 UmwG, 613a, para. 1 BGB.

13.1.2 Furthermore, BAG transfers to BPO all rights and obligations from existing pension commitments of BAG (current pensions, vested pension rights and similar obligations, particularly transitional payments for early retirement and interim pensions) to those employees of the Polymers business area whose employment is terminated in the time period between July 1, 2002 and the Closing Date or will terminate in this time period, and their surviving dependents.

13.1.3 Provisions for the obligations from the pension commitments listed in § 13.1.1 and § 13.1.2 shall be established accordingly by BPO. The respective pension reserves are contained in the assets transferred to BPO under this Agreement.

13.1.4 In addition, BAG shall be jointly and severally liable for all pension commitments listed in § 13.1.1 and § 13.1.2 pursuant to § 133, para. 1 and para. 3 UmwG for a period of five years from the date the registration of the hive-down in the commercial register of BAG is deemed to be published.

13.1.5 BPO shall indemnify BAG for all claims arising from the pension commitments listed in § 13.1.1 and § 13.1.2 which are asserted against BAG referring to the time period after the Effective Date.

13.2 Pension Liabilities to Employees Whose Employment Contracts Were Terminated Prior to July 1, 2002

13.2.1 Obligations from the existing pension commitments of BAG (current pensions, vested pension rights and similar obligations, particularly transitional payments for early retirement and interim pensions) to those employees whose employment contracts were terminated prior to July 1, 2002 and who would have been allocated to the Polymers business area, and their surviving dependents are not transferred pursuant to §§ 324 UmwG, 613a, para. 1 BGB to BPO and shall also not be transferred to BPO under this Agreement.

13.2.2 Accordingly, the provisions for the obligations from the pension commitments listed in § 13.2.1 shall continue to be established by BAG.

13.2.3 BPO shall reimburse BAG the proportional costs necessary to carry out the pension commitments listed in § 13.2.1 to the extent such costs are not covered by provisions in the Final Balance Sheet, and all proportional administrative costs accruing to the pension commitments as from the Effective Date, including the costs of expert opinions and contributions to the Mutual Benefit Association for Pension Security. The pro rata costs to be borne by BPO which are not covered by the provisions – minus the pro rata amount of the costs borne by Bayer CropScience AG – corresponds to the proportion of the gross remuneration total of 2002 of the employees allocated to the Polymers business area as of July 1, 2002 in relation to the gross remuneration total of 2002 of all employees of BAG that not have been allocated to the CropScience business area.

#### IV. Terms of the Transfer

##### § 14 Closing Date

- 14.1 The transfer of the Undertaking, i.e. items of the assets and liabilities affected by the hive-down and the other rights and obligations of BAG, will be effective *in rem* on the date of registration of the hive-down in the commercial register of BAG (“Closing Date”).
- 14.2 Possession to movable goods is transferred to BPO on the Closing Date. Insofar as movable goods are in possession of third parties, BAG transfers its claim for recovery to BPO with effect as of the Closing Date.

##### § 15 Catch-all Provision

- 15.1 Insofar as certain assets and liabilities and other rights and obligations, in particular, from contracts, shareholdings, memberships or administrative actions which should be transferred to BPO pursuant to this Agreement, are not already transferred to BPO by operation of law with the registration of the hive-down, BAG shall transfer these items of the assets and liabilities and the other rights and obligations to BPO. Should a transfer to BPO externally not be possible or only be possible with a disproportionately high expenditure or should such transfer be unreasonable, the Parties shall place themselves in such position as if the transfer had occurred also externally as of the Effective Date.
- 15.2 Insofar as the transfer of certain assets and liabilities or other rights and obligations or the taking over of contracts requires the approval of third parties or a public law permit, BAG and BPO shall endeavor to obtain the respective approval or permit. If such approval or permit cannot

be obtained or can only be obtained with a disproportionately high expenditure, § 15.1, sentence 2, shall apply accordingly regarding the internal relationship of the two companies.

- 15.3 Insofar as certain assets and liabilities or other rights and obligations pursuant to this Agreement shall not be transferred but are transferred by operation of law, BPO shall retransfer the rights or, if appropriate, indemnify BAG, and BAG shall agree to the retransfer of the obligations or, if appropriate, indemnify BPO. The Parties shall undertake all measures necessary and expedient in this connection and cooperate in all legal actions which are necessary and expedient in order to retransfer such rights and obligations to BAG. In their internal relationship, the Parties shall act as if the rights and obligations mentioned in § 15.3, sentence 1, were not transferred. The aforementioned regulation of this § 15.3 shall apply accordingly if assets and liabilities or other rights and obligations which were allocated to the Polymers business area by mistake of the Parties are transferred pursuant to this Agreement.

##### § 16 Cooperation Obligations

- 16.1 BAG and BPO shall make all declarations, issue all documents and undertake all other actions which are still necessary or expedient in connection with the transfer of the Undertaking.
- 16.2 As of the Closing Date, BPO shall receive all business documents held by BAG allocated to the Polymers business area or in connection herewith, in particular, contracts and approval documents, shop regulations, construction and building plans, operation handbooks and personnel documents. BPO shall also receive all documents which are necessary for the claim of the rights transferred to it under this Agreement. BPO shall store the books and other records within the statutory record retention period for BAG and shall ensure that BAG can inspect and copy these business documents. Business and trade secrets are to be treated confidentially.
- 16.3 With respect to proceedings conducted by authorities, particularly tax audits and tax and other litigation which concern the Undertaking, the Parties shall mutually support each other until December 31, 2010. In particular, they shall reciprocally make available all information and documents which are necessary or expedient for the performance of tax or other authority demands or for the provision of proof to tax authorities or other authorities or courts and shall reciprocally work towards obtaining reasonable support from their employees.

## § 17 *Creditor Protection and Internal Compensation*

Unless this Agreement provides any other distribution of burdens and liabilities arising from or in connection with the Undertaking, the following shall apply:

- 17.1 If and insofar as claims are enforced against BAG by creditors for obligations on the basis of the provisions in § 133 UmwG or other provisions and such obligations are transferred to BPO pursuant to the terms of this Agreement or claims are enforced against BAG for obligations resulting from future statutory relationships which were, are or will be established in connection with the business activities of the Polymers business area, BPO shall indemnify BAG for the respective obligation upon first demand. The same shall apply if a claim for provision of security is enforced against BAG by such creditors.
- 17.2 If and insofar as in the opposite case claims are enforced against BPO by creditors for obligations on the basis of the provisions in § 133 UmwG or other provisions and such obligations are not transferred to BPO pursuant to the terms of this Agreement or claims are enforced against BPO for obligations resulting from future statutory relationships which were, are or will be established in connection with other business areas, service areas, business area companies or service companies other than the Polymers business area, BAG shall indemnify BPO for the respective obligation upon first demand. The same shall apply if a claim for provision of security is enforced against BPO by such creditors.
- 17.3 Insofar as claims are enforced against BPO by creditors for obligations transferred by this Agreement which are covered by the Bayer Group insurance agreement, BAG will transfer all insurance payments received by it to BPO.

## § 18 *Preclusion of Claims; Environment*

- 18.1 Claims and rights of BPO against BAG of all kinds and regardless of their legal basis with respect to quality and the status of the assets and liabilities as well as the Undertaking as a whole transferred by BAG under this Agreement are herewith expressly precluded. This shall also apply in particular to claims for pre-contractual or contractual breach of duties and the breach of statutory obligations.

- 18.2 In the internal relationship between BAG and BPO, BPO shall be fully liable only for such contamination of soil and ground water caused by BPO, the Polymers business area of BAG or a predecessor business unit.

## V. Counter-Performance and Capital Measures

### § 19 *Granting of Individual Share Certificates and Capital Measures*

- 19.1 BAG, as the sole stockholder of BPO, shall receive as consideration for the hive-down of the Polymers business area to BPO a total of 9,949,300 new individual bearer no par value shares of BPO.
- 19.2 BPO shall increase its share capital by €9,949,300 (in words: Euro nine million nine hundred forty-nine thousand three hundred) to implement the hive-down. Each no par value share of BPO represents €1 in the increased share capital.
- 19.3 The new shares shall be issued with a profit participation right as of October 1, 2003. If the Effective Date pursuant to § 2.2 is postponed, the commencement of the profit participation right of the new shares shall be postponed accordingly.
- 19.4 The total value at which the contribution in kind performed by BAG shall be assumed by BPO corresponds to the commercial law book value of the transferred net assets as of the Effective Date as reported in the Final Balance Sheet of BAG as of September 30, 2003, 24.00 hours. To the extent this value exceeds the amount of the increase in share capital according to § 19.2, the excess amount shall be allocated to the capital reserves pursuant to § 272, para. 2, no. 1 German Commercial Code (“*Handelsgesetzbuch*”).
- 19.5 If the value of the contribution in kind prior to the Closing Date or the book value of the transferred net assets prior to the Effective Date does not correspond to the value of the minimum amount of all new shares issued by BPO, BAG is obliged to make a payment to the bank account of Commerzbank AG in Cologne, stated in Annex 10.5, in the amount that is necessary so that the value of the contribution in kind on the Closing Date or the book value of the transferred net assets at the Effective Date reaches the value of the minimum amount of all new shares issued by BPO. If BAG is required to make such payment, the amount of the payment shall be determined in coordination with the auditor required for contributions in kind (“*Sacheinlagenprüfer*”). BAG’s total liability shall not exceed 25% of the balance sheet total as stated in the Hive-Down Balance Sheet. Any claims of such liability may not be asserted after the registration of the hive-down in the commercial register of BAG.

## § 20 Special Rights and Advantages

- 20.1 No granting of rights or other measures for individual stockholders or for owners of special rights in terms of § 126, para. 1, no. 7 UmwG, except for those granted under the regulation in § 11.4 for stock option programs, are planned.
- 20.2 No special advantages in terms of § 126, para. 1, no. 8 UmwG for members of the Board of Management or the Supervisory Board of the companies participating in the hive-down or an auditor of a participating company shall be granted.

## VI. Consequences of the Hive-Down for the Employees and their Representatives

### § 21 Transfer of the Employment Relationships

- 21.1 On the Closing Date, all employment relationships currently existing with BAG and allocated to the Polymers business area are transferred to BPO with all rights and obligations pursuant to the provisions of §§ 324 UmwG, 613a BGB. The employees who are allocated to the Polymers business area are listed in Annex 21.1.
- 21.2 Pursuant to §§ 324 UmwG, 613a, para. 4 BGB, no employment relationship may be terminated due to the transfer of the business operation via hive-down.
- 21.3 The content of the transferred employment relationships shall be determined by their legal status on the Closing Date. Type of work, salary, as well as other employment terms are not changed by the hive-down. The employment term served with and recognized by BAG shall be taken into account in its entirety with respect to all regulations dependent upon the term of employment.
- 21.4 The legal situation regarding the pension commitments is described in § 13. Irrespective of the aforesaid, the employees remain, as before, ordinary members of the Bayer Pension Fund.
- 21.5 The collective bargaining agreement commitment to date of BAG also applies to BPO. Prior to the Closing Date of the hive-down, BPO shall join the regional Employer Associations of the Chemical Industry (“*Arbeitgeberverbände der Chemischen Industrie*”) and, thereby, be bound by such collective bargaining agreement.
- 21.6 In connection with the hive-down of the business and service areas of BAG to separate legal entities under the joint holding company of the Bayer Group, BAG and the union named “*Industriegewerkschaft Bergbau Chemie Energie*” (hereinafter referred to as “IG BCE”) entered into a collective bargaining agreement on January 10, 2002

(the “Collective Bargaining Agreement”) which contains detailed regulations concerning the labor management relations within the framework of the rearrangement of the Bayer Group (see in detail § 22.1). The Collective Bargaining Agreement provides that the shop agreements and the central shop agreements existing with BAG for employees transferred to BPO shall be replaced according to collective bargaining law by agreements with BPO having the same content. As a result, the shop agreements and the central shop agreements remain in place for the employees being transferred to BPO. This is also the content of a central shop agreement between BAG and the central works council of BAG of July 16, 2002.

Adjustments to the shop agreements and the central shop agreements due to the hive-down insofar as employees transferred to BPO are affected, employees remaining with BPO are affected or employees remaining with BAG are affected, shall be mutually agreed upon by BAG together with the respective works council or central works council.

### § 22 Representation of Employees Pursuant to the Employees’ Representation Law

#### 22.1 Works Council and Central Works Council

Under the Collective Bargaining Agreement, BAG and IG BCE have agreed that the existing works council structures in effect up to then in BAG locations should essentially remain unchanged after the hive-down to BPO and the other planned hive-downs of the remaining business and service areas of BAG in 2003. The Collective Bargaining Agreement contains, in particular, the following regulations (with regard to the treatment of the existing shop agreements, see *supra* § 21.6) for the works constitution before and after the hive-down:

- 22.1.1 Within the rotational works councils’ elections in March 2002, as done previously, works councils were elected in each of the five German BAG locations in Leverkusen, Dormagen, Uerdingen, Elberfeld and Brunsbüttel (hereinafter referred to as “Works Councils on Location”). All employees entitled to vote at the respective location shall be entitled to vote for the Works Council on Location, regardless of whether they are transferred via the hive-down or remain with BAG.
- 22.1.2 The Works Councils on Location were elected, as done previously, for the full term of four years. The Works Councils on Location to be elected in March 2002, as well as the Central Works Council (§ 22.1.4), shall also remain in office after the hive-down.

22.1.3 The Works Councils on Location shall be responsible for all matters resulting from the Employees' Representation Act ("*Betriebsverfassungsgesetz*") insofar as such relate to the respective location. The responsibility shall be irrespective of the legal structures of the respective location, i.e. it shall apply for the matters of all companies of the Bayer Group at the respective location. The Works Council on Location shall continue to observe the interests of all employees of BAG employed at the respective location regardless of whether they are transferred via hive-down to BPO, remain with BAG or have been transferred or will be transferred by the additional hive-downs to other companies of the Bayer Group.

22.1.4 The Works Councils on Location shall form, as done previously, a Central Works Council and a Central Works Council Committee. The Central Works Council shall be responsible for all issues which cannot be regulated by the individual Works Councils on Location as they relate to more than one location.

22.1.5 The Collective Bargaining Agreement came into effect on the date of its execution. It has a fixed term until May 31, 2006. Should a party to the Collective Bargaining Agreement come to the conclusion during the term that the co-determination structure laid down in the Collective Bargaining Agreement has not proved successful in practice and these doubts cannot be dispelled by mutual agreement, such party shall have the right to terminate the Collective Bargaining Agreement with effect as of December 31, 2004. After the termination of the Collective Bargaining Agreement, the statutory works constitution shall apply, i.e. the Works Councils in BPO and BAG shall then be elected separately.

## 22.2 Representative Committees of Executive Employees and Central Representative Committee of Executive Employees

With regard to the representation of the executive employees, BAG and the Central Representative Committee of Executive Employees of BAG have agreed to the following:

22.2.1 Shortly after the Closing Date (§ 14.1), BPO shall hold an election for a Company Representative Committee of Executive Employees. The Company Representative Committee of Executive Employees shall replace the previous representative committee of executive employees at the five BAG locations for the executive employees who are transferred to BPO and shall replace the Central

Representative Committee of Executive Employees. The statutory duties of the Company Representative Committee of Executive Employees shall refer to the entire company of BPO; contrary to the duties of the previous representative committee of executive employees of BAG, they are, therefore, not limited to the respective location.

22.2.2 Up until the election of a Company Representative Committee of Executive Employees of BPO but for a maximum transitory period of one year after the Closing Date, the works councils elected within the rotational election in March 2002, as well as the Central Representative Committee of Executive Employees of BAG, shall receive an interim mandate for the observance of the interests of the executive employees transferred to BPO.

22.2.3 After the election of the Company Representative Committee of Executive Employees of BPO, the Group Representative Committee of Executive Employees of BAG shall be supplemented by a representative of the Company Representative Committee of Executive Employees of BPO. The personnel composition of the Group Representative Committee of Executive Employees shall be adjusted accordingly as soon as the hive-downs of the remaining business and service areas of BAG to new companies planned for 2003 are executed and Company Representative Committees of Executive Employees are also formed therein. Up until its new formation, the Group Representative Committee of Executive Employees shall remain in existence as formed upon conclusion of the rotational elections in March 2002.

## § 23 Supervisory Board

23.1 The hive-down has no effect on the legal status, composition and term of the Supervisory Board of BAG. The representatives of employees in the Supervisory Board of BAG shall be elected by the employees of all German companies belonging to the Bayer Group so that the employees transferred to BPO retain their voting rights.

23.2 When the hive-down becomes legally effective, BPO shall be subject to co-determination pursuant to the German Co-determination Act ("*Mitbestimmungsgesetz*") of 1976. For this purpose, the Supervisory Board of BPO currently composed of three persons, shall be newly composed in a composition proceeding pursuant to §§ 97 et seq. German Stock Corporation Act ("*Aktiengesetz*"). The newly composed Supervisory Board of BPO will have twelve members of which six shall be stockholder representatives and six shall be employee representatives.

## VII. Miscellaneous

### § 24 Costs and Taxes

The costs and taxes accruing, now and in the future, in connection with the notarization of this Agreement and its performance shall be borne by BPO. The costs of the respective annual stockholders' meeting and the costs of filing and registration shall be borne by each Party itself.

### § 25 Sales and Services Contracts

- 25.1 BAG is prepared to provide BPO in the future all sales and services it has performed to date for the Bayer Group in the Polymers business area with economic effect as from the Effective Date and at arm's length terms. Such sales and services can also be performed by a subsidiary of BAG.
- 25.2 BPO undertakes the obligation to obtain, at market conditions from BAG or a subsidiary of BAG, infrastructure services regarding specific locations (in particular, road and way services, canalization and sewage treatment, water and energy lines, plant and fire protection) which it requires for the plant locations.
- 25.3 BPO is prepared to provide BAG all sales and services performed to date by the Polymers business area within the Bayer Group for BAG or its subsidiaries with economic effect as from the Effective Date at arm's length terms.

### § 26 Final Provisions

- 26.1 Jurisdiction for all legal disputes arising from this Agreement shall be in Leverkusen, Germany.
- 26.2 Amendments and supplements to this Agreement must be in writing, including a waiver of this provision itself, insofar as more extensive form requirements are not required.
- 26.3 Should one or more provisions of this Agreement be void in whole or in part, invalid or unenforceable, the validity of this Agreement and its remaining provisions shall not be affected thereby. Instead of the void, invalid or unenforceable provision, a provision shall apply which comes closest in terms of form, content, time, measure and scope of application to what was desired according to the economic sense and meaning of the void, invalid or unenforceable provision. The same shall apply for any gaps in this Agreement.

The Annexes referred to in the Hive-Down and Transfer Agreement, done by the notary Dr. Dieter Janke, in Leverkusen, Germany, recorded as a reference document on March 7, 2003, and that, by reference, became part of the Hive-Down and Transfer Agreement, have the following essential content:

- Annex 3.1 contains the Hive-Down Balance Sheet for the Polymers business area as of January 1, 2003, 00.00 hours. The Hive-Down Balance Sheet shows the assets and liabilities of the Polymers business area. The Hive-Down Balance Sheet was prepared on the basis of the book values reported in the Annual Balance Sheet of Bayer AG as of December 31, 2002, 24.00 hours.
- Annex 4.1 contains a Trust Agreement with regard to the Industrial Property Rights that comes into effect as of the Effective Date, i.e. as of the date of the registration of the hive-down in the commercial register of Bayer AG, and has economic retroactive effect as of October 1, 2003, 00.00 hours. Under the Trust Agreement, Bayer AG and Bayer Polymers AG agree that Bayer AG holds the Industrial Property Rights which exclusively or primarily serve the Polymers business area in trust for Bayer Polymers AG. The individual Industrial Property Rights are listed in Annexes to the Trust Agreement. In economic terms, Bayer Polymers AG will be the sole owner of the Industrial Property Rights. The legal ownership of the Industrial Property Rights remains in each case with Bayer AG. With respect to the Industrial Property Rights that primarily serve the Polymers business area but at the same time also serve other business or service areas of Bayer AG, Bayer AG retains the right to use them for its other business and service areas.

Bayer AG is obliged, as the sole legal owner of the Industrial Property Rights, to administrate them as a trustee in its own name but exclusively for the interest and the account of Bayer Polymers AG. Bayer Polymers AG is entitled at any time to claim the transfer and change of registration of individual or all Industrial Property Rights from Bayer AG to its own name. Regarding the Industrial Property Rights that primarily serve Bayer Polymers AG, Bayer Polymers AG in this case is obliged to grant to Bayer AG exclusive, no cost, non-terminable grant-back licenses to use these Industrial Property Rights for its other business and service areas, limited to the current scope of use by the Company. With regard to business or service areas, which at this time already have been hived down and transferred into separate companies, Bayer Polymers AG is obliged to grant equivalent licenses directly to these companies.

Bayer AG has the right to prohibit the use of the trademarks that contain the elements "Bay" or "Bayer" by Bayer Polymers AG if Bayer AG is no longer a majority stockholder in Bayer Polymers AG.

- Annex 4.2 contains a License Agreement that will become effective between Bayer AG and Bayer Polymers AG as of the Closing Date, i.e. the date of the registration of the hive-down in the commercial register of Bayer AG, and has economic retroactive effect as of October 1, 2003, 00.00 hours. Under

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- this License Agreement, Bayer AG grants Bayer Polymers AG a license for Industrial Property Rights that although also serving the Polymers business area, primarily serve other business or service areas of Bayer AG. The Industrial Property Rights are listed in an Annex to the License Agreement. The license covers industrial activities and the performance of services in the Polymers business area. The license comprises a no cost, exclusive, transferable and non-terminable right of use for the Industrial Property Rights. Actions that affect the legal constitution of the Industrial Property Rights partly or in whole may be taken by Bayer AG only in understanding with Bayer Polymers AG and at the same time by taking into account the interests of the other business and service areas.
- Annex 4.3 contains a Joint Use Agreement that becomes effective as of the Closing Date, i.e. the date of the registration of the hive-down in the commercial register of Bayer AG, and has economic retroactive effect as of October 1, 2003, 00.00 hours. Under this Joint Use Agreement, Bayer AG grants Bayer Polymers AG an exclusive and no cost right for the Polymers business area to jointly use the name "Bayer" as part of its own company name and the trademarks "Bayer" and the Bayer Cross symbol on a world-wide basis for labeling the products of Bayer Polymers AG, identifying its services and its general business transactions. The ownership of the Company name and the Group trademarks remain with Bayer AG. The right of joint use is, in principle, non-terminable. However it may be terminated with immediate effect if Bayer AG is no longer the majority stockholder in Bayer Polymers AG. In such case Bayer Polymers AG is entitled to an indemnification which is equal to the going concern tax value.
  - Annex 5.1 contains a listing of all confidential business inventions that are allocated exclusively to the Polymers business area and that, by decision of Bayer AG, are treated as confidential business inventions and shall not be filed for registration. The annex lists the confidential business inventions by their internal file numbers, the dates the inventions were notified and their internal abbreviations.
  - Annex 8.1 contains a list of all constructional and technical plants and machinery, other constructions and office and plant equipment, including plants in construction and all claims from payments on accounts made hereto and all operating facilities that are exclusively or primarily allocated to the Polymers business area and that are not integral parts of the real estate/buildings that are transferred to Bayer Polymers AG pursuant to the Hive-Down Agreement or which are subject to land use contracts that are transferred to other business area or service companies. The annex lists the individual property, plant and equipment by their commission and record numbers.
  - Annex 9.1 lists the shareholdings to be allocated exclusively or primarily to the Polymers business area that are transferred to Bayer Polymers AG. The annex shows the book values of the shareholdings and the main attributes of the businesses (name of the company, registered office, capital of the company and share of the capital belonging to Bayer AG) in which a shareholding exists.
  - Annex 9.2 shows the value of the loans receivable that are transferred from Bayer AG to Bayer Polymers AG.
  - Annex 10.1 contains a list of the essential inventory assets of Bayer AG that are transferred to Bayer Polymers AG. The annex shows the book values of the inventories as well as claims from payments on account made for the inventories and specifies each inventory by its material number.
  - Annex 10.2 contains a listing of trade receivables that are transferred from Bayer AG to Bayer Polymers AG and the book values that are reported in the Hive-Down Balance Sheet for such trade receivables. The individual trade receivables are broken down by their allocation to certain non-personal accounts (short and long-term receivables from third parties, receivables from subsidiaries and other affiliated companies as well as value adjustments) and they are specified by partner numbers that are used internally by Bayer AG.
  - Annex 10.3 lists the receivables from affiliated companies and from companies in which participations are held and that are transferred from Bayer AG to Bayer Polymers AG. The annex shows the book values reported in the Hive-Down Balance Sheet for these receivables. The receivables are specified by partner numbers internally used by Bayer AG.
  - Annex 10.4 names other items of the current assets of Bayer AG that are transferred to Bayer Polymers AG. These items concern, *inter alia*, factory insurance premiums and license expenses. In general, these items are listed by partner numbers internally used by Bayer AG.
  - Annex 10.5 shows the liquid assets that are transferred to Bayer Polymers AG.
  - Annex 11.1 contains a listing of all contingent liabilities of the Polymers business area for which provisions have been established and that are transferred from Bayer AG to Bayer Polymers AG. The listing sets forth the respective liabilities by the underlying business transactions and by their designated partner numbers internally used by Bayer AG.

- Annex 11.2 contains a listing of trade payables that are transferred from Bayer AG to Bayer Polymers AG and shows the book values reported in the Hive-Down Balance Sheet for these payables. The individual payables are broken down by their allocation to certain non-personal accounts (short-term liabilities to third parties, liabilities to subsidiaries and liabilities for freight and customs duties) and are specified by their partner numbers.
  - Annex 11.3 shows the payables due to affiliated companies or companies in which a participation is held and that are transferred from Bayer AG to Bayer Polymers AG. The annex shows the book values as reported in the Hive-Down Balance Sheet for these payables. The annex is broken down by the type of payables and by partner numbers for the payables.
  - Annex 11.5 lists other liabilities that are transferred from Bayer AG to Bayer Polymers AG. They cover, *inter alia*, damages arising out of business interruptions and liabilities for wage and church taxes. The liabilities are specified by partner numbers.
  - Annex 12.1.1 contains a list of essential contracts (excluding leasing contracts and the land use contract listed in Annex 12.1.2) that are allocated exclusively to the Polymers business area and that are transferred from Bayer AG to Bayer Polymers AG.
  - Annex 12.1.2 lists the land use contract that was agreed upon by Bayer AG and Bayer Industry Services GmbH & Co. OHG and that is transferred from Bayer AG to Bayer Polymers AG. The contract is identified, in particular, by the respective site of the Polymers business area, the pieces of land stated in the contract and the total amount of land that is left for use.
  - Annex 12.1.3 contains a Special Right of Use Agreement that becomes effective between Bayer AG and Bayer Polymers AG as of the Closing Date, i.e. the date of the registration of the hive-down in the commercial register of Bayer AG, and has economic retroactive effect as of October 1, 2003, 00.00 hours. Under this Special Right of Use Agreement, Bayer AG grants Bayer Polymers AG a right of use of all operating facilities which are integral part of the real estate and buildings to which the land use contract is transferred to Bayer Polymers AG pursuant to the Hive-Down Agreement or under which land use contracts are transferred to other business area or service companies. The use of the operating facilities is free of charge. To the extent that real estate and/or buildings are no longer used, the Special Right of Use Agreement terminates. In this case, Bayer Polymers AG has a right to demand removal of the operating facilities, to limit its scope of use or to claim reimbursement for the residual value of the relinquished operating facilities. The costs for the removal are to be borne by Bayer Polymers AG and Bayer AG in equal amounts.
  - Annex 12.2 contains a list of essential contracts (excluding leasing contracts) that primarily are allocated to the Polymers business area and that are transferred from Bayer AG to Bayer Polymers AG.
  - Annex 12.3 contains a list of the essential contracts (excluding leasing contracts) that also can be allocated to the Polymers business area but primarily are allocated towards other business or service areas.
  - Annex 12.5 shows all memberships in syndicates, associations and other organizations that are allocated to the Polymers business area and that are transferred from Bayer AG to Bayer Polymers AG.
  - Annex 21.1 contains a listing of all employees that are allocated to the Polymers business area. The respective employees are specified by their personal numbers.
- The Hive-Down and Transfer Agreement has been submitted to the commercial register of the Company prior to the calling of the Stockholders' Meeting.
- The hive-down of the Polymers business area is explained and substantiated in more detail in the Joint Hive-Down Report of the Boards of Management of the Company and of Bayer Polymers AG.

## **9. Consent to the Hive-Down and Transfer Agreement between the Company and Bayer Chemicals Aktiengesellschaft**

The Board of Management and the Supervisory Board propose that the Meeting consent to the Hive-Down and Transfer Agreement between the Company and Bayer Chemicals AG entered into on March 11, 2003.

The Company and Bayer Chemicals AG have entered into a Hive-Down and Transfer Agreement on March 11, 2003 before the Notary Dr. Dieter Janke in Leverkusen. Under this Hive-Down and Transfer Agreement the Company hives down as a whole all assets and liabilities together with all rights and obligations allocated to the Chemicals business area to Bayer Chemicals AG (hive-down for acquisition pursuant to § 123, para. 3, no. 1 German Transformation Act; "*Umwandlungsgesetz*"). The hive-down shall have economic effect as of July 1, 2003, 00.00 hours.

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*The essential content of the Hive-Down and Transfer Agreement is as follows:*

## **HIVE-DOWN and TRANSFER AGREEMENT**

between  
Bayer Aktiengesellschaft,  
Leverkusen ("BAG")  
and  
Bayer Chemicals Aktiengesellschaft,  
Leverkusen ("BCH")

### **I. Preliminary Remarks**

- 0.1 BAG has its registered office in Leverkusen. The share capital of the Company on the date of the execution of this Agreement amounts to €1,869,675,315.20 and is divided into 730,341,920 no par value shares.
- 0.2 BCH has its registered office in Leverkusen. The share capital of the company on the date of the execution of this Agreement amounts to €50,100 and is divided into 50,100 no par value shares. BAG is the sole stockholder of BCH.
- 0.3 Chemicals business area of BAG is comprised of the Business Units Basic Chemicals (BAC), Fine Chemicals (FCH), Ion Exchange Resins (ION), Leather (LEA), Material Protection (MPP), Paper (PAP), Performance Chemicals (PCH), Textile Processing Chemicals (TPC), Colorants for Plastics & Specialties (CPS) and Inorganic Pigments (IPG) as well as H.C. Starck, which is an independent subgroup of Bayer AG. As of July 1, 2002, the Chemicals business area has been organizationally combined with the related service functions of the central service and corporate divisions of BAG and shall now be transferred to a separate legal entity. The Chemicals business area shall be transferred to BCH by hive-down for acquisition pursuant to the German Transformation Act ("*Umwandlungsgesetz*", "*UmwG*").

NOW THEREFORE, BAG and BCH agree to the following:

### **II. Hive-Down, Effective Date and Balance Sheet**

#### *§ 1 Hive-Down*

- 1.1 BAG transfers, as part of its undertaking, all of the assets and liabilities together with all rights and obligations allocated to the Chemicals business area (hereinafter referred as a whole as the "Undertaking" or the "Chemicals business area") in their entirety to BCH by hive-down for acquisition pursuant to § 123, para. 3, no. 1

UmwG and as consideration for the assignment of shares of BCH to BAG pursuant to § 19. § 1.2 shall remain unaffected.

- 1.2 Items of the assets and liabilities and other rights and obligations of BAG which are not allocated to the Chemicals business area pursuant to this Agreement or which are expressly precluded from the transfer in this Agreement shall not be transferred to BCH.
- 1.3 If the scope of the use of the assets becomes relevant pursuant to this Agreement, the scope of the use of the assets by the Chemicals business area or other business or service areas as of January 1, 2003, shall be decisive, except as otherwise provided in this Agreement. § 3.2 shall remain unaffected.

#### *§ 2 Effective Date*

- 2.1 The transfer of the Undertaking described in § 1 and specified in §§ 4 – 13 shall occur between BAG and BCH with economic effect as of July 1, 2003, 00.00 hours ("Effective Date"). From the Effective Date all actions and business transactions of BAG with regard to the parts of the Undertaking allocated to the Chemicals business area shall be deemed to be made for the account of BCH.
- 2.2 If the hive-down is not registered in the commercial register of BAG by February 29, 2004, then, in deviation from § 2.1, the Effective Date shall be deemed to be January 1, 2004, 00.00 hours. In case of a further delay of the registration beyond February 28 of the following year, the Effective Date shall be postponed respectively in accordance with the aforementioned provision by one year. In case of such postponement of the Effective Date, the Hive-Down Balance Sheet pursuant to § 3.1 shall remain relevant.

#### *§ 3 Hive-Down Balance Sheet and Adjustment*

- 3.1 It shall be determined on the basis of the Hive-Down Balance Sheet for the Chemicals business area as of January 1, 2003, 00.00 hours, developed on the basis of the Annual Balance Sheet of BAG as of December 31, 2002, 24.00 hours pursuant to Annex 3.1 ("Hive-Down Balance Sheet"), which items of the assets and liabilities are allocated to the Chemicals business area. BAG also transfers to BCH all assets not required to be reported, not reportable or not actually reported in the balance sheet and other rights and liabilities which, according to origin or purpose, are to be allocated to the Chemicals business area, unless it is otherwise expressly stated in this Agreement.

- 3.2 Any additions or disposals of assets and liabilities in the time period between January 1, 2003 and the Closing Date (§ 14.1) as well as other rights (including surrogate rights such as, e.g. compensation claims, etc.) and obligations are also transferred. Accordingly, BAG transfers to BCH also those assets and liabilities allocated to the Chemicals business area with respect to origin and purpose as well as all other rights and obligations which are received by the Chemicals business area during the time period between January 1, 2003 and the Closing Date or which came into existence during this time period. Accordingly, those items of assets and liabilities and other rights and obligations which are sold or otherwise transferred in the time period between January 1, 2003 and the Closing Date or which no longer exist at this point in time are not transferred to BCH. The aforesaid provisions shall apply respectively to changes of the scope of use of assets.
- 3.3 The audited interim balance sheet of BAG as of June 30, 2003, 24.00 hours, shall be the final balance sheet of BAG for the hive-down pursuant to §§ 125, 17, para. 2 UmwG ("Final Balance Sheet"). BAG is obligated to prepare the Final Balance Sheet in compliance with the provisions regarding the annual balance sheet and its auditing and to have it audited.
- 3.4 BCH shall be obligated to continue the book values of the transferred assets and liabilities in its commercial balance sheet, as reported in the Final Balance Sheet upon which the Hive-Down Balance Sheet is based. The same shall apply regarding the continuation of the book value in the tax balance sheet.

### III. Subject Matter of the Hive-Down

In particular, the assets and obligations described in more detail *infra* in §§ 4 to 13 of this Agreement, are part of the Undertaking.

#### § 4 Industrial Property Rights

The domestic and foreign patents, utility models and trademarks and applications for such industrial property rights (hereinafter referred to as "Industrial Property Rights") are not transferred to BCH.

- 4.1 On the Closing Date (§ 14.1), a Trust Agreement as set forth in Annex 4.1 comes into effect between BAG and BCH with regard to the Industrial Property Rights which exclusively or primarily serve the Chemicals business area and are listed in Annexes 1 and 2 to the Trust Agreement, with retroactive economic effect as of the Effective Date. Under the Trust Agreement, BAG shall hold those

Industrial Property Rights in trust for BCH. BAG shall retain a right of use to the Industrial Property Rights which are primarily allocated to the Chemicals business area.

- 4.2 On the Closing Date (§ 14.1), a License Agreement as set forth in Annex 4.2 comes into effect between BAG and BCH with regard to the Industrial Property Rights listed in the Annex to the License Agreement which, although also serving the Chemicals business area, primarily serve other business or service areas of BAG, with retroactive economic effect as of the Effective Date. BAG shall grant BCH a right of use therein for the industrial activities and the performance of services in the Chemicals business area.
- 4.3 On the Closing Date (§ 14.1), a Joint Use Agreement as set forth in Annex 4.3 comes into effect between BAG and BCH with regard to the Company name "Bayer" and the Group trademarks "Bayer" and the Bayer Cross symbol, with retroactive economic effect as of the Effective Date. BAG shall grant BCH therein the right to jointly use the Company name and the trademarks.

#### § 5 Know-How

With regard to the know-how related to the Chemicals business area consisting, in particular, of

- (i) the entire processing know-how, plant calculations, plant constructions and plans related to the property, plant and equipment pursuant to § 8;
- (ii) the entire processing know-how, plant calculations, plant constructions and plans related to planned production or production of a predecessor business unit, allocated to the Chemicals business area;
- (iii) the entire processing know-how, plant calculations, plant constructions and plans related to technologies of the Chemicals business area that had been made accessible to third parties;
- (iv) the entire product specifications;
- (v) data on chemical substances, formulas and data sheets on products;
- (vi) research reports;
- (vii) know-how on development and research;
- (viii) survey on effectiveness;
- (ix) media materials (photos, videos, graphics, sound materials, etc.) which were administered by the Chemicals business area or (co-) produced by it;

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- (x) all methods of application technology and technical survey as well as other data and inspections of all products and substances in the development stage;

which is allocated to the Chemicals business area (collectively, "Know-How"), the Parties agree to the following:

- 5.1 BAG transfers to BCH the entire Know-How exclusively allocated to the Chemicals business area as well as all confidential business inventions exclusively allocated to the Chemicals business area pursuant to Annex 5.1 which are treated as confidential business inventions by BAG.
- 5.2 BAG transfers to BCH the entire Know-How primarily allocated to the Chemicals business area subject to the provision that BAG shall retain an exclusive, transferable, no cost, and non-terminable right of use for all of its other current business and service areas, including the right to sub-license.
- 5.3 If BAG is only jointly entitled to the Know-How and the confidential business inventions transferred pursuant to §§ 5.1 and 5.2, BAG transfers the respective joint entitlement pursuant to §§ 5.1 and 5.2.
- 5.4 The entire other Know-How which, even if also related to the Chemicals business area, is allocated primarily to other business or service areas of BAG, is not transferred to BCH. With respect to the entire other Know-How, BAG transfers to BCH an exclusive, transferable and non-terminable right of use limited to the Chemicals business area at no cost (subject to § 5.7), including the right to sub-license within the Chemicals business area. § 5.3 shall apply respectively.
- 5.5 BAG grants BCH an exclusive, transferable and non-terminable right of use to all existing databases of BAG limited to the industrial activities and the performance of services in the Chemicals business area at no cost (subject to § 5.7), insofar as such are not already transferred to BCH under this Agreement.
- 5.6 BCH obtains the possession of all recordings, technical documents and other data carriers upon which the intangible assets transferred to BCH are stored. However, BCH shall merely be granted access to the central data storage of BAG. With regard to the central data storage of companies of the Bayer Group, BAG transfers the part of the access right to which BAG is entitled.
- 5.7 If BAG owes compensation to third parties for the transferred Know-How, BCH shall reimburse BAG for all compensation accruing for the time period as of the Effective Date pro rata for the use of BCH. Furthermore, BCH shall pay the pro rata amount of administrative costs attributed to the use of the databases listed in § 5.5 by BCH accruing for the time period beginning on the Effective Date.

## § 6 Software

- 6.1 BAG transfers to BCH all rights to the software that has been exclusively developed for or licensed in the Chemicals business area and all updates of this software.
- 6.2 On the Closing Date (§ 14.1), BAG hereby grants BCH, with retroactive effect as of the Effective Date, an irrevocable, no cost right of joint use to the general license to SAP-R3 obtained under the contract dated June 17/30, 1997, according to the implementation status achieved on the Effective Date and to the extent it is used in the Chemicals business area or, respectively, will be used. BCH shall reimburse BAG the pro rata service, maintenance and further development costs attributable to the use by BCH and for the time period beginning on the Effective Date.
- 6.3 BAG grants BCH sub-licenses in all remaining other software which is installed on the IT hardware transferred to BCH pursuant to § 8.1 or on leased IT hardware for which the leasing contract shall be transferred to BCH pursuant to § 12.1 and to which BAG holds the licenses or has installed on central IT hardware for the use of BCH. The licenses themselves shall remain with BAG. BCH shall reimburse BAG the royalties (with regard to royalties payable on a regular basis by BAG and with regard to one time payments, in an amount corresponding to the depreciation costs) attributed to the use by BCH for the time period beginning on the Effective Date.
- 6.4 On the Closing Date (§ 14.1), BAG hereby grants BCH, with retroactive effect as of the Effective Date, an irrevocable, no cost right of joint use to the general license to all software developed by it and all continuing development of software pursuant to § 6.3 for which BAG holds a license and that is tailored to not only the Chemicals business area but to at least one other business or service area according to the implementation status as of the Effective Date and to the extent it is used in the Chemicals business area or, respectively, will be used. BCH shall reimburse BAG the pro rata service, maintenance and further development costs attributable to the use by BCH and for the time period beginning on the Effective Date.
- 6.5 BCH shall be granted access to the central data storage of BAG. With respect to the central data storage of companies of the Bayer Group, BAG transfers its respective part of the access right.

## § 7 Public Law Approvals and Qualifications

BAG transfers to BCH all rights and obligations from public law approvals, permits and similar entitlements which are allocated to the Chemicals business area, in particular:

- 7.1 all rights in and from all approvals and applications of substances and preparations, especially material protection products such as mikrobicides, fungicides, algicide or insecticides and new substances according to the German Chemical Act ("*Chemikaliengesetz*") which are allocated to the Chemicals business area, as well as all applications of BAG for authorization for substances and preparations which are allocated to the Chemicals business area. Also transferred are all rights in the related authorization documents (authorization files, authorization orders and other authorization documents, regardless of whether they are located at BAG, with the respective authorities or other third parties), including the protection rights of the authorization documents against reference by subsequent applicants;
- 7.2 all rights and obligations from declarations and notifications to the responsible authorities which refer to substances and preparations of BAG pursuant to § 7.1 which are allocated to the Chemicals business area, and the respective rights to place into circulation the stated substances and preparations (including the rights following from the listing of the stated substances and preparations in public lists or applications to such listings);
- 7.3 all rights and obligations pursuant to all foreign authorizations, applications, declarations and notifications as well as pursuant to all public law qualifications regarding substances and preparations of BAG pursuant to § 7.1, which are allocated to the Chemicals business area. As far as foreign admissions and foreign authorizations (collectively referred as "Foreign Authorizations") are not transferable, BAG shall be obligated with regard to BCH to maintain the Foreign Authorizations for a term until BCH has received respective new Foreign Authorizations. BAG agrees to dispose of the non-transferable Foreign Authorizations only upon instruction of BCH, to make changes to the non-transferable Foreign Authorizations only upon instruction of BCH and to make declarations to the authorities only in coordination with and upon instruction of BCH. The maintenance costs of the Foreign Authorizations as well as costs of their continuation by BAG shall be borne by BCH. BCH shall indemnify BAG for all liability claims which are made against BAG based on the continuation of the non-transferable Foreign Authorizations;
- 7.4 all rights and obligations from all notifications and applications for the inclusion of biocide active components in Annexes I of the Directive 98/8/EEC dated February 16, 1998 which are allocated to the Chemicals business area. This includes, in particular, all rights to the submitted scientific files, documents and documentation, in particular, the rights of protection against reference by third parties;
- 7.5 all rights and obligations pursuant to all approvals for the plants requiring official approval which are transferred to BCH pursuant to this Agreement. BAG shall notify the responsible authority of the change of the plant operator; pursuant to § 52a German Federal Protection Against Emissions Act ("*Bundes-Immissionsschutzgesetz*") BCH shall inform the responsible authority of the authorized body which is in charge of fulfilling the obligations of a plant operator.
- 7.6 BAG and BCH together shall coordinate the procedural steps necessary to be taken for the implementation of the transfers described in §§ 7.1 – 7.5 and for the assumption of all obligations associated herewith and shall agree to a procedure which is commercially acceptable and reasonable for both Parties. This shall apply, in particular, to the transfer of applications and notifications pursuant to the German Chemical Act, the granting of a right to make reference by BCH or BAG and the stipulation regarding distribution and selling substances and preparations labeled with the name BAG in order to ensure uninterrupted sale of the substances and preparations taken over by BCH in accordance with public law labeling provisions.
- 7.7 Insofar as entitlements and obligations accruing out of public law authorizations, permissions and similar entitlements within the meaning of this § 7 (collectively referred as "Entitlements") not only serve the Chemicals business area but also other business or service areas of BAG, to the extent legally permissible, the part of the Entitlements belonging to the Chemicals business area is transferred. Insofar as a separation of the Entitlements is contrary to public law provisions, the Entitlements as a whole are transferred to BCH if the respective Entitlement primarily serves the Chemicals business area. Insofar as the Entitlements do not serve the Chemicals business area primarily, they shall not transfer to BCH. The Parties shall place each other in such position as if the Entitlements pursuant to this § 7 would have been transferred. Insofar as Entitlements within the meaning of this § 7 are not transferable, BAG shall support BCH to obtain these Entitlements.

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## § 8 *Transfer of the Property, Plant and Equipment*

BAG transfers to BCH all property, plant and equipment allocated to the Chemicals business area unless it is otherwise expressly stated in this Agreement. Included herein are, in particular:

- 8.1 all constructional and technical plants and machinery, including plants in construction and including, all claims from payments on account made thereon, the office and plant equipment and all operating facilities which are exclusively or primarily allocated to the Chemicals business area, particularly those listed in Annex 8.1, and which are not integral parts of the real estate/buildings which are subject to the land use contract transferred pursuant to § 12.1, or which are subject to land use contracts transferred to another business area or service company. As far as property, plant and equipment are used by other business or service areas of BAG in addition to the Chemicals business area, BAG transfers the joint ownership corresponding to the scope of use of those assets by the Chemicals business area;
- 8.2 all vehicles which are exclusively or primarily allocated to the Chemicals business area;
- 8.3 all minor assets and other operating resources existing in connection with the property, plant and equipment transferred to BCH.

Insofar as items of the property, plant and equipment are subject to a retention of ownership or BAG has transferred the ownership by way of security to third parties, BAG transfers to BCH all claims existing in this connection, including all expectancy rights and rights to recover possession.

## § 9 *Transfer of the Investments*

BAG transfers to BCH all investments allocated to the Chemicals business area. Included herein are in particular:

- 9.1 all shareholdings that exclusively or primarily are related to the Chemicals business area. Annex 9.1 sets forth those shareholdings. The transfer shall include all rights and obligations associated therewith, in particular, all entitlements to profits insofar as no distribution has been resolved upon as of the Effective Date. BCH shall, therewith, be entitled to all profit distributions, including tax credits existing in connection therewith, which were resolved upon or after the Effective Date regardless of the

time period to which they refer. All consortium agreements, other shareholder agreements and enterprise agreements shall be transferred together with the shareholdings. The Parties shall carry out all other actions necessary or expedient for transfer pursuant to § 14. The Parties shall place each other in such position as if the shareholdings were transferred as of the Effective Date;

- 9.2 all loan receivables, in particular, house building loan receivables which are allocated to the Chemicals business area pursuant to Annex 9.2.

## § 10 *Transfer of the Current Assets*

BAG transfers to BCH all current assets allocated to the Chemicals business area. These shall include, in particular:

- 10.1 all inventories allocated to the Chemicals business area consisting of raw materials and supplies, in particular, the existing test substances and other goods in stock which serve the Chemicals business area, goods in progress, work in progress, finished goods and goods for resale, including payments on account. The essential items of the current assets to be transferred are listed in Annex 10.1;
- 10.2 all of the trade receivables allocated to the Chemicals business area pursuant to Annex 10.2;
- 10.3 all receivables from affiliated companies and companies in which participations are held pursuant to Annex 10.3;
- 10.4 all other items of the current assets allocated to the Chemicals business area pursuant to Annex 10.4;
- 10.5 liquid assets pursuant to Annex 10.5.

If the aforementioned items are subject to a retention of ownership or BAG has transferred the ownership by way of security to third parties, BAG transfers to BCH all claims existing in this connection, including all expectancy rights and rights to recover possession.

## § 11 *Transfer of Obligations and Reserves; Taxes*

BAG transfers to BCH all obligations, with the exception of existing pension obligations which are covered by § 13, allocated to the Chemicals business area. Included herein are, in particular:

- 11.1 all contingent liabilities of the Chemicals business area pursuant to Annex 11.1 for which provisions have been established and all other obligations that result from the previous business activity of the Chemicals business area, which are not required to be reported, not reportable or not actually reported in the balance sheet;
- 11.2 all trade payables which are allocated to the Chemicals business area pursuant to Annex 11.2;
- 11.3 all payables towards affiliated companies or companies in which a participation is held pursuant to Annex 11.3;
- 11.4 all obligations resulting from existing stock option plans of BAG regarding employees who are transferred to BCH pursuant to § 613a German Civil Code (*“Bürgerliches Gesetzbuch”*, “BGB”) and regarding employees of the Chemicals business area whose employment is terminated in the time period between the Effective Date and the Closing Date (§ 14.1);
- 11.5 all other liabilities which are allocated to the Chemicals business area pursuant to Annex 11.5, in particular, liabilities from wage taxes and liabilities within the framework of social insurance.
- 11.6 Claims of tax reimbursements and obligations for payment of taxes for prior years which relate to the Chemicals business area, as well as reimbursements and obligations to pay taxes for prior years in connection with social insurance claims, shall remain with BAG, insofar as they concern the time period up until the Effective Date. Increased or reduced taxes, including tax supplementary payments from tax audit determinations for time periods up until the Effective Date, shall be borne by BAG or, respectively, BAG shall be entitled thereto. Insofar as these tax audit determinations, in the time period after the Effective Date, cause reduced taxes by reverse effects, including tax supplementary payments for BCH, BCH shall reimburse BAG the cash value of the tax reduction effect (discounted with 6% to the due date of the additional taxes) insofar as this reduction effect is not attributed to BAG for tax purposes through a single entity relationship. BCH shall inform BAG of the issuance of the respective tax assessment notices. Upon demand of BAG, BCH shall be obligated – at the cost of BAG – to file a legal remedy against a tax assessment notice.

## § 12 *Transfer of Contracts and Other Rights*

- 12.1 BAG transfers to BCH all contracts and contract offers exclusively allocated to the Chemicals business area, unless this Agreement states otherwise. The essential contracts (with the exception of leasing contracts and the land use contract stated in Annex 12.1.2) transferred pur-

suant to § 12.1, sentence 1, are listed in Annex 12.1.1. Furthermore, all leasing contracts are transferred for items such as, e.g. office equipment and furnishings, cars, etc., which are exclusively allocated to the Chemicals business area or exclusively used by employees of the Chemicals business area.

Insofar as the transferred contracts and contract offers are subject to litigation or arbitration disputes, these dispute relationships are also transferred.

Finally, the land use contract between Bayer Industry Services GmbH & Co. OHG as lessor and BAG as lessee listed in Annex 12.1.2 is transferred.

BAG grants a right of use to BCH at no cost of all operating facilities, used by the Chemicals business area which are integral parts of the real estate/buildings which are subject to the land use contract transferred to BCH pursuant to Annex 12.1.2 or which are subject to land use contracts transferred to another business area or service company. On the Closing Date (§ 14.1), a Special Right of Use Contract as set forth in Annex 12.1.3 shall come into effect between the Parties with retroactive economic effect as of the Effective Date. The essential operating facilities are listed in an annex to the Special Right of Use Contract.

BAG retains ownership in these areas, real estate and buildings as well as in the operating facilities.

- 12.2 BAG transfers to BCH all contracts and contract offers which also concern other business or service areas of BAG but are primarily allocated to the Chemicals business area, unless this Agreement states otherwise. The essential contracts (with the exception of leasing contracts) which are transferred pursuant to § 12.2, sentence 1, are listed in Annex 12.2. § 12.2, sentence 1, also applies to all leasing contracts which are transferred for items such as, e.g. office equipment and furnishings, cars, etc., which are primarily attributed to the Chemicals business area or are used primarily by employees of the Chemicals business area.

Insofar as the transferred contracts and contract offers are subject to litigation or arbitration disputes, these dispute relationships are also transferred.

The Parties shall decide jointly whether they will discuss with the respective contract partner to amend the contracts listed in § 12.2, sentence 1, and to conclude new contracts so that in the future BCH and BAG or those companies to which the respective business or service

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areas are hived-down will be entitled and obligated by their own respective contracts. Until then, BCH shall exercise all rights and obligations from the contracts listed in § 12.2, sentence 1, to the extent legally permissible. In their internal relationship, BAG shall be entitled to the rights from these contracts on a pro rata basis, i.e. to the extent that they are not applicable to BCH. In its internal relationship to BCH, BAG shall perform all obligations under or resulting from these contracts to the same extent.

- 12.3 Contracts and contract offers primarily allocated to other business areas of BAG but which nevertheless also affect the Chemicals business area shall not be transferred to BCH. The essential contracts (with the exception of leasing contracts) primarily allocated to other business or service areas of BAG but which nevertheless also affect the Chemicals business area are listed in Annex 12.3. Contracts and contract offers primarily allocated to the Chemicals business area, but which nevertheless also affect one or more service areas of BAG and which are required by one or more service areas for performing mandatory or optional services to the business or service areas are also not transferred to BCH.

The Parties shall decide jointly whether they will discuss with the respective contract partner to amend the contracts listed in § 12.3, sentences 1 and 3, and to conclude new contracts in such a way that in the future BCH and BAG, or, if the respective contract is transferred to a business area or service company by way of hive-down, the respective company will be entitled and obligated from their own respective contracts. Until then, BAG shall exercise all rights and obligations from the contracts listed in § 12.3, sentences 1 and 3, to the extent legally permissible. In their internal relationship, BCH is entitled to the rights from these contracts on a pro rata basis, i.e. to the extent that they are applicable to the Chemicals business area. In its internal relationship to BAG, BCH shall perform all obligations under or resulting from these contracts to the same extent.

- 12.4 Insurance contracts are not subject to this Agreement. The Parties shall jointly notify the insurance company, Pallas Versicherung AG, with respect to the extension of the insurance coverage to BCH under the existing Bayer Group provisions.
- 12.5 BAG transfers to BCH all memberships and other legal positions in the syndicates, associations and other organizations listed in Annex 12.5.

- 12.6 BAG transfers to BCH all enterprise agreements that exist with German subsidiaries of BCH. The transferred enterprise agreements are listed in Annex 12.6.

## § 13 Pension Liabilities and Pension Provisions

- 13.1 Pension Liabilities to Current Employees and to Employees No Longer Employed as of July 1, 2002
- 13.1.1 On the Closing Date (§ 14.1), all rights and obligations from existing pension commitments of BAG (pensions and similar obligations, particularly transitional payments for early retirement and interim pensions) to those employees of the Chemicals business area whose employment relationships exist on the Closing Date, are transferred to BCH pursuant to §§ 324 UmwG, 613a, para. 1 BGB.
- 13.1.2 Furthermore, BAG transfers to BCH all rights and obligations from existing pension commitments of BAG (current pensions, vested pension rights and similar obligations, particularly transitional payments for early retirement and interim pensions) to those employees of the Chemicals business area whose employment is terminated in the time period between July 1, 2002 and the Closing Date or will terminate in this time period, and their surviving dependents.
- 13.1.3 Provisions for the obligations from the pension commitments listed in § 13.1.1 and § 13.1.2 shall be established accordingly by BCH. The respective pension reserves are contained in the assets transferred to BCH under this Agreement.
- 13.1.4 In addition, BAG shall be jointly and severally liable for all pension commitments listed in § 13.1.1 and § 13.1.2 pursuant to § 133, para. 1 and para. 3 UmwG for a period of five years from the date the registration of the hive-down in the commercial register of BAG is deemed to be published.
- 13.1.5 BCH shall indemnify BAG for all claims arising from the pension commitments listed in § 13.1.1 and § 13.1.2 which are asserted against BAG referring to the time period after the Effective Date.
- 13.2 Pension Liabilities to Employees Whose Employment Contracts Were Terminated Prior to July 1, 2002
- 13.2.1 Obligations from the existing pension commitments of BAG (current pensions, vested pension rights and similar obligations, particularly transitional payments for early retirement and interim pensions) to those employees whose employment contracts

were terminated prior to July 1, 2002 and who would have been allocated to the Chemicals business area, and their surviving dependents are not transferred pursuant to §§ 324 UmwG, 613a, para. 1 BGB to BCH and shall also not be transferred to BCH under this Agreement.

13.2.2 Accordingly, the provisions for the obligations from the pension commitments listed in § 13.2.1 shall continue to be established by BAG.

13.2.3 BCH shall reimburse BAG the proportional costs necessary to carry out the pension commitments listed in § 13.2.1 to the extent such costs are not covered by provisions in the Final Balance Sheet, and all proportional administrative costs accruing to the pension commitments as from the Effective Date, including the costs of expert opinions and contributions to the Mutual Benefit Association for Pension Security. The pro rata costs to be borne by BCH which are not covered by the provisions – minus the pro rata amount of the costs borne by Bayer CropScience AG – corresponds to the proportion of the gross remuneration total of 2002 of the employees allocated to the Chemicals business area as of July 1, 2002 in relation to the gross remuneration total of 2002 of all employees of BAG that not have been allocated to the CropScience business area.

#### IV. Terms of the Transfer

##### § 14 Closing Date

- 14.1 The transfer of the Undertaking, i.e. items of the assets and liabilities affected by the hive-down and the other rights and obligations of BAG, will be effective *in rem* on the date of registration of the hive-down in the commercial register of BAG (“Closing Date”).
- 14.2 Possession to movable goods is transferred to BCH on the Closing Date. Insofar as movable goods are in possession of third parties, BAG transfers its claim for recovery to BCH with effect as of the Closing Date.

##### § 15 Catch-all Provision

- 15.1 Insofar as certain assets and liabilities and other rights and obligations, in particular, from contracts, shareholdings, memberships or administrative actions which should be transferred to BCH pursuant to this Agreement, are not already transferred to BCH by operation of law with the registration of the hive-down, BAG shall transfer these items of the assets and liabilities and the other rights and obligations to BCH. Should a transfer to BCH externally

not be possible or only be possible with a disproportionately high expenditure or should such transfer be unreasonable, the Parties shall place themselves in such position as if the transfer had occurred also externally as of the Effective Date.

15.2 Insofar as the transfer of certain assets and liabilities or other rights and obligations or the taking over of contracts requires the approval of third parties or a public law permit, BAG and BCH shall endeavor to obtain the respective approval or permit. If such approval or permit cannot be obtained or can only be obtained with a disproportionately high expenditure, § 15.1, sentence 2, shall apply accordingly regarding the internal relationship of the two companies.

15.3 Insofar as certain assets and liabilities or other rights and obligations pursuant to this Agreement shall not be transferred but are transferred by operation of law, BCH shall retransfer the rights or, if appropriate, indemnify BAG, and BAG shall agree to the retransfer of the obligations or, if appropriate, indemnify BCH. The Parties shall undertake all measures necessary and expedient in this connection and cooperate in all legal actions which are necessary and expedient in order to retransfer such rights and obligations to BAG. In their internal relationship, the Parties shall act as if the rights and obligations mentioned in § 15.3, sentence 1, were not transferred. The aforementioned regulation of this § 15.3 shall apply accordingly if assets and liabilities or other rights and obligations which were allocated to the Chemicals business area by mistake of the Parties are transferred pursuant to this Agreement.

##### § 16 Cooperation Obligations

- 16.1 BAG and BCH shall make all declarations, issue all documents and undertake all other actions which are still necessary or expedient in connection with the transfer of the Undertaking.
- 16.2 As of the Closing Date, BCH shall receive all business documents held by BAG allocated to the Chemicals business area or in connection herewith, in particular, contracts and approval documents, shop regulations, construction and building plans, operation handbooks and personnel documents. BCH shall also receive all documents which are necessary for the claim of the rights transferred to it under this Agreement. BCH shall store the books and other records within the statutory record retention period for BAG and shall ensure that BAG can inspect and copy these business documents. Business and trade secrets are to be treated confidentially.

16.3 With respect to proceedings conducted by authorities, particularly tax audits and tax and other litigation which concern the Undertaking, the Parties shall mutually support each other until December 31, 2010. In particular, they shall reciprocally make available all information and documents which are necessary or expedient for the performance of tax or other authority demands or for the provision of proof to tax authorities or other authorities or courts and shall reciprocally work towards obtaining reasonable support from their employees.

## *§ 17 Creditor Protection and Internal Compensation*

Unless this Agreement provides any other distribution of burdens and liabilities arising from or in connection with the Undertaking, the following shall apply:

- 17.1 If and insofar as claims are enforced against BAG by creditors for obligations on the basis of the provisions in § 133 UmwG or other provisions and such obligations are transferred to BCH pursuant to the terms of this Agreement or claims are enforced against BAG for obligations resulting from future statutory relationships which were, are or will be established in connection with the business activities of the Chemicals business area, BCH shall indemnify BAG for the respective obligation upon first demand. The same shall apply if a claim for provision of security is enforced against BAG by such creditors.
- 17.2 If and insofar as in the opposite case claims are enforced against BCH by creditors for obligations on the basis of the provisions in § 133 UmwG or other provisions and such obligations are not transferred to BCH pursuant to the terms of this Agreement or claims are enforced against BCH for obligations resulting from future statutory relationships which were, are or will be established in connection with other business areas, service areas, business area companies or service companies other than the Chemicals business area, BAG shall indemnify BCH for the respective obligation upon first demand. The same shall apply if a claim for provision of security is enforced against BCH by such creditors.
- 17.3 Insofar as claims are enforced against BCH by creditors for obligations transferred by this Agreement which are covered by the Bayer Group insurance agreement, BAG will transfer all insurance payments received by it to BCH.

## *§ 18 Preclusion of Claims; Environment*

- 18.1 Claims and rights of BCH against BAG of all kinds and regardless of their legal basis with respect to quality and the status of the assets and liabilities as well as the Undertaking as a whole transferred by BAG under this Agreement are herewith expressly precluded. This shall also apply in particular to claims for pre-contractual or contractual breach of duties and the breach of statutory obligations.
- 18.2 In the internal relationship between BAG and BCH, BCH shall be fully liable only for such contamination of soil and ground water caused by BCH, the Chemicals business area of BAG or a predecessor business unit.

## **V. Counter-Performance and Capital Measures**

### *§ 19 Granting of Individual Share Certificates and Capital Measures*

- 19.1 BAG, as the sole stockholder of BCH, shall receive as consideration for the hive-down of the Chemicals business area to BCH a total of 9,949,900 new individual bearer no par value shares of BCH.
- 19.2 BCH shall increase its share capital by €9,949,900 (in words: Euro nine million nine hundred forty-nine thousand nine hundred) to implement the hive-down. Each no par value share of BCH represents €1 in the increased share capital.
- 19.3 The new shares shall be issued with a profit participation right as of January 1, 2003. If the Effective Date pursuant to § 2.2 is postponed, the commencement of the profit participation right of the new shares shall be postponed accordingly.
- 19.4 The total value at which the contribution in kind performed by BAG shall be assumed by BCH corresponds to the commercial law book value of the transferred net assets as of the Effective Date as reported in the Final Balance Sheet of BAG as of June 30, 2003, 24.00 hours. To the extent this value exceeds the amount of the increase in share capital according to § 19.2, the excess amount shall be allocated to the capital reserves pursuant to § 272, para. 2, no. 1 German Commercial Code (“Handelsgesetzbuch”).
- 19.5 If the value of the contribution in kind prior to the Closing Date or the book value of the transferred net assets prior to the Effective Date does not correspond to the value of the minimum amount of all new shares issued by BCH, BAG is obliged to make a payment to the bank account of Commerzbank AG in Cologne, stated in Annex 10.5, in the amount that is necessary so that the value of the contri-

bution in kind on the Closing Date or the book value of the transferred net assets at the Effective Date reaches the value of the minimum amount of all new shares issued by BCH. If BAG is required to make such payment, the amount of the payment shall be determined in coordination with the auditor required for contributions in kind (“*Sacheinlagenprüfer*”). BAG’s total liability shall not exceed 25% of the balance sheet total as stated in the Hive-Down Balance Sheet. Any claims of such liability may not be asserted after the registration of the hive-down in the commercial register of BAG.

## § 20 Special Rights and Advantages

- 20.1 No granting of rights or other measures for individual stockholders or for owners of special rights in terms of § 126, para. 1, no. 7 UmwG, except for those granted under the regulation in § 11.4 for stock option programs, are planned.
- 20.2 No special advantages in terms of § 126, para. 1, no. 8 UmwG for members of the Board of Management or the Supervisory Board of the companies participating in the hive-down or an auditor of a participating company shall be granted.

## VI. Consequences of the Hive-Down for the Employees and their Representatives

### § 21 Transfer of the Employment Relationships

- 21.1 On the Closing Date, all employment relationships currently existing with BAG and allocated to the Chemicals business area are transferred to BCH with all rights and obligations pursuant to the provisions of §§ 324 UmwG, 613a BGB. The employees who are allocated to the Chemicals business area are listed in Annex 21.1.
- 21.2 Pursuant to §§ 324 UmwG, 613a, para. 4 BGB, no employment relationship may be terminated due to the transfer of the business operation via hive-down.
- 21.3 The content of the transferred employment relationships shall be determined by their legal status on the Closing Date. Type of work, salary, as well as other employment terms are not changed by the hive-down. The employment term served with and recognized by BAG shall be taken into account in its entirety with respect to all regulations dependent upon the term of employment.
- 21.4 The legal situation regarding the pension commitments is described in § 13. Irrespective of the aforesaid, the employees remain, as before, ordinary members of the Bayer Pension Fund.

- 21.5 The collective bargaining agreement commitment to date of BAG also applies to BCH. Prior to the Closing Date of the hive-down, BCH shall join the regional Employer Associations of the Chemical Industry (“*Arbeitgeberverbände der Chemischen Industrie*”) and, thereby, be bound by such collective bargaining agreement.
- 21.6 In connection with the hive-down of the business and service areas of BAG to separate legal entities under the joint holding company of the Bayer Group, BAG and the union named “*Industriegewerkschaft Bergbau Chemie Energie*” (hereinafter referred to as “*IG BCE*”) entered into a collective bargaining agreement on January 10, 2002 (the “*Collective Bargaining Agreement*”) which contains detailed regulations concerning the labor management relations within the framework of the rearrangement of the BAG Group (see in detail § 22.1). The Collective Bargaining Agreement provides that the shop agreements and the central shop agreements existing with BAG for employees transferred to BCH shall be replaced according to collective bargaining law by agreements with BCH having the same content. As a result, the shop agreements and the central shop agreements remain in place for the employees being transferred to BCH. This is also the content of a central shop agreement between BAG and the central works council of BAG of July 16, 2002.

Adjustments to the shop agreements and the central shop agreements due to the hive-down insofar as employees transferred to BCH are affected, employees remaining with BCH are affected or employees remaining with BAG are affected, shall be mutually agreed upon by BAG together with the respective works council or central works council.

### § 22 Representation of Employees Pursuant to the Employees’ Representation Law

#### 22.1 Works Council and Central Works Council

Under the Collective Bargaining Agreement, BAG and IG BCE have agreed that the existing works council structures in effect up to then in BAG locations should essentially remain unchanged after the hive-down to BCH and the other planned hive-downs of the remaining business and service areas of BAG in 2003. The Collective Bargaining Agreement contains, in particular, the following regulations (with regard to the treatment of the existing shop agreements, see *supra* § 21.6) for the works constitution before and after the hive-down:

- 22.1.1 Within the rotational works councils’ elections in March 2002, as done previously, works councils were elected in each of the five German BAG locations in Leverkusen, Dormagen, Uerdingen, Elberfeld and Brunsbüttel (hereinafter referred to as “*Works Councils on Location*”). All employees

entitled to vote at the respective location shall be entitled to vote for the Works Council on Location, regardless of whether they are transferred via the hive-down or remain with BAG.

22.1.2 The Works Councils on Location were elected, as done previously, for the full term of four years. The Works Councils on Location to be elected in March 2002, as well as the Central Works Council (§ 22.1.4), shall also remain in office after the hive-down.

22.1.3 The Works Councils on Location shall be responsible for all matters resulting from the Employees' Representation Act ("*Betriebsverfassungsgesetz*") insofar as such relate to the respective location. The responsibility shall be irrespective of the legal structures of the respective location, i.e. it shall apply for the matters of all companies of the Bayer Group at the respective location. The Works Council on Location shall continue to observe the interests of all employees of BAG employed at the respective location regardless of whether they are transferred via hive-down to BCH, remain with BAG or have been transferred or will be transferred by the additional hive-downs to other companies of the Bayer Group.

22.1.4 The Works Councils on Location shall form, as done previously, a Central Works Council and a Central Works Council Committee. The Central Works Council shall be responsible for all issues which cannot be regulated by the individual Works Councils on Location as they relate to more than one location.

22.1.5 The Collective Bargaining Agreement came into effect on the date of its execution. It has a fixed term until May 31, 2006. Should a party to the Collective Bargaining Agreement come to the conclusion during the term that the co-determination structure laid down in the Collective Bargaining Agreement has not proved successful in practice and these doubts cannot be dispelled by mutual agreement, such party shall have the right to terminate the Collective Bargaining Agreement with effect as of December 31, 2004. After the termination of the Collective Bargaining Agreement, the statutory works constitution shall apply, i.e. the Works Councils in BCH and BAG shall then be elected separately.

22.2 Representative Committees of Executive Employees and Central Representative Committee of Executive Employees

With regard to the representation of the executive employees, BAG and the Central Representative Committee of Executive Employees of BAG have agreed to the following:

22.2.1 Shortly after the Closing Date (§ 14.1), BCH shall hold an election for a Company Representative Committee of Executive Employees. The Company Representative Committee of Executive Employees shall replace the previous representative committee of executive employees at the five BAG locations for the executive employees who are transferred to BCH and shall replace the Central Representative Committee of Executive Employees. The statutory duties of the Company Representative Committee of Executive Employees shall refer to the entire company of BCH; contrary to the duties of the previous representative committee of executive employees of BAG, they are, therefore, not limited to the respective location.

22.2.2 Up until the election of a Company Representative Committee of Executive Employees of BCH but for a maximum transitory period of one year after the Closing Date, the works councils elected within the rotational election in March 2002, as well as the Central Representative Committee of Executive Employees of BAG, shall receive an interim mandate for the observance of the interests of the executive employees transferred to BCH.

22.2.3 After the election of the Company Representative Committee of Executive Employees of BCH, the Group Representative Committee of Executive Employees of BAG shall be supplemented by a representative of the Company Representative Committee of Executive Employees of BCH. The personnel composition of the Group Representative Committee of Executive Employees shall be adjusted accordingly as soon as the hive-downs of the remaining business and service areas of BAG to new companies planned for 2003 are executed and Company Representative Committees of Executive Employees are also formed therein. Up until its new formation, the Group Representative Committee of Executive Employees shall remain in existence as formed upon conclusion of the rotational elections in March 2002.

## § 23 Supervisory Board

23.1 The hive-down has no effect on the legal status, composition and term of the Supervisory Board of BAG. The representatives of employees in the Supervisory Board of BAG shall be elected by the employees of all German companies belonging to the Bayer Group so that the employees transferred to BCH retain their voting rights.

23.2 When the hive-down becomes legally effective, BCH shall be subject to co-determination pursuant to the German Co-determination Act (“*Mitbestimmungsgesetz*”) of 1976. For this purpose, the Supervisory Board of BCH, currently composed of three persons, shall be newly composed in a composition proceeding pursuant to §§ 97 et seq. German Stock Corporation Act (“*Aktiengesetz*”). The newly composed Supervisory Board of BCH will have twelve members of which six shall be stockholder representatives and six shall be employee representatives.

## VII. Miscellaneous

### § 24 Costs and Taxes

The costs and taxes accruing, now and in the future, in connection with the notarization of this Agreement and its performance shall be borne by BCH. The costs of the respective annual stockholders’ meeting and the costs of filing and registration shall be borne by each Party itself.

### § 25 Sales and Services Contracts

25.1 BAG is prepared to provide BCH in the future all sales and services it has performed to date for the Bayer Group in the Chemicals business area with economic effect as from the Effective Date and at arm’s length terms. Such sales and services can also be performed by a subsidiary of BAG.

25.2 BCH undertakes the obligation to obtain, at market conditions from BAG or a subsidiary of BAG, infrastructure services regarding specific locations (in particular, road and way services, canalization and sewage treatment, water and energy lines, plant and fire protection) which it requires for the plant locations.

25.3 BCH is prepared to provide BAG all sales and services performed to date by the Chemicals business area within the Bayer Group for BAG or its subsidiaries with economic effect as from the Effective Date at arm’s length terms.

### § 26 Final Provisions

26.1 Jurisdiction for all legal disputes arising from this Agreement shall be in Leverkusen, Germany.

26.2 Amendments and supplements to this Agreement must be in writing, including a waiver of this provision itself, insofar as more extensive form requirements are not required.

26.3 Should one or more provisions of this Agreement be void in whole or in part, invalid or unenforceable, the validity of this Agreement and its remaining provisions shall not be affected thereby. Instead of the void, invalid or unenforceable provision, a provision shall apply which comes closest in terms of form, content, time, measure and scope of

application to what was desired according to the economic sense and meaning of the void, invalid or unenforceable provision. The same shall apply for any gaps in this Agreement.

The Annexes referred to in the Hive-Down and Transfer Agreement, done by the notary Dr. Dieter Janke, in Leverkusen, Germany, recorded as a reference document on March 7, 2003, and that, by reference, became part of the Hive-Down and Transfer Agreement, have the following essential content:

- Annex 3.1 contains the Hive-Down Balance Sheet for the Chemicals business area as of January 1, 2003, 00.00 hours. The Hive-Down Balance Sheet shows the assets and liabilities of the Chemicals business area. The Hive-Down Balance Sheet was prepared on the basis of the book values reported in the Annual Balance Sheet of Bayer AG as of December 31, 2002, 24.00 hours.
- Annex 4.1 contains a Trust Agreement with regard to the Industrial Property Rights that comes into effect as of the Effective Date, i.e. as of the date of the registration of the hive-down in the commercial register of Bayer AG, and has economic retroactive effect as of July 1, 2003, 00.00 hours. Under the Trust Agreement, Bayer AG and Bayer Chemicals AG agree that Bayer AG holds the Industrial Property Rights which exclusively or primarily serve the Chemicals business area in trust for Bayer Chemicals AG. The individual Industrial Property Rights are listed in Annexes to the Trust Agreement. In economic terms, Bayer Chemicals AG will be the sole owner of the Industrial Property Rights. The legal ownership of the Industrial Property Rights remains in each case with Bayer AG. With respect to the Industrial Property Rights that primarily serve the Chemicals business area but at the same time also serve other business or service areas of Bayer AG, Bayer AG retains the right to use them for its other business and service areas.

Bayer AG is obliged, as the sole legal owner of the Industrial Property Rights, to administrate them as a trustee in its own name but exclusively for the interest and the account of Bayer Chemicals AG. Bayer Chemicals AG is entitled at any time to claim the transfer and change of registration of individual or all Industrial Property Rights from Bayer AG to its own name. Regarding the Industrial Property Rights that primarily serve Bayer Chemicals AG, Bayer Chemicals AG in this case is obliged to grant to Bayer AG exclusive, no cost, non-terminable grant-back licenses to use these Industrial Property Rights for its other business and service areas, limited to the current scope of use by the Company. With regard to business or service areas, which at this time already have been hived down and transferred into separate companies Bayer Chemicals AG is obliged to grant equivalent licenses directly to these companies.

# Agenda

Bayer AG has the right to prohibit the use of the trademarks that contain the elements “Bay” or “Bayer” by Bayer Chemicals AG if Bayer AG is no longer a majority stockholder in Bayer Chemicals AG.

- Annex 4.2 contains a License Agreement that will become effective between Bayer AG and Bayer Chemicals AG as of the Closing Date, i.e. the date of the registration of the hive-down in the commercial register of Bayer AG, and has economic retroactive effect as of July 1, 2003, 00.00 hours. Under this License Agreement, Bayer AG grants Bayer Chemicals AG a license for Industrial Property Rights that although also serving the Chemicals business area, primarily serve other business or service areas of Bayer AG. The Industrial Property Rights are listed in an Annex to the License Agreement. The license covers industrial activities and the performance of services in the Chemicals business area. The license comprises a no cost, exclusive, transferable and non-terminable right of use for the Industrial Property Rights. Actions that affect the legal constitution of the Industrial Property Rights partly or in whole may be taken by Bayer AG only in understanding with Bayer Chemicals AG and at the same time by taking into account the interests of the other business and service areas.
- Annex 4.3 contains a Joint Use Agreement that becomes effective as of the Closing Date, i.e. the date of the registration of the hive-down in the commercial register of Bayer AG, and has economic retroactive effect as of July 1, 2003, 00.00 hours. Under this Joint Use Agreement, Bayer AG grants Bayer Chemicals AG an exclusive and no cost right for the Chemicals business area to jointly use the name “Bayer” as part of its own company name and the trademarks “Bayer” and the Bayer Cross symbol on a world-wide basis for labeling the products of Bayer Chemicals AG, identifying its services and its general business transactions. The ownership of the Company name and the Group trademarks remain with Bayer AG. The right of joint use is, in principle, non-terminable. However it may be terminated with immediate effect if Bayer AG is no longer the majority stockholder in Bayer Chemicals AG. In such case Bayer Chemicals AG is entitled to an indemnification which is equal to the going concern tax value.
- Annex 5.1 contains a listing of all confidential business inventions that are allocated exclusively to the Chemicals business area and that, by decision of Bayer AG, are treated as confidential business inventions and shall not be filed for registration. The annex lists the confidential business inventions by their internal file numbers, the dates the inventions were notified and their internal abbreviations.
- Annex 8.1 contains a list of all constructional and technical plants and machinery, other constructions and office and plant equipment, including plants in construction and all claims from payments on accounts made hereto and all operating facilities that are exclusively or primarily allocated to the Chemicals business area and that are not integral parts of the real estate/buildings that are transferred to Bayer Chemicals AG pursuant to the Hive-Down Agreement or which are subject to land use contracts that are transferred to other business area or service companies. The annex lists the individual property, plant and equipment by their commission and record numbers.
- Annex 9.1 lists the shareholdings to be allocated exclusively or primarily to the Chemicals business area that are transferred to Bayer Chemicals AG. The annex shows the book values of the shareholdings and the main attributes of the businesses (name of the company, registered office, capital of the company and share of the capital belonging to Bayer AG) in which a shareholding exists.
- Annex 9.2 shows the value of the loans receivable that are transferred from Bayer AG to Bayer Chemicals AG.
- Annex 10.1 contains a list of the essential inventory assets of Bayer AG that are transferred to Bayer Chemicals AG. The annex shows the book values of the inventories as well as claims from payments on account made for the inventories and specifies each inventory by its material number.
- Annex 10.2 contains a listing of trade receivables that are transferred from Bayer AG to Bayer Chemicals AG and the book values that are reported in the Hive-Down Balance Sheet for such trade receivables. The individual trade receivables are broken down by their allocation to certain non-personal accounts (short- and long-term receivables from third parties, receivables from subsidiaries and other affiliated companies as well as value adjustments) and they are specified by partner numbers that are used internally by Bayer AG.
- Annex 10.3 lists the receivables from affiliated companies and from companies in which participations are held and that are transferred from Bayer AG to Bayer Chemicals AG. The annex shows the book values reported in the Hive-Down Balance Sheet for these receivables. The receivables are specified by partner numbers internally used by Bayer AG.
- Annex 10.4 names other items of the current assets of Bayer AG that are transferred to Bayer Chemicals AG. These items concern, *inter alia*, factory insurance premiums and license expenses. In general these items are listed by partner numbers internally used by Bayer AG.
- Annex 10.5 shows the liquid assets that are transferred to Bayer Chemicals AG.
- Annex 11.1 contains a listing of all contingent liabilities of the Chemicals business area for which provisions have been established and that are transferred from Bayer AG to Bayer Chemicals AG. The listing sets forth the respective liabilities by the underlying business transactions and by their designated partner numbers internally used by Bayer AG.

- Annex 11.2 contains a listing of trade payables that are transferred from Bayer AG to Bayer Chemicals AG and shows the book values reported in the Hive-Down Balance Sheet for these payables. The individual payables are broken down by their allocation to certain non-personal accounts (short-term liabilities to third parties, liabilities to subsidiaries and liabilities for freight and customs duties) and are specified by their partner numbers.
  - Annex 11.3 shows the payables due to affiliated companies or companies in which a participation is held and that are transferred from Bayer AG to Bayer Chemicals AG. The annex shows the book values as reported in the Hive-Down Balance Sheet for these payables. The annex is broken down by the type of payables and by partner numbers for the payables.
  - Annex 11.5 lists other liabilities that are transferred from Bayer AG to Bayer Chemicals AG. They cover, *inter alia*, damages arising out of business interruptions and liabilities for wage and church taxes. The liabilities are specified by partner numbers.
  - Annex 12.1.1 contains a list of essential contracts (excluding leasing contracts and the land use contract listed in Annex 12.1.2) that are allocated exclusively to the Chemicals business area and that are transferred from Bayer AG to Bayer Chemicals AG.
  - Annex 12.1.2 lists the land use contract that was agreed upon by Bayer AG and Bayer Industry Services GmbH & Co. OHG and that is transferred from Bayer AG to Bayer Chemicals AG. The contract is identified, in particular, by the respective site of the Chemicals business area, the pieces of land stated in the contract and the total amount of land that is left for use.
  - Annex 12.1.3 contains a Special Right of Use Agreement that becomes effective between Bayer AG and Bayer Chemicals AG as of the Closing Date, i.e. the date of the registration of the hive-down in the commercial register of Bayer AG, and has economic retroactive effect as of July 1, 2003, 00.00 hours. Under this Special Right of Use Agreement, Bayer AG grants Bayer Chemicals AG a right of use of all operating facilities which are integral part of the real estate and buildings to which the land use contract is transferred to Bayer Chemicals AG pursuant to the Hive-Down Agreement or under which land use contracts are transferred to other business area or service companies. The use of the operating facilities is free of charge. To the extent that real estate and/or buildings are no longer used, the Special Right of Use Agreement terminates. In this case, Bayer Chemicals AG has a right to demand removal of the operating facilities, to limit its scope of use or to claim reimbursement for the residual value of the relinquished operating facilities. The costs for the removal are to be borne by Bayer Chemicals AG and Bayer AG in equal amounts.
  - Annex 12.2 contains a list of essential contracts (excluding leasing contracts) that primarily are allocated to the Chemicals business area and that are transferred from Bayer AG to Bayer Chemicals AG.
  - Annex 12.3 contains a list of the essential contracts (excluding leasing contracts) that also can be allocated to the Chemicals business area but primarily are allocated towards other business or service areas.
  - Annex 12.5 shows all memberships in syndicates, associations and other organizations that are allocated to the Chemicals business area and that are transferred from Bayer AG to Bayer Chemicals AG.
  - Annex 12.6 contains a list of all enterprise agreements which exist between domestic participations related to the Chemicals business area and domestic affiliated companies and Bayer Chemicals AG and which are transferred from Bayer AG to Bayer Chemicals AG.
  - Annex 21.1 contains a listing of all employees that are allocated to the Chemicals business area. The respective employees are specified by their personal numbers.
- The Hive-Down and Transfer Agreement has been submitted to the commercial register of the Company prior to the calling of the Stockholders' Meeting.
- The hive-down of the Chemicals business area is explained and substantiated in more detail in the Joint Hive-Down Report of the Boards of Management of the Company and of Bayer Chemicals AG.

**10. Consent to the Hive-Down and Transfer Agreement between the Company on the one hand and the service companies Bayer Business Services GmbH, Bayer Technology Services GmbH and Bayer Industry Services GmbH & Co. OHG (the “Service Companies”) on the other hand**

The Board of Management and the Supervisory Board propose that the Meeting consent to the Hive-Down and Transfer Agreement between the Company and the service companies Bayer Business Services GmbH, Bayer Technology Services GmbH and Bayer Industry Services GmbH & Co. OHG entered into on March 11, 2003.

The Company and the aforesaid Service Companies entered into a Hive-Down and Transfer Agreement on March 11, 2003 before the Notary Dr. Dieter Janke in Leverkusen. Under this Hive-Down and Transfer Agreement the Company hives down as a whole all assets and liabilities, together with all rights and obligations allocated to the respective service area, to the respective Service Company (hive-down for acquisition pursuant to § 123, para. 3, no. 1 German Transformation Act;

“Umwandlungsgesetz”). The Hive-Down of the Business Services and Industry Services service areas shall have economic effect as of October 1, 2003, 00.00 hours. The hive-down of the Technology Services service area shall have retroactive economic effect as of January 1, 2003, 00.00 hours.

*The essential content of the Hive-Down and Transfer Agreement is as follows:*

## HIVE-DOWN and TRANSFER AGREEMENT

between  
Bayer Aktiengesellschaft,  
Leverkusen (“BAG”)  
and  
the respective Service Company,  
Leverkusen (“SC”)

*The following wording of the Hive-Down and Transfer Agreement applies for all Service Companies except for deviations for the respective Service Company which are explained in square brackets.*

### I. Preliminary Remarks

- 0.1 BAG has its registered office in Leverkusen. The share capital of the Company on the date of the execution of this Agreement amounts to €1,869,675,315.20 and is divided into 730,341,920 no par value shares.
- 0.2 *[Bayer Business Services GmbH: BBS has its registered office in Leverkusen. The share capital of the company on the date of the execution of this Agreement amounts to €25,700. BAG is the sole shareholder of BBS.]*
- [Bayer Technology Services GmbH: BTS has its registered office in Leverkusen. The share capital of the company on the date of the execution of this Agreement amounts to €25,000. BAG is the sole shareholder of BTS.]*
- [Bayer Industry Services GmbH & Co. OHG: BIS has its registered office in Leverkusen. Partners of BIS are BAG and Bayer Industry Services Geschäftsführungs-GmbH. BAG owns 100% of the partnership capital of BIS, and Bayer Industry Services Geschäftsführungs-GmbH owns 0%. Only Bayer Industry Services Geschäftsführungs-GmbH is entitled to manage and represent BIS.]*
- 0.3 *[Bayer Business Services GmbH: The “Business Services” service area of BAG comprises parts of the former Corporate Planning and Controlling department (substantial parts of the Management Consulting and Organization department as well as Strategic Planning (market*

research)), parts of the former Finance Division (Monetary Transactions and Credit Management), parts of the former Law, Patents, Licenses and Insurance Division, parts of the former Corporate Communications Division, the former Information Management Division, parts of the former Enterprise Accounting and Reporting Division, parts of the former Human Resources Division, parts of the former Central Research Division, functions of the former Procurement and Logistic Division and the former Corporate Staff eCommerce of BAG. As of July 1, 2002, the Business Services service area has been established, consisting of the Procurement and Logistics, Management Consulting, Human Resources, Information Management, Law and Patents and Accounting Systems and Solutions divisions. It shall now be transferred to a separate legal entity. The Business Services service area shall be transferred to BBS by hive-down for acquisition pursuant to the German Transformation Act (“Umwandlungsgesetz”, “UmwG”).]

*[Bayer Technology Services GmbH: The “Technology Services” service area of BAG comprises the former Central Technology Division (particularly the Engineering, Process Technology and Energy Management sections) as well as parts of the Physics section of the former Central Research Division of BAG. As of July 1, 2002, the “Technology Services” service area has been established, consisting of the Business Planning & Services, Business Management, Engineering, Process Technology, Process Management Technology and Energy Management & Procurement sections. It shall now be transferred to a separate legal entity. The Technology Services service area shall be transferred to BTS by hive-down for acquisition pursuant to the German Transformation Act (“Umwandlungsgesetz”, “UmwG”).]*

*[Bayer Industry Services GmbH & Co. OHG: The “Industry Services” service area comprises the former Site Services Division and parts of the former Central Research and Central Technology divisions of BAG. As of July 1, 2002, the Industry Services service area has been established, consisting of the Chemical Park and Community Relations, Utility Services, Infrastructure Services, Safety Services, Technical Services, Environmental Management/Permits, Environmental Services, Site Security, Central Analytical Services and Brunsbüttel sections. It shall now be transferred to a separate legal entity. The Industry Services service area shall be transferred to BIS by hive-down for acquisition pursuant to the German Transformation Act (“Umwandlungsgesetz”, “UmwG”).]*

NOW THEREFORE, BAG and SC agree to the following:

## II. Hive-Down, Effective Date and Balance Sheet

### § 1 Hive-Down

- 1.1 BAG transfers, as part of its undertaking, all of the assets and liabilities together with all rights and obligations allocated to the respective service area (hereinafter referred to as a whole as the “Undertaking” or the “Service Area”) in their entirety to SC by hive-down for acquisition pursuant to § 123, para. 3, no. 1 UmwG as consideration for the assignment of a further share of SC to BAG pursuant to § 19 [*Bayer Industry Services GmbH & Co. OHG*: as consideration for the assignment of a further share of the stated capital of BIS to BAG]. § 1.2 shall remain unaffected.
- 1.2 Items of the assets and liabilities and other rights and obligations of BAG which are not allocated to the Service Area pursuant to this Agreement or which are expressly precluded from the transfer in this Agreement shall not be transferred to SC.
- 1.3 If the scope of the use of the assets becomes relevant pursuant to this Agreement, the scope of the use of the assets by the Service Area or the business or other service areas of BAG, as of January 1, 2003, shall be decisive, except as otherwise provided in this Agreement. § 3.2 shall remain unaffected.

### § 2 Effective Date

- 2.1 The transfer of the Undertaking described in § 1 and specified in §§ 4 – 13 shall occur between BAG and SC with economic effect as of October 1, 2003, 00.00 hours (“Effective Date”) [*Bayer Technology Services GmbH*: January 1, 2003]. From the Effective Date all actions and business transactions of BAG with regard to the parts of the Undertaking allocated to the Service Area shall be deemed to be made for the account of SC.
- 2.2 If the hive-down is not registered in the commercial register of BAG by February 29, 2004, then, in deviation from § 2.1, the Effective Date shall be deemed to be January 1, 2004, 00.00 hours. In case of a further delay of the registration beyond February 28 of the following year, the Effective Date shall be postponed respectively in accordance with the aforementioned provision by one year [*Bayer Technology Services GmbH*: another year]. In case of such postponement of the Effective Date, the Hive-Down Balance Sheet pursuant to § 3.1 shall remain relevant.

### § 3 Hive-Down Balance Sheet and Adjustment

- 3.1 It shall be determined on the basis of the Hive-Down Balance Sheet for the Service Area as of January 1, 2003, 00.00 hours, developed on the basis of the Annual

Balance Sheet [*Bayer Technology Services GmbH*: Final Balance Sheet (§ 3.3)] of BAG as of December 31, 2002, 24.00 hours pursuant to Annex 3.1 (“Hive-Down Balance Sheet”), which items of the assets and liabilities are allocated to the Service Area. BAG also transfers to SC all assets not required to be reported, not reportable or not actually reported in the balance sheet and other rights and liabilities which, according to origin or purpose, are to be allocated to the Service Area, unless it is otherwise expressly stated in this Agreement.

- 3.2 Any additions or disposals of assets and liabilities in the time period between January 1, 2003 and the Closing Date (§ 14.1) as well as other rights (including surrogate rights such as, e.g. compensation claims, etc.) and obligations are also transferred. Accordingly, BAG transfers to SC also those assets and liabilities allocated to the Service Area with respect to origin and purpose as well as all other rights and obligations which are received by the Service Area during the time period between January 1, 2003 and the Closing Date or which came into existence during this time period. Accordingly, those items of assets and liabilities and other rights and obligations which are sold or otherwise transferred in the time period between January 1, 2003 and the Closing Date or which no longer exist at this point in time are not transferred to SC. The aforesaid provisions shall apply respectively to changes of the scope of use of assets.
- 3.3 The audited interim balance sheet of BAG as of September 30, 2003, 24.00 hours [*Bayer Technology Services GmbH*: the audited and certified Annual Balance Sheet as of December 31, 2002, 24.00 hours] shall be the final balance sheet of BAG for the hive-down pursuant to §§ 125, 17, para. 2 UmwG (“Final Balance Sheet”). BAG is obligated to prepare the Final Balance Sheet in compliance with the provisions regarding the annual balance sheet and its auditing and to have it audited. [*The last sentence does not apply to Bayer Technology Services GmbH*]
- 3.4 SC shall be obligated to continue the book values of the transferred assets and liabilities in its commercial balance sheet, as reported in the Final Balance Sheet. The same shall apply regarding the continuation of the book value in the tax balance sheet.

[*Bayer Technology Services GmbH*: BTS shall be obligated to continue the book values of the transferred assets and liabilities in its commercial balance sheet, as reported in the Final Balance Sheet upon which the Hive-Down Balance Sheet is based. The same shall apply regarding the continuation of the book value in the tax balance sheet.]

### III. Subject Matter of the Hive-Down

In particular, the assets and obligations described in more detail *infra* in §§ 4 to 13 of this Agreement, are part of the Undertaking.

#### § 4 Industrial Property Rights

The domestic and foreign patents, utility models and trademarks and applications for such industrial property rights (hereinafter referred to as “Industrial Property Rights”) are not transferred to SC.

4.1 On the Closing Date (§ 14.1), a Trust Agreement as set forth in Annex 4.1 comes into effect between BAG and SC with regard to the Industrial Property Rights which exclusively or primarily serve the Service Area and are listed in Annexes 1 and 2 to the Trust Agreement, with retroactive economic effect as of the Effective Date. Under the Trust Agreement, BAG shall hold those Industrial Property Rights in trust for SC. BAG shall retain a right of use to the Industrial Property Rights which are primarily allocated to the Service Area.

4.2 On the Closing Date (§ 14.1), a License Agreement as set forth in Annex 4.2 comes into effect between BAG and SC with regard to the Industrial Property Rights listed in the Annex to the License Agreement which, although also serving the Service Area, primarily serve business or other service areas of BAG, with retroactive economic effect as of the Effective Date. BAG shall grant SC a right of use therein for the industrial activities and the performance of services in the Service Area.

4.3 On the Closing Date (§ 14.1), a Joint Use Agreement as set forth in Annex 4.3 comes into effect between BAG and SC with regard to the Company name “Bayer” and the Group trademarks “Bayer” and the Bayer Cross symbol, with retroactive economic effect as of the Effective Date. BAG shall grant SC therein the right to jointly use the Company name and the Group trademarks.

#### § 5 Know-how

[*Bayer Business Services GmbH*: With regard to the know-how related to the Business Services service area consisting, in particular, of

- (i) the entire processing know-how related to items of the property, plant and equipment pursuant to § 8;
- (ii) media materials (photos, videos, graphics, sound materials, etc.) which were administered by the Business Services service area or (co-) produced by it;

which respectively is allocated to the Business Services service area (collectively, “Know-How”), the Parties agree to the following:]

[*Bayer Technology Services GmbH*: With regard to the know-how related to the Technology Services service area consisting, in particular, of

- (i) the entire processing know-how related to items of the property, plant and equipment pursuant to § 8;
- (ii) the entire product specifications;
- (iii) data on chemical substances;
- (iv) research reports;
- (v) know-how on development and research;
- (vi) studies on effectiveness;
- (vii) media materials (photos, videos, graphics, sound materials, etc.) which were administered by the Technology Services service area or (co-) produced by it;
- (viii) all technical surveys and other inspections of all products and substances in the development stage;
- (ix) models for simulation, concept studies, process simulations, process flow charts, R+I flow charts and PDS-presentations;

which respectively is allocated to the Technology Services service area (collectively, “Know-How”), the Parties agree to the following:]

[*Bayer Industry Services GmbH & Co. OHG*: With regard to the know-how related to the Industry Services service area consisting, in particular, of

- (i) the entire processing know-how related to items of the property, plant and equipment pursuant to § 8;
- (ii) the entire waste specifications;
- (iii) data on chemical substances;
- (iv) inspection and research reports;
- (v) know-how on development and research;
- (vi) media materials (photos, videos, graphics, sound materials, etc.) which were administered by the Industry Services service area or (co-) produced by it;

which respectively is allocated to the Industry Services service area (collectively, “Know-How”), the Parties agree to the following:]

- 5.1 BAG transfers to SC the entire Know-How exclusively allocated to the Service Area.
- 5.2 BAG transfers to SC the entire Know-How primarily allocated to the Service Area subject to the provision that BAG shall retain an exclusive, transferable, no cost, and non-terminable right of use for all of its current business and other service areas, including the right to sub-license.
- 5.3 If BAG is only jointly entitled to the transferred Know-How pursuant to §§ 5.1 and 5.2, BAG transfers the respective joint entitlement pursuant to §§ 5.1 and 5.2.
- 5.4 The entire other Know-How which, even if also related to the Service Area, is allocated primarily to business or other service areas of BAG, is not transferred to SC. With respect to the entire other Know-How, BAG transfers to SC an exclusive, transferable and non-terminable right of use limited to the Service Area at no cost (subject to § 5.7), including the right to sub-license within the Service Area. § 5.3 shall apply respectively.
- 5.5 BAG grants SC an exclusive, transferable and non-terminable right of use to all existing databases of BAG limited to the industrial activities and the performance of services in the Service Area at no cost (subject to § 5.7) insofar as such are not already transferred to SC under this Agreement.
- 5.6 SC obtains the possession of all recordings, technical documents and other data carriers upon which the intangible assets transferred to SC are stored. However, SC shall merely be granted access to the central data storage of BAG. With regard to the central data storage of companies of the Bayer Group, BAG transfers the part of the access right to which BAG is entitled.
- 5.7 If BAG owes compensation to third parties for the transferred Know-How, SC shall reimburse BAG for all compensation accruing for the time period as of the Effective Date pro rata for the use of SC. Furthermore, SC shall pay the pro rata amount of administrative costs attributed to the use of the databases listed in § 5.5 by SC accruing for the time period beginning on the Effective Date.

## § 6 Software

- 6.1 BAG transfers to SC all rights to the software that has been exclusively developed for or licensed in the Service Area and all updates of this software.

- 6.2 On the Closing Date (§ 14.1), BAG hereby grants SC, with retroactive effect as of the Effective Date, an irrevocable, no cost right of joint use to the general license to SAP-R3 obtained under the contract dated June 17/30, 1997, according to the implementation status achieved on the Effective Date and to the extent it is used in the Service Area or, respectively, will be used. SC shall reimburse BAG the pro rata service, maintenance and further development costs attributable to the use by SC and for the time period beginning on the Effective Date.

*[Bayer Business Services GmbH: BAG transfers to BBS the general license to SAP-R3 obtained under the contract dated June 17/30, 1997, including all rights of implementation in all SAP projects of BAG under the provision that BAG maintains an irrevocable, no cost right of joint use to the extent it is used by BAG on the Effective Date (the extent of use of business or other service areas that have not been hived-down at this time shall not be taken into account). BAG shall reimburse SC the pro rata service, maintenance and further development costs attributable to the use by BAG and for the time period beginning on the Effective Date.]*

- 6.3 BAG grants SC sub-licenses in all remaining other software which is installed on the IT hardware transferred to SC pursuant to § 8.1 or on leased IT hardware for which the leasing contract shall be transferred to SC pursuant to § 12.1 and to which BAG holds the licenses or has installed on central IT hardware for the use of SC. The licenses themselves shall remain with BAG. SC shall reimburse BAG the royalties (with regard to royalties payable on a regular basis by BAG and with regard to one time payments, in an amount corresponding to the depreciation costs) attributed to the use by SC for the time period beginning on the Effective Date.

*[Bayer Business Services GmbH: BAG transfers to BBS its obligation based on § 6.2 sentence 1, of the Hive-Down and Transfer Agreements with Bayer CropScience AG, Bayer HealthCare AG, Bayer Chemicals AG, Bayer Polymers AG and the service companies Bayer Industry Services GmbH & Co. OHG and Bayer Technology Services GmbH (the “Hive-Down and Transfer Agreements”) to grant to the respective business area or service company an irrevocable, no cost right of joint use of the SAP-R3 general license. Furthermore, BAG transfers to BBS its respective right based on § 6.2 sentence 2, of the Hive-Down and Transfer Agreements to be reimbursed for the service, maintenance and further development costs attributable to the respective business area or service company.]*

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6.4 On the Closing Date (§ 14.1), BAG hereby grants SC, with retroactive effect as of the Effective Date, an irrevocable, no cost right of joint use to the general license to all software developed by it and all continuing development of software pursuant to § 6.3 for which BAG holds a license that is tailored to not only the Service Area but to at least one business or other service area according to the implementation status as of the Effective Date and to the extent it is used in the Service Area or, respectively, will be used. SC shall reimburse BAG the pro rata service, maintenance and further development costs attributable to the use by SC and for the time period beginning on the Effective Date.

*[Bayer Business Services GmbH: BAG transfers to BBS all rights with respect to all software to which BAG holds a license and which is not exclusively designated to a business area, a service area or BAG itself (the respective business and service areas shall not be taken into account). To the extent that, on the Effective Date, BAG uses software, within the meaning of § 6.4 sentence 1 (except as used by business and service areas of BAG that are not hived-down by this time), BAG retains a right of use. BAG shall reimburse SC the royalties (with regard to royalties payable on a regular basis by BAG and with regard to one time payments, in an amount corresponding to the depreciation costs) attributed to the use by BAG for the time period beginning on the Effective Date. Furthermore, BAG transfers to BBS the sub-licenses granted by BAG to the business area or service companies pursuant to § 6.3 sentence 1, of the Hive-Down and Transfer Agreements and the right to claim reimbursement for payment of royalties by the respective business area or service company pursuant to § 6.3. sentence 3.]*

6.5 SC shall be granted access to the central data storage of BAG. With respect to the central data storage of companies of the Bayer Group, BAG transfers its respective part of the access right.

*[Bayer Business Services GmbH: BAG transfers to BBS all rights to all other software to which BAG holds a license and to updates of such software pursuant to § 6.4, which do not exclusively serve a business or service area, under the provision that BAG retains an irrevocable, no cost right of joint use to the extent it is used by BAG on the Effective Date (except as used by business and service areas of BAG that are not hived-down by this time). BAG shall reimburse SC the pro rata service, maintenance and further development costs attributable to the use by BAG and for the time period beginning on the Effective Date.]*

[6.6 *Exclusively for Bayer Business Services GmbH:* BAG transfers to BBS its respective obligation pursuant to § 6.4 sentence 1, of the Hive-Down and Transfer Agreements (except for the Hive-Down and Transfer Agreement between BAG and Bayer CropScience AG) to grant to the respective business area or service company an irrevocable and no cost license for the software developed by BAG or the updates of software licensed in for BAG. Furthermore, BAG transfers to BBS the right to claim reimbursement for the pro rata service, maintenance and further development costs attributable to the use by the respective business area or service company pursuant to § 6.4 sentence 4, of the Hive-Down and Transfer Agreements.

6.7 The central data storage shall be transferred to BBS by BAG under the provision that BAG retains an access right. Furthermore, BAG transfers to BBS its obligation pursuant to § 6.5 and § 6.4 of the Hive-Down and Transfer Agreements to grant access to the central data storage to the respective business area and service companies. Furthermore, BAG transfers to BBS its access right to the central data storage of companies of the Bayer Group, to the extent these access rights have not been transferred pursuant to the Hive-Down and Transfer Agreements to the respective business area or service company or will not be transferred to them and except to the extent these rights are not needed by BAG itself after all business or service areas have been hived-down.]

## § 7 Public Law Approvals and Qualifications

[7.1 *Bayer Business Services GmbH:* BAG transfers to BBS all rights and obligations pursuant to all public law authorizations, admissions and similar entitlements (collectively referred as “Entitlements”), allocated to the Business Services service area.

7.2 BAG and BBS together shall coordinate the procedural steps necessary to be taken for the implementation of the transfers described in § 7.1 and for the assumption of all obligations associated herewith and shall agree to a procedure which is commercially acceptable and reasonable for both Parties.

7.3 Insofar as rights and obligations pursuant to Entitlements not only serve the Business Services service area but also business or other service areas of BAG, to the extent legally permissible, the part of the Entitlements belonging to the Business Services service area is transferred. Insofar as a separation of the Entitlements is contrary to public law provisions, the Entitlements as a whole are transferred to BBS if the respective Entitlement primarily serves the Service Area. Insofar as the Entitlements do not primarily serve the Service Area, they shall not transfer to BBS. The Parties shall place each other in such position as if the Entitlements pursuant to this § 7 would

have been transferred. Insofar as Entitlements within the meaning of this § 7 are not transferable, BAG shall support BBS to obtain these Entitlements.]

[*Bayer Technology Services GmbH*: BTS transfers to BBS all rights and obligations from public law approvals, permits and similar entitlements (collectively referred as “Entitlements”) which are allocated to the Technology Services service area, in particular:

- 7.1 all rights and obligations pursuant to all approvals for the plants requiring official approval which are transferred to BTS pursuant to this Agreement. BAG shall notify the responsible authority of the change of the plant operator; pursuant to § 52a German Federal Protection Against Emissions Act (“*Bundes-Immissionsschutzgesetz*”) BTS shall inform the responsible authority of the authorized body which is in charge of fulfilling the obligations of a plant operator.
- 7.2 BAG and BTS together shall coordinate the procedural steps necessary to be taken for the implementation of the transfers described in § 7.1 and for the assumption of all obligations associated herewith and shall agree to a procedure which is commercially acceptable and reasonable for both Parties.
- 7.3 Insofar as rights and obligations pursuant to Entitlements not only serve the Technology Services service area but also business or other service areas of BAG, to the extent legally permissible, the part of the Entitlements belonging to the Technology Services service area is transferred. Insofar as a separation of the Entitlements is contrary to public law provisions, the Entitlements as a whole are transferred to BTS if the respective Entitlement primarily serves the Technology Services service area. Insofar as the Entitlements do not primarily serve the Technology Services service area, they shall not transfer to BTS. The Parties shall place each other in such position as if the Entitlements pursuant to this § 7 would have been transferred. Insofar as Entitlements within the meaning of this § 7 are not transferable, BAG shall support BTS to obtain these Entitlements.]

[*Bayer Industry Services GmbH & Co. OHG*: BAG transfers to BIS all rights and obligations from public law approvals, permits and similar entitlements (collectively referred as “Entitlements”) which are allocated to the Industry Services service area, in particular:

- 7.1 all rights and obligations pursuant to all approvals for the plants requiring official approval pursuant to the German Federal Protection Against Emissions Act (“*Bundes-Immissionsschutzgesetz*”) which are transferred to BIS pursuant to this Agreement. BAG shall notify the responsible authority of the change of the plant operator; BIS shall

inform the responsible authority of the authorized body which is in charge of fulfilling the obligations of a plant operator pursuant to § 52a of the German Federal Protection Against Emissions Act and § 53 of the German Act for Promoting Closed-Cycle Substance Management and Waste Disposal (“*Kreislaufwirtschafts- und Abfallgesetz*”);

- 7.2 all rights and obligations pursuant to all permits and authorizations for all plants transferred to BIS pursuant to this Agreement, which have to be authorized by laws other than the German Federal Protection Against Emissions Act, in particular pursuant to all permits and authorizations pursuant to § 31 German Federal Act on the Use of Waterways (“*Wasserstrassengesetz*”);
- 7.3 all rights and obligations pursuant to all official approvals of plants requiring official approval that are transferred to BIS pursuant to this Agreement, in particular landfills;
- 7.4 all rights and obligations pursuant to authorizations related to water laws and permissions pursuant to the German Federal Water Resources Act (“*Wasserhaushaltsgesetz*”) and respective state water laws.
- 7.5 all rights and obligations pursuant to permits and permissions for the operation of the railway infrastructure company operated by the Industry Services service area according to the German Railway Act (“*Allgemeines Eisenbahngesetz*”) and the connecting train operated by the Industry Services service area pursuant to the State Railway Act of North Rhine-Westphalia (“*Landeseisenbahngesetz NRW*”).
- 7.6 BAG and BIS together shall coordinate the procedural steps necessary to be taken for the implementation of the transfers described in §§ 7.1 to 7.5 and for the assumption of all obligations associated herewith and shall agree to a procedure which is commercially acceptable and reasonable for both Parties.
- 7.7 Insofar as rights and obligations pursuant to Entitlements not only serve the Industry Services service area but also business or other service areas of BAG, to the extent legally permissible, the part of the Entitlements belonging to the Industry Services service area is transferred. Insofar as a separation of the Entitlements is contrary to public law provisions, the Entitlements as a whole are transferred to BIS if the respective Entitlement primarily serves the Industry Services service area. Insofar as the Entitlements do not primarily serve the Industry Services service area, they shall not transfer to BIS. The Parties shall place each other in such position as if the Entitlements pursuant to this § 7 would have been transferred. Insofar as Entitlements within the meaning of this § 7 are not transferable, BAG shall support BIS to obtain these Entitlements.]

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## § 8 Transfer of the Property, Plant and Equipment

BAG transfers to SC all property, plant and equipment allocated to the Service Area unless it is otherwise expressly stated in this Agreement. Included herein are, in particular:

- 8.1 all constructional and technical plants and machinery, including plants in construction and including all claims from payments on account made thereon, the office and plant equipment and all operating facilities, which are exclusively or primarily allocated to the Service Area, particularly those listed in Annex 8.1, and which are not integral parts of the real estate/buildings [*Bayer Business Services GmbH*: which are subject to land use contracts transferred pursuant to § 12.1] [*Bayer Technology Services GmbH*: which are subject to the land use contract transferred pursuant to § 12.1] [*Bayer Industry Services GmbH & Co. OHG*: which are subject to the land use contract listed in Annex 12.1.2] or which are subject to land use contracts transferred to a business area or other service company. As far as property, plant and equipment are used by business or other service areas of BAG in addition to the Service Area, BAG transfers joint ownership corresponding to the scope of use of those assets by the Service Area;
- 8.2 all vehicles which are exclusively or primarily allocated to the Service Area;
- 8.3 all minor assets and other operating resources existing in connection with the property, plant and equipment transferred to SC.

Insofar as items of the property, plant and equipment are subject to a retention of ownership or BAG has transferred the ownership by way of security to third parties, BAG transfers to SC all claims existing in this connection, including all expectancy rights and rights to recover possession.

## § 9 Transfer of the Investments

BAG transfers to SC all investments allocated to the Service Area. Included herein are in particular:

- 9.1 all shareholdings that exclusively or primarily are related to the Service Area. Annex 9.1 sets forth those shareholdings. The transfer shall include all rights and obligations associated therewith, in particular, all entitlements to profits insofar as no distribution has been resolved upon as of the Effective Date. SC shall, therewith, be entitled to all profit distributions, including tax credits existing in connection therewith, which were resolved upon on or

after the Effective Date regardless of the time period to which they refer. All consortium agreements, other shareholder agreements and enterprise agreements shall be transferred together with the shareholdings. The Parties shall carry out all other actions necessary or expedient for transfer pursuant to § 14. The Parties shall place each other in such position as if the shareholdings were transferred as of the Effective Date;

- 9.2 all loan receivables, in particular, house building loan receivables which are allocated to the Service Area pursuant to Annex 9.2.

[*Bayer Technology Services GmbH*: BAG transfers to BTS all investments allocated to the Technology Services service area. Included herein are, in particular, all loan receivables, in particular, house building loan receivables which are allocated to the Technology Services service area pursuant to Annex 9.]

## § 10 Transfer of the Current Assets

BAG transfers to SC all current assets allocated to the Service Area. These shall include, in particular:

- 10.1 all inventories allocated to the Service Area consisting of raw materials and supplies and other goods in stock which serve the Service Area, goods in progress, work in progress, finished goods and goods for resale, including payments on account. The essential items of the current assets to be transferred are listed in Annex 10.1;

[*Bayer Industry Services GmbH & Co. OHG*: all inventories allocated to the Industry Services service area consisting of raw materials and supplies, existing test substances and other goods in stock which serve the Industry Services service area, work in progress, as well as goods, including payments on account. The essential items of the current assets to be transferred are listed in Annex 10.1;]

- 10.2 all of the trade receivables allocated to the Service Area pursuant to Annex 10.2;
- 10.3 all receivables from affiliated companies and companies in which participations are held pursuant to Annex 10.3;
- 10.4 all other items of the current assets allocated to the Service Area pursuant to Annex 10.4;
- 10.5 liquid assets pursuant to Annex 10.5.

If items of the current assets are subject to a retention of ownership or BAG has transferred the ownership by way of security to third parties, BAG transfers to SC all claims existing in this connection, including all expectancy rights and rights to recover possession.

#### § 11 Transfer of Obligations and Reserves; Taxes

BAG transfers to SC all obligations, with the exception of existing pension obligations which are covered by § 13, allocated to the Service Area. Included herein are, in particular:

- 11.1 all contingent liabilities of the Service Area pursuant to Annex 11.1 for which provisions have been established and all other obligations that result from the previous business activity of the Service Area, which are not required to be reported, not reportable or not actually reported in the balance sheet;
- 11.2 all trade payables which are allocated to the Service Area pursuant to Annex 11.2;
- 11.3 all payables towards affiliated companies or companies in which a participation is held pursuant to Annex 11.3; [Does not apply to *Bayer Industry Services GmbH & Co. OHG*]
- 11.4 all obligations resulting from existing stock option plans of BAG regarding employees who are transferred to SC pursuant to § 613a German Civil Code (“*Bürgerliches Gesetzbuch*”, “BGB”) and regarding employees of the Service Area whose employment is terminated in the time period between the Effective Date and the Closing Date (§ 14.1); [*Bayer Industry Services GmbH & Co. OHG*: 11.3]
- 11.5 all other liabilities which are allocated to the Service Area pursuant to Annex 11.5, in particular, liabilities from wage taxes and liabilities within the framework of social insurance. [*Bayer Industry Services GmbH & Co. OHG*: 11.4 and Annex 11.4]
- 11.6 Claims of tax reimbursements and obligations for payment of taxes for prior years which relate to the Service Area, as well as reimbursements and obligations to pay taxes for prior years in connection with social insurance claims, shall remain with BAG, insofar as they concern the time period up until the Effective Date. Increased or reduced taxes, including tax supplementary payments from tax audit determinations for time periods up until the Effective Date, shall be borne by BAG or, respectively, BAG shall be entitled thereto. Insofar as these tax audit determinations, in the time period after the Effective Date, cause reduced

taxes by reverse effects, including tax supplementary payments for SC [*Bayer Industry Services GmbH & Co. OHG*: BIS as taxpayer], SC shall reimburse BAG the cash value of the tax reduction effect (discounted with 6% to the due date of the additional taxes) [*Bayer Industry Services GmbH & Co. OHG*: attributed to BAG as taxpayer] insofar as this reduction effect is not attributed to BAG for tax purposes through a single entity relationship. SC shall inform BAG of the issuance of the respective tax assessment notices. Upon demand of BAG, SC shall be obligated – at the cost of BAG – to file a legal remedy against a tax assessment notice. [*Bayer Industry Services GmbH & Co. OHG*: 11.5]

#### § 12 Transfer of Contracts and Other Rights

- 12.1 BAG transfers to SC all contracts and contract offers exclusively allocated to the Service Area, unless this Agreement states otherwise. The essential contracts (with the exception of leasing contracts [*Bayer Business Services GmbH*: and the land use contracts listed in Annex 12.1.2] [*Bayer Technology Services GmbH*: and the land use contract listed in Annex 12.1.2]) transferred pursuant to § 12.1 sentence 1, are listed in Annex 12.1.1. Furthermore, all leasing contracts are transferred for items such as, e.g. office equipment and furnishings, cars, etc., which are exclusively allocated to the Service Area or exclusively used by employees of the Service Area.

Insofar as the transferred contracts and contract offers are subject to litigation or arbitration disputes, these dispute relationships are also transferred.

[*Bayer Business Services GmbH*: Finally, the land use contracts between Bayer Industry Services GmbH & Co. OHG as lessor and BAG as lessee listed in Annex 12.1.2 are transferred.] [*Bayer Technology Services GmbH*: Finally, the land use contract between Bayer Industry Services GmbH & Co. OHG as lessor and BAG as lessee listed in Annex 12.1.2 is transferred.] [Does not apply to *Bayer Industry Services GmbH & Co. OHG*]

BAG grants a right of use to SC at no cost of all operating facilities, used by the Service Area which are integral parts of the real estate/buildings [*Bayer Business Services GmbH*: which are subject to the land use contracts transferred pursuant to Annex 12.1.2 to SC] [*Bayer Technology Services GmbH*: which are subject to the land use contract transferred pursuant to Annex 12.1.2] [*Bayer Industry Services GmbH & Co. OHG*: which are subject to the land use contract listed in Annex 12.1.2] or which are subject to land use contracts transferred to a business area or other service company. On the Closing Date (§ 14.1), a Special Right of Use Contract as set forth in Annex 12.1.3

comes into effect between the Parties with retroactive economic effect as of the Effective Date. The essential operating facilities are listed in an annex to the Special Right of Use Contract.

BAG retains ownership in these areas, real estate and buildings as well as in the operating facilities.

- 12.2 BAG transfers to SC all contracts and contract offers which also concern business or other service areas of BAG, but are primarily allocated to the Service Area. Furthermore, all contracts and contract offers are transferred to SC which, although primarily allocated to a business or other service area of BAG, also affect the Service Area and which are required by the Service Area for performing mandatory or optional services to business or other service areas. The essential contracts (with the exception of leasing contracts) which are transferred pursuant to § 12.2, sentences 1 and 2, are listed in Annex 12.2. § 12.2, sentence 1, also applies to all leasing contracts which are transferred for items such as, e.g. office equipment and furnishings, cars, etc., which are primarily attributed to the Service Area or are used primarily by employees of the Service Area.

Insofar as the transferred contracts and contract offers are subject to litigation or arbitration disputes, these dispute relationships are also transferred.

The Parties shall decide jointly whether they will discuss with the respective contract partner to amend the contracts listed in § 12.2, sentences 1 and 2, and to conclude new contracts so that in the future SC and BAG, or those companies to which the respective business or service areas are hived-down will be entitled and obligated by their own respective contracts. Until then, SC shall exercise all rights and obligations from the contracts listed in § 12.2, sentences 1 and 2, to the extent legally permissible. In their internal relationship, BAG shall be entitled to the rights from these contracts on a pro rata basis, i.e. to the extent that they are not applicable to SC. In its internal relationship to SC, BAG shall perform all obligations under or resulting from these contracts to the same extent.

- 12.3 Contracts and contract offers primarily allocated to a business or other service area of BAG but which nevertheless also affect the Service Area shall not be transferred to SC, unless this Agreement states otherwise. The essential contracts (with the exception of leasing contracts) primarily allocated to a business or other service area of BAG but which nevertheless affect also the Service Area are listed in Annex 12.3.

The Parties shall decide jointly whether they will discuss with the respective contract partner to amend the contracts listed in § 12.3, sentence 1, and to conclude new contracts so that in the future SC and BAG, or in case of the transfer of the respective contract to a business area or service company by way of hive-down, the respective company will be entitled and obligated by their own respective contracts. Until then, BAG or in case of the transfer of the respective contract to a business area or service company by way of hive-down, the respective company shall exercise all rights and obligations from the contracts listed in § 12.3, sentence 1, to the extent legally permissible. In their internal relationship, SC is entitled to the rights from these contracts on a pro rata basis, i.e. to the extent that they are applicable to the Service Area. In its internal relationship to BAG, SC shall perform all obligations under or resulting from these contracts to the same extent.

- 12.4 Insurance contracts are not subject to this Agreement. The Parties shall jointly notify the insurance company, Pallas Versicherung AG, with respect to the extension of the insurance coverage to SC under the existing Bayer Group provisions.
- 12.5 BAG transfers to SC all memberships and other legal positions in the syndicates, associations and other organizations listed in Annex 12.5.
- 12.6 [*Bayer Business Services GmbH*: BAG transfers to BBS all enterprise agreements that exist with German affiliates of BBS. The transferred enterprise agreements are listed in Annex 12.6.]

[*Bayer Industry Services GmbH & Co. OHG*: BAG transfers to BIS all enterprise agreements that exist with German affiliates allocated pursuant to § 9.1. The transferred enterprise agreements are listed in Annex 12.6.]

## § 13 Pension Liabilities and Pension Provisions

- 13.1 Pension Liabilities to Current Employees and to Employees No Longer Employed as of July 1, 2002
- 13.1.1 On the Closing Date (§ 14.1), all rights and obligations from existing pension commitments of BAG (pensions and similar obligations, particularly transitional payments for early retirement and interim pensions) to those employees of the Service Area whose employment relationships exist on the Closing Date, are transferred to SC pursuant to §§ 324 UmwG, 613a, para. 1 BGB.

13.1.2 Furthermore, BAG transfers to SC all rights and obligations from existing pension commitments of BAG (current pensions, vested pension rights and similar obligations, particularly transitional payments for early retirement and interim pensions) to those employees of the Service Area whose employment is terminated in the time period between July 1, 2002 and the Closing Date or will terminate in this time period, and their surviving dependents.

13.1.3 Provisions for the obligations from the pension commitments listed in § 13.1.1 and § 13.1.2 shall be established accordingly by SC. The respective pension reserves are contained in the assets transferred to SC under this Agreement.

13.1.4 In addition, BAG shall be jointly and severally liable for all pension commitments listed in § 13.1.1 and § 13.1.2 pursuant to § 133, para. 1 and para. 3 UmwG for a period of five years from the date the registration of the hive-down in the commercial register of BAG is deemed to be published.

13.1.5 SC shall indemnify BAG for all claims arising from the pension commitments listed in § 13.1.1 and § 13.1.2 which are asserted against BAG referring to the time period after the Effective Date.

## 13.2 Pension Liabilities to Employees Whose Employment Contracts Were Terminated Prior to July 1, 2002

13.2.1 Obligations from the existing pension commitments of BAG (current pensions, vested pension rights and similar obligations, particularly transitional payments for early retirement and interim pensions) to those employees whose employment contracts were terminated prior to July 1, 2002 and who would have been allocated to the Service Area, and their surviving dependents are not transferred pursuant to §§ 324 UmwG, 613a, para. 1 BGB to SC and shall also not be transferred to SC under this Agreement.

13.2.2 Accordingly, the provisions for the obligations from the pension commitments listed in § 13.2.1 shall continue to be established by BAG.

13.2.3 SC shall reimburse BAG the proportional costs necessary to carry out the pension commitments listed in § 13.2.1 to the extent such costs are not covered by provisions in the Final Balance Sheet, and all proportional administrative costs accruing to the pension commitments as from the Effective

Date, including the costs of expert opinions and contributions to the Mutual Benefit Association for Pension Security. The pro rata costs to be borne by SC which are not covered by the provisions – minus the pro rata amount of the costs borne by Bayer CropScience AG – corresponds to the proportion of the gross remuneration total of 2002 of the employees allocated to the Service Area as of July 1, 2002 in relation to the gross remuneration total of 2002 of all employees of BAG that not have been allocated to the CropScience business area.

## IV. Terms of the Transfer

### § 14 Closing Date

14.1 The transfer of the Undertaking, i.e. items of the assets and liabilities affected by the hive-down and the other rights and obligations of BAG, will be effective *in rem* on the date of registration of the hive-down in the commercial register of BAG (“Closing Date”).

14.2 Possession to movable goods is transferred to SC on the Closing Date. Insofar as movable goods are in possession of third parties, BAG transfers its claim for recovery to SC with effect as of the Closing Date.

### § 15 Catch-all Provision

15.1 Insofar as certain assets and liabilities and other rights and obligations, in particular, from contracts, shareholdings, memberships or administrative actions which should be transferred to SC pursuant to this Agreement are not already transferred to SC by operation of law with registration of the hive-down, BAG shall transfer these items of the assets and liabilities and the other rights and obligations to SC. Should a transfer to SC externally not be possible or only be possible with a disproportionately high expenditure or should such transfer be unreasonable, the Parties shall place themselves in such position as if the transfer had occurred also externally as of the Effective Date.

15.2 Insofar as the transfer of certain assets and liabilities or other rights and obligations or the taking over of contracts requires the approval of third parties or a public law permit, BAG and SC shall endeavor to obtain the respective approval or permit. If such approval or permit cannot be obtained or can only be obtained with disproportionately high expenditure, § 15.1, sentence 2, shall apply accordingly regarding the internal relationship of the two companies.

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15.3 Insofar as certain assets and liabilities or other rights and obligations pursuant to this Agreement shall not be transferred but are transferred by operation of law, SC shall retransfer the rights or, if appropriate, indemnify BAG, and BAG shall agree to the retransfer of the obligations or, if appropriate, indemnify SC. The Parties shall undertake all measures necessary and expedient in this connection and cooperate in all legal actions which are necessary and expedient in order to retransfer such rights and obligations to BAG. In their internal relationship, the Parties shall act as if the rights and obligations mentioned in §15.3, sentence 1, were not transferred. The aforementioned regulation of this § 15.3 shall apply accordingly if assets and liabilities or other rights and obligations which were allocated to the Service Area by mistake of the Parties are transferred pursuant to this Agreement.

## § 16 Cooperation Obligations

16.1 BAG and SC shall make all declarations, issue all documents and undertake all other actions which are still necessary or expedient in connection with the transfer of the Undertaking.

16.2 As of the Closing Date, SC shall receive all business documents held by BAG allocated to the Service Area or in connection herewith, in particular, contracts and approval documents, shop regulations, construction and building plans, operation handbooks and personnel documents. SC shall also receive all documents which are necessary for the claim of the rights transferred to it under this Agreement. SC shall store the books and other records within the statutory record retention period for BAG and shall ensure that BAG can inspect and copy these business documents. Business and trade secrets are to be treated confidentially.

16.3 With respect to proceedings conducted by authorities, particularly tax audits and tax and other litigation which concern the Undertaking, the Parties shall mutually support each other until December 31, 2010. In particular, they shall reciprocally make available all information and documents which are necessary or expedient for the performance of tax or other authority demands or for the provision of proof to tax authorities or other authorities or courts and shall reciprocally work towards obtaining reasonable support from their employees.

## § 17 Creditor Protection and Internal Compensation

Unless this Agreement provides any other distribution of burdens and liabilities arising from or in connection with the Undertaking, the following shall apply:

17.1 If and insofar as claims are enforced against BAG by creditors for obligations on the basis of the provisions in § 133 UmwG or other provisions and such obligations are transferred to SC pursuant to the terms of this Agreement or claims are enforced against BAG for obligations resulting from future statutory relationships which were, are or will be established in connection with the business activities of the Service Area, SC shall indemnify BAG for the respective obligation upon first demand. The same shall apply if a claim for provision of security is enforced against BAG by such creditors.

17.2 If and insofar as in the opposite case claims are enforced against SC by creditors for obligations on the basis of the provisions in § 133 UmwG or other provisions and such obligations are not transferred to SC pursuant to the terms of this Agreement or claims are enforced against SC for obligations resulting from future statutory relationships which were, are or will be established in connection with other business areas, service areas, business area companies or service companies other than the Service Area, BAG shall indemnify SC for the respective obligation upon first demand. The same shall apply if a claim for provision of security is enforced against SC by such creditors.

17.3 Insofar as claims are enforced against SC by creditors for obligations transferred by this Agreement which are covered by the Bayer Group insurance agreement, BAG will transfer all insurance payments received by it to SC.

## § 18 Preclusion of Claims; Environment

18.1 Claims and rights of SC against BAG of all kinds and regardless of their legal basis with respect to quality and the status of the assets and liabilities as well as the Undertaking as a whole transferred by BAG under this Agreement are herewith expressly precluded. This shall also apply in particular to claims for pre-contractual or contractual breach of duties and the breach of statutory obligations.

18.2 In the internal relationship between BAG and SC, SC shall be fully liable only for such contamination of soil and ground water caused by SC, the Service Area or a predecessor business unit. [*Bayer Industry Services GmbH & Co. OHG*: unless otherwise agreed by the Parties]

## V. Counter-Performance and Capital Measures

### § 19 *Granting of a Share in the Company [Bayer Industry Services GmbH & Co. OHG: Granting of Shares in the Company]*

[19.1 *Bayer Business Services GmbH*: BAG, as the sole shareholder of BBS, shall receive as consideration for the hive-down of the Business Services service area to BBS a further share in the company in the nominal value of €5,974,300.

19.2 BBS shall increase its share capital from €25,700 by €5,974,300 by creating a new share in the company in the nominal value of €5,974,300 to implement the hive-down.

19.3 The new share in the company shall be issued with a profit participation right as of October 1, 2003. If the Effective Date pursuant to § 2.2 is postponed, the commencement of the profit participation right of the new shares shall be postponed accordingly.

19.4 The total value at which the contribution in kind performed by BAG shall be assumed by BBS corresponds to the commercial law book value of the transferred net assets as of the Effective Date as reported in the Final Balance Sheet of BAG as of September 30, 2003, 24.00 hours, which still has to be drawn up. To the extent the value exceeds the amount of the increase in share capital according to § 19.2, the excess amount shall be allocated to the capital reserves pursuant to § 272, para. 2, no. 1 German Commercial Code ("*Handelsgesetzbuch*").

19.5 If the value of the contribution in kind prior to the Closing Date or the book value of the transferred net assets prior to the Effective Date does not correspond to the amount of the new company share issued by BBS, BAG is obliged to make a payment to the bank account of Commerzbank AG in Cologne, stated in Annex 10.5, in the amount that is necessary so that the value of the contribution in kind on the Closing Date or the book value of the transferred net assets at the Effective Date reaches the amount of the new company share issued by BBS. If BAG is required to make such payment, the amount of the payment shall be determined in coordination with the auditor required for contributions in kind ("*Sacheinlagenprüfer*"). BAG's total liability shall not exceed 25% of the balance sheet total as stated in the Hive-Down Balance Sheet. Any claims of

such liability may not be asserted after the registration of the hive-down in the commercial register of BAG.]

[19.1 *Bayer Technology Services GmbH*: BAG, as the sole shareholder of BTS, shall receive as consideration for the hive-down of the Technology Services service area to BTS a further share in the company in the nominal value of €5,975,000.

19.2 BTS shall increase its share capital from €25,000 by €5,975,000 to €6,000,000 by creating a new share in the company in the nominal value of €5,975,000 to implement the hive-down.

19.3 The new share in the company shall be issued with a profit participation right as of January 1, 2003. If the Effective Date pursuant to § 2.2 is postponed, the commencement of the profit participation right of the new shares shall be postponed accordingly.

19.4 The total value at which the contribution in kind performed by BAG shall be assumed by BTS corresponds to the commercial law book value of the transferred net assets as of the Effective Date as well as in the Final Balance Sheet of BAG as of December 31, 2002, 24.00 hours. To the extent the value exceeds the amount of the increase in share capital according to § 19.2, the excess amount shall be allocated to the capital reserves pursuant to § 272, para. 2, no. 1 German Commercial Code ("*Handelsgesetzbuch*").

19.5 If the value of the contribution in kind prior to the Closing Date does not correspond to the amount of the new share in the company issued by BTS, BAG is obliged to make a payment to the bank account of Commerzbank AG in Cologne, stated in Annex 10.5, in the amount that is necessary so that the value of the contribution in kind on the Closing Date reaches the amount of the new company share issued by BTS. If BAG is required to make such payment, the amount of the payment shall be determined in coordination with the auditor required for contributions in kind ("*Sacheinlagenprüfer*"). BAG's total liability shall not exceed 25% of the balance sheet total as stated in the Hive-Down Balance Sheet. Any claims of such liability may not be asserted after the registration of the hive-down in the commercial register of BAG.]

[19.1 *Bayer Industry Services GmbH & Co. OHG*: In performing the hive-down, BIS shall increase its stated capital pursuant to § 3 of the Partnership Agreement from €500,000 by €9,500,000. Therefore the partnership share of BAG in the stated capital of BIS shall be increased respectively as consideration for the hive-down of the Industry Services service area to BIS. BAG performs the capital contribution by hiving down the Industry Services service area.

- 19.2 The participation in the profits of BIS is measured as of January 1, 2003 according to the increased stated capital of BIS. If the Effective Date pursuant to § 2.2 is postponed, the commencement of the profit participation of the increased stated capital shall be postponed accordingly.
- 19.3 The total value at which the contribution in kind performed by BAG shall be assumed by BIS corresponds to the commercial law book value of the transferred net assets as of the Effective Date as reported in the Final Balance Sheet of BAG as of September 30, 2003, 24.00 hours, which still has to be drawn up. For the transfer of the Industry Services service area, BAG shall be credited an amount of €9,500,000 on its capital account. To the extent the book value exceeds the amount of €9,500,000, the difference shall be credited to the capital reserve account of BAG.
- 19.4 If the value of the contribution in kind prior to the Closing Date or the book value of the transferred net assets prior to the Effective Date does not correspond to the amount by which the stated capital is increased, BAG is obliged to make a payment to the bank account of Commerzbank AG in Cologne, stated in Annex 10.5, in the amount that is necessary so that the value of the contribution in kind on the Closing Date or the book value of the transferred net assets at the Effective Date reaches the amount by which the stated capital is increased. If BAG is required to make such payment, the amount of the payment shall be determined in coordination with the auditor required for contributions in kind (“*Sacheinlagenprüfer*”). BAG’s total liability shall not exceed 25% of the balance sheet total as stated in the Hive-Down Balance Sheet. Any claims of such liability may not be asserted after the registration of the hive-down in the commercial register of BAG.]

## § 20 Special Rights and Advantages

- 20.1 No granting of rights or other measures for individual shareholders or for owners of special rights in terms of § 126, para. 1, no. 7 UmwG, except for those granted under the regulation in § 11.4 for stock option programs, are planned.
- 20.2 No special advantages in terms of § 126, para. 1, no. 8 UmwG for members of a management or supervisory body of the companies participating in the hive-down or an auditor of a participating company shall be granted.

[*Bayer Industry Services GmbH & Co. OHG*: No special advantages in terms of § 126, para. 1, no. 8 shall be granted.]

## VI. Consequences of the Hive-Down for the Employees and their Representatives

### § 21 Transfer of the Employment Relationships

- 21.1 On the Closing Date, all employment relationships currently existing with BAG and allocated to the Service Area are transferred to SC with all rights and obligations pursuant to the provisions of §§ 324 UmwG, 613a BGB. The employees who are allocated to the Service Area are listed in Annex 21.1.
- 21.2 Pursuant to §§ 324 UmwG, 613a, para. 4 BGB, no employment relationship may be terminated due to the transfer of the business operation via hive-down.
- 21.3 The content of the transferred employment relationships shall be determined by their legal status on the Closing Date. Type of work, salary, as well as other employment terms are not changed by the hive-down. The employment term served with and recognized by BAG shall be taken into account in its entirety with respect to all regulations dependent upon the term of employment.
- 21.4 The legal situation regarding the pension commitments is described in § 13. Irrespective of the aforesaid, the employees remain, as before, ordinary members of the Bayer Pension Fund.
- 21.5 The collective bargaining agreement commitment to date of BAG also applies to SC. Prior to the Closing Date of the hive-down, SC shall join the regional Employer Associations of the Chemical Industry (“*Arbeitgeberverbände der Chemischen Industrie*”) and, thereby, be bound by such collective bargaining agreement.
- 21.6 In connection with the hive-down of the business and service areas of BAG to separate legal entities under the joint holding company of the Bayer, BAG and the union named “*Industriegewerkschaft Bergbau Chemie Energie*” (hereinafter referred to as “IG BCE”) entered into a collective bargaining agreement on January 10, 2002 (the “Collective Bargaining Agreement”) which contains detailed regulations concerning the labor management relations within the framework of the rearrangement of the Bayer Group (see in detail § 22.1). The Collective Bargaining Agreement provides that the shop agreements and the central shop agreements existing with BAG for employees transferred to SC shall be replaced according to collective bargaining law by agreements with SC having the same content. As a result, the shop agreements and the central shop agreements remain in place for the employees being transferred to SC. This is also the content of a central shop agreement between BAG and the central works council of BAG of July 16, 2002.

Adjustments to the shop agreements and the central shop agreements due to the hive-down insofar as employees transferred to SC are affected, employees remaining with SC are affected or employees remaining with BAG are affected, shall be mutually agreed upon by the BAG together with the respective works council or central works council.

## § 22 Representation of Employees Pursuant to the Employees' Representation Law

### 22.1 Works Council and Central Works Council

Under the Collective Bargaining Agreement, BAG and IG BCE have agreed that the existing works council structures in effect up to then in BAG locations should essentially remain unchanged after the hive-down to SC and the other planned hive-downs of the remaining business and service areas of BAG in 2003. The Collective Bargaining Agreement contains, in particular, the following regulations (with regard to the treatment of the existing shop agreements, see *supra* § 21.6) for the works constitution before and after the hive-down:

22.1.1 Within the rotational works councils' elections in March 2002, as done previously, works councils were elected in each of the five German BAG locations in Leverkusen, Dormagen, Uerdingen, Elberfeld and Brunsbüttel (hereinafter referred to as "Works Councils on Location"). All employees entitled to vote at the respective location shall be entitled to vote for the Works Council on Location, regardless of whether they are transferred via the hive-down or remain with BAG.

22.1.2 The Works Councils on Location were elected, as done previously, for the full term of four years. The Works Councils on Location to be elected in March 2002 as well as the Central Works Council (§ 22.1.4), shall also remain in office after the hive-down.

22.1.3 The Works Councils on Location shall be responsible for all matters resulting from the German Employees' Representation Act ("*Betriebsverfassungsgesetz*") insofar as such relate to the respective location. The responsibility shall be irrespective of the legal structures of the respective location, i.e. it shall apply for the matters of all companies of the Bayer Group at the respective location. The Works Council on Location shall continue to observe the interests of all employees of BAG employed at the respective location regardless of whether they are transferred via hive-down to SC, remain with BAG or have been transferred or will be transferred by the additional hive-downs to other companies of the Bayer Group.

22.1.4 The Works Councils on Location shall form, as done previously, a Central Works Council and a Central Works Council Committee. The Central Works Council shall be responsible for all issues which cannot be regulated by the individual Works Councils on Location as they relate to more than one location.

22.1.5 The Collective Bargaining Agreement came into effect on the date of its execution. It has a fixed term until May 31, 2006. Should a party to the Collective Bargaining Agreement come to the conclusion during the term that the co-determination structure laid down in the Collective Bargaining Agreement has not proved successful in practice and these doubts cannot be dispelled by mutual agreement, such party shall have the right to terminate the Collective Bargaining Agreement with effect as of December 31, 2004. After the termination of the Collective Bargaining Agreement, the statutory works constitution shall apply, i.e. the Works Councils in SC and BAG shall then be elected separately.

### 22.2 Representative Committees of Executive Employees and Central Representative Committee of Executive Employees

With regard to the representation of the executive employees, BAG and the Central Representative Committee of Executive Employees of BAG have agreed to the following:

22.2.1 Shortly after the Closing Date (§ 14.1), SC shall hold an election for a Company Representative Committee of Executive Employees. The Company Representative Committee of Executive Employees shall replace the previous representative committee of executive employees at the five BAG locations for the Executive Employees who are transferred to SC and shall replace the Central Representative Committee of Executive Employees. The statutory duties of the Company Representative Committee of Executive Employees shall refer to the entire company of SC; contrary to the duties of the previous representative committee of executive employees of BAG, they are, therefore, not limited to the respective location.

22.2.2 Up until the election of a Company Representative Committee of Executive Employees of SC but for a maximum transitory period of one year after the Closing Date, the works councils elected within the rotational election in March 2002, as well as the Central Representative Committee of Executive Employees of BAG, shall receive an interim mandate for the observance of the interests of the executive employees transferred to SC.

22.2.3 After the election of the Company Representative Committee of Executive Employees of SC, the Group Representative Committee of Executive Employees of BAG shall be supplemented by a representative of the Company Representative Committee of Executive Employees of SC. The personnel composition of the Group Representative Committee of Executive Employees shall be adjusted accordingly as soon as the hive-downs of the remaining business and services areas of BAG to new companies planned for 2003 are executed and Company Representative Committees of Executive Employees are also formed therein. Up until its new formation, the Group Representative Committee of Executive Employees shall remain in existence as formed upon conclusion of the rotational elections in March 2002.

## § 23 Supervisory Board

23.1 The hive-down has no effect on the legal status, composition and term of the Supervisory Board of BAG. The representatives of employees in the Supervisory Board of BAG shall be elected by the employees of all German companies belonging to the Bayer Group so that the employees transferred to SC retain their voting rights.

23.2 [Bayer Business Services GmbH: When the hive-down becomes legally effective, BBS shall be subject to co-determination pursuant to the German Co-determination Act (“Mitbestimmungsgesetz”) of 1976. For this purpose, the Supervisory Board of BBS shall be newly composed in a composition proceeding pursuant to §§ 97 et seq. German Stock Corporation Act (“Aktiengesetz”) (analogous). The newly composed Supervisory Board of BBS will have twelve members of which six shall be shareholder representatives and six shall be employee representatives.]

[Bayer Technology Services GmbH: When the hive-down becomes legally effective, BTS shall be subject to co-determination pursuant to the German Employees’ Representation Act (“Betriebsverfassungsgesetz”) of 1952. For this purpose, the Supervisory Board of BTS shall be newly composed in a composition proceeding pursuant to §§ 97 et seq. German Stock Corporation Act (“Aktiengesetz”) (analogous). The newly composed Supervisory Board of BTS will have three members of which two shall be shareholder representatives and one shall be an employee representative.]

[Bayer Industry Services GmbH & Co. OHG: The German Co-determination Act (“Mitbestimmungsgesetz”) of 1976 shall not apply to BIS after the hive-down. Therefore, BIS shall not have a Supervisory Board. However, it is agreed

to apply, pursuant to the hive-down, the provisions of the German Co-determination Act (“Mitbestimmungsgesetz”) of 1976 to Bayer Industry Services Geschäftsführungs-GmbH and to set up a Supervisory Board at this company that shall be composed in a composition proceeding pursuant to §§ 97 et seq. German Stock Corporation Act (“Aktiengesetz”) (analogous). The newly composed Supervisory Board of Bayer Industry Services Geschäftsführungs-GmbH will have twelve members of which six shall be shareholder representatives and six shall be employee representatives.]

## VII. Miscellaneous

### § 24 Costs and Taxes

The costs and taxes accruing, now and in the future, in connection with the notarization of this Agreement and its performance shall be borne by SC. The costs of the respective annual shareholders’ meeting and the costs of filing and registration shall be borne by each Party itself.

### § 25 Sales and Services Contracts

25.1 BAG is prepared to provide SC in the future all sales and services it has performed to date for the Bayer Group in the Service Area with economic effect as from the Effective Date and at arm’s length terms. Such sales and services can also be performed by a subsidiary of BAG.

25.2 SC undertakes the obligation to obtain, at market conditions from BAG or a subsidiary of BAG, infrastructure services regarding specific locations (in particular, road and way services, canalization and sewage treatment, water and energy lines, plant and fire protection) which it requires for the plant locations. [Shall not apply to Bayer Industry Services GmbH & Co. OHG]

25.3 SC is prepared to provide BAG all sales and services performed to date by the Service Area within the Bayer Group for BAG or its subsidiaries with economic effect as from the Effective Date at arm’s length terms. [Bayer Industry Services GmbH & Co. OHG: 25.2]

### § 26 Final Provisions

26.1 Jurisdiction for all legal disputes arising from this Agreement shall be in Leverkusen, Germany.

26.2 Amendments and supplements to this Agreement must be in writing, including a waiver of this provision itself, insofar as more extensive form requirements are not required.

26.3 Should one or more provisions of this Agreement be void in whole or in part, invalid or unenforceable, the validity of this Agreement and its remaining provisions shall not be affected thereby. Instead of the void, invalid or unenforce-

able provision, a provision shall apply which comes closest in terms of form, content, time, measure and scope of application to what was desired according to the economic sense and meaning of the void, invalid or unenforceable provision. The same shall apply for any gaps in this Agreement.

The Annexes referred to in the Hive-Down and Transfer Agreement, done by the notary Dr. Dieter Janke, in Leverkusen, Germany, recorded as a reference document on March 7, 2003, and that, by reference, became part of the Hive-Down and Transfer Agreement, have the following essential content:

*The following description of the Annexes applies for all Service Companies except where derogations for the respective Service Company are explained in square brackets.*

- Annex 3.1 contains the Hive-Down Balance Sheet for the respective Service Area as of January 1, 2003, 00.00 hours. The Hive-Down Balance Sheet shows the assets and liabilities of the respective Service Area. The Hive-Down Balance Sheet was prepared on the basis of the book values reported in the Annual Balance Sheet [*Bayer Technology Services GmbH: Final Balance Sheet (§ 3.3)*] of Bayer AG as of December 31, 2002, 24:00 hours.
- Annex 4.1 contains a Trust Agreement with regard to the Industrial Property Rights that comes into effect as of the Effective Date, i.e. as of the date of the registration of the hive-down in the commercial register of Bayer AG, and has economic retroactive effect as of October 1, 2003, 00.00 hours [*Bayer Technology Services GmbH: January 1, 2003, 00.00 hours*]. Under the Trust Agreement, Bayer AG and the respective Service Company agree that Bayer AG holds the Industrial Property Rights which exclusively or primarily serve the respective Service Area in trust for the respective Service Area. The individual Industrial Property Rights are listed in Annexes to the Trust Agreement. In economic terms, the respective Service Company will be the sole owner of the Industrial Property Rights. The legal ownership of the Industrial Property Rights remains in each case with Bayer AG. With respect to the Industrial Property Rights that primarily serve the respective Service Area but at the same time also serve the business or other service areas of Bayer AG, Bayer AG retains the right to use them for its business and other service areas. [*Bayer Business Services GmbH: As of January 31, 2003, no such Industrial Property Rights existed in the Business Services service area.*]

Bayer AG is obliged, as the sole legal owner of the Industrial Property Rights, to administrate them as a trustee in its own name but exclusively for the interest and the account of the respective Service Company. The respective Service

Company is entitled at any time to claim the transfer and change of registration of individual or all Industrial Property Rights from Bayer AG to its own name. Regarding the Industrial Property Rights that primarily serve the respective Service Company, the respective Service Company in this case is obliged to grant to Bayer AG exclusive, no cost, non-terminable grant-back licenses to use these Industrial Property Rights for its business and other service areas, limited to the current scope of use by the respective Service Company. With regard to business or other service areas, which at this time already have been hived down and transferred into separate companies, the respective Service Company is obliged to grant equivalent licenses directly to these companies.

Bayer AG has the right to prohibit the use of the trademarks that contain the elements "Bay" or "Bayer" by the respective Service Company if Bayer AG is no longer a majority shareholder in the respective Service Company.

- Annex 4.2 contains a License Agreement that will become effective between Bayer AG and the respective Service Company as of the Closing Date, i.e. the date of the registration of the hive-down in the commercial register of the Company, and has economic retroactive effect as of October 1, 2003, 00.00 hours [*Bayer Technology Services GmbH: January 1, 2003, 00.00 hours*]. Under this License Agreement, Bayer AG grants the respective Service Company a license for Industrial Property Rights that, although also serving the respective Service Area, primarily serve business or other service areas of Bayer AG. The Industrial Property Rights are listed in an Annex to the License Agreement. The license covers industrial activities and the performance of services in the respective Service Area. The license comprises a no cost, transferable, exclusive, and non-terminable right of use for the Industrial Property Rights. Actions that affect the legal constitution of the Industrial Property Rights partly or in whole may be taken by Bayer AG only in understanding with the respective Service Company and at the same time by taking into account the interests of the other business and service areas. [*Bayer Business Services GmbH: As of January 31, 2003, no such Industrial Property Rights existed in the Business Services service area.*]
- Annex 4.3 contains a Joint Use Agreement that becomes effective as of the Closing Date, i.e. the date of the registration of the Hive-Down in the commercial register of Bayer AG, and has economic retroactive effect as of October 1, 2003, 00.00 hours [*Bayer Technology Services GmbH: January 1, 2003, 00.00 hours*]. Under this Joint Use agreement, Bayer AG grants the respective Service Company an exclusive and no cost right for the respective Service Area to jointly use the name "Bayer" as part of its own company name and the trademarks "Bayer" and the Bayer Cross symbol on a worldwide basis for labeling the products of the respective Service

# Agenda

- Company, identifying its services and its general business transactions. The ownership of the company name remains with Bayer AG. The right of joint use is, in principle, non-terminable. However it may be terminated with immediate effect if Bayer AG is no longer the majority shareholder in the respective Service Company. In such case the respective Service Company is entitled to an indemnification which is equal to the going concern tax value .
- Annex 8.1 contains a list of all constructional and technical plants and machinery, other constructions and office and plant equipment, including plants in construction and all claims from payments on accounts made hereto and all operating facilities that are exclusively or primarily allocated to the respective Service Area and that are not integral parts of the real estate/buildings [*Bayer Business Services GmbH*: which are subject to land use contracts transferred pursuant to § 12.1] [*Bayer Technology Services GmbH*: which are subject to the land use contract transferred pursuant to § 12.1] [*Bayer Industry Services GmbH & Co. OHG*: which are subject to the land use contract listed in Annex 12.1.2] or which are subject to land use contracts that are transferred to business area or other service companies. The annex lists the individual property, plant and equipment by their commission and record numbers.
  - Annex 9.1 lists the shareholdings to be allocated exclusively or primarily to the respective Service Area that are transferred to the respective Service Company. [*Bayer Technology Services GmbH*: Annex 9.1 does not apply] The annex shows the book values of the shareholdings and the main attributes of the businesses (name of the company, registered office, capital of the company and share of the capital belonging to Bayer AG) in which a shareholding exists.
  - Annex 9.2 shows the value of the loans receivable that are transferred from Bayer AG to the respective Service Company [*Bayer Technology Services GmbH*: Annex 9].
  - Annex 10.1 contains a list of the essential inventory assets of Bayer AG that are transferred to the respective Service Companies. The annex shows the book values of the inventories as well as claims from payments on account made for the inventories and specifies each inventory by its material number.
  - Annex 10.2 contains a listing of trade receivables that are transferred from Bayer AG to the respective Service Company and the book values that are reported in the Hive-Down Balance Sheet for such trade receivables. The individual trade receivables are broken down by their allocation to certain non-personal accounts (short and long-term receivables from third parties, receivables from subsidiaries and other affiliated companies as well as value adjustments) and they are specified by partner numbers that are used internally by Bayer AG.
  - Annex 10.3 lists the receivables from affiliated companies and companies in which a participation are held and that are transferred from Bayer AG to the respective Service Company. The annex shows the book values reported in the Hive-Down Balance Sheet for these receivables. The receivables are specified by partner numbers internally used by Bayer AG.
  - Annex 10.4 names other items of the current assets of Bayer AG that are transferred to the respective Service Companies. These items concern, *inter alia*, factory insurance premiums and license expenses. In general, these items are listed by partner numbers internally used by Bayer AG.
  - Annex 10.5 shows the liquid assets that are transferred to the respective Service Companies.
  - Annex 11.1 contains a listing of all contingent liabilities of the respective Service Area for which provisions have been established and that are transferred from Bayer AG to the respective Service Company. The listing sets forth the respective liabilities by the underlying business transactions and their designated partner numbers internally used by Bayer AG.
  - Annex 11.2 contains a listing of trade payables that are transferred from Bayer AG to the respective Service Companies and shows the book values reported in the Hive-Down Balance Sheet for these payables. The individual payables are broken down by their allocation to certain non-personal accounts (short-term liabilities to third parties, liabilities to subsidiaries and liabilities for freight and customs duties) and are specified by their partner numbers.
  - Annex 11.3 shows the payables towards affiliated companies or companies in which a participation is held and that are transferred from Bayer AG to the respective Service Companies. [*Bayer Industry Services GmbH & Co. OHG*: Annex 11.3 shall not apply] The annex shows the book values as reported in the Hive-Down Balance Sheet for these payables. The annex is broken down by the type of payables and by partner numbers for the payables.

- Annex 11.5 lists other liabilities that are transferred from Bayer AG to the respective Service Companies. [*Bayer Industry Services GmbH & Co. OHG*: Annex 11.4] They cover, *inter alia*, damages arising out of business interruptions and liabilities for wage and church taxes. The liabilities are specified by partner numbers.
  - Annex 12.1.1 contains a list of essential contracts (excluding leasing contracts [*Bayer Business Services GmbH*: and the land use contracts listed in Annex 12.1.2] [*Bayer Technology Services GmbH*: and the land use contract listed in Annex 12.1.2]) that are allocated exclusively to the respective Service Area and that are transferred from Bayer AG to the respective Service Company.
  - Annex 12.1.2 lists the land use contract that was agreed upon by Bayer AG and Bayer Industry Services GmbH & Co. OHG and that is transferred from Bayer AG to the respective Service Companies. [*Bayer Business Services GmbH*: Annex 12.1.2 lists several land use contracts.] [*Bayer Industry Services GmbH & Co. OHG*: the land use contract listed in Annex 12.1.2 will not be transferred from Bayer AG to Bayer Industry Services GmbH & Co. OHG.]. The contract is identified, in particular, by the respective site of the respective Service Area, the pieces of land stated in the contract and the total amount of land that is left for use.
  - Annex 12.1.3 contains a Special Right of Use Agreement that becomes effective between Bayer AG and the respective Service Company as of the Closing Date, i.e. the date of the registration of the hive-down in the commercial register of Bayer AG and has retroactive economic effect as of October 1, 2003, 00.00 hours [*Bayer Technology Services GmbH*: January 1, 2003, 00.00 hours]. Under this Special Right of Use Agreement, Bayer AG grants the respective Service Company a right of use of all operating facilities used by the respective Service Area which are an integral part of the real estate and buildings to which the land use contracts are transferred to the respective Service Company pursuant to the Hive-Down Agreement or under which land use contracts are transferred to business area or other service companies. [*Bayer Industry Services GmbH & Co. OHG*: which are subject to the land use contract listed in Annex 12.1.2]. The use of the operating facilities is free of charge. To the extent real estate and/or buildings are no longer used, the Special Right of Use Agreement terminates. In this case, the respective Service Company has a right to demand removal of the operating facilities, to limit its scope of use or to claim reimbursement for the residual value of the relinquished operating facilities. The costs for the removal are to be borne by the respective Service Company and BAG in equal amounts.
  - Annex 12.2 contains a list of essential contracts (excluding leasing contracts) that primarily are allocated to the respective Service Area and that are transferred from Bayer AG to the respective Service Company. The list also contains the essential contracts (excluding leasing contracts) that primarily are allocated to a business or other service area but are transferred from Bayer AG to the respective Service Company.
  - Annex 12.3 contains a list of the essential contracts (excluding leasing contracts) that also can be allocated to the respective Service Area but primarily are allocated to a business or other service area and which are not transferred to the respective Service Area.
  - Annex 12.5 shows all memberships in syndicates, associations and other organizations that are allocated to the respective Service Area and that are transferred from Bayer AG to the respective Service Company.
  - [*Bayer Business Services GmbH*: Annex 12.6 contains a list of all enterprise agreements with German subsidiaries of Bayer Business Services GmbH and which are transferred from Bayer AG to Bayer Business Services GmbH.] [*Bayer Industry Services GmbH & Co. OHG*: Annex 12.6 contains a list of enterprise agreements which exist between German affiliates related to the Industry Services service area and which are transferred from BAG to Bayer Industry Services GmbH & Co. OHG].
  - Annex 21.1 contains a listing of all employees that are allocated to the respective Service Area. The respective employees are specified by their personal numbers.
- The Hive-Down and Transfer Agreement has been submitted to the commercial register of the Company prior to the calling of the Stockholders' Meeting.
- The Hive-Down of the respective Service Area is explained and substantiated in more detail in the Joint Hive-Down Report of the Board of Management of the Company and the Management of the respective Service Company.

## 11. Consent to the Control and Profit Transfer Agreement between the Company on the one hand and the business area companies Bayer HealthCare Aktiengesellschaft, Bayer Polymers Aktiengesellschaft and Bayer Chemicals Aktiengesellschaft on the other hand

The Board of Management and the Supervisory Board propose that the Meeting consent to the Control and Profit Transfer Agreements between the Company on the one hand and the business area companies Bayer HealthCare AG, Bayer Polymers AG and Bayer Chemicals AG on the other hand entered into on November 19, 2002 (Bayer Polymers AG on March 11, 2003).

The Company on the one hand and the business area companies Bayer HealthCare AG and Bayer Chemicals AG on the other hand have entered into a Control and Profit Transfer Agreement on November 19, 2002. The Control and Profit Transfer Agreement between the Company and Bayer Polymers AG was entered into on March 11, 2003.

*The essential content of the Control and Profit Transfer Agreements is as follows:*

### CONTROL and PROFIT TRANSFER AGREEMENT

between  
Bayer Aktiengesellschaft, Leverkusen  
("Bayer")  
and  
the respective Business Area Company, Leverkusen  
("BAC")

#### § 1 Management

- (1) BAC hereby submits Bayer the direction of its company. Accordingly Bayer is entitled to issue instructions to the Management Board of BAC with regard to the management of the company.
- (2) Bayer shall only exercise its right to issue instructions through its Management Board. All instructions must be in writing.

#### § 2 Transfer of Profits

- (1) BAC agrees to transfer its entire profits to Bayer. The amount to be transferred is – subject to the establishment or cancellation of reserves pursuant to para. 2 – the annual net profit accruing prior to such profit transfer, minus any loss carried forward from the previous year plus the amount to be transferred to the statutory reserves.
- (2) BAC can attribute amounts to other profit reserves from the annual net profit with the approval of Bayer to the extent such is permissible pursuant to commercial law and economically justified pursuant to a reasonable com-

mercial judgement. Other profit reserves established during the term of this Agreement shall be dissolved upon demand of Bayer and shall be used to compensate an annual net loss or shall be transferred as profits. Any transfer of amounts resulting from the dissolution of other profit reserves, which were established before this Agreement becomes effective, shall be precluded.

- (3) The obligation to transfer profits shall apply first to the entire profits of the fiscal year in which this Agreement becomes legally effective. *[Does not apply to Bayer Polymers AG]*

#### § 3 Compensation of Losses

Bayer is obligated to compensate for any losses pursuant to § 302 of the German Stock Corporation Act ("Aktiengesetz"). § 2, para. 3, hereof shall apply accordingly. *[Last sentence does not apply to Bayer Polymers AG.]*

#### § 4 Validity and Term

- (1) This Agreement requires the approval by the Stockholders' Meetings of the companies entering into this Agreement for validity.
- (2) This Agreement shall become effective upon registration in the commercial register located at the site of the registered office of BAC and shall apply, with the exception of the right to issue instructions pursuant to § 1 hereof, for the time period as from January 1, 2003.

*[Bayer Polymers AG: This Agreement shall become effective upon registration in the commercial register located at the site of the registered office of BPO and shall apply for the time period beginning on October 1, 2003. The right to issue instructions cannot be exercised before registration in the commercial register located at the site of the registered office of BPO.]*

- (3) This Agreement may be terminated with a notice period of six months but not before the end of December 31, 2008. If this Agreement is not terminated, it shall be deemed to be extended by one-year calendar periods having the same six-month notice period, respectively.

*[Bayer Polymers AG: This Agreement may be terminated with a notice period of six months to the end of a fiscal year but not before the end of September 30, 2009. If this Agreement is not terminated, it shall be deemed to be extended by one fiscal year periods having the same six-month notice period, respectively.]*

- (4) The right to terminate this Agreement for cause without observance of a notice period shall remain unaffected. Bayer shall be entitled to terminate for cause, in particular, if one of the following circumstances occurs:

- a) Bayer is no longer stockholder of BAC with the majority of the capital or the voting rights;
- b) an additional stockholder participates in BAC in connection with a joint venture;
- c) shares of BAC are listed on a stock exchange.

#### § 5 Miscellaneous

The invalidity or unenforceability of one or more provisions of this Agreement shall not affect the validity of the remaining provisions.

Each Control and Profit Transfer Agreement is explained and substantiated in more detail in the respective Joint Report on the Enterprise Agreement by the Board of Management of the Company and the respective Business Area Company.

### 12. Consent to the Control and Profit Transfer Agreement between the Company on the one hand and the service companies Bayer Business Services GmbH and Bayer Technology Services GmbH on the other hand

The Board of Management and the Supervisory Board propose that the Meeting consent to the Control and Profit Transfer Agreements between the Company on the one hand and the service companies Bayer Business Services GmbH and Bayer Technology Services GmbH on the other hand entered into on March 11, 2003 and on November 19, 2002, respectively.

The Company and Bayer Business Services GmbH have entered into a Control and Profit Transfer Agreement on March 11, 2003. The Control and Profit Transfer Agreement between the Company and Bayer Technology Services GmbH was entered into on November 19, 2002.

*The essential content of the Control and Profit Transfer Agreements is as follows:*

#### CONTROL and PROFIT TRANSFER AGREEMENT

between  
Bayer Aktiengesellschaft, Leverkusen  
("Bayer")  
and  
the respective Service Company, Leverkusen  
("SC")

*The following wording of the agreement applies to Bayer Business Services GmbH and Bayer Technology Services GmbH. Deviations of the wording for the respective Service Company are marked in angular brackets.*

#### § 1 Management

- (1) SC places itself under the management of Bayer. Accordingly Bayer is entitled to issue instructions to the Management of SC with regard to the management of the company.
- (2) Bayer shall only exercise its right to issue instructions through its Management Board. All instructions must be in writing.

#### § 2 Transfer of Profits

- (1) SC agrees to transfer its entire profits to Bayer. The amount to be transferred is – subject to the establishment or cancellation of reserves pursuant to para. 2 – the annual net profit accruing prior to such profit transfer, minus any loss carried forward from the previous year.
- (2) SC can attribute amounts to other profit reserves from the annual net profit with the approval of Bayer to the extent such is permissible pursuant to commercial law and economically justified pursuant to a reasonable commercial judgement. Other profit reserves established during the term of this Agreement shall be dissolved upon demand of Bayer and shall be used to compensate an annual net loss or shall be transferred as profits. Any transfer of amounts resulting from the dissolution of other profit reserves, which were established before this Agreement becomes effective, shall be precluded. § 301 German Stock Corporation Act ("Aktiengesetz") shall apply by analogy.
- (3) The obligation to transfer profits shall apply first to the entire profits of the fiscal year in which this Agreement becomes legally effective. *[Does not apply to Bayer Business Services GmbH.]*

#### § 3 Compensation of Losses

Bayer is obligated to compensate for any losses pursuant to § 302 of the German Stock Corporation Act ("Aktiengesetz") which shall apply by analogy. § 2, para. 3, hereof shall apply accordingly. *[Last sentence does not apply to Bayer Business Services GmbH.]*

#### § 4 Validity and Term

- (1) This Agreement requires the approval by General Meeting of the SC and the Shareholders' Meeting of Bayer for validity.
- (2) This Agreement shall become effective upon registration in the commercial register located at the site of the registered office of SC and shall apply, with the exception of the right to issue instructions pursuant to § 1 hereof, for the time period as from January 1, 2003.

[*Bayer Business Services GmbH*: This Agreement shall become effective upon registration in the commercial register located at the site of the registered office of BBS and shall apply for the time period as from October 1, 2003. The right to issue instructions, shall not become effective prior to registration in the commercial register located at the site of the registered office of BBS.]

- (3) This Agreement may be terminated with a notice period of six months but not before the end of December 31, 2008. If this Agreement is not terminated, it shall be deemed to be extended by one-year calendar periods having the same six-month notice period, respectively.

[*Bayer Business Services GmbH*: This Agreement may be terminated with a notice period of six months to the end of the fiscal year but not before the end of September 30, 2009. If this Agreement is not terminated, it shall be deemed to be extended by one fiscal year periods having the same six-month notice period, respectively.]

- (4) The right to terminate the Agreement for cause without observance of a notice period shall remain unaffected. Bayer shall be entitled to terminate for cause, in particular, if Bayer is no longer majority shareholder of SC or an additional shareholder participates in SC .

## § 5 Miscellaneous

The invalidity or unenforceability of one or more provisions of this Agreement shall not affect the validity of the remaining provisions.

Each Control and Profit Transfer Agreement is explained and substantiated in more detail in the respective Joint Report on the Enterprise Agreement by the Board of Management of the Company and the Management of the respective Service Company.

### 13. Consent to the Profit Transfer Agreement between the Company on the one hand and two Subsidiary Companies on the other hand

The Board of Management and the Supervisory Board propose that the Meeting consent to the Profit Transfer Agreements between the Company on the one hand and the Subsidiary Companies Erste BV GmbH i.G. and Zweite BV GmbH i.G. on the other hand entered into on March 11, 2003, respectively.

The Company on the one hand and Erste BV GmbH and Zweite BV GmbH on the other hand have entered into a Profit Transfer Agreement on March 11, 2003, respectively.

*The essential content of the Profit Transfer Agreements is as follows:*

### PROFIT TRANSFER AGREEMENT

between  
Bayer Aktiengesellschaft, Leverkusen  
("Bayer")  
and  
the respective Subsidiary Company, Leverkusen  
("Sub")

#### § 1 Transfer of Profits

- (1) Sub agrees to transfer its entire profits to Bayer. The amount to be transferred is – subject to the establishment or cancellation of reserves pursuant to para. 2 – the annual net profit accruing prior to such profit transfer, minus any loss carried forward from the previous year.
- (2) Sub can attribute amounts to other profit reserves from the annual net profit with the approval of Bayer to the extent such is permissible pursuant to commercial law and economically justified pursuant to a reasonable commercial judgement. Other profit reserves established during the term of this Agreement shall be dissolved upon demand of Bayer and shall be used to compensate an annual net loss or shall be transferred as profits. Any transfer of amounts resulting from the dissolution of other profit reserves, which were established before this Agreement becomes effective, shall be precluded. § 301 German Stock Corporation Act ("*Aktiengesetz*") shall apply by analogy.
- (3) The obligation to transfer profits shall apply first to the entire profits of the fiscal year in which this Agreement becomes legally effective.

#### § 2 Compensation of Losses

Bayer is obligated to compensate for any losses pursuant to § 302 of the German Stock Corporation Act ("*Aktiengesetz*") which shall apply by analogy. § 1, para. 3, hereof shall apply accordingly.

### § 3 *Validity and Term*

- (1) This Agreement requires the approval by General Meeting of Sub and the Shareholders' Meeting of Bayer for validity.
- (2) This Agreement shall become effective upon registration in the commercial register located at the site of the registered office of Sub.
- (3) This Agreement may be terminated with a notice period of six months to the end of the fiscal year but not before the end of September 30, 2009. If this Agreement is not terminated, it shall be deemed to be extended by one fiscal year periods having the same six-month notice period, respectively.
- (4) The right to terminate this Agreement for cause without observance of a notice period shall remain unaffected. Bayer shall be entitled to terminate for cause, in particular, if Bayer is no longer majority shareholder of Sub or an additional shareholder participates in Sub.

### § 4 *Miscellaneous*

The invalidity or unenforceability of one or more provisions of this Agreement shall not affect the validity of the remaining provisions.

Each Profit Transfer Agreement is explained and substantiated in more detail in the respective Joint Report on the Enterprise Agreement by the Board of Management of the Company and the Management of the respective Subsidiary Company.

#### **14. Appointment of auditors**

The Supervisory Board proposes that PwC Deutsche Revision Aktiengesellschaft Wirtschaftsprüfungsgesellschaft, Essen, Germany be appointed as auditors for the 2003 fiscal year.

From the day on which this Notice of the Annual Stockholders' Meeting is published, the following documents in particular will be available for inspection by the stockholders on the Company's business premises (Legal Department, Building Q 26, Kaiser-Wilhelm-Allee, 51368 Leverkusen, Germany). Copies of them will be issued to all stockholders immediately, without charge, on request.

1. Annual financial statements of Bayer AG and the Bayer Group, Management Reports of Bayer AG and the Bayer Group, report of the Supervisory Board, proposal by the Board of Management for distribution of the profit (item 1 of the Agenda)

2. Hive-Down and Transfer Agreement between the Company and Bayer HealthCare AG and Joint Report on the Hive-Down and Transfer Agreement by the Boards of Management of the Company and Bayer HealthCare AG (item 7 of the Agenda)
3. Hive-Down and Transfer Agreement between the Company and Bayer Polymers AG and Joint Report on the Hive-Down and Transfer Agreement by the Boards of Management of the Company and Bayer Polymers AG (item 8 of the Agenda)
4. Hive-Down and Transfer Agreement between the Company and Bayer Chemicals AG and Joint Report on the Hive-Down and Transfer Agreement by the Boards of Management of the Company and Bayer Chemicals AG (item 9 of the Agenda)
5. Hive-Down and Transfer Agreements between the Company on the one hand and the service companies Bayer Business Services GmbH, Bayer Technology Services GmbH and Bayer Industry Services GmbH & Co. OHG on the other hand, and Joint Reports on the Hive-Down and Transfer Agreement by the Board of Management of the Company and the Managements of the respective service companies (item 10 of the Agenda)
6. Control and Profit Transfer Agreements between the Company on the one hand and the business area companies Bayer HealthCare AG, Bayer Polymers AG and Bayer Chemicals AG on the other hand, and Joint Reports on the respective Control and Profit Transfer Agreements by the Boards of Management of the Company and the respective business area companies (item 11 of the Agenda)
7. Control and Profit Transfer Agreements between the Company on the one hand and the service companies Bayer Business Services GmbH and Bayer Technology Services GmbH on the other hand, and Joint Reports on the respective Control and Profit Transfer Agreements by the Board of Management of the Company and the Managements of the respective service companies (item 12 of the Agenda)
8. Profit Transfer Agreements between the Company on the one hand and two Subsidiary Companies on the other hand and Joint Reports on the respective Profit Transfer Agreements by the Board of Managements of the Company and the Managements of the respective Subsidiary Companies (item 13 of the Agenda)
9. The annual financial statements and management reports, as far as made up for the last three fiscal years, of the respective parties to the Hive-Down and Transfer Agreements, the Control and Profit Transfer Agreements and the Profit Transfer Agreements

# Agenda

The documents under nos. 2., 3., 4., and 6. are published in a brochure entitled “*Informationen zur Neuordnung des Bayer-Konzerns 2003 – Arbeitsgebiete HealthCare, Polymers and Chemicals*” (“Information on the Reorganization of the Bayer Group 2003 – HealthCare, Polymers and Chemicals Business Areas”). The documents under nos. 5. and 7. are published in a brochure entitled “*Informationen zur Neuordnung des Bayer-Konzerns 2003 Servicebereiche*” (“Information on the Reorganization of the Bayer Group 2003 – Service Areas”). The documents under no. 8. are contained in another brochure called “*Informationen zu Gewinnabführungsverträgen 2003*” (“Information on Profit Transfer Agreements 2003”). These brochures, which are available only in German, may be ordered free of charge from Bayer Aktiengesellschaft, c/o Dynevo GmbH, Kundencenter, Geb. K 17, 51368 Leverkusen, Germany.

Stockholders’ right to attend and vote at the Stockholders’ Meeting is subject to the condition that they have deposited their shares during normal business hours not later than April 22, 2003 with the Company (Legal Department, Building Q 26, Kaiser-Wilhelm-Allee, 51368 Leverkusen, Germany), a German notary public, a collective security deposit bank or one of the banks listed below, and that they leave them there until the end of the Meeting.

- >> Bankgesellschaft Berlin AG
- >> Bankhaus Gebr. Bethmann
- >> Bankhaus Reuschel & Co.
- >> Bayerische HypoVereinsbank AG
- >> Bayerische Landesbank GZ
- >> B. Metzler seel. Sohn & Co. KGaA
- >> Commerzbank AG
- >> Credit Suisse First Boston
- >> Delbrück & Co. Privatbankiers
- >> Deutsche Bank AG
- >> Dresdner Bank AG
- >> DZ Bank AG
- >> Hauck & Aufhäuser Privatbankiers KGaA
- >> HSBC Trinkaus & Burkhardt KGaA
- >> ING BHF-BANK AG
- >> Landesbank Hessen-Thüringen GZ
- >> Landesbank Schleswig-Holstein GZ
- >> M. M. Warburg & Co. KGaA
- >> Merck, Finck & Co. Privatbankiers
- >> Norddeutsche Landesbank GZ
- >> Sal. Oppenheim jr. & Cie. KGaA
- >> UBS Warburg AG
- >> Vereins- und Westbank AG
- >> Westdeutsche Landesbank
- >> Westfalenbank AG

*Other depositaries are as follows in:*

## **Belgium:**

Banque Bruxelles Lambert  
KBC Bank N.V.

## **France:**

Banque Nationale de Paris  
Crédit Lyonnais  
Société Générale

## **Italy:**

Monte Titoli S.p.A.

## **Japan:**

The Mitsubishi Trust & Banking Corp.

## **Luxembourg:**

Kredietbank S.A. Luxembourgeoise

## **Netherlands:**

ABN AMRO Bank N.V.

## **Spain:**

Deutsche Bank S.A.E.

## **Switzerland:**

Credit Suisse First Boston AG  
UBS AG

## **United Kingdom:**

UBS Warburg Ltd.

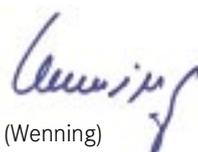
Deposition with one of the above-mentioned depositaries is also deemed to have been effected if shares held in custody by a bank are blocked with the approval and on behalf of such depositary until the end of the Meeting. In case of deposition with a German notary public or a collective security deposit bank, a document certifying such deposition must be submitted to the Company by April 23, 2003 at the latest. Stockholders may appoint an individual or stockholders’ association as proxy to exercise their voting rights.

Stockholders’ counter-motions or election nominations relating to specific items of the agenda must be submitted exclusively to

Bayer Aktiengesellschaft  
Gebäude Q 26 (Rechtsabteilung)  
Kaiser-Wilhelm-Allee  
51368 Leverkusen, Germany  
Fax: 0049 / 214 / 30-55817

Motions or nominations for election submitted by stockholders that arrive on time at the aforesaid address will be published immediately on the Internet at [www.hv2003.bayer.de](http://www.hv2003.bayer.de). Motions or nominations for election submitted by stockholders send to different addresses will not be considered.

Leverkusen, March 13, 2003  
Bayer Aktiengesellschaft  
The Board of Management



(Wenning)



(Kühn)

## Supervisory Board

**Prof. Dr. Herbert Grünewald †**  
*Honorary Chairman, Leverkusen*

**Hermann Josef Strenger**  
*Honorary Chairman, Leverkusen*

**Dr. Manfred Schneider**  
*Chairman of the Supervisory Board*

**Erhard Gipperich**  
*Vice Chairman of the Supervisory Board*

**Dr. Paul Achleitner** (effective April 26, 2002)

**Dr. Josef Ackermann** (effective April 26, 2002)

**Petra Brayer** (until April 26, 2002)

**Karl-Josef Ellrich**

**Thomas Hellmuth** (effective October 2, 2002)

**Prof. Dr. Ing. e. h. Hans-Olaf Henkel**  
(effective April 26, 2002)

**Karl-Heinz Huchthausen**  
(from April 26, 2002 until October 1, 2002)

**Dr. h. c. Martin Kohlhaussen**

**Hilmar Kopper** (until April 26, 2002)

**John Christian Kornblum**  
(effective April 26, 2002)

**Petra Kronen**

**Dr.-Ing. Manfred Lennings**  
(until April 26, 2002)

**Dr. h. c. André Leysen** (until April 26, 2002)

**Dr. h. c. Helmut Oswald Maucher**  
(until April 26, 2002)

**Rolf Nietzard** (until April 26, 2002)

**Dr. Heinrich von Pierer**

**Dr. Wolfgang Reitzle**  
(effective April 26, 2002)

**Wolfgang Schenk** (effective April 26, 2002)

**Waltraud Schlaefke** (until April 26, 2002)

**Hubertus Schmoltdt**

**Dieter Schulte**

**Hermann Josef Strenger**  
(until April 26, 2002)

**Dr. Eugen Velker** (until April 26, 2002)

**Lodewijk Christiaan van Wachem**  
(until April 26, 2002)

**Siegfried Wendlandt**

**Reinhard Wendt** (effective April 26, 2002)

**Thomas de Win** (effective April 26, 2002)

**Prof. Dr. Ernst-Ludwig Winnacker**

**Dr. Hermann Wunderlich**

## Board of Management

**Werner Wenning**  
*Chairman of the Board of Management*

**Klaus Kühn** (effective May 1, 2002)

**Dr. Attila Molnar** (until June 30, 2002)

**Dr. Frank Morich** (until June 30, 2002)

**Dr. Udo Oels**

**Dr. Richard Pott** (effective May 1, 2002)

**Dr. Manfred Schneider** (until April 26, 2002)

**Werner Spinner** (until Feb. 28, 2003)

**Dr. Gottfried Zaby** (until March 7, 2002)

## Dates

<b>Spring Financial News Conference</b>	Thursday, March 13, 2003
<b>Spring Investor Conference</b>	Friday, March 14, 2003
<b>Annual Stockholders' Meeting 2003</b>	Friday, April 25, 2003
<b>Payment of Dividend</b>	Friday, May 2, 2003
<b>First Quarter Results 2003</b>	Wednesday, May 7, 2003
<b>First Half Results 2003 London Investor Conference</b>	Wednesday, August 6, 2003
<b>Fall Financial News Conference and Investor Conference</b>	Tuesday, November 11, 2003
<b>Spring Financial News Conference and Investor Conference</b>	Thursday, March 18, 2004
<b>Annual Stockholders' Meeting 2004</b>	Friday, April 30, 2004
<b>Payment of Dividend</b>	Monday, May 3, 2004

## Bayer Group

<i>€ million</i>	<b>2002</b>	<b>2001</b>	<i>Change in %</i>
Sales	29,624	30,275	- 2.2
Operating result	1,574	1,611	- 2.3
Income before income taxes	956	1,115	- 14.3
Net income	1,060	965	+ 9.8
Gross cash flow	3,012	2,923	+ 3.0
Net cash flow	4,420	3,859	+ 14.5
Stockholders' equity	15,335	16,922	- 9.4
Total assets	41,692	37,039	+ 12.6
Capital expenditures	2,383	2,617	- 8.9
Employees <i>(at year end)</i>	122,600	116,900	+ 4.9
Personnel expenses	8,176	7,849	+ 4.2
Research and development expenses	2,577	2,559	+ 0.7

## Bayer AG

		<b>2002</b>	<b>2001</b>	<i>Change in %</i>
Total dividend payment	<i>€ million</i>	657	657	0.0
Dividend per share	€	0.90	0.90	0.0

The complete financial statements of the Bayer Group have been examined by the auditors, PwC Deutsche Revision Aktiengesellschaft Wirtschaftsprüfungsgesellschaft, who have issued an unqualified opinion. The complete Annual Report, which includes the financial statements of the Bayer Group, is published in English and German. The financial statements of Bayer AG are published separately in both languages. These publications and lists of Bayer's direct and indirect holdings may be obtained on request from Bayer AG, Communications, 51368 Leverkusen, Germany.

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[www.bayer.com](http://www.bayer.com)

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#### Forward-Looking Statements

This publication contains forward-looking statements. These statements use words like "believes", "assumes", "expects" or similar formulations. Various known and unknown risks, uncertainties and other factors could lead to substantial differences between the actual future results, financial situation, development or performance of our company and those either expressed or implied by these statements. These factors include, among other things:

- downturns in the business cycle of the industries in which we compete;
- new regulations, or changes to existing regulations, that increase our operating costs or otherwise reduce our profitability;
- increases in the price of our raw materials, especially if we are unable to pass these costs along to customers;
- loss or reduction of patent protection for our products;
- liabilities, especially those incurred as a result of environmental laws or product liability litigation;
- fluctuation in international currency exchange rates as well as changes in the general economic climate; and
- other factors identified in this publication.

These factors include those discussed in our public reports filed with the Frankfurt Stock Exchange and with the U.S. Securities and Exchange Commission (including our Form 20-F). In view of these uncertainties, we caution readers not to place undue reliance on these forward-looking statements. We assume no liability whatsoever to update these forward-looking statements or to conform them to future events or developments.

The Annual Stockholders' Meeting of Bayer AG on April 26, 2002 consented to the hive-down of the CropScience business area to the subsidiary Bayer CropScience AG. The 2003 Stockholders' Meeting of Bayer AG will vote on transferring the remaining business areas and the service areas to separate legal entities.

The Notice of our Annual Stockholder's Meeting is a convenience translation. For the relevant legal document, please refer to original German version.