LEHMAN BROTHERS

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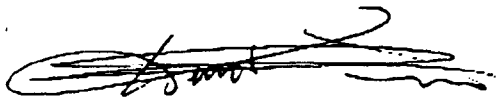
DATE: February 25, 1997 **PAGES (INCLUDING COVER):** 15

TO: Richard Murdoch
CEO and President
CellPro
(206) 489-8787 (Fax Number)

FROM: Kevin Davies (212) 526-3025

MESSAGE: Enclosed are the executive summary and confidentiality agreement related to the Immunotherapy Division of Baxter. Should you have an interest in receiving further information, please execute and return the confidentiality agreement to me. Please call if you have any questions.

Sincerely,



Kevin Davies

II. EXECUTIVE SUMMARY*

The Immunotherapy Division of Baxter Healthcare Corporation's Biotech Group is the leading developer of instruments in the emerging field of *ex vivo* cell therapies. The administration of cells for therapeutic benefit is receiving increasing attention as the results of clinical research supporting this medical practice become available. The market opportunity for cell therapies is projected by industry analysts to be between $2 and $5 billion by 2001. Immunotherapy's instruments have the potential to become the leading platform for creating a new generation of transfusion medicine products and for allowing cell therapies to become routine clinical practice. Initial products are targeted at the oncology market, but the technology is also capable of expanding into other areas of unmet medical needs. These other cell therapy markets include AIDS and other infectious diseases, blood disorders, genetic diseases, autoimmune and inflammatory diseases, solid organ transplantation, metabolic disorders, CNS disorders, burns, and bone and cartilage repair.

The strategy of Immunotherapy is to develop cell processing instruments for use with biological reagents and additional instruments to provide integrated systems for cell manipulation. Every *ex vivo* cellular procedure will require some manipulation of cells. This manipulation may be as simple as separation from other blood components or as complex as cell selection followed by gene transfection. In all cases it is expected that the process will be closely regulated and will follow strict guidelines. Immunotherapy's integrated systems strategy is intended to provide "turn-key" capabilities to cell processors, regardless of the complexity of the cell manipulation.

Immunotherapy's goal is to enable cell processing to become routine, standardized and affordable, thus becoming widely distributed. In this regard, Immunotherapy has been active in helping this goal to become reality. Immunotherapy has developed the know-how and experience through global clinical studies to take bench-level research in cell therapies to full scale cell cultures including gene transfer, thus advancing both the commercialization of this area and the reputation of the Baxter Immunotherapy cell manipulation devices and disposables.

The Isolex® Cell Separator

Immunotherapy has developed a distinctive technological expertise focused on the separation of cells by immunoselection which has broad utility in the preparation of cellular therapies. The foundation of this expertise is Immunotherapy's proprietary immunomagnetic instrument and companion disposables for cell separation called the Isolex® Cell Separator. The Isolex® Cell Separator employs highly specific murine anti-human antibodies which target $CD34^+$ hematopoietic stem cells. These antibody-marked cells are captured by rosetting them with magnetic beads coated with sheep anti-murine antibodies which recognize the antibodies targeting the desired cells. The rosetted cells are then separated away from non-targeted cells when passed through a magnetic field. After the non-target cells are removed, the specific release of captured cells is accomplished by a peptide which competes for the antibody targeting the captured cell. Unlike other instruments, this proprietary instrument and selection

* This is a summary of certain information contained elsewhere in this Memorandum.

process allows for very pure preparations of cells whose surfaces are free of biological reagents used in the capture process. This process also enables the simultaneous or subsequent use of additional antibodies to subdivide or further enrich the targeted cell population. This is particularly important in treatments where any contaminating cells may have adverse effects or where unique subsets of cells are desirable, such as in gene therapy applications.

The Immunotherapy Division has developed and launched the Isolex® Cell Separator, an automated, sterile path instrument for the clinical separation of specific cell populations from blood or bone marrow. Three versions of this instrument have been developed: the smaller scale Isolex® 50 Cell Separator for research use; the clinical scale semi-automated 300 SA Cell Separator; and the fully automated 300i Cell Separator. To date, the Immunotherapy management team has obtained approval of these products in Europe and is aggressively pursuing FDA approval in the United States. In this pursuit, Immunotherapy is currently compiling data for a PMA submission and is in discussions with the FDA about appropriate filing strategies.

The successful development of these instruments is evidence of Immunotherapy's capabilities to effectively marry biological reagents and reactions with sophisticated instrument engineering. Compared to other cell separation instruments, the automated Isolex® Cell Separator will provide the following advantages:

- **Minimize required operator attention** - Automated, sterile path processing will allow the running of multiple procedures simultaneously in busy laboratories. The Isolex® 300i Cell Separator will provide reproducible purities and yields in approximately 2.5 hours.

- **Facilitate regulatory compliance for the operator** - Instruments for cellular therapy will face strict regulatory requirements. An automated, sterile path instrument will provide consistent reproducible quality processing, making regulatory review in a GMP environment easier.

- **Reduce the need for additional equipment** - Since the Isolex® 300i Cell Separator incorporates proprietary cell washing technology directly into the device, no external centrifugation will be required in the selection process.

Immunotherapy's cell selection instruments will be one component of a cell processing system. Immunotherapy has also begun development of an automated, sterile path expansion instrument for growing selected cells. These instruments, and others in cell processing, will be capable of being integrated into sterile path systems for cell processing.

<u>Immunotherapy is Developing Automated Instruments for Integrated Systems</u>

It is Immunotherapy's goal to provide integrated systems which reduce the complexity of practicing *ex vivo* cell and gene therapies today. Immunotherapy believes that its automated, sterile path instruments used in integrated systems will provide "turn-key"

ex vivo cell and gene therapy capabilities which will set the standards for cell therapy protocols and become routine in clinical practice. These systems will be equally appropriate for use in a GMP cell processing center with clean room capabilities and in the less well-controlled and more likely setting of the hospital or even an outpatient setting. Immunotherapy believes its integrated systems strategy will:

- **Reduce the complexity of practicing cell therapy and facilitate adoption into standard clinical practice guidelines** — Management envisions Immunotherapy developing into a "razor/razor-blade" business which will provide disposable kits containing the preferred biological reagents with the preferred instrumentation platform. This integrated system will provide clinicians with state-of-the-art capabilities in an operator friendly process.

- **Possess broader market reach** — Integrated systems will allow the preparation of cellular and gene therapies to become routine practice capable of being performed in a dedicated cell processing center, hospital lab or in an outpatient setting. The main drivers of this adoption will be consistent quality and lower costs of performing these therapies due to reduced operator time requirements, reduced regulatory hurdles and reducing the need to build costly cell processing centers.

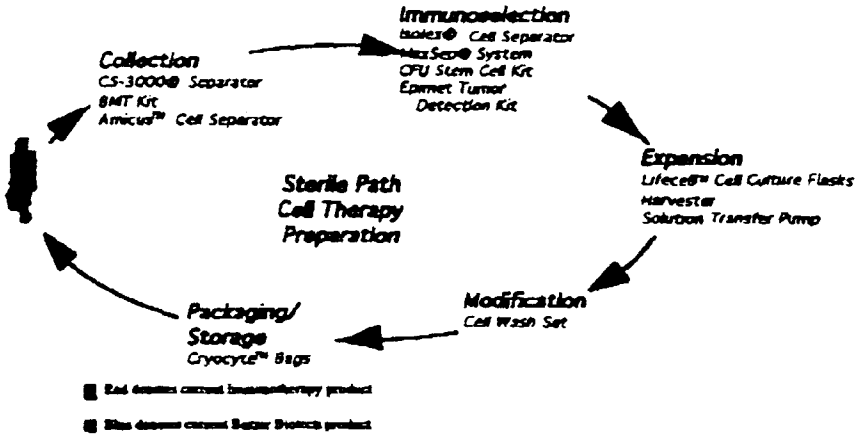
- **Be easily leveraged by innovators of cell and gene therapy applications** — Immunotherapy has begun "seeding" the population of cell and gene therapy innovators by making available not only integrated systems for academic researchers but has also implemented a team of specialized sales representatives focused on selling the Isolex® Cell Separator and the integrated systems approach to companies working in these areas. Both of these efforts are intended to lower the barriers of entry for developing new applications and leverage an installed base of instruments with new therapeutic product offerings.

Immunotherapy's Current Product Portfolio

Immunotherapy's products are being sold through Baxter Biotech's sales force along with other cell handling instruments to provide turn-key operations to cell processors. Although Immunotherapy is in the process of launching its premier cell selection device, the Isolex® 300i Cell Separator, the Division has been recording substantive sales over the last several years. This includes the sales of Immunotherapy's Isolex® 50 and Isolex® 300 Cell Separator instruments as well as its other cell processing products used in cell culture, cell enumeration, blood component cryopreservation and infusion. On a proforma basis, the actual sales of Immunotherapy were $6.2 million in 1995, with projected sales of $9.4 million and $15.4 million in 1996 and 1997, respectively. As *ex vivo* cell therapy is in its infancy, it is believed that sales will increase dramatically with development of the therapeutic area.

Immunotherapy is leveraging the Baxter Biotech sales force to provide a portfolio of the numerous products needed to practice *ex vivo* cell therapy. Immunotherapy's products are currently being offered as a seamless system of apheresis, selection and cell handling systems. Immunotherapy is leveraging Baxter's recognized leadership in

blood handling systems, with over 50 years of experience in this market. In the area of *ex vivo* cell therapy the Baxter and Immunotherapy current product offerings include:



Immunotherapy's Current Cell Selection Applications

Immunotherapy is initially pursuing application of the Isolex® Cell Separator to provide hematopoietic stem cells ("CD34$^+$") as an adjunctive therapy for high dose cancer chemotherapy regimens in breast cancer, B-cell malignancies and multiple myeloma. Point Of View ("POV") estimates these clinical indications may address a market opportunity for the industry in excess of $500 million by the year 2000. This market forecast anticipates cell therapies only for renal cell carcinoma, multiple myeloma, colorectal cancer, malignant melanoma and adjunctive therapy for breast cancer. POV further estimates that adjunctive therapy for breast cancer will by itself be an industry market opportunity in excess of $500 million by 2005. In addition, product sales to reduce the incidence of graft versus host disease ("GVHD") in allogeneic transplantation should quickly follow the use for autologous indications. Although these few markets are quite large, they do not approach the far reaching potential of *ex vivo* cell therapies.

Opportunities to Leverage Immunotherapy's Cell Separation Platform

The Isolex® Cell Separator is the cornerstone of numerous product opportunities addressing significant unmet medical needs. Immunotherapy desires to leverage the utility of this instrument by expanding its current investigations into additional opportunities. By incorporating different antibodies, the Isolex® Cell Separator can be used to purify other cell populations. Once cells are purified, they can be expanded *ex vivo* with the proper growth factors to provide large quantities of desirable cells. In addition, once purified, these selected cells can also be genetically modified to confer additional therapeutic attributes. Given the breadth of these opportunities and the unavailability of internal resources and technologies to develop them all, Baxter has decided to find a strategic partner capable of complementing Immunotherapy's business.

In addition to developing the CD34⁺ applications for the Isolex® Cell Separator, the Immunotherapy management team has identified a number of additional opportunities to leverage its instruments. These opportunities, which are beyond Immunotherapy's available financial and technical resources, provide compelling reasons to establish the proposed partnership. It is believed that, with the right partner, the resulting global joint venture or strategic alliance will increase market opportunity and provide significant profit potential for both partners. With additional investment, technologies and know-how, Immunotherapy's management team has identified the following opportunities for exploration to leverage its current instrument systems:

Product Concept	Possible Applications
CD34⁺ Transplantation Leverage current cell selection platform into new indications.	Sickle Cell Anemia AIDS Autoimmune
CD34⁺ Expansion Commercialize automated cell expansion system for *ex vivo* expansion of cells with initial focus on the expansion of neutrophil/platelet progenitors for high dose chemotherapy related neutropenia/thrombocytopenia.	Neutropenia Thrombocytopenia
T-cell Activation Commercialize a process and disposables allowing sterile path non-specific activation and/or expansion of T-cells and T-cell subsets.	AML/CML HIV CD4 Supplement
Antigen Specific T-cells Commercialize a selection and culture system for generating dendritic cells and antigen-specific T-cells for cancer and infectious disease therapy.	Breast Cancer Melanoma Prostate Cancer Hepatitis B
Genetic Modification Commercialize selection and cell culture system for gene transfer applications in cancer and congenital blood disorders.	Graft versus host disease Gaucher's disease Chronic Granulomatous Disease

Immunotherapy has made progress in some of these leveraged areas of opportunity. For example, in the cell expansion area, Immunotherapy has:

- obtained the first CD34⁺ expansion IND;
- was one of the first to obtain a CD34⁺ gene therapy IND, Phase I complete;
- developed a new cell expansion container; and
- completed a Phase I study with culture expanded CD34⁺ cells under serum-free conditions.

Immunotherapy's Competitive Position

In general, Immunotherapy may face competition from several different types of competitors:

- **Cell Processing Companies.** These companies are focused on providing services to physicians. Although some are building proprietary instruments, their strategy is not to commercialize the instrument but to provide services within their own cell processing centers. To support this service business, they must expend large sums of capital to build regional cell processing facilities and employ skilled technicians capable of manipulating cells under sterile conditions. It is Immunotherapy's goal to convert these facilities from current expensive cell culturing techniques to Immunotherapy's more practical and reliable instruments. As such, these current competitors are potential customers for Immunotherapy's products.

- **Cellular Device Companies.** Like the Immunotherapy Division, there are several product focused companies attempting to develop turn-key devices for cell processing. CellPro and Amcell are the most direct competitors; however, the significantly greater automation of Immunotherapy's instruments is expected to be a major competitive advantage. In addition, Immunotherapy's proprietary peptide release system may provide additional purity by selectively releasing only targeted cells to leave behind non-specifically bound contaminating cells.

- **Growth Factor Companies.** The growth factor companies are looking to increase the usage of their products through the identification of new markets and indications. These companies see cell processing and culturing as a logical next step for their products. As such, these companies may be complementary rather than competitive. However, in the future, should the right combination of growth factors be demonstrated to selectively promote the growth of a specific population of cells *in vivo, ex vivo* cell manipulation may be diminished.

Immunotherapy's Intellectual Property

Immunotherapy's intellectual property estate is arranged into four general patent families:

1. Selection systems;
2. Bioreactor and culture systems;
3. Reagents for use in selection; and
4. Culturing; cell compositions.

The selection system encompasses the Isolex® Cell Separator and similar instruments. This patent family includes patents and patent applications directed to the basic selection device having two magnets for capturing the paramagnetic beads and patents and applications directed to the specific device configuration. The disposable set for the Isolex® 300i Cell Separator incorporates a patented spinning membrane technology used for cell washing. Baxter also possesses patents and patent applications pertaining to the reagents used in the selection systems, including both the capture of cells with antibodies and the proprietary peptide release technology.

Baxter is the owner of certain patents and patent applications pertaining to gas permeable culture containers useful for culturing stem cells, early stage progenitor cells and mature cell lines such as T-cells, and dendritic cells. Baxter further owns patents and patent applications covering specific cell compositions, including $CD34^+$ cells, neutrophil precursor cells, $CD34^+/CD38^-$ cells and process patents for the generation of platelet precursors and dendritic cells.

Immunotherapy's Operations

Immunotherapy is a global division with headquarters in Irvine, California, a research site in Round Lake, Illinois and customer training, service and limited manufacturing and research capabilities in Munich, Germany. In these three sites, Immunotherapy has a total of 137 employees. All combined, Immunotherapy, as a division of Baxter, has the necessary personnel to take a cancer-related project from inception and research to commercialization, including regulatory and clinical expertise, engineering, developmental biology, quality systems and marketing.

Immunotherapy has also taken advantage of its relationship with Baxter's Biotech Group by utilizing corporate services wherever possible. Business development, finance and human resources are all corporate functions, and Immunotherapy contracts for their services as needed.

From the inception of Immunotherapy, there has been a clear strategy to leverage the strengths of Baxter's core global manufacturing, distribution, sales and service organizations. These organizations provide extensive core infrastructure, global commercialization, and supply chain management expertise along with high-volume cost leveraging. Immunotherapy also takes advantage of Baxter's GMP manufacturing capabilities in instrument fabrication, antibody production, and the manufacture of disposable sets. Baxter is willing to continue to make these services available to Immunotherapy following the proposed transaction.

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CONFIDENTIALITY AND NON-SOLICITATION AGREEMENT

THIS CONFIDENTIALITY AND NON-SOLICITATION AGREEMENT ("Agreement") is made and entered into as of this __ day of _____, 1996, by and between Baxter Healthcare Corporation, a Delaware corporation with its principal executive offices at One Baxter Parkway, Deerfield, Illinois 60015 ("Baxter"), and _____ ("Recipient").

RECITALS

WHEREAS, Baxter and its subsidiaries and affiliates (including, without limitation, each of their respective divisions and business units, hereinafter collectively referred to as the "Baxter Group"), among other business operations, are engaged in cellular therapies, including the development of cell selection and expansion systems for the preparation of therapeutic cell compositions (collectively, the "Division Business") through Baxter's Immunotherapy Division (the Division); and

WHEREAS, the Recipient is interested in discussing with Baxter a potential acquisition of an interest in, joint venture with, business combination with, or other similar business transaction with, the Division (the Potential Transaction); and

WHEREAS, in connection with the Potential Transaction, Baxter desires to provide to the Recipient, and the Recipient desires to review, certain information with respect to the Division and certain related information of the Baxter Group which is relevant to the Potential Transaction (the Division Information), which Division Information has been and is maintained as confidential by the Baxter Group; and

WHEREAS, during the course of its review of the Potential Transaction, the Recipient shall come into contact with the employees of the Division who are essential to the continuing operations of the Division Business; and

WHEREAS, in order to induce Baxter to provide the Recipient with, and as a condition precedent to Baxter's providing the Recipient with, the Division Information and access to the Division's employees, the Recipient has agreed to enter into and to abide by the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the premises, of the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, the parties hereto acknowledge and agree as follows:

TERMS

1. **Definition and Acknowledgment of Confidential Information.**

(a) For the purposes of this Agreement, the term "Confidential Information" shall mean information of the Baxter Group which is not generally known by third parties from Legitimate Origins (as that capitalized term is defined in Section 3(b) below), including, but not limited to, any information regarding: (i) the specific terms and conditions of this Agreement and any Potential Transaction, (ii) the Baxter Group's business and/or strategic plans, (iii) the Baxter Group's research, technology, development, manufacturing, marketing, sales or distribution of products, goods or services, (iv) lists and identities of actual or potential customers, vendors or suppliers of the Baxter Group, (v) pricing of goods and services to, or prices of goods or services from, actual or potential customers, vendors or suppliers of the Baxter Group, and (vi) any technical or non-technical data, formulae, patterns, compilations, programs, devices, methods, techniques, know-how, drawings, designs, processes, procedures, inventions, improvements, models, manuals or financial data of the Baxter Group. In the event that the Recipient can prove that any part of the Confidential Information has become generally known to third parties from Legitimate Origins, that part of the Confidential Information shall no longer be deemed Confidential Information for the purposes of this Agreement, but the Recipient shall continue to be bound by the terms of this Agreement as to all other Confidential Information.

(b) The Recipient, on behalf of itself and its subsidiaries and affiliates, and on behalf of all of their respective officers, directors, employees, agents and representatives (collectively, the Representatives), acknowledges and agrees that all Division Information, all information which the Recipient or the Recipient's Representatives may obtain from the Baxter Group in connection with the Potential Transaction or the Division Business, and all information which the Recipient or the Recipient's Representatives may develop in connection with the Potential Transaction or the Division Business, including but not limited to any information regarding or related to the Potential Transaction, shall be deemed to constitute Confidential Information of the Baxter Group. The Recipient acknowledges and agrees that such Confidential Information is extremely valuable to the Baxter Group and shall be deemed to be a "trade secret" pursuant to applicable law.

2. **Agreement to Maintain Confidentiality.** The Recipient may utilize the Confidential Information only for the purpose of its internal review, analysis, negotiation, documentation and closing of the Potential Transaction. The Recipient, on behalf of itself and the Recipient's Representatives, agrees that except with respect to Authorized Disclosures (as that term is defined in Section 3 below) and as otherwise expressly permitted by this Agreement in furtherance of the Potential Transaction, the Recipient will not, and will cause any and all of its Representatives not to, on or after the date hereof, in any form or manner, directly or indirectly, divulge, disclose or

communicate to any person, or utilize for its commercial benefit or for the benefit of any other person, or to the detriment of the Baxter Group, any Confidential Information. In addition, the Recipient agrees to, and will cause any and all of its Representatives to, protect and secure any Confidential Information in its possession or in the possession of its Representatives from unauthorized disclosure or use. The standard of care imposed on the Recipient and its Representatives for protecting Confidential Information will be the care employed by the Recipient to protect its own confidential information, but in no event shall the care used by the Recipient and its Representatives be less than the exercise of reasonable and prudent care to prevent unauthorized disclosure or use of such Confidential Information (except that the Recipient shall not be excused for its own negligence or the negligence of its Representatives). In the event of the destruction, loss or theft of any materials containing Confidential Information from the Recipient or its Representatives, the Recipient shall notify Baxter in writing immediately identifying the materials so lost or destroyed.

3. **Authorized Disclosures**. Notwithstanding any provision of this Agreement to the contrary, the Recipient shall not be deemed to be in breach of Section 2 of this Agreement with respect to the following authorized disclosures of Confidential Information ("Authorized Disclosure(s)"):

(a) Disclosures of Confidential Information to the extent that such disclosures were previously authorized in writing by the President of Venture Management for the Biotech Group of Baxter or his designee; or

(b) Disclosures of Confidential Information which the Recipient can prove is, or had previously become, generally known by third parties from Legitimate Origins (for the purposes of this Agreement, the term "Legitimate Origins" means that the source or channel of communications and/or documentation was entitled to permit the transmission of the relevant information without breach of this Agreement, any other applicable agreement or duty, or any applicable law); or

(c) Disclosures of Confidential Information to any governmental authority, or to officials or officers of any court, administrative court or arbitrators, with valid and competent jurisdiction thereof, if directed to disclose such Confidential Information to and by any of the foregoing, and in any event only after ten (10) business days prior written notice to Baxter describing the Confidential Information so to be disclosed, to whom it is to be disclosed, and the reasons for disclosure; or

(d) Disclosures of Confidential Information to the Recipient's Representatives who reasonably need to know such information in connection with the Recipient's review, analysis, negotiation, documentation and closing of the Potential Transaction and who have been informed of and have agreed to be bound by the terms and conditions of this Agreement regarding the disclosure and protection of such Confidential Information.

4. **Reproduction of Confidential Information**. The Recipient agrees that the Recipient will not, and will cause any and all of its Representatives not to, reproduce copies of any Confidential Information which bears the legend (or its equivalent): **DO NOT DUPLICATE.** Subject to the terms of this Agreement, the Recipient and its Representatives may duplicate documents which do not bear the aforementioned legend, provided that such duplication is reasonably required in furtherance of the Potential Transaction.

5. **No License or Right**. No right or license, whether expressed or implied, in the Confidential Information is granted to the Recipient or any of its Representatives other than to use the Confidential Information in the manner and to the extent expressly authorized by this Agreement.

6. **Publicity**. The Recipient, on behalf of itself and the Recipient's Representatives, agrees that no information, release or public announcement, or confirmation or denial of same, with respect to the Potential Transaction or any phase thereof will be made by the Recipient or any of its Representatives without prior coordination with, and the express prior written approval of, Baxter.

7. **Delivery Upon Termination**. Upon Baxter's written request for any reason, the Recipient will promptly deliver to Baxter all correspondence, catalogs, price books, drawings, blueprints, manuals, letters, notes, notebooks, reports, programs, plans, proposals, financial documents, or any other documents concerning the Baxter Group's research, technology, development, technical information, customers, dealer network, marketing strategies, products or processes and/or which contains Confidential Information, and all summaries and analyses thereof created by the Recipient or its Representatives, in all cases whether in hard copy form or other media (including, but not limited to, computer software or magnetic or optical storage media).

8. **Covenant Not-To-Solicit**. The Recipient agrees that during, and for a period of twelve (12) months after termination of, the Recipient's negotiation of the Potential Transaction with Baxter, for any reason whatsoever, the Recipient and the Recipient's Representatives will not, in any form or manner, directly or indirectly, on the Recipient's behalf or on behalf of (or in combination with) others: contact, communicate with, or correspond with any director, officer, employee, representative, agent or independent contractor of the Division, which in any manner shall interfere with or attempt to disrupt the relationship between the Division and/or any other member of the Baxter Group and any of such persons, including but not limited to the solicitation or encouragement of any employee to leave the employ of the Division for any reason, or employ any such person in any manner whatsoever, without the prior written consent of a duly authorized officer of Baxter.

9. **Enforcement and Indemnification**. In the event that the Recipient or its Representatives breach any of the terms of this Agreement, the Recipient acknowledges and agrees that said breach will result in immediate and irreparable harm to the business and goodwill of the Baxter Group and that damages, if any, and remedies at law for such breach will be inadequate and not determinable. Baxter, upon a breach or violation of this Agreement by the Recipient or its Representatives, shall therefore be entitled to (a) apply for and receive from any court of competent jurisdiction equitable relief by way of temporary or permanent injunction to restrain any breach or violation of this Agreement and for such further relief as the court may deem just and proper, at law or in equity; (b) in the event that Baxter shall prevail in enforcing any of its rights hereunder, Baxter's reasonable costs and expenses in enforcing such rights under this Agreement (including court costs and legal fees and expenses); and (c) be indemnified and held harmless by the Recipient from and against any and all manner of expenses, losses, claims and liabilities of any kind incurred by Baxter and the other members of the Baxter Group in connection with such breach or violation.

10. **Continuing Obligation**. The obligations, duties and liabilities of the Recipient pursuant to this Agreement are continuing, absolute and unconditional and shall remain in full force and effect as provided herein despite any termination of the Potential Transaction. If any breach of any obligations or duties hereunder occurs, the running of the applicable period of proscription will be stayed until such breach is cured.

11. **Severability**. If any restriction or limitation in this Agreement is deemed to be unreasonable, onerous or unduly restrictive by a court of competent jurisdiction, it shall not be stricken in its entirety and held totally void and unenforceable, but shall remain effective to the maximum extent permissible within reasonable bounds. If any phrase, clause or provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, such phrase, clause or provision shall be deemed severed from this Agreement, but will not affect any other provisions of this Agreement, which shall otherwise remain in full force and effect.

12. **Assignment**. The Recipient acknowledges and agrees that the Recipient's rights and obligations under this Agreement cannot be transferred, sold, assigned, pledged or hypothecated by the Recipient.

13. **Capacity**. The Recipient hereby represents and warrants that, in entering into this Agreement, it is not in violation of any contract or agreement, whether written or oral, with any other person to which it is a party or by which it is bound and will not violate or interfere with the rights of any other person.

14. **Entire Agreement**. This Agreement contains the entire agreement between the parties relating to the subject matter hereof. Furthermore, the parties hereto specifically agree that all prior agreements, whether written or oral, relating to

the subject matter of this Agreement shall be of no further force or effect from and after the date hereof.

15. Notices. Any notice, request or other communication required to be given pursuant to the provisions hereof shall be in writing and shall be deemed to have been given when delivered in person, when sent by confirmed facsimile transmission to the party, or five (5) days after being deposited in the United States mail, certified or registered, postage prepaid, return receipt requested and addressed to the party at its last known address, in the case of the Recipient to the attention of the officer of the Recipient executing this Agreement, and in the case of Baxter, to:

	With a copy to:
Victor W. Schmitt	Marla S. Persky
President, Venture Management	Associate General Counsel
Baxter Healthcare Corporation	Baxter Healthcare Corporation
1627 Lake Cook Road LCIV-1	1627 Lake Cook Road LCIV-1
Deerfield, Illinois 60015	Deerfield, Illinois 60015
Fax: (847) 940-6271	Fax: (847) 940-6273

The address and/or facsimile number of any party may be changed by notice in writing to the other parties duly served in accordance herewith.

16. Amendment or Waiver. No amendment, modification or waiver of any term, condition, right or remedy hereunder shall be effective for any purpose unless specifically set forth in a writing signed by the party to be bound thereby. The waiver by Baxter of any breach of any term or condition of this Agreement shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition hereof.

17. Governing Law; Burden of Proof. This Agreement and the enforcement thereof shall be governed and controlled in all respects by the internal laws of the State of Illinois, without application of conflicts of law principles. Upon a claim by Baxter of a breach of this Agreement, the Recipient shall have the burden of proving that information disclosed was not Confidential Information.

18. Headings / Counterparts / Facsimile Signatures. The headings of the parts and sections of this Agreement are inserted for convenience of reference only and shall not be deemed a part of, or affect the construction or interpretation of, any provision hereof. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all such counterparts together shall constitute one and the same instrument. With respect to this Agreement and any notices delivered pursuant to this Agreement, documents signed by facsimile signature shall be deemed to be of the same force and effect as an original of a manually signed copy.

19. **Other Defined Terms**. As used in this Agreement, the term affiliate means, with respect to any person, any person which Controls that person, which that person Controls, or which is under common Control with that person. The term Control means ownership of at least 50% of the securities of a person and/or the power or position, direct or indirect, to direct or affect, in any magnitude, the direction of the management, policies or actions of a person through voting, by contract, or otherwise. The term person means any individual, sole proprietorship, partnership, limited partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, limited liability partnership, institution, entity, party, or government (whether national, federal, state or local, and any instrumentality, division, agency or department thereof).

20. **No Other Commitment**. This Agreement does not constitute a commitment of either Baxter or the Recipient to enter into any other or further agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first hereinabove written.

Baxter:	Recipient:
Baxter Healthcare Corporation	_____
By:_____	By:_____
Name:_____	Name:_____
Title:_____	Title:_____