WILMER, CUTLER & PICKERING
2445 M STREET, N.W.
WASHINGTON, D.C. 20037-1420

TELEPHONE (202) 663-6000
FACSIMILE (202) 663-6363

100 LIGHT STREET
BALTIMORE, MD 21202
TELEPHONE (410) 986-2800
FACSIMILE (410) 986-2828

4 CARLTON GARDENS
LONDON SW1Y 5AA
TELEPHONE 011 (44171) 872-1000
FACSIMILE 011 (44171) 839-3537

RUE DE LA LOI 15 WETSTRAAT
B-1040 BRUSSELS
TELEPHONE 011 (322) 285-4900
FACSIMILE 011 (322) 285-4949

FRIEDRICHSTRASSE 95
D-10117 BERLIN
TELEPHONE 011 (4930) 2022-6400
FACSIMILE 011 (4930) 2022 6500

GARY D. WILSON
DIRECT LINE (202) 663-6279
INTERNET GWILSON@WILMER.COM

June 6, 1997

By facsimile

Donald R. Ware
Foley, Hoag & Eliot LLP
One Post Office Square
Boston, MA 02109

Frederick G. Savage
Johns Hopkins University
Office of VP and General Counsel
113 Garland Hall
3400 N. Charles Street
Baltimore, MD 21218-2688

Re: Bayh-Dole Petition of CellPro, Inc.

Dear Messrs. Ware and Savage:

I am writing you on behalf of CellPro, Inc. to offer to enter into a license to the patents involved in CellPro's petition to the Department of Health and Human Services seeking the exercise of the government's "march in" rights under the Bayh-Dole Act. Such a license would not only serve the nation's public health needs and resolve the proceedings before the agency but also resolve the pending motions for injunction and stay in the ongoing patent litigation between the parties.

The license terms CellPro proposes are as follows: For a non-exclusive license to the Hopkins patents, CellPro would pay a one-time license fee of $1.5 million and a 10 percent running royalty until December 31, 2001, and a 7 percent running royalty thereafter. The running royalty would be paid on the total sales value of all products containing the 12.8 antibody (or another antibody within the scope of the '204 patent as construed by the district court) that are sold or manufactured in the United States (but not products that are sold outside the United States and include an antibody made outside the United States). The ongoing litigation between the parties would continue as to pre-license sales and production until final judgment or settlement. If the patents are ultimately determined to be invalid or not infringed by the 12.8 antibody all running royalties and license fees paid under the agreement would be refunded to CellPro.

The proposed terms are, we submit, reasonable from the perspective of Johns Hopkins and its licensees.

they will receive whatever damages (enhanced or not) and attorneys fees the court ultimately awards. (Alternatively, CellPro would be prepared to negotiate to try to fix the amounts at issue for pre-license periods through agreement.) If at the end of the day the patents are determined to be invalid or not infringed, then of course CellPro does not need a license, and the contingent refund would ensure that plaintiffs will not be unjustly enriched. Moreover, as I am sure you are aware, had CellPro entered into the license agreement plaintiffs say was available in the past, it would have been free under the Supreme Court's decision in Lear v. Adkins to have sought a declaration that the patents were invalid and not infringed and to have withheld royalty payments pending the resolution of that litigation. Accordingly, the parties would be in the same position as they would have been in had there been a CellPro/Baxter license followed by such litigation, except that plaintiffs would receive a $750,000 higher license fee and a 2 percent higher royalty (as well as potentially enhanced royalties and attorneys fees for the pre-license period) should they ultimately prevail in the litigation.

In your May 7, 1997, letter to Dr. Baldwin, you invited CellPro to propose an alternative royalty arrangement and called for all parties to work to devise a solution that "will assure uninterrupted patient access to the technology." CellPro is committed to the principle that patients should have the treatment options they need and believes that the royalty arrangement outlined above should provide a basis for ensuring that that will be the case. We urge Johns Hopkins, Becton Dickinson, and Baxter to accept CellPro's proposal and thus resolve the Bayh-Dole proceeding.

Under all of the circumstances, it would seem that a period of two weeks should be sufficient to determine whether the parties can reach a solution to this problem between themselves. In anticipation that our efforts will be successful, we are in the process of preparing a draft license agreement based on a redacted agreement between AIS and Baxter that we obtained from an AIS filing with the SEC. I will send you that draft and telephone you early next week. In the meantime, please do not hesitate to call me if you have any questions.

Very truly yours,

Gary D. Wilson

cc: Barbara M. McGarey

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FACSIMILE 011 (49301) 2022-6500

June 11, 1997

By Facsimile

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Foley, Hoag & Eliot LLP
One Post Office Square
Boston, MA 02109

Frederick G. Savage
Johns Hopkins University
Office of VP and General Counsel
113 Garland Hall
3400 N. Charles Street
Baltimore, MD 21218-2688

Re: Bayh-Dole Petition of CellPro, Inc.

Dear Messrs. Ware and Savage:

As promised, I am sending you a draft proposed license agreement. I will telephone you later today to discuss.

Very truly yours,

Gary D. Wilson

Enclosure

DRAFT

NON-EXCLUSIVE LICENSE AGREEMENT

THIS AGREEMENT, effective as of March __, 1997, is between Baxter Health Care Corporation ("Baxter"), a corporation of the State of Delaware, having its principal place of business at One Baxter Parkway, Deerfield, IL, Becton Dickinson and Company ("Becton"), a corporation of the State of _____, Johns Hopkins University ("Hopkins"), a _____ of the State of _____ (referred to herein collectively with Baxter and Becton as "Licensors"); and CellPro, Inc. ("Licensee"), a corporation of the State of _____, having its principal place of business at 22215 26th Avenue, S.E., Bothell, Washington 98021.

RECITALS

Baxter has acquired certain rights under the Patents (as defined in Section 1.2 below) from Becton pursuant to a license agreement effective August 24, 1990;

Becton had previously acquired certain rights under said Patents from Hopkins pursuant to a license agreement effective _____, 1984;

Hopkins is the original assignee of said Patents;

Licensee has an interest in acquiring a non-exclusive license under said Patents;

Licensors are interested in licensing said Patents;

NOW, THEREFORE, in consideration of the premises and of the performance of the covenants herein contained, the parties agree as follows:

Article I. DEFINITIONS

1.1 "Effective Date" shall mean the date first written above.

1.2 "Patents" shall mean the following U.S. patents and any divisional patents, continuations, continuations-in-part, reissues, and reexaminations thereof:

- 4,714,680, Human Stem Cells, issued 12/22/87
- 4,965,204, Human Stem Cells and Monoclinal Antibodies, issued 12/23/90
- 5,035,994, Human Stem Cells and Monoclinal Antibodies, issued 7/30/91
- 5,130,144, Human Stem Cells and Monoclinal Antibodies, issued 7/14/92

1.3 "Licensed Product(s)" shall mean: (1) the Ceprate SC System approved by the United States Food and Drug Administration on December __, 1996, (2) the Ceprate LC System, and (3) any therapeutic or research system, device, kit, or product, including without limitation, hybridomas, antibodies, cellular suspensions, biological products, separation devices, or other reagents, for which the making, having made, using, or selling of the same would infringe one or more claims of one or more Patents.

1.4 "Net Sales Price" shall mean gross selling price, less the following items but only insofar as they are included in such gross selling price, to the extent such items (except items (a) and (d) below) are separately billed:

(a) usual trade and cash discounts actually allowed other than advertising allowances;

(b) import, export, excise, sales and/or use taxes, and custom duties;

(c) cost of insurance and transportation from the place of manufacture to the customer's premises or point of distribution; and

(d) credit for returns, allowances, or trades and retroactive price reductions.

1.5 "Licensee" and "Licensors" shall include their respective affiliates. Affiliate shall mean a corporation of which a party has direct or indirect ownership of at least fifty percent (50%) of the voting stock.

Article II. LICENSE GRANT

As of the Effective Date of this Agreement, Licensors hereby grant to Licensee a non-exclusive, non-transferable, worldwide license under Patents to make, have made, use, and sell Licensed Products and to practice all methods covered by any claim of any Patent.

Article III. GOVERNMENT RIGHTS

3.1 All rights granted by Licensors under this Agreement are subject to the requirements of public Law 96-517, as amended, and any applicable implementing regulations. Licensee acknowledges that, if a conflict arises between the conditions of this agreement and the rights of the Federal Government, Licensee's rights may be subordinate to the legitimate rights of the Federal Government.

3.2 Notwithstanding any provisions in this Agreement, Licensors disclaim any and all obligations or liabilities arising under the provisions of this Agreement if Licensee is charged in any governmental action for not complying with or failing to comply with governmental regulations in the course of taking steps to bring any Licensed Product to a point of practical application.

3.3 Licensee shall comply with all reasonable governmental requests directed to either Licensee or Licensors and provide all information and assistance necessary to comply with said reasonable requests. Failure of Licensee to comply with this provision shall be considered a material breach of this Agreement.

3.4 Licensee agrees that all of its research, development, and marketing activities under this Agreement shall comply with all governmental regulations in force and effect including, but not limited to, federal, state, and municipal legislation.

Article IV. PATENT MAINTENANCE

4.1 Costs. All future patent costs pertaining to Patents whether or not such Patents are pending on the Effective Date, including preparation, filing, and prosecution of patent applications, issuance, taxation, and maintenance costs shall be borne by Licensors in accordance with the terms of the agreements among them.

4.2 Control. All control over Patents will be in Licensors in accordance with the terms of the agreements among them.

Article V. PAYMENT BY LICENSEE

5.1 Cash. On or before July __, 1997, Licensee shall pay Baxter the sum of $1,500,000.

5.2 Royalty Rates. Licensee shall pay to Baxter royalties based on the following running royalty rates:

5.2.1 A 10 percent royalty on Net Sales for each product included in the Royalty Base specified in Section 5.3 below sold by Licensee from the Effective Date until December 31, 2001, when the making, having made, using, or selling of such product would infringe one or more claims of one or more Patents if not for this license.

5.2.2 A 7 percent royalty on Net Sales for each product included in the Royalty Base specified in Section 5.3 below sold by Licensee from January 1, 2002, until December 22,

2004, when the making, having made, using, or selling or such Licensed Product would infringe one or more claims of one or more Patents if not for this license.

5.3 Royalty Base. The royalty payable under this Agreement shall be computed by applying the royalty rates specified in Section 5.2 to the following royalty base:

5.3.1 The Royalty Base for the Ceprate SC System shall be the Net Sales Price of the disposable kit sold for use with the System, which kit includes columns containing avidin coated beads, antibodies, tubing sets, filters, bags, and processing solutions required to perform the cell separation process.

5.3.2 The Royalty Base for the Ceprate LC System shall be the Net Sales Price of the entire product excluding the lab stand.

5.3.3 In the case of sales that would infringe one or more claims of one or more Patents if not for this license of products that contain more than the usual Ceprate SC disposable stem cell kit (for example, combination products that contain other antibodies or reagents), the Royalty Base shall be determined by multiplying the Net Sales Price of the combination product by the ratio of the list price of the Ceprate SC disposable stem cell kit to the list price of the combination product.

5.4. Currency conversions. All amounts payable hereunder by Licensee shall be payable in United States dollars; provided, however, that if any payment on account of Net Sales Price is received by Licensee in a currency other than United States dollars, such amount shall be

converted to United States dollars at the average daily rate set by Citibank in New York City for the quarterly reporting period and the payment shall be computed on the net amount of United States dollars received by Licensee after payment of the costs of conversion. Licensee may further deduct any taxes required by a governmental agency to be withheld in respect of royalties payable.

5.5 Currency Restrictions. If restrictions on the transfer of currency exist in any country such as to prevent Licensee from making payments in the United States, Licensee shall take all reasonable steps to obtain a waiver of such restrictions or otherwise to enable Licensee to make such payments, failing which Licensee shall make the royalty payments due upon sales in such country in local currency and deposit such payments in a local bank or other depository designated by Baxter.

Article VI. ACCOUNTING

6.1 Reports. Licensee shall report in writing to Baxter within sixty (60) days after the end of each calendar quarter the quantities of Licensed Product subject to royalties hereunder that were sold by Licensee during said quarter, and the calculation of the royalties thereon. If no Licensed Product subject to royalties hereunder has been sold by Licensee during any such period, Licensee shall so report in writing to Baxter within sixty (60) days after the end of such period. Any Royalty Payments hereunder shall be made concurrently with such reports. Reports and royalty payments shall be sent to the appropriate party at the following address or such other address as Licensors shall in the future specify in writing:

President
Baxter Biotech Group
Immunotherapy Division
3015 S. Daimler Ave.
Santa Ana. California

6.2 Records. Licensee shall keep adequate records in sufficient detail to enable the royalties payable by Licensee hereunder to be determined. and permit said records to be inspected at any time during regular business hours by an independent auditor appointed by Baxter for this purpose who shall report to Baxter only the amount of the royalties payable hereunder.

Article VII. INFRINGEMENT

7.1 Infringement by Licensee. In the event that Licensee is sued for infringement by reason of making, using, or selling Licensed Product. Licensee shall notify Licensors in writing of the suit and shall defend such suit at Licensee's own expense: provided. however. that if such suit alleges invalidity or unenforceability of one or more of the Patents. then Licensors. at their sole discretion. may request joinder in the suit for the purposes of defending the Patents. Licensors shall have the right to provide advice and assistance in any such litigation at their expense. unless such advice and assistance is requested by Licensee. then it shall be at Licensee's expense. In the event Licensors are joined in such litigation. Licensors shall have the right to defend themselves with counsel of their choice. at their expense.

7.2 Infringement by Third Party.

(a) Licensee shall notify Licensors of any infringement by a third party of any Patents and shall provide Licensors with the available evidence, if any, of such infringement.

(b) Licensors shall have the exclusive right and sole discretion during the term of this Agreement to bring suit or other proceeding against the infringer in its own name and Licensee shall be kept informed at all times of all such proceedings taken by Licensors. If Licensors requests, Licensee may, in Licensee's discretion, join Licensors as a party to lawsuit or other proceeding at Licensee's expense; however, Licensors shall retain control of the prosecution of such suit or proceedings.

(c) Nothing in this Agreement shall be construed as obligating Licensors, or giving Licensee the right, to proceed against a third party infringer of one or more Patents.

Article VIII. NEGATION OF WARRANTIES AND INDEMNIFICATION

8.1. Licensors warrant and represent that they have the right to grant this license to Licensee under the Patents.

8.2 Nothing in this Agreement shall be construed as:

(a) a warranty or representation by Licensors as to the validity or scope of any of the Patents; or

(b) a warranty or representation by Licensors that anything made, used, sold, or otherwise disposed of under any license or sublicense granted in this Agreement is or will be free from infringement of patents or other rights of third parties; or

(c) an obligation of either party to bring, prosecute, or defend actions or suits, or to assist the other party in bringing, prosecuting or defending, against third parties for infringement, subject to and except as provided in Article VII hereof; or

(d) conferring the right to use any name or trade name, or any contraction, abbreviation, simulation or adaptation thereof, of any other party (or of any of its employees, faculty, students, inventors, officers, or trustees) in any advertising, promotional, or sales literature without the prior written consent of such other party; or

(e) conferring by implication, estoppel, or otherwise any license or rights under any patents of Licensors other than the Patents, regardless of whether such patents are dominant or subordinate to the Patents.

8.3 DISCLAIMER OF WARRANTIES. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8.4 Licensee shall defend, indemnify, and hold Licensors and their Affiliates harmless from and against any and all claims, suits, and expenses, including reasonable attorney expenses, based on Licensee's and its Affiliates' manufacture, use, and sale of Licensed Products.

8.5 Licensee shall defend, indemnify, and hold Licensors harmless from and against any and all claims, suits, and expenses including attorney expenses based on any act or omission of Licensee and its Affiliates' manufacture, use, or distribution of Licensed Products.

8.6. Each of the parties represents to each other that it has the full right to enter into this Agreement and that there are no agreements or commitments which would prevent either from satisfying each and every responsibility, obligation, and covenant it has assumed under this Agreement.

Article IX. TERM AND TERMINATION

9.1 Default. If either party shall fail to perform any of its obligations under this Agreement, the non-defaulting party may give written notice of the default to the defaulting party. Unless such default is corrected within sixty (60) days after receipt of such notice, the notifying party may terminate this Agreement upon thirty (30) days' prior written notice.

9.2 Term. Unless otherwise terminated, as provided for in this Agreement, this Agreement will continue until the expiration of all of the Patents.

9.3 Survivability. Articles 3 and 7 shall survive the termination of this Agreement.

Article X. DISPUTE RESOLUTION

10.1 Arbitration. Any controversy or claim arising under this Agreement shall be settled by arbitration administered by a panel of three arbitrators appointed pursuant to the Commercial Arbitration Rules of the American Arbitration Association who shall conduct the arbitration in accordance with those Rules. Judgment on any award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Neither a party nor the arbitrator shall disclose the existence, content, or results of any arbitration hereunder without the prior written consent of all of the parties to the arbitration, except in connection with any enforcement of the award in a court of competent jurisdiction.

10.2 Pending Litigation. Nothing in this Agreement is intended to or shall resolve the litigation pending in the U.S. District Court for the District of Delaware captioned Johns Hopkins University, et al. v. CellPro, Inc., Civil Action No. 94-105-RRM, with regard to alleged infringement of the Patents by Licensee prior to the effective date of this Agreement; provided, however, that upon the execution of this Agreement Licensors shall withdraw their claim of entitlement to injunctive relief, and in the event that an order or judgment including provisions for injunctive relief is entered before this Agreement is executed, Licensors shall refrain from enforcing such injunctive provisions and shall cooperate as requested by Licensee to procure their removal from such order or judgment. In the event that there is a final, unappealable judgment entered in said litigation finding that Licensee owes no damages for infringement of the Patents either on account of the invalidity of the Patents or the noninfringement of the Patents

by Licensee's products, then Licensee may within 30 days of the date the judgment becomes final and unappealable provide notice to Licensors that it terminates this Agreement, and within 60 days of such notice Licensors shall return to Licensee all fees and royalties paid pursuant to the provisions of Article 5 hereof.

Article XI. MISCELLANEOUS

11.1 Integration. This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof, and supersedes and replaces all prior agreements, understandings, writings, and discussions between the parties relating to said subject matter.

11.2 Amendments. This Agreement may be amended only by a written instrument executed by the Parties. The failure of either party at any time or times to require performance of any provision hereof shall in no manner affect its rights at a later time to enforce the same. No waiver by either party to any condition or term in any one or more instances shall be construed as a further or continuing waiver of such condition or term or any other condition or term.

11.3 Successors. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

11.4 Assignability. This Agreement shall not be assignable by either party without the other party's prior written consent, except for Licensors' right to receive royalties payable hereunder and except as part of a sale or transfer of substantially the entire business relating to

operations pursuant to this Agreement. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective business of Licensors and Licensee to which this Agreement relates.

11.5 Notices. Any notice and payment of royalties required or permitted to be given hereunder shall be deemed sufficient if mailed by registered or certified mail (return receipt requested), or delivered by hand to the party to whom such notice is required.

11.6. If any part of this Agreement is found to infringe any applicable law or regulation or is otherwise unenforceable or ineffective then this Agreement shall thereafter be construed and have effect as if the part of the Agreement that is unenforceable or ineffective was deleted therefrom provided that either party shall be entitled at any time thereafter to serve notice upon the other requiring that the parties shall negotiate alternative terms to replace the terms that are infringing, unenforceable. or ineffective.

11.7 Titles. All titles and subtitles used in this Agreement are for purposes of illustration or organization and are not legally binding on the Parties.

11.8 Relationship of the Parties. Nothing in this Agreement is intended or shall be deemed to constitute a partnership, agency, employer-employee, or joint venture relationship between the Parties.

11.9 Further Acts and Instruments. Each Party hereto agrees to execute, acknowledge, and deliver such further instruments and to do all such other acts as may be necessary or appropriate to effect the purpose and intent of this Agreement.

11.10 Export Restrictions. This Agreement is made subject to any restrictions concerning the export of products or technical data from the United States of America that may be imposed upon Licensors or Licensee from time to time by the Government of the United States of America.

11.11 Choice of Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of _____.

11.12 Notices. Any and all reports, notices, and other communications hereunder, except as provided under Article 6, shall be sent to the appropriate party at the following address or to such other addresses as the party has hereafter specified in writing:

For Baxter:

President
Baxter Biotech Group
Immunotherapy Division
3015 S, Daimler Ave,
Santa Ana, California

Michael Schiffer, Esq,
Assistant General Counsel
Baxter HEALTH CARE Corporation
2132 Michelson Drive
Irvine, California

For Becton:

For Hopkins:

For Licensee:

11.13 Licensors' Rights. Nothing in this Agreement shall be construed to prohibit or limit in any manner Licensors' right to grant licenses for Patents to any third party.

11.14 Press Release. The parties hereto shall agree upon the form and issue a public announcement or press release relating to the existence of this Agreement. No further public announcement or press release shall be made by either party provided that any party shall remain free to make an announcement required under the United States Security laws or regulations and provided further that such party shall cooperate with the other parties in defining the content of such announcement or release. Licensee shall not include in announcement or release any mention or indication that Licensors endorse the manufacture, use, or sale of any Licensed Product by Licensee.