



4927339

Date 9th February 2005

**STRICTLY PRIVATE & CONFIDENTIAL**

To: Frank J Carr Ph.D  
President and Chief  
Executive Officer  
Biovation Limited  
Crombie Lodge  
Aberdeen Science Park  
Balgownie Drive  
Aberdeen AB22 8GU

**EIRX  
THERAPEUTICS  
PLC**

2800 Cork Airport  
Business Park,  
Kinsale Road,  
Cork,  
Ireland.

Tel: 353-21-432 0847  
Fax: 353-21-432 0848  
[www.eirx.com](http://www.eirx.com)

Dear Dr Carr,

**PROPOSED PURCHASE BY EIRX THERAPEUTICS PLC ("EIRX") OF THE ISSUED SHARE CAPITAL OF AUVENTURE LIMITED HELD BY BIOVENTURE LIMITED (THE "REMAINING SHAREHOLDER")**

As you are aware, EIRX recently acquired a majority stake of 280,500 ordinary shares of 1p each (representing 56.1% of the issued share capital) in Auvation Limited (the "Company") from Dr Bill Melvin and Donald Grant (the "Majority Shareholders"). We also expressed an interest, at that time, in acquiring the entire issued share capital of the Company.

We are therefore now writing to you as a remaining shareholder of the Company to offer to purchase your shareholding in the Company (the "Sale Shares"), on and subject to the terms set out below.

**1. Consideration**

- 1.1 The consideration for the sale and purchase of the entire remaining shareholdings in the Company, will be on the same basis as that offered to the Majority Shareholders, namely, based on a valuation of the entire Company at £2.7 million.
- 1.2 The consideration will be payable on the Completion Date by the allotment and issue to yourselves of ordinary shares of 2p in EIRX, fully paid at 6p per share (the "EIRX Consideration Shares"), as set out below:

Name of Shareholder	Number of Sale Shares	Number of EIRX Consideration Shares	Value of the EIRX Consideration Shares
Biovation Limited	99,500	8,955,000	£537,300

EIRX shall ensure that the EIRX Consideration Shares shall be admitted to the Alternative Investment Market of the London Stock Exchange ("AIM") and shall become effective in accordance with the provisions of the Alternative Investment Rules published by the London Stock Exchange (the "AIM Rules").



Registered in England  
No. 4927339  
Directors:  
J. Pool, I. Hayes, T. Cotter,  
N. Strong, F. Murphy,

1.4 The EIRX Consideration Shares shall be subject to the following restrictions on disposal:

- (a) (save for any transfer of the EIRX Consideration Shares to Merck Holding GmbH, Merck KGaA or any company owned and/or controlled directly or indirectly by Merck KGaA (each a "Merck Group Company and together the "Merck Group Companies"), which transfer shall not be restricted in any way), the Remaining Shareholder shall not be entitled to trade or deal in the EIRX Consideration Shares issued to him for a period of 12 months from the Completion Date, without the prior written consent of EIRX; and
- (b) the Remaining Shareholder shall not be entitled to trade or deal in any derivatives referenced to such shares issued to him at any time prior to their allotment, without the prior written consent of EIRX.

In the event of a transfer of the EIRX Consideration Shares to a Merck Group Company, the Remaining Shareholder shall procure that the restrictions set forth in this paragraph 1.4 including but not limited to the 12 month lock-up period pursuant to paragraph 1.4 (a) shall apply to and be observed by all Merck Group Companies.

## 2. **Covenants**

2.1 The Remaining Shareholder shall covenant and warrant to EIRX on the terms set out in Schedule 1.

2.2 EIRX shall covenant and warrant to the Remaining Shareholder on the terms set out in Schedule 2.

## 3. **Costs**

3.1 Each of the parties shall be responsible for its own costs incurred in connection with negotiating and concluding the arrangements contemplated by this letter.

## 4. **Announcements and Confidentiality**

4.1 None of the parties shall make any announcement concerning this letter or the proposed transaction without the prior written consent of the other party except to the extent that such announcement is required by law or any securities exchange or regulatory or governmental body.

4.2 Where any of the parties are required to make an announcement by law or any regulatory or governmental body, such party shall use all reasonable endeavours to consult with the other party prior to such announcement being made.

## 5. **Governing Law and Jurisdiction**

5.1 This letter, the negotiations and any legal agreements prepared in connection with the transaction shall be governed by and construed in accordance with the laws of England and Wales.

5.2 The parties agree to irrevocably submit to the non-exclusive jurisdiction of the English Courts as regards any claims arising under or in connection with this letter.

## 6. **Miscellaneous**

6.1 This letter cancels and supersedes all prior oral or written agreements or understandings between the parties concerning the proposed transaction.

6.2 This letter and communication is issued pursuant to article 62 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 as exempt from the provisions of section 21 of the Financial Services and Markets Act 2000.

## 7. **Entire Agreement**

7.1 This letter constitutes the whole and only agreement between the parties relating to the sale and purchase of the Sale Shares. In entering into this letter, each party acknowledges that it is not relying

on any pre-contractual statement which is not expressly set out in this letter.

7.2 Except in the case of fraud, no party shall have any right of action against any other party to this letter arising out of or in connection with any pre-contractual statement except to the extent it is repeated in this letter.

7.3 For the purpose of this paragraph, "pre contractual statement" means any draft, agreement, undertaking, representation, warranty (whether express or implied) promise, assurance or arrangement of any nature whatsoever, whether or not in writing, relating to the subject matter of this letter made or given by any person at any time prior to the date of this letter.

8. **Contracts (Rights of Third Parties) Act 1999**

8.1 The parties to this letter do not intend that any term of this letter should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this letter.

9. **Execution in counterpart**

9.1 This letter may be executed in any number of counterparts, and by the parties to it on separate counterparts, but shall not be effective until each party has executed at least one counterpart.

10. **Completion**

10.1 The completion of the sale and purchase of the Sale Shares under this letter shall occur on the date on which EIRX receives a duly completed stock transfer form in respect of the Remaining Shareholder's Sale Shares (including all evidence of title thereto) (the "Completion Date").

10.2 Within 2 business days of the Completion Date, EIRX shall (a) issue the EIRX Consideration Shares to the Remaining Shareholder; (b) procure that the CREST account operated on behalf of the Remaining Shareholder is credited with the EIRX Consideration Shares; and (c) procure that the Remaining Shareholder is registered as the holder of the EIRX Consideration Shares in the register of members of EIRX.

11. **Acceptance**

11.1 If you wish to accept the terms of this offer, please take the following steps:

- (a) sign and return the enclosed copy letter as indicated;
- (b) indicate on the enclosed copy letter whether you would wish your EIRX Consideration Shares to be held in certificated form (in which case a share certificate will be issued to you) or in uncertificated form (in which case please provide the details of your CREST account on the enclosed copy letter where indicated).

Yours faithfully



Date: 13/05/

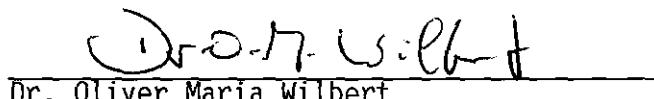
2005

Ian Hayes, Director  
duly authorised for and on behalf of  
EIRX Therapeutics plc

Signed for and on behalf of  
Biovation Limited



Dr. Inge Lues, Director



Dr. Oliver Maria Wilbert

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Accepted and agreed by:

**BIOVATION LIMITED**

**Signature:** .....

**Date:** .....

**2005**

**Print Name:** .....

duly authorised for and on behalf of

**Biovation Limited**

**Biovation Limited's EIRX Consideration Shares**

**CREST account number: LNKAV 5794029**

**SCHEDULE 1**  
**REMAINING SHAREHOLDER WARRANTIES**

1. The Remaining Shareholder covenants with and warrants to EIRX as at the date of this letter and the Completion Date that:

- 1.1 he is the sole legal and beneficial owner of the Sale Shares;
- 1.2 he has full power, right and authority to sell the Sale Shares;
- 1.3 this agreement to sell the Sale Shares constitutes binding obligations on him in accordance with its terms; and
- 1.4 the Sale Shares shall be sold and transferred free from encumbrances (including, any option, trust, power of sale, pre-emption right, right of first refusal, security interest or any other right, claim or interest, whether legal or equitable, of any third party)

and the transfer of each of the Sale Shares to EIRX shall be deemed to include expressly and be made subject to all the above provisions of this schedule.

**SCHEDULE 2**  
**EIRX WARRANTIES**

1. EIRX covenants with and warrants to the Remaining Shareholder as at the date of this letter and at the Completion Date that:

- 1.1 EIRX has the requisite power and authority to enter into and perform the obligations contained in this letter;
- 1.2 the obligations of EIRX under this letter constitute binding obligations of EIRX in accordance with their respective terms;
- 1.3 the EIRX Consideration Shares will, when issued, be credited as fully paid free from any encumbrances (including any option, trust, power of sale, pre-emption right, right of first refusal, security interest or any other right, claim or interest, whether legal or equitable, of any third party);
- 1.4 all filings and disclosures required to be made by EIRX and/or its directors under the AIM Rules have been satisfied and are correct and up to date
- 1.5 EIRX is resident for tax purposes in the United Kingdom;
- 1.6 EIRX is not a "close company" as defined in Income and Corporation Taxes Act 1988.