

foiapa

18-04167-E

From: Mark Edwards <medwards@biosciadvisors.com>
Sent: Sunday, April 29, 2018 2:41 PM
To: foiapa
Subject: FOIA Request



I would like to request access to Exhibits 10.2 and 10.3 to the Form S-3 filed by Insite Vision, Inc. on 9/29/1997. Confidential treatment was sought as to certain portions when initially filed with the Commission.

In the event that confidential treatment has not expired or has been extended, I further request that you send me the expiration date(s) from the relevant CT order(s) so I will know when I should resubmit my request.

I authorize up to \$61 in search and retrieval fees. Please send the exhibit(s) by PDF if possible.

Sincerely,

Mark

Mark G Edwards
Managing Director
Bioscience Advisors
2855 Mitchell Dr., Suite 103
Walnut Creek, CA 94598
medwards@biosciadvisors.com
925 954-1397



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

May 22, 2018

Mr. Mark G. Edwards
Bioscience Advisors
2855 Mitchell Dr., Suite 103
Walnut Creek, CA 94598

RE: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. 18-04167-E

Dear Mr. Edwards:

This letter is in response to your request, dated April 29, 2018 and received in this Office on April 30, 2018, for Exhibits 10.2 and 10.3 to the Form S-3 filed by Insite Vision, Inc. on September 29, 1997.

The search for responsive records has resulted in the retrieval of 30 pages of records that may be responsive to your request. They are being provided to you with this letter.

As shown on the enclosed invoice, the processing fee is \$30.50 in accordance with our fee schedule. You may use our [Online Payment](#) option to pay by debit or credit card. If paying by mail, checks or money orders should be made payable to the SEC and a copy of the invoice should be mailed to our payment address: Enterprise Services Center, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Boulevard, Oklahoma City, OK 73169. Please refer to the following link for detailed instructions on how to remit payments. <http://www.sec.gov/about/offices/ofm.htm>

If you have any questions, please contact me directly at andersonc@sec.gov or (202) 551-8315. You may also contact me at foiapa@sec.gov or (202) 551-7900. You also have the right to seek assistance from Ray J. McInerney as a FOIA Public Liaison or contact the Office of Government Information Services (OGIS) for dispute resolution services. OGIS can be reached at 1-877-684-6448 or Archives.gov or via e-mail at ogis@nara.gov.

Sincerely,

A handwritten signature in cursive script that reads "Clarissa Anderson".

Clarissa Anderson
FOIA Research Specialist

Enclosures

10.2

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is made as of the 1st day of July, 1997 (the "Effective Date") by and between The University of Connecticut Health Center, a public institution of higher education, having a business address at 263 Farmington Avenue, Farmington, Connecticut 06030 (hereinafter referred to as "UCHC") and InSite Vision Incorporated, a Delaware corporation with its principal place of business at 965 Atlantic Avenue, Alameda, California 94501 (hereinafter referred to as "Licensee").

WHEREAS, the UCHC Laboratory of Dr. Mansoor Sarfarazi has invented technology for genetic-based prognosis and diagnosis of Primary Congenital Glaucoma ("PCG"), as defined under Section 1.7 hereof;

WHEREAS, UCHC owns UCHC Technology and Patent Rights, as defined below, related to the PCG technology;

WHEREAS, Licensee desires to exercise its option under Sections 9.2 and 9.3 of the Research Agreement to secure a license to use such UCHC Technology and Patent Rights to produce, use and sell Licensed Products related to PCG and is willing to expend efforts and resources to do so if it can obtain a license to use such UCHC Technology and Patent Rights related to PCG under the terms and conditions set forth herein; and

WHEREAS, UCHC desires to facilitate a timely transfer of its information and technology concerning the UCHC Technology and the Patent Rights related to PCG for the ultimate benefit of the public and this transfer is best accomplished by the grant of this license;

NOW THEREFORE, for and in consideration of the covenants, conditions, and undertakings hereinafter set forth, it is agreed by and between the parties as follows:

1. **Definitions**

1.1 "UCHC Technology" means any research and development information, know-how, and technical data relating only to PCG which has been developed in the UCHC laboratory of Dr. Mansoor Sarfarazi and is in the possession of UCHC prior to the Effective Date which relates to and is necessary for the practice of the Patent Rights relating only to prognosis and diagnosis of PCG and which UCHC has the right to provide to Licensee.

1.2 "Licensed Products" means any method, procedure, process, prognostic kit, diagnostic kit, product, or component part thereof whose manufacture, sale

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or use includes a material use of UCHC Technology or Patent Rights for prognosis and/or diagnosis of PCG.

1.3 "Patent Rights" means all rights of UCHC to any subject matter relating to prognosis and/or diagnosis of PCG described by, claimed in or covered by United States Patent Application Serial No. 08/800,636 titled "Diagnosis and Treatment of Glaucoma," filed February 13, 1997 (the "Existing Application"), any continuations, continuations-in-part ("CIP"), divisions and substitutions thereof, and any foreign patents corresponding thereto, and/or any divisions, continuations, or reissues thereof, provided that in order to be included in Patent Rights, the new subject matter contained in any CIP, or foreign counterparts thereto, must have been developed in the UCHC laboratory of Dr. Mansoor Sarfarazi during the term of the Research Agreement and as a result of the work performed under the Research Agreement, and the new subject matter must relate to prognosis and/or diagnosis of PCG.

1.4 "Net Sales" means total billings for Licensed Products, determined in accordance with generally accepted accounting principles, sold by Licensee and its Affiliates, less:

(a) import, export, excise, use, value-added and sales taxes, and custom duties actually paid by Licensee to the extent separately stated on invoices or other sales documents;

(b) to the extent actually paid by Licensee, costs of insurance, packing, and transportation from the place of manufacture to the customer's premises or point of installation to the extent separately stated on invoices or other sales documents;

(c) credit for returns, allowances, and discounts actually allowed by Licensee; and

(d) Medicaid rebates and rebates actually allowed by Licensee made or taken in amounts customary in the industry.

Licensed Products shall be considered sold when paid for or thirty (30) days after invoiced, whichever is sooner.

1.5 "Affiliate" means any entity which controls, is controlled by or is under common control with Licensee. An entity shall be regarded as in control of another entity if it owns or controls more than fifty percent (50%) of the voting power of such entity.

1.6 "Valid Claim" means a claim of an issued, unexpired patent which has not been: held invalid or unenforceable by a final decision of a court or governmental agency of competent jurisdiction, which decision is unappealable or was not

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appealed within the time allowed therefor; or admitted in writing to be invalid or unenforceable by the holder(s) pursuant to a reissue, disclaimer or otherwise.

1.7 "PCG" is defined throughout this Agreement as primary congenital glaucoma related to the GLC3A locus and other GLC3 loci, if any, for which Dr. Sarfarazi identifies mutations under the terms of the Research Agreement between UCHC and Licensee dated October 23, 1996, as amended, (the "Research Agreement").

2. Grant of License and Term

2.1 UCHC grants to Licensee and its Affiliates an exclusive, worldwide right and license to use UCHC Technology, and to make, have made, use, import, export and sell Licensed Products incorporating, made, using or derived from UCHC Technology, upon the terms and conditions of this Agreement.

2.2 UCHC grants to Licensee and its Affiliates an exclusive, worldwide license under the Patent Rights to make, use and sell Licensed Products, and to practice any process, method or procedure covered by the Patent Rights related to prognosis and/or diagnosis of PCG, upon the terms and conditions set forth herein.

2.3 The rights and licenses granted under Sections 2.1 and 2.2 above shall include the exclusive right to grant sublicenses.

2.4 UCHC shall promptly disclose to Licensee the UCHC Technology and provide Licensee with copies of the physical embodiments thereof. UCHC shall provide Licensee with reasonable assistance in understanding and implementing the UCHC Technology related to PCG. The amount of such assistance to be provided by Dr. Mansoor Sarfarazi will be mutually agreed by Dr. Sarfarazi and Licensee, and Dr. Sarfarazi will be compensated for time spent providing such assistance at the same rate as for services provided pursuant to his existing consulting agreement with Licensee. Licensee shall not disclose any unpublished UCHC Technology furnished by UCHC pursuant to this Agreement to third parties during the term of this Agreement or any time thereafter, provided, however, that Licensee may disclose any such UCHC Technology at any time: (1) with the prior written consent of Dr. Sarfarazi and UCHC, (2) after the same shall have become public through no fault of Licensee or (3) to sublicensees of Licensee or other persons or entities with whom Licensee proposes to enter into a business relationship, provided that such sublicensee or third party enters into a confidentiality agreement containing provisions equivalent to Section 8 of this Agreement. The Licensee will not disclose proprietary information which is unpublished and not included in a patent application without Dr. Sarfarazi's prior permission, which shall not be unreasonably withheld or delayed.

2.5 In the event that the laboratory of Dr. Mansoor Sarfarazi at UCHC develops any improvements relating only to the prognosis and diagnosis of PCG

("Improvements") as a result of the work performed under the Research Agreement during the time the Research Agreement is in effect, UCHC shall promptly notify Licensee of such Improvements in writing and provide Licensee with a detailed written description of such Improvements. Licensee shall have the right to include such Improvements under the rights granted in this Agreement and all rights granted to Licensee herein with respect to the UCHC Technology and the Patent Rights shall apply to such Improvements, provided that Licensee shall notify UCHC and Dr. Sarfarazi in writing of its election to have the Improvements included under the grant and all other provisions of this Agreement within ninety (90) days of receipt of written notice of such Improvements from UCHC.

2.6 During the term of the Research Agreement, Licensee shall have the option, as described in Article 9 of the Research Agreement, to obtain from UCHC an exclusive, worldwide right and license to use any ~~research and development information, know-how, and technical data relating to~~ ^{invention} PCG which has been developed in the UCHC laboratory of Dr. Mansoor Sarfarazi and is in the possession of UCHC which relates to therapeutic approaches to PCG and which UCHC has the right to provide to Licensee. The terms and conditions of such license shall be determined in good faith.

Handwritten signature and date: 8/15/97
 UCHC
 InSite Vision

3. License Fee and Royalties

3.1 Licensee shall pay to UCHC a license issue fee of Ten Thousand Dollars (\$10,000) upon the execution of this Agreement. In addition, Licensee shall pay to UCHC the following milestone payment: Forty Thousand Dollars (\$40,000) upon submission of an application for regulatory approval of the first Licensed Product for prognostic or diagnostic use to the U.S. Food and Drug Administration ("FDA") or upon beginning commercial sale of Licensed Products. For the purpose of this Section 3.1, payments shall be made to UCHC within thirty (30) days of the triggering event.

3.2 Licensee shall pay UCHC:

(a) six percent (6%) of Net Sales of Licensed Products for prognostic or diagnostic use as earned royalties, provided that such Licensed Products are covered by a Valid Claim in the country in which, and at the time, they are sold, provided, however, that the foregoing earned royalty rate of six percent (6%) shall be reduced to an earned royalty equal to the UCHC Portion (as defined below) multiplied by six percent (6%) in the case of sales of Licensed Products that incorporate the UCHC Technology or the Patent Rights and components licensed by Licensee from other third parties. The "UCHC Portion" means the portion of the total detectable incidence of Primary Congenital Glaucoma in the target population defined by the parties that is attributable to the detection capabilities of and/or the genes identified by the UCHC Technology and the Patent Rights. Documentation for the above calculation will be based on the reported results of the UCHC research and on other relevant data from published materials; and

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(b) one and one half percent (1.5%) of Net Sales of Licensed Products for prognostic or diagnostic use as earned royalties, provided that such Licensed Products are not covered by a Valid Claim in the country in which, and at the time, they are sold, provided, however, that the foregoing earned royalty rate of one and one half percent (1.5%) shall be reduced to an earned royalty equal to the UCHC Portion multiplied by one and one half percent (1.5%) in the case of sales of Licensed Products that incorporate the UCHC Technology and components licensed by Licensee from other third parties. Documentation for the above calculation will be based on the reported results of the UCHC research and on other relevant data from published materials.

3.3 Within forty-five (45) days after the end of the first four (4) full calendar quarters following the first commercial sale of Licensed Products, or at the end of the calendar quarter which falls four (4) years after the Effective Date and each year thereafter during the term of this Agreement, Licensee shall pay to UCHC the amount, if any, by which the following minimum annual royalty payments exceed the earned royalty payments made by Licensee to UCHC pursuant to Section 3.2 above for the corresponding year:

First year	<u>\$20,000</u>
Second year	<u>\$45,000</u>
Third year	<u>\$65,000</u>
Each year thereafter	<u>\$95,000</u>

Notwithstanding any provision of this Agreement to the contrary, in the event of Licensee's breach of any of its obligations under Section 3, UCHC shall have the right, at its sole discretion, to terminate this Agreement or to convert the exclusive licenses granted under Section 2.1 and 2.2 hereof to non-exclusive licenses upon providing Licensee with written notice of such conversion if Licensee has failed to cure any such breach within ninety (90) days of receipt of written notice from UCHC describing such breach.

3.4 Notwithstanding any provision of this Agreement to the contrary, Licensee shall pay to UCHC:

(a) fifty percent (50%) of royalties that Licensee and/or its Affiliates receive as earned royalty income from sublicensees, up to the amount that UCHC would receive if such sales had been made by Licensee; and

(b) fifty percent (50%) of all sublicensing fees that Licensee and/or its Affiliates receive from sublicensees, including, but not limited to, initial sublicensing fees, minimums, maintenance fees, equity or other ownership interest, and milestone payments.

Licensee shall provide UCHC with a complete copy of each sublicense granted by Licensee within thirty (30) days of execution of such sublicense.

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3.5 Sales of Licensed Products between or among Licensee, its Affiliates and sublicensees shall not be subject to any royalty hereunder, and in such cases royalties shall be calculated upon Licensee's or its Affiliates' or sublicensees' Net Sales to an independent third party. Licensee shall be responsible for payment of any royalty accrued on Net Sales of Licensed Products to such independent third party through Licensee's Affiliates or sublicensees. Royalties shall accrue hereunder only once in respect of the same unit of the Licensed Product.

4. Timing of Royalty Payments: Records

4.1 Within forty-five (45) days after the end of each calendar quarter, Licensee shall pay to UCHC the royalty payment and sublicensing income due for such quarter in U.S. dollars. Such royalties shall be converted, where applicable, from the currency of the country in which the sale was made into U.S. dollars in accordance with generally accepted accounting principles.

4.2 Together with each quarterly payment, Licensee shall submit to UCHC a written accounting showing its computation of royalties and sublicensing income due under this Agreement for such quarter. Said accounting shall set forth gross sales, credits and other offsets, Net Sales, total sublicensing income, the exchange rate applied, if any, and the total payment due for the quarter in question.

4.3 Licensee shall keep full and accurate books and records reflecting the sales of Licensed Products and the data used in arriving at Net Sales and the amount of royalties and/or share of sublicense income payable to UCHC hereunder for no less than three years after the end of each such quarter. Licensee shall permit UCHC, at UCHC's expense, to have such books and records examined by independent certified public accountants retained by UCHC and reasonably acceptable to Licensee, during regular business hours upon reasonable advance notice, but not later than three years following the rendering of any such reports, accounting and payments, and no more often than one time per year. Such independent accountants shall keep confidential any information obtained during such examination and shall report to UCHC only the amounts of royalties and/or share of sublicense income which the independent accountant believes to be due and payable hereunder.

5. Due Diligence. Licensee shall use its reasonable commercial efforts to proceed with the research, development and commercialization of Licensed Products and shall thereafter use its reasonable commercial efforts to commercialize and sell the Licensed Products so developed during the term of this Agreement. If Licensee has not made commercial sales of Licensed Products within five (5) years after the Effective Date, UCHC may terminate this Agreement upon sixty (60) days prior written notice at the sole discretion of UCHC.

6. Government Rights. Notwithstanding Sections 2.1 and 2.2 above, any and all licenses granted hereunder are subject the following rights of the United States Government which arise out of its partial sponsorship of the research which led to the UCHC Technology or the Patent Rights: (i) a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any invention within the Patent Rights throughout the world; and (ii) march-in rights as provided in 35 U.S.C. § 203. Upon the written request of the Licensee, UCHC will use reasonable efforts to obtain a waiver of the requirement under 35 U.S.C. § 203 that products embodying such inventions or produced through the use of such inventions sold in the United States be manufactured substantially in the United States.

7. Term and Termination.

7.1 Unless earlier terminated in accordance with this Section 7, this Agreement and the licenses granted herein shall continue until the later of (a) the expiration of the last-to-expire patent within the Patent Rights, or (b) the abandonment of the last application within the Patent Rights or (c) fifteen (15) years from the Effective Date of this Agreement. Upon the expiration, but not the earlier abandonment or termination of this Agreement, Licensee's rights under Section 2.1 shall survive.

7.2 UCHC may terminate this Agreement if Licensee is: in significant breach of a material term of this Agreement and Licensee fails to remedy such breach within sixty (60) days after written notice of breach from UCHC; or adjudged bankrupt or enter into a composition with or assignment to its creditors with respect to substantially all of its assets.

7.3 Licensee may terminate this Agreement at any time upon one hundred eighty (180) days written notice to UCHC, provided that Licensee shall be obligated to pay to UCHC all milestone, minimum, earned royalty, sublicense income or other amounts due and payable to UCHC as of the effective date of the written notice. In addition to the above, if Licensee terminates this Agreement within five (5) years after the Effective Date, and if Licensee, together with its sublicensees and affiliates, has failed to achieve commercial sales of Licensed Products of at least two million dollars per year, Licensee shall also pay to UCHC an early termination fee equal to six (6) months of minimum royalties as outlined in Section 3.3 and as calculated for the six (6) months after the effective date of the termination. All payments required under this Section 7.3 shall be paid to UCHC within thirty (30) days of the effective date of the termination.

7.4 The provisions of Sections 1, 7.1, 7.4, 8, 12, 13 and 14 hereof shall survive any expiration or termination of this Agreement.

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8. Confidentiality

8.1 UCHC and Licensee shall keep any technology, formula, trade secrets, technical data or business information ("Information") provided or made available by the other party or its Affiliates hereunder confidential, and neither UCHC nor Licensee shall, without the prior written consent of the other party or its Affiliates, as the case may be, use (except as expressly permitted by this Agreement or for the purposes of this Agreement), or disclose to any third party, any Information provided or made available by the other party or its Affiliates hereunder; provided, however, that the foregoing shall not apply to information which the party receiving such information can establish by written documentation to (i) have been publicly known at the time of disclosure by the other party or its Affiliates, as the case may be, (ii) have become publicly known, without fault on its part, subsequent to such disclosure, (iii) have been otherwise known by it from a source (other than the other party or its agents or Affiliates), lawfully having possession of such information, or (v) have been developed by it or its Affiliates independently of the disclosure by the other party or its Affiliates.

The foregoing shall not preclude the disclosure of information by UCHC or Licensee:

(a) to its legal representatives, Affiliates, consultants, outside contractors and (if it has the right to grant the license or sublicense) its licensees and sublicensees, under like confidentiality obligations on the part of the recipients, or

(b) to the extent required by law or regulation, provided that, to the extent reasonably possible, it shall give prompt written notice of the proposed disclosure to the other party or its Affiliates, as the case may be, so as to allow the other party or its Affiliates, as the case may be, an opportunity to object to such requirement and, if applicable, assure that confidential treatment will be accorded to such information, or

(c) to the extent that such information is reasonably required to be disclosed for the purpose of securing necessary governmental authorization for the clinical testing or marketing of products or for the purpose of conducting clinical testing or marketing of products, or of prosecuting or defending litigation.

8.2 The terms of this Agreement shall not be disclosed by either party to any third party (other than as provided in Subsections 8.1(a), (b) and (c) above) or be published unless both parties expressly agree otherwise in writing. Furthermore, neither party shall use the name of the other party or its Affiliates without their prior written consent. However, the foregoing restrictions shall not apply to the disclosure of information set forth in the form of an agreed-upon press release, if any, which may be prepared in mutually agreeable format and substance for release on the Effective Date, or to disclosures required by law or regulation. Both UCHC and Licensee may include the existence of this

Agreement and the Research Agreement in annual reports and other public documents without the permission of the other party.

9. Use of UCHC's Name. Licensee shall not use the name of UCHC or Dr. Sarfarazi or its then current employees in advertising or promoting the sale of Licensed Products or for any other business purpose without the prior written consent of UCHC and/or Dr. Sarfarazi, as appropriate.

10. UCHC Use. It is expressly agreed that, notwithstanding any provisions herein, UCHC is free to use the UCHC Technology and the Patent Rights for its own research, teaching and educational purposes without limitation and without payment of royalties or any other form of payment.

11. Patents.

(a) Filing for, prosecuting and maintaining patent applications and patents included within the Patent Rights shall be made at the discretion of and in the name of UCHC. Licensee and its sublicensees shall have the opportunity to provide input on the strategy for seeking such patent protection, including a reasonable opportunity to review future patent applications and related documents associated with the Patent Rights. Licensee shall cooperate with and assist UCHC in filing for and prosecution of such Patent Rights. UCHC shall keep Licensee fully informed as to the status of such Patent Rights. In addition, UCHC will use diligent efforts to advise Licensee of all proposed patent filings of a substantive nature in time reasonably sufficient for Licensee to review such filings. Licensee will reimburse UCHC for reasonable costs incurred by UCHC in the preparation, filing, prosecution and maintenance of the Patent Rights. Unless otherwise agreed by the parties in writing, the law firm of Hamilton, Brook, Smith and Reynolds shall be utilized for purposes of preparing, filing, prosecuting, and maintaining patent applications hereunder.

(b) If UCHC elects to terminate either the prosecution or maintenance of the Patent Rights in any country prior to the completion of normal prosecution before the patent examiner of such country or prior to the end of the corresponding term for maintenance, as the case may be, it will give Licensee sixty (60) days prior written notice of such election prior to any time limit on any action due. Licensee, upon receipt of such notice, shall have the option to undertake the continuation of such prosecution or maintenance and UCHC will transfer title to Licensee for such patent application or patent.

(c) Each party shall promptly inform the other of any suspected or threatened infringement of any Patent Rights by a third party and cooperate to develop an appropriate response to the infringement. UCHC and Licensee each shall have the right to institute an action for infringement of the Patent Rights against such third party in accordance with the following:

- i. If UCHC and Licensee agree to institute suit jointly, the suit shall be brought in both their names, the out-of-pocket costs thereof shall be borne equally, provided that UCHC will be responsible for its share of costs only by allowing Licensee to withhold up to fifty percent (50%) of the royalties or sublicensing income otherwise due and payable to UCHC, and any recovery or settlement shall be shared in the following proportions: seventy-five percent (75%) to Licensee and twenty-five percent (25%) to UCHC. UCHC and Licensee shall agree to the manner in which they shall exercise control over such action. Either party may, if it so desires, also be represented by separate counsel of its own selection, the fees for which counsel shall be paid by such party;
- ii. In the absence of agreement to institute a suit jointly, UCHC may institute suit, and, at its option, join Licensee as a plaintiff, provided, however, that UCHC must provide Licensee with written notice of its decision to institute suit within thirty (30) days of UCHC becoming reasonably aware of the possibility of instituting a suit. UCHC shall bear the entire cost of litigation that it institutes and shall be entitled to retain the entire amount of any recovery or settlement. In the event UCHC fails to provide the foregoing notice, Licensee may institute suit, and, at its option, join UCHC as a plaintiff. Licensee shall bear the entire cost of such litigation that it institutes and shall be entitled to retain the entire amount of any recovery or settlement; and
- iii. In either of the foregoing cases, each party will provide the other party with reasonable assistance and full cooperation in connection with an action instituted.

12. **Indemnity.** Licensee agrees to indemnify, hold harmless and defend UCHC, its officers, employees, and agents, against any and all claims, suits, losses, damage, costs, fees, and expenses asserted by third parties, both government and private, for death, illness, personal injury and property damage resulting from or arising out of Licensee's development, use or sale of the Licensed Products, provided that Licensee shall not be responsible for amounts paid in settlement of any claim without its approval. In the event of loss resulting from acts of omission or commission by UCHC and/or its employees in connection with this Agreement, the Licensee or any third party shall have recourse through the Connecticut Claims Commission as provided under Chapter 53 of the Statutes of the State of Connecticut in which all claims against the State of Connecticut and the University of Connecticut shall be filed with the State of Connecticut Claims Commissioner. In

addition, this provision shall apply to any claims against UCHC made in conjunction with Section 14.2 of this Agreement.

IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING IN ANY WAY OUT OF THIS AGREEMENT UNDER ANY CAUSE OF ACTION, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

13. Warranties. UCHC warrants that it: has the lawful right to grant the licenses provided in this Agreement; has not granted rights or licenses in conflict with of this Agreement; has not received any notice of a claim of infringement or misappropriation of any alleged rights asserted by any third party in relation to the UCHC Technology or the Patent Rights; is not aware that any third party is infringing the Patent Rights; and, except as disclosed to Licensee, UCHC is not aware of any patents or other proprietary rights of any third party which would materially affect the exercise of the license rights granted hereunder to Licensee. UCHC agrees that during the term of this Agreement (or any license granted hereunder), UCHC shall not enter into any other agreements that conflict with rights or obligations provided hereunder, including any rights and obligations that survive termination hereof.

14. Miscellaneous.

14.1 Notices. Any notice required or permitted to be given to the parties hereto shall be deemed to have been properly given if delivered in person or when received if mailed by first-class certified mail to the other party at the appropriate address as set forth at the beginning of this Agreement, or to such other addresses as may be designated in writing by the parties from time to time during the term of this Agreement.

14.2 Governing Law and Dispute Resolution. This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut without regard to the conflict of laws provisions thereof. Any controversy arising under or related to this Agreement, or any disputed claim by either party against the other under this Agreement, excluding any dispute relating to patent validity or infringement arising under this Agreement, shall be first addressed by good faith negotiation between the parties; if such efforts fail to resolve the dispute, the parties shall seek the assistance of a mutually acceptable third-party mediator. ~~If the dispute will remain unresolved after a reasonable period of mediation, the dispute shall be referred to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrators shall be binding upon the parties and may be enforced by either~~

11. InSite Init./Date UCHC Init./Date
[Handwritten signatures and dates: InSite 8/11/97, UCHC 8/6/97]


InSite Init./Date


UCHC Init./Date

~~party in the court of competent jurisdiction in any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover costs and reasonable attorney's fees.~~ Notwithstanding anything to the contrary, nothing in this Agreement shall be deemed as preventing either party from seeking injunctive relief (or any other provisional remedy) from any court having jurisdiction over the parties and the subject matter of the dispute as necessary to protect either party's name, proprietary information, trade secrets, know-how or any other proprietary rights.

14.3 Waiver. It is agreed that no waiver by either party hereto of any breach or default of any of the covenants or agreements herein set forth shall be deemed a waiver as to any subsequent and/or similar breach or default.

14.4 Assignment. This Agreement shall not be assignable by either party without the written consent of the other party, which consent shall not be withheld unreasonably. Notwithstanding the foregoing, either party may transfer and assign this Agreement, without the other party's consent, to an entity that succeeds to substantially all of the business or assets of such party to which this Agreement pertains.

14.5 Independent Contractors. The relationship of UCHC and Licensee established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed (i) to give either party the power to direct or control the day-to-day activities of the other or (ii) to constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.

14.6 Severability. If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, then the remaining provisions shall nevertheless remain in full force and effect. The parties further agree to negotiate in good faith a substitute, valid and enforceable provision that most nearly effects the parties' intent and to be bound by the mutually agreed substitute provision.

14.7 Force Majeure. Nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence of the nonperforming party.

14.8 Entire Agreement. This Agreement constitutes the entire, final, complete and exclusive agreement between the parties and supersedes all previous agreements or representations, oral or written, relating to the licensing and commercial development of the PCG technology for prognostic and diagnostic use. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party. Both parties acknowledge having read the terms and conditions set forth in this Agreement, understand all terms and conditions, and agree to be bound thereby.

14.9 UCHC is authorized to enter into this Agreement under Section 10a-104 and Sections 10a-110 to 10a-110g of the General Statutes of Connecticut, as amended as of the Effective Date.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

THE UNIVERSITY OF CONNECTICUT
HEALTH CENTER

INSITE VISION
INCORPORATED

By: 

By: 

Name: Leonard P. Paplauskas

Name: Michael D. Baer

Title: Asst. Vice Chancellor for Research

Title: Vice President



OFFICE OF TECHNOLOGY TRANSFER

LICENSE AGREEMENT

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PREAMBLE

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* Confidential treatment is requested for the language which has been underscored or marked. Such language has been deleted from the copy filed with the SEC with the Registration Statement on Form S-3 of InSite Vision Incorporated.

This license agreement (the "Agreement") is made and entered into this ~~July~~ ^{August} 19th day of July, 1997, (the Effective Date) by and between the UNIVERSITY OF ROCHESTER, an educational institution chartered by the State of New York (hereinafter referred to as ROCHESTER), and InSite Vision Incorporated, a corporation duly organized under the laws of Delaware and having its principal office at 965 Atlantic Avenue, Alameda, CA 94501 (hereinafter referred to as INSITE).

WITNESSETH

WHEREAS, ROCHESTER is the owner of certain "Patent Rights" (as later defined herein) relating to ROCHESTER Case No. 6-11401-337, "*Intraretinal Delivery System*" and has the right to grant licenses under said Patent Rights;

WHEREAS, ROCHESTER desires to have the Patent Rights utilized in the public interest and is willing to grant a license thereunder;

WHEREAS, INSITE has represented to ROCHESTER that it shall commit itself to a thorough, vigorous and diligent program of exploiting the Patent Rights so that public utilization shall result therefrom; and

WHEREAS, INSITE desires to obtain a license under the Patent Rights upon the terms and conditions hereafter set forth.

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

ARTICLE I - DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the following meanings:

1.1 "INSITE" shall include a related company of INSITE, the voting stock of which is directly or indirectly at least fifty percent (50%) owned or controlled by INSITE, an organization which directly or indirectly controls more than fifty percent (50%) of the voting stock of INSITE and an organization, the majority ownership of which is directly or indirectly common to the ownership of INSITE.

1.2 "Patent Rights" shall mean all of the following ROCHESTER intellectual property:

(a) the United States and foreign patents and/or patent applications listed in Appendix A;

(b) United States and foreign patents issued from the applications listed in Appendix A and from divisionals and continuations of these applications;

(c) claims of U.S. and foreign continuation-in-part applications, and of the resulting patents, which are directed to subject matter specifically described in the U.S. and foreign applications listed in Appendix A;

(d) claims of all foreign patent applications, and of the resulting patents, which are directed to subject matter specifically described in the United States patents and/or patent applications described in (a), (b), or (c) above;

(e) any reissues of United States patents described in (a), (b), (c), or (d) above.

1.3 A "Licensed Product" shall mean any product or part thereof which:

(a) is covered in whole or in substantial part by an issued, unexpired claim or a pending claim contained in the Patent Rights in the country in which any Licensed Product is made, used or sold;

(b) is manufactured by using a process which is covered in whole or in substantial part by an issued, unexpired claim or a pending claim contained in the Patent Rights in the country in which any Licensed Process is used or in which such product or substantial part thereof is used or sold.

1.4 A "Licensed Process" shall mean any process which is covered in whole or in substantial part by an issued, unexpired claim or a pending claim contained in the Patent Rights.

1.5 "Net Sales" shall mean INSITE's (and its sublicensee's) billings for Licensed Products and Licensed Processes produced hereunder less the sum of the following:

(a) discounts allowed in amounts customary in the trade;

- (b) sales, import, export, excise, and value-added taxes and customs and tariff duties and/or use taxes directly imposed and with reference to particular sales;
- (c) outbound transportation prepaid or allowed, costs of insurance and packing from the place of manufacture to customer's premises; and
- (d) amounts allowed or credited on returns.

No deductions shall be made for commissions paid to individuals whether they be with independent sales agencies or regularly employed by INSITE and on its payroll, or for cost of collections. Licensed Products shall be considered "sold" when paid for or thirty (30) days after invoicing, whichever is sooner.

ARTICLE II - GRANT

2.1 ROCHESTER hereby grants to INSITE the exclusive worldwide right and license to make, have made, use, import, export, lease and sell the Licensed Products, and to practice the Licensed Processes to the end of the term for which the Patent Rights are granted unless sooner terminated according to the terms hereof.

2.2 ROCHESTER hereby agrees that it shall not grant any other license to make, have made, use, lease and sell Licensed Products or to utilize Licensed Processes during the period of time commencing with the Effective Date of this Agreement and coinciding with the term or terms for which any Patent Rights are issued, unless sooner terminated as hereinafter provided.

2.3 ROCHESTER reserves the right to practice under the Patent Rights for its own noncommercial research purposes.

2.4 INSITE shall have the exclusive, worldwide right to enter into sublicensing agreements for the rights, privileges and licenses granted hereunder.

2.5 INSITE hereby agrees that every sublicensing agreement to which it shall be a party and which shall relate to the rights, privileges and license granted hereunder shall contain a statement setting forth the date upon which INSITE's exclusive rights, privileges and license hereunder shall terminate.

2.6 INSITE agrees that any sublicenses granted by it shall provide that the obligations to ROCHESTER of Articles II, V, VII, IX, X, XII and XIII of this Agreement shall be binding upon the sublicensee as if it were a party to this Agreement. INSITE further agrees to attach copies of these Articles to sublicense agreements.

2.7 INSITE agrees to forward to ROCHESTER a copy of any and all fully executed sublicense agreements, and further agrees to forward to ROCHESTER annually a copy of such reports received by INSITE from its sublicensees during the preceding twelve (12) month period under the sublicenses as shall be pertinent to a royalty accounting under said sublicense agreements.

2.8 INSITE shall not receive from sublicensees anything of value in lieu of cash payments in consideration for any sublicense under this Agreement, without the express prior written permission of ROCHESTER.

2.9 The license granted hereunder shall not be construed to confer any rights upon INSITE by implication, estoppel or otherwise as to any technology not specifically set forth in Appendix A hereof.

ARTICLE III - DUE DILIGENCE

3.1 INSITE shall use reasonable commercial efforts to bring one or more Licensed Products or Licensed Processes to market through a thorough, vigorous and diligent program for exploitation of the Patent Rights.

3.2 In addition, INSITE shall adhere to the following milestones:

(a) INSITE shall deliver to ROCHESTER on or before March 31, 1998 a business plan showing the amount of money, number and kind of personnel and time budgeted and planned for each phase of development of the Licensed Products and Licensed Processes and shall provide similar reports to ROCHESTER on an annual basis on or before the ninetieth (90th) day following the close of INSITE's fiscal year.

(b) INSITE shall develop a working prototype model on or before December 31, 1998; INSITE shall file an IDE for the Licensed Product by

March 31, 2000; and INSITE shall file a 510K for the Licensed Product by June 30, 2002.

3.3 INSITE's failure to perform in accordance with Paragraphs 3.1 and 3.2 above shall be grounds for ROCHESTER to terminate this Agreement pursuant to Paragraph 13.3 hereof.

ARTICLE IV - ROYALTIES

4.1 For the rights, privileges and license granted hereunder, INSITE shall pay royalties to ROCHESTER in the manner hereinafter provided to the end of the term of the Patent Rights or until this Agreement shall be terminated as hereinafter provided:

(a) License Issue Fee of Sixty-Five Dollars (\$65,000), which said License Issue Fee shall be deemed earned and due immediately upon the execution of this Agreement.

(b) License Maintenance Fees of Ten Thousand Dollars (\$10,000) per year payable on the first anniversary of the Effective Date and each year thereafter; provided, however, that the License Maintenance Fee for a given year shall be creditable against any Running Royalties subsequently due during said year under subparagraph 4.1 (c) below, and also creditable against any payments to the University of Rochester during said year to support research in the Laboratory of Dr. Manuel del Cerro.

(c) Running Royalty in an amount equal to ten percent (10%) of the Net Sales of the Licensed Products or Licensed Processes used, leased, or sold by or for INSITE.

(d) Thirty-three percent of all payments to INSITE by any sublicensee as compensation for the right to make, have made, use, import, export, lease and sell the Licensed Products.

4.2 No multiple royalties shall be payable because any Licensed Product, its manufacture, use, lease or sale shall be covered by more than one Patent Rights patent application or Patent Rights patent licensed under this Agreement.

* Confidential treatment is requested for the language which has been underscored or marked. Such language has been deleted from the copy filed with the SEC with the Registration Statement on Form S-3 of InSite Vision Incorporated.

4.3 Royalty payments shall be paid in United States dollars in Rochester, New York, or at such other place as ROCHESTER may reasonably designate consistent with the laws and regulations controlling in any foreign country. If any currency conversion shall be required in connection with the payment of royalties hereunder, such conversion shall be made by using the exchange rate published in the Wall Street Journal on the last business day of the calendar quarterly reporting period to which such royalty payments relate.

ARTICLE V - REPORTS AND RECORDS

5.1 INSITE shall keep full, true and accurate books of account containing all particulars that may be necessary for the purpose of showing the amounts payable to ROCHESTER hereunder. Said books of account shall be kept at INSITE's principal place of business or the principal place of business of the appropriate division of INSITE to which this Agreement relates. Said books and the supporting data shall be open, subject to ROCHESTER providing INSITE with reasonable, advance written notice, at all reasonable times for three (3) years following the end of the calendar year to which they pertain, to the inspection of ROCHESTER or its agents for the purpose of verifying INSITE's royalty statement or compliance in other respects with this Agreement.

5.2 INSITE, within sixty (60) days after December 31, of each year, shall deliver to ROCHESTER true and accurate reports, giving such particulars of the business conducted by INSITE and its sublicensees during the preceding year under this Agreement as shall be pertinent to a royalty accounting hereunder. These shall include at least the following:

- (a) number of Licensed Products manufactured and sold.
- (b) total billings for Licensed Products sold.
- (c) deductions applicable as provided in Paragraph 1.5.
- (d) total royalties due.
- (e) names and addresses of all sublicensees of INSITE.

5.3 With each such report submitted, INSITE shall pay to ROCHESTER the royalties due and payable under this Agreement. If no royalties shall be due, INSITE shall so report.

5.4 On or before the ninetieth (90th) day following the close of INSITE's fiscal year, INSITE shall provide ROCHESTER with INSITE's certified financial statements for the preceding fiscal year, including, at a minimum, a Balance Sheet and an Operating Statement.

5.5 The royalty payments set forth in this Agreement, if overdue, bear interest until payment at a per annum rate four percent (4%) above the then current reference rate in effect at the Chase Lincoln First Bank, Rochester, New York, on the due date. The payment of such interest shall not foreclose ROCHESTER from exercising any other rights it may have as a consequence of the lateness of any payment.

ARTICLE VI - PATENT PROSECUTION

6.1 ROCHESTER shall apply for, seek prompt issuance of, and maintain during the term of this Agreement the Patent Rights in the United States and in the foreign countries listed in Appendix A hereto. Appendix A may be amended by verbal agreement of both parties, such agreement to be confirmed in writing within ten (10) days. The prosecution, filing and maintenance of all Patent Rights patents and applications shall be the primary responsibility of ROCHESTER; provided, however, INSITE shall have reasonable opportunities to advise ROCHESTER and shall cooperate with ROCHESTER in such prosecution, filing and maintenance.

6.2 Payment of all fees and costs relating to the filing, prosecution, and maintenance of the Patent Rights incurred by the University after the Effective Date shall be the responsibility of INSITE.

ARTICLE VII - INFRINGEMENT

7.1 INSITE shall inform ROCHESTER promptly in writing of any alleged infringement of the Patent Rights by a third party that it becomes reasonably and sufficiently aware of and of any available evidence thereof.

7.2 During the term of this Agreement, ROCHESTER shall have the right, but shall not be obligated, to prosecute at its own expense any such infringements of the Patent Rights and, in furtherance of such right, INSITE hereby agrees that ROCHESTER may join

INSITE as a party plaintiff in any such suit, without expense to INSITE. The total cost of any such infringement action commenced or defended solely by ROCHESTER shall be borne by ROCHESTER and ROCHESTER shall keep any recovery or damages for past infringement derived therefrom.

7.3 If within six (6) months after having been notified of any alleged infringement, ROCHESTER shall have been unsuccessful in persuading the alleged infringer to desist and shall not have brought and shall not be diligently prosecuting an infringement action, or if ROCHESTER shall notify INSITE at any time prior thereto of its intention not to bring suit against any alleged infringer, then, and in those events only, INSITE shall have the right, but shall not be obligated to prosecute at its own expense any infringement of the Patent Rights, and INSITE may, for such purposes, use the name of ROCHESTER as party plaintiff, provided, however, that such right to bring an infringement action shall remain in effect only for so long as the license granted herein remains exclusive. No settlement, consent judgment or other voluntary final disposition of the suit may be entered into without the consent of ROCHESTER, which consent shall not be unreasonable withheld. INSITE shall indemnify ROCHESTER against any order for costs that may be made against ROCHESTER in such proceedings.

7.4 In the event that INSITE shall undertake the enforcement and/or defense of the Patent Rights by litigation, INSITE may withhold up to fifty percent (50%) of the royalties otherwise thereafter due ROCHESTER hereunder and apply the same toward reimbursement of its associated costs and expenses, including reasonable attorneys' fees in connection therewith. Any recovery of damages by INSITE for any such suit shall be applied first in satisfaction of any unreimbursed expenses and legal fees of INSITE relating to the suit, and next toward reimbursement of ROCHESTER for any royalties past due or withheld and applied pursuant to this Article VII. The balance remaining from any such recovery shall be divided equally between INSITE and ROCHESTER.

7.5 In the event that a declaratory judgment action alleging invalidity or noninfringement of any of the Patent Rights shall be brought against INSITE, ROCHESTER, at its option, shall have the right, within thirty (30) days after commencement of such action, to intervene and take over the sole defense of the action at its own expense.

7.6 In any infringement suit as either party may institute to enforce the Patent Rights pursuant to this Agreement, the other party hereto shall, at the request and expense of the party initiating such suit, cooperate in all respects and, to the extent possible, have its employees testify when requested and make available relevant records, papers, information, samples, specimens, and the like.

7.7 INSITE, during the exclusive period of this Agreement, shall have the sole right in accordance with the terms and conditions herein to sublicense any alleged infringer for future use of the Patent Rights.

ARTICLE VIII - PRODUCT LIABILITY; CONFIDENTIALITY; LIMITATION OF LIABILITY; WARRANTIES

8.1 INSITE shall at all times during the term of this Agreement and thereafter, indemnify, defend and hold ROCHESTER, its trustees, officers, employees and affiliates, harmless against all claims and expenses, including legal expenses and reasonable attorneys' fees arising out of the death of or injury to any person or persons or out of any damage to property and against any other claim proceeding, demand, expense and liability of any kind whatsoever resulting from the production, manufacture, sale, use, lease, consumption or advertisement of the Licensed Product(s) and/or Licensed Process(es) or arising from any obligation of INSITE hereunder.

8.2 INSITE shall obtain and carry in full force and effect liability insurance which shall protect INSITE and ROCHESTER in regard to events covered by Paragraph 8.1 above.

8.3 EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, ROCHESTER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND VALIDITY OF PATENT RIGHTS CLAIMS, ISSUED OR PENDING.

8.4 ROCHESTER and INSITE shall keep any technology, formula, trade secrets, technical data or business information ("Information") provided or made available by the

other party hereunder confidential, and neither ROCHESTER nor INSITE shall, without the prior written consent of the other party, as the case may be, use (except as expressly permitted by this Agreement or for the purposes of the Agreement), or disclose to any third party, any Information provided or made available by the other party hereunder, provided, however, that the foregoing shall not apply to information which the party receiving such information can establish by written documentation to (i) have been publicly known at the time of disclosure by the other party, as the case may be, (ii) have been publicly known, without fault on its part, subsequent to such disclosure, (iii) have been otherwise known by it from a source (other than the other party or its agents), lawfully having possession of such information, or (iv) have been developed by it independently of the disclosure by the other party. The foregoing shall not preclude the disclosure of information by ROCHESTER or INSITE:

(a) to its legal representatives, consultants, outside contractors and (if it has the right to grant the license or sublicense) its licensees and sublicensees, under like confidentiality obligations on the part of the recipients, or

(b) to the extent required by law or regulation, provided that, to the extent reasonably possible, it shall give prompt written notice of the proposed disclosure to the other party, as the case may be, so as to allow the other party, as the case may be, an opportunity to object to such requirement and, if applicable, assure that confidential treatment will be accorded to such information, or

(c) to the extent that such information is reasonably required to be disclosed for the purpose of securing necessary governmental authorization for the clinical testing or marketing of products or for the purpose of conducting clinical testing or marketing of products, or of prosecuting or defending litigation.

8.5 IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING IN ANY WAY OUT OF THIS AGREEMENT UNDER ANY CAUSE OF ACTION, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF

SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LISTED REMEDY.

8.6 ROCHESTER warrants that it: has the lawful right to grant the licenses provided in this Agreement; it has not granted rights or licenses in conflict with this Agreement; has not received any notice of a claim of infringement or misappropriation of any alleged rights asserted by any third party in relation to the Patent Rights; and, except as disclosed to INSITE, ROCHESTER is not aware of any patents or other proprietary rights of any third party which would materially affect the exercise of the license rights granted hereunder to INSITE. ROCHESTER agrees that during the term of this Agreement (or any license granted hereunder), ROCHESTER shall not enter into any other agreements that conflict with rights or obligations provided hereunder, including any rights and obligations that survive termination hereof.

ARTICLE IX - EXPORT CONTROLS

It is understood that ROCHESTER is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities (including the Arms Export Control Act, as amended and the Export Administration Act of 1979), and that its obligations hereunder are contingent on compliance with applicable United States export laws and regulations. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and/or written assurances by INSITE that INSITE shall not export data or commodities to certain foreign countries without prior approval of such agency. ROCHESTER neither represents that a license shall not be required nor that, if required, it shall be issued.

ARTICLE X - NON-USE OF NAMES

INSITE shall not use the names of the University of Rochester nor of any of its employees, nor any adaptation thereof, in any advertising, promotional or sales literature without prior written consent obtained from ROCHESTER in each case, which consent shall

not be unreasonably withheld or delayed, except that INSITE may state that it is licensed by ROCHESTER under one or more of the patents and/or applications comprising the Patent Rights.

ARTICLE XI - ASSIGNMENT

This Agreement shall not be assignable by either party without the written consent of the other party, which consent shall not be withheld unreasonably. Notwithstanding the foregoing, either party may transfer and assign this Agreement without the other party's consent, to an entity that succeeds to substantially all of the business or assets of such party to which this Agreement pertains.

ARTICLE XII - ARBITRATION

12.1 Any and all claims, disputes or controversies arising under, out of, or in connection with this Agreement, including any dispute relating to patent validity of infringement, which have not been resolved by good faith negotiations between the parties, shall be resolved by final and binding arbitration in New York, New York, under the then current rules of the American Arbitration Association, or the Patent Arbitration Rules if applicable, then obtaining. The arbitrators shall have no power to add to, subtract from or modify any of the terms or conditions of this Agreement. Any award rendered in such arbitration may be enforced by either party in either the courts of the State of New York or in the United States District Court for the District of New York, to whose jurisdiction for such purposes ROCHESTER and INSITE each hereby irrevocably consents and submits.

12.2 Notwithstanding the foregoing, nothing in this Article shall be construed to waive any rights or timely performance of any obligations existing under this Agreement.

ARTICLE XIII - TERMINATION AND TERM

13.1 If INSITE shall cease to carry on its business, this Agreement shall terminate upon notice by ROCHESTER.

13.2 Should INSITE fail to pay ROCHESTER royalties due and payable hereunder within sixty (60) days after such royalties are due and payable, ROCHESTER shall have the right to terminate this Agreement on thirty (30) days' notice, unless INSITE shall pay ROCHESTER within the thirty (30) day period, all such royalties and interest due and payable. Upon the expiration of the thirty (30) day period, if INSITE shall not have paid all such royalties and interest due and payable, the rights, privileges and license granted hereunder shall terminate.

13.3 Upon any material breach or default of this Agreement by INSITE, other than those occurrences set out in Paragraphs 13.1 and 13.2 hereinabove, which shall always take precedence in that order over any material breach or default referred to in this Paragraph 13.3, ROCHESTER shall have the right to terminate this Agreement and the rights, privileges and license granted hereunder by ninety (90) days' notice to INSITE. Such termination shall become effective unless INSITE shall have cured any such breach or default prior to the expiration of the ninety (90) day period.

13.4 INSITE shall have the right to terminate this Agreement at any time on sixty (60) days written notice to ROCHESTER, and upon payment of all amounts due ROCHESTER through the effective date of the termination.

13.5 Upon termination of this Agreement for any reason, nothing herein shall be construed to release either party from any obligation that matured prior to the effective date of such termination. INSITE and any sublicensee thereof may, however, after the effective date of such termination, sell all Licensed Products, and complete Licensed Products in the process of manufacture at the time of such termination and sell the same, provided that INSITE shall pay to ROCHESTER the royalties thereon as required by Article IV of this Agreement and shall submit the reports required by Article V hereof on the sales of Licensed Products.

13.6 Upon termination of this Agreement for any reason, any sublicensee not then in default shall have the right to seek a license from ROCHESTER.

13.7 Unless terminated in accordance with this article 13, this Agreement and the licenses granted herein shall continue until the expiration of the last to expire Patent Rights.

**ARTICLE XIV - PAYMENTS, NOTICES
AND OTHER COMMUNICATIONS**

Any payment, notice or other communication pursuant to this Agreement shall be sufficiently made or given on the date of mailing if sent to such party by certified first class mail, postage prepaid, addressed to it at its address below or as it shall designate by written notice given to the other party:

In the case of ROCHESTER:

Director
Office of Technology Transfer
University of Rochester
518 Hylan Building
Rochester, NY 14627-0140

In the case of INSITE:

Chief Executive Officer
InSite Vision Incorporated
965 Atlantic Avenue
Alameda, CA 94501

ARTICLE XV - MISCELLANEOUS PROVISIONS

15.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of New York, U.S.A., except that questions affecting the construction and effect of any patent shall be determined by the law of the country in which the patent was granted.

15.2 The parties hereto acknowledge that this Agreement sets forth the entire Agreement and understanding of the parties hereto as to the subject matter hereof, merges all prior discussions between them, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

15.3 The provisions of this Agreement are severable, and in the event that any provisions of this Agreement shall be determined to be invalid or unenforceable under any controlling body of the law, such invalidity or unenforceability shall not in any way affect the validity of enforceability of the remaining provisions hereof.

15.4 INSITE agrees to mark the Licensed Products sold in the United States with all applicable United States patent numbers. All Licensed Products shipped to or sold in

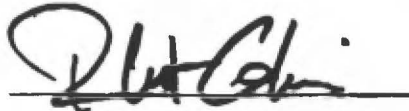
other countries shall be marked in such a manner as to conform with the patent laws and practice of the country of manufacture or sale.

15.5 The failure of either party to assert a right hereunder or to insist upon compliance with any term of condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

IN WITNESS WHEREOF, the parties have hereunto set their hands and duly executed this Agreement the day and year set forth below.

UNIVERSITY OF ROCHESTER

INSITE VISION INCORPORATED

By 

By 

Name: Robert R. Goodwin, Ph.D.

Name: Michael D. Baer

Title: Director, Technology Transfer

Title: Vice President

Date AUGUST 13, 1997

Date AUGUST 19, 1997

APPENDIX A

ROCHESTER Case No. 6-11401-337
"Intraretinal Delivery System"

U.S. Patent No. 5,273,530
"INTRARETINAL DELIVERY AND WITHDRAWAL INSTRUMENTS"
Issue Date: December 28, 1993

U.S. Patent No. 5,409,457 (divisional of 5,273,530)
"INTRARETINAL DELIVERY AND WITHDRAWAL INSTRUMENTS"
Issue Date: April 25, 1995

Canadian Application No. 2,096,006
"INTRARETINAL DELIVERY AND WITHDRAWAL INSTRUMENTS"
Examination Request due: November 13, 1998

Japanese Application No. 4-502282
"INTRARETINAL DELIVERY AND WITHDRAWAL INSTRUMENTS"
Examination Request due: November 13, 1998