SALES AGREEMENT  
  
  
 THIS SALES AGREEMENT dated as of October 1, 2003 (the "Effective Date")  
(this "Agreement"), is entered into between Vascular Sciences Corporation, a  
Delaware corporation ("VSC"), having a place of business at 000 Xxxxxxx Xxxxxx,  
Xxxx Xxxxxx, Xxxxxxx 00000, and RheoGenX Biosciences Corporation ("RheoGenX"),  
having a place of business at 0000 Xxxxxx Xxxx., Xxxx, XX 00000.  
  
 W I T N E S S E T H :  
  
 WHEREAS, RheoGenX desires to solicit orders from third parties for  
VSC's system (the "VSC System"), comprising proprietary hollow fiber blood  
filters and related extracorporeal equipment.  
  
 WHEREAS, VSC desires to grant RheoGenX certain rights to market and  
sell the Products for use in the Exclusive Field and the Non-Exclusive Field in  
the Territory (each as defined below) in accordance with the terms of this  
Agreement.  
  
 NOW, THEREFORE, in consideration of the foregoing premises and the  
mutual covenants set forth below, the parties hereby agree as follows:  
  
 ARTICLE 1  
  
 DEFINITIONS  
  
 For purposes of this Agreement, the terms defined in this Article 1  
("Definitions") shall have the respective meanings set forth below:  
  
 1.1 "Confidential Information" shall mean, with respect to a party, all  
information of any kind whatsoever, and all tangible and intangible embodiments  
thereof of any kind whatsoever, which is disclosed by such party to the other  
party and is marked, identified as or otherwise acknowledged to be confidential  
at the time of disclosure to the other party. Notwithstanding the foregoing,  
Confidential Information of a party shall not include information which the  
other party can establish by written documentation (a) to have been publicly  
known prior to disclosure of such information by the disclosing party to the  
other party, (b) to have become publicly known, without fault on the part of the  
other party, subsequent to disclosure of such information by the disclosing  
party to the other party, (c) to have been received by the other party at any  
time from a source, other than the disclosing party, rightfully having  
possession of and the right to disclose such information, (d) to have been  
otherwise known by the other party prior to disclosure of such information by  
the disclosing party to the other party, or (e) to have been independently  
developed by employees or agents of the other party without access to or use of  
such information disclosed by the disclosing party to the other party.  
  
 1.2 "Exclusive Field" shall mean the Field excluding the Non-Exclusive  
Field.  
  
  
  
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 1.3 "Field" shall mean the evaluation, diagnosis, monitoring and  
treatment of non-ophthalmic diseases, states or conditions in humans, subject to  
modification by the parties upon their mutual agreement in writing.  
  
 1.4 "Non-Exclusive Field" shall mean the evaluation, diagnosis,  
monitoring and treatment of general wellness and sudden deafness diseases,  
states or conditions in humans, subject to modification by the parties upon  
their mutual agreement in writing.  
  
 1.5 "Person" shall mean an individual, corporation, partnership,  
limited liability company, trust, business trust, association, joint stock  
company, joint venture, pool, syndicate, sole proprietorship, unincorporated  
organization, governmental authority or any other form of entity not  
specifically listed herein.  
  
 1.6 "Products" shall mean, collectively, the products listed on Exhibit  
A ("The Products") hereto, subject to modification by the parties as set forth  
in Section 3.3 ("Further Rights").  
  
 1.7 "Regulatory Approval" shall mean, with respect to a country in the  
Territory, all applicable registrations, licenses and approvals from the  
governing health authorities of such country necessary to sell and use the VSC  
System (and the components thereof) in the Field in such country.  
  
 1.8 "Territory" shall mean the countries set forth on Exhibit A ("The  
Products") hereto, subject to modification by the parties as set forth in  
Section 3.3 ("Further Rights"). Israel is and shall be excluded from the  
Territory.  
  
 1.9 "Third Party" shall mean any Person other than VSC, RheoGenX and  
their respective affiliates.  
  
 1.10 "Transfer Price" shall mean, with respect to each Product, the  
fully-burdened cost to VSC (including, without limitation, any applicable  
license fees, services fees and royalties required to be paid and all taxes,  
freight, transportation, insurance and other similar charges) to manufacture or  
have manufactured and deliver or have delivered each such unit of the Products  
in accordance with the terms of this Agreement, as determined in accordance with  
United States Generally Accepted Accounting Principles (GAAP), consistently  
applied.  
  
 ARTICLE 2  
  
 REPRESENTATIONS AND WARRANTIES  
  
 2.1 Existence. Each party hereby represents and warrants to the other  
party that such party is duly organized, validly existing and in good standing  
under the laws of the state in which it is organized.  
  
 2.2 Authorization and Enforcement of Obligations. Each party hereby  
represents and warrants to the other party that such party (a) has the power and  
authority and the legal right to enter into this Agreement and to perform its  
obligations hereunder, and (b) has taken all necessary action on its part to  
authorize the execution and delivery of this Agreement and the  
  
  
  
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performance of its obligations hereunder. This Agreement has been duly executed  
and delivered on behalf of such party, and constitutes a legal, valid, binding  
obligation, enforceable against such party in accordance with its terms.  
  
 ARTICLE 3  
  
 APPOINTMENT OF SALES REPRESENTATIVE  
  
 3.1 Acknowledgement. The parties hereto acknowledge that VSC does not,  
as at the Effective Date, have from its suppliers the right to sell the VSC  
System (and all of the Products) for use in either the Exclusive Field or the  
Non-Exclusive Field. The appointment provided in section 3.2 hereof shall only  
become effective upon VSC obtaining any such rights or licences from its  
suppliers and only to the extent allowed by any ultimate agreements between VSC  
and its suppliers.  
  
 3.2 Appointment. Subject to the terms and conditions of this Agreement,  
including, without limitation, section 3.1, and to the terms of the Distribution  
Services Agreement between VSC and Apheresis Technologies, Inc., dated May 2002,  
VSC hereby appoints RheoGenX as VSC's:  
  
 (i) exclusive representative in the Territory to solicit and  
 obtain orders for, and to sell, the Products to Third Parties  
 or affiliates of RheoGenX (other than TLC and Diamed and their  
 subsidiaries), solely for use by such Third Parties or  
 affiliates of RheoGenX in the Exclusive Field; and  
  
 (ii) non-exclusive representative in the Territory to solicit and  
 obtain orders for, and to sell, the Products to Third Parties  
 or affiliates of RheoGenX (other than TLC and Diamed and their  
 subsidiaries), solely for use by such Third Parties or  
 affiliates of RheoGenX in the Non-Exclusive Field.  
  
 RheoGenX hereby accepts such appointment and agrees to act as such  
 representative under the terms and conditions of this Agreement.  
 Notwithstanding anything in this Agreement to the contrary, in  
 addition to the restrictions set out in section 3.1 hereof, RheoGenX  
 shall not have the right to, and shall not solicit or obtain orders  
 for or sell any Product labeled for use in an application in the  
 Exclusive Field or the Non-Exclusive Field in any country until such  
 time as VSC has obtained Regulatory Approval for use of such Product  
 in such application in the Exclusive Field or the Non-Exclusive  
 Field, as applicable, in such country.  
  
 3.3 Further Rights. If VSC modifies or improves the VSC System to  
include one or more additional (or different) components, VSC will promptly  
notify RheoGenX, and the parties will amend this Agreement to modify the  
Products to add such new component(s) and to delete any component(s) that are  
replaced or eliminated in each case to the extent allowed by VSC's agreements  
with its suppliers. Notwithstanding anything in this Agreement to the contrary,  
in addition to the restrictions set out in section 3.1 hereof, RheoGenX shall  
not have the right to, and shall not solicit or obtain orders for or sell any  
Product labeled for use in an application in  
  
  
  
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the Field in any country until such time as VSC has obtained Regulatory Approval  
for use of such Product in such application in the Exclusive Field or the  
Non-Exclusive Field, as applicable, in such country.  
  
 3.4 Independent Contractor. RheoGenX is and at all times shall be an  
independent contractor in all matters related to this Agreement. The foregoing  
appointment does not constitute an appointment of RheoGenX as the agent or legal  
representative of VSC or its supplier(s) for any purpose whatsoever. RheoGenX is  
not granted any right or authority to assume or to create any obligation or  
responsibility, express or implied, on behalf of or in the name of VSC or its  
supplier(s) or to bind VSC or its supplier(s) in any manner whatsoever, or to  
accept any legal process addressed to or intended for VSC or its supplier(s).  
  
 3.5 Limitations on Activities. Upon the appointment under section 3.2  
becoming effective, RheoGenX shall not, directly or indirectly, promote, market,  
seek customers for, solicit or obtain orders for or sell the Products outside  
the Territory or for use outside the Field. RheoGenX shall not use  
subdistributors or other agents to distribute the Products without the prior  
written consent of VSC. RheoGenX will not modify, alter or in any way change the  
Products without VSC's prior written consent.  
  
 3.6 Exclusivity. RheoGenX shall not, and hereby agrees that it will  
not, represent, market or sell any products that are similar to or competitive  
with the Products at any time during the term of this Agreement.  
  
 3.7 Expenses and Costs. RheoGenX shall be solely responsible for all  
expenses and costs incurred in performing its duties hereunder, including,  
without limitation, all operating, sales and promotional expenses.  
  
 3.8 RheoGenX's General Duties. Upon the appointment under section 3.2  
becoming effective, RheoGenX shall use its best efforts to: (i) introduce,  
promote the sale of, solicit and obtain orders for, and sell Products to  
customers in the Territory in accordance with the terms of this Agreement; (ii)  
promote demand for Products in the Territory; (iii) provide coverage of existing  
and potential customers within the Territory on a regular basis consistent with  
good business practices; (iv) devote as much time, attention and skill as may be  
necessary to properly conduct such activities; (v) cooperate to the fullest  
extent possible in implementing all lawful sales programs, policies, directions,  
requests and general instructions of VSC; (vi) provide any training and  
technical assistance as requested by its customers or VSC with respect to  
Products; (vii) take any and all actions which may be helpful or advisable to  
conducting its activities under this Agreement and to conduct those activities  
in strict accordance with the terms hereof; and (viii) act in accordance with  
all applicable laws, rules and regulations, including without limitation, all  
applicable medical device reporting regulations, in performing its duties  
hereunder.  
  
 3.9 RheoGenX's Specific Duties and Prohibitions. Without in any way  
limiting the generality of the preceding paragraph, RheoGenX agrees that upon  
the appointment under section 3.2 becoming effective:  
  
 3.9.1 Sales Efforts. RheoGenX shall use commercially reasonable  
efforts and diligence to meet the reasonably foreseeable market demand for the  
Products. The business  
  
  
  
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conducted by RheoGenX in connection with the marketing and sale of the Products  
shall at all times be conducted so as not to detract from, interfere with or  
adversely reflect upon the goodwill and reputation of VSC or its suppliers, its  
trademarks and/or trade names or those of its suppliers, or the Products.  
  
 3.9.2 Facilities. RheoGenX shall maintain its own office space and  
facilities, with the entire costs of these items and activities to be borne  
solely by RheoGenX.  
  
 3.9.3 Personnel. RheoGenX shall provide and maintain, at its own  
expense a competent and adequately trained, skilled and motivated sales  
organization for the sale of Products in the Territory.  
  
 3.10 Forecasts. Following the appointment under section 3.2 becoming  
effective, not less than thirty (30) days prior to the first day of each  
calendar month during the term of this Agreement, RheoGenX shall prepare and  
provide VSC with a written forecast (the "Forecast") of the estimated  
requirements for the Products by customers of RheoGenX for each of the  
subsequent twelve (12) calendar months. Such Forecasts shall be calculated in  
good faith by RheoGenX, to the best of RheoGenX's ability. RheoGenX shall be  
required to purchase one hundred percent (100%) of the quantity forecasted for  
the first five (5) months of each such forecast.  
  
 3.11 Orders. RheoGenX shall make all purchases of Products by  
submitting firm purchase orders to VSC. If RheoGenX orders, in any month, more  
than the amount forecasted for such month, VSC will use good faith efforts to  
fulfill the additional amount of Products ordered. Each such purchase order  
shall be in writing in a form reasonably acceptable to VSC, and shall specify  
the quantity of the Products ordered, the place of delivery and the requested  
delivery date therefor, which shall not be less than sixty (60) days after the  
date of such purchase order. In the event of a conflict between the terms and  
conditions of any purchase order and this Agreement, the terms and conditions of  
this Agreement shall prevail, and any additional or different terms shall be of  
no force or effect.  
  
 3.12 Right to Reject Orders. VSC shall have the right to reject any  
order placed by RheoGenX if such order is inconsistent with the amount  
forecasted for the applicable time period or if RheoGenX is in breach of any of  
its payment obligations under this Agreement. RheoGenX's order shall be deemed  
accepted when it is acknowledged and accepted by VSC in writing. RheoGenX may  
not cancel any order after it is accepted by VSC without the written consent of  
VSC.  
  
 3.13 Delivery Schedule. VSC shall make commercially reasonable efforts  
to deliver the Products in accordance with the delivery schedules set forth in  
the accepted orders. However, if anything beyond the control of VSC prevents VSC  
from completely filling orders accepted by VSC in accordance with this Section  
3.13 ("Delivery Schedule"), RheoGenX shall accept a delayed and/or partial  
shipment. VSC shall notify RheoGenX promptly if VSC anticipates any potential  
delay.  
  
 3.14 Delivery. All Products supplied under this Agreement shall be  
shipped f.o.b. the place of manufacture to such location as designated by  
RheoGenX. Title and risk of loss and  
  
  
  
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damage to the Products purchased by RheoGenX hereunder shall pass to RheoGenX  
upon receipt by delivery to the applicable carrier.  
  
 3.15 Packaging. All Products supplied under this Agreement shall be  
packaged in such manner as VSC reasonably determines.  
  
 3.16 Inability to Supply. VSC shall not be liable for failure to supply  
Products or for the late delivery of Products if (i) VSC orders the Products (or  
components thereof) from its supplier(s) and such supplier(s) fail to deliver  
such Products (or components thereof), or (ii) VSC's supplier terminates its  
agreement with VSC for the supply of the Products (or components thereof). In  
the event of the occurrence of (i) or (ii) above, VSC will use commercially  
reasonable efforts to notify RheoGenX as promptly as practicable of the  
circumstances, will discuss with RheoGenX ways in which to remedy the  
circumstances, and will use commercially reasonable efforts to supply the  
ordered Products as promptly as practicable thereafter.  
  
 3.17 Product Sale Agreement. RheoGenX will sell the Products to  
customers subject to each such customer's agreement to and execution of a  
written agreement which will, in form and substance, be acceptable to and  
approved by VSC. RheoGenX will provide the form of such agreement to VSC for  
written approval prior to RheoGenX's provision of such agreement to any  
customers. Such agreement will, among other things, require that the customer  
return the filter portion of the VSC System to VSC after use. RheoGenX hereby  
agrees and acknowledges that such used filters, and the contents thereof, will  
be owned by VSC. RheoGenX hereby assigns any and all right, title and interest  
that RheoGenX may have in and to such used filters and their contents to VSC.  
Once VSC has approved the form of such agreement in writing, RheoGenX will use  
such form of agreement for all sales of the Products to customers. Upon VSC's  
request, RheoGenX will permit VSC to examine and make copies of such executed  
agreements.  
  
 3.18 Antioxidant Product. RheoGenX will not manufacture, produce,  
deliver, market or sell any antioxidant product other than the antioxidant  
product provided by VSC. In addition, RheoGenX will include a term in its  
product sale agreements with its customers that requires such customers (i) to  
recommend such antioxidant product to their patients and/or customers in  
connection with the treatment performed using the Products and (ii) to refrain  
from recommending any other antioxidant product in connection with the treatment  
performed using the Products.  
  
 3.19 Records. RheoGenX shall maintain complete and accurate books and  
records pertaining to the performance of its duties hereunder. RheoGenX shall  
retain originals or copies of all correspondence, quotations, orders, customer  
agreements and other documents relating to its obligations (and the performance  
thereof), including but not limited to copies of all quotations and customer  
agreements made, negotiated, transmitted or in any way handled by RheoGenX  
regarding sale of the Products in the Territory under this Agreement, for a  
minimum of two (2) years following the termination of this Agreement. VSC or its  
authorized representative shall have the right, upon thirty (30) days notice to  
RheoGenX, to examine and make copies of such records, during normal business  
hours, not more than once per calendar quarter during the term of this Agreement  
and during the two (2) year period after the termination hereof.  
  
  
  
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 3.20 VSC Material. RheoGenX shall not use any VSC stationery, forms or  
printed material of any kind, for any purpose, except as may otherwise be  
provided herein, without obtaining in each instance VSC's prior written consent  
for such use.  
  
 3.21 Problems. RheoGenX shall promptly notify VSC in writing in the  
event of any problems, complaints, recalls or inspections relating to the  
Products of which RheoGenX becomes aware.  
  
 3.22 Recalls. In the event of a recall of the Products, RheoGenX shall  
be responsible for conducting the recall in accordance with all legal  
requirements and all requirements of the applicable governing health authority  
in such country, and for all costs and expenses related thereto.  
  
 3.23 VSC's Assistance to RheoGenX. Upon request by RheoGenX, VSC shall  
provide RheoGenX, at VSC's facilities or such other location as is mutually  
agreed upon by the parties, with appropriate training related to the sales,  
marketing, design and technical support of the Products on a cost basis with  
such costs to be agreed upon in writing between the parties in advance of any  
such services being provided.  
  
 3.24 Training; Technical Service. Subject to section 3.23, RheoGenX  
shall be responsible for all training of RheoGenX employees and agents and Third  
Parties relating to the Products. RheoGenX will also be responsible for all  
technical support services relating to the Products. RheoGenX will perform such  
training and technical support services in accordance with VSC's direction and  
requirements. RheoGenX will use only spare parts supplied by VSC for any such  
technical support services. RheoGenX will also perform maintenance and safety  
checks of the Products in accordance with VSC's direction and requirements.  
  
 3.25 Supplier Reports. For the purpose of sales planning by VSC,  
RheoGenX shall submit to VSC, in writing, before the tenth (10th) day of each  
calendar quarter following the appointment under section 3.2 becoming effective,  
a report of RheoGenX's sales and inventory of the Products, including the level  
of inventory of the Products by article. RheoGenX also shall submit to VSC  
information in its possession with respect to competitors' state of marketing  
and general market information, relevant economic, political and business  
conditions in the Territory, and texts and summaries of governmental statutes,  
rules and regulations established or revised from time to time, affecting the  
marketing or sale of the Products in the Territory, upon VSC's request, which  
will only be made by VSC if and to the extent that VSC is requested by its  
supplier(s) to provide the foregoing.  
  
 ARTICLE 4  
  
 FINANCIAL TERMS  
  
 4.1 Payment. RheoGenX will pay to VSC the Transfer Price for each  
Product supplied by VSC, as set forth on VSC's invoice. VSC will invoice  
RheoGenX for the amounts due in accordance with VSC's current and reasonable  
practices. RheoGenX will pay all such invoiced amounts within twenty (20) days  
after the date of VSC's invoice. Notwithstanding the foregoing, in the event  
that VSC is required to pay its supplier(s) sooner than twenty (20) days  
  
  
  
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after the date of any invoice, VSC will notify RheoGenX of same and RheoGenX  
will pay such amounts to VSC by such earlier date.  
  
 4.2 Taxes. RheoGenX shall pay all federal, state, county or municipal  
sales or use tax, excise or similar charge, or other tax assessment (other than  
that assessed against income), assessed or charged on the sale of the Products  
sold pursuant to this Agreement.  
  
 4.3 Payment Method. All payments by RheoGenX to VSC under this  
Agreement shall be paid in United States dollars, and all such payments shall be  
originated from a North American bank located in North America and made by check  
or by bank wire transfer in immediately available funds to such account as VSC  
shall designate before such payment is due.  
  
 4.4 Product Deletions. RheoGenX shall not be entitled to receive any  
compensation upon VSC's deletion of one or more Products from the Products  
described on Exhibit A ("The Products"), nor shall RheoGenX be entitled to  
receive any compensation if VSC should for any reason withdraw any given Product  
from the market.  
  
 ARTICLE 5  
  
 WARRANTY  
  
 5.1 Warranty. VSC will provide to RheoGenX the same warranty with  
respect to each Product as VSC's applicable supplier provides to VSC for such  
Product.  
  
 5.2 Disclaimer. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN SECTION 5.1  
("WARRANTY") ABOVE, VSC MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR  
IMPLIED, WITH RESPECT TO THE PRODUCTS OR THE VSC SYSTEM, INCLUDING WITHOUT  
LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR  
NONINFRINGEMENT OF THE PATENT RIGHTS OR OTHER INTELLECTUAL PROPERTY RIGHTS OF  
ANY OTHER PERSON.  
  
 5.3 No Warranties by RheoGenX. RheoGenX shall not make any  
representations or warranties relating to the Products to its customers other  
than those set forth in this Article 5 ("Warranty").  
  
 ARTICLE 6  
  
 REGULATORY APPROVAL  
  
 6.1 Regulatory Approval. VSC shall be responsible, at its own cost and  
expense, for conducting all applicable clinical trials for the Products in each  
country of the Territory. VSC is and shall be the sole owner of any and all data  
obtained through or for such clinical trials and all activities related thereto;  
provided, that RheoGenX shall have the right to use such data as reasonably  
necessary for RheoGenX's performance of its obligations hereunder. VSC shall be  
responsible, at its own cost and expense, for obtaining and maintaining all  
applicable Regulatory Approvals and validations for the promotion, marketing,  
sales and use of the Products and all components thereof in the Field in each  
country of the Territory. At the reasonable request of  
  
  
  
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RheoGenX, VSC will use commercially reasonable efforts to amend any applicable  
Regulatory Approvals if necessary for RheoGenX to be able to carry out its  
obligations under this Agreement.  
  
 6.2 Medical Service Reporting. RheoGenX will fully cooperate with VSC  
in VSC's compliance with all applicable laws and regulations with respect to the  
clinical trials and Regulatory Approvals, and will comply with all applicable  
laws and regulations with respect to marketing, promotion, solicitation of  
orders for and sales of the Products. Without limiting any other provision in  
this Agreement, RheoGenX shall comply with, and shall fully cooperate with VSC  
in VSC's compliance with, all applicable medical device reporting regulations of  
the applicable governing health authorities of the countries of the Territory.  
  
 6.3 Medical Insurance Reimbursement. VSC shall be responsible for  
obtaining and maintaining public and private medical insurance reimbursement  
availability for all Products in the Field, and the treatment by the Products in  
the Field, in each country in the Territory and obtaining and maintaining  
prospective payment codes as applicable for the treatment by the Products in the  
Field in each country in the Territory.  
  
 ARTICLE 7  
  
 LIMITATION OF LIABILITY  
  
 IN NO EVENT SHALL VSC HAVE ANY LIABILITY TO RheoGenX OR ANY OTHER PARTY  
FOR ANY AMOUNTS IN EXCESS OF THE AGGREGATE AMOUNT OF THE TRANSFER PRICES  
ACTUALLY RECEIVED BY VSC UNDER THIS AGREEMENT, NOR FOR ANY SPECIAL, INCIDENTAL  
OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR  
PROSPECTIVE PROFITS, LOSS OF ACTUAL OR ANTICIPATED SALES, OR EXPENDITURES,  
INVESTMENTS OR COMMITMENTS MADE IN CONNECTION WITH THE ESTABLISHMENT,  
DEVELOPMENT OR MAINTENANCE OF THE RELATIONSHIP CREATED BY THIS AGREEMENT OR ANY  
OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND OR NATURE, EVEN IF VSC HAS BEEN  
ADVISED OF THE POSSIBILITY OF THE SAME, ARISING OUT OF OR IN CONNECTION WITH THE  
PRODUCTS OR THE VSC SYSTEM OR OTHERWISE RELATING TO THIS AGREEMENT.  
  
 ARTICLE 8  
  
 PROPRIETARY RIGHTS  
  
 8.1 Proprietary Rights. Ownership and all right, title and interest in  
and to any patents, copyrights, trade secrets, trademarks, trade names, service  
marks or any other proprietary rights relating to any Product(s) and the VSC  
System are and shall remain solely in VSC (or its suppliers). RheoGenX will  
promptly inform VSC of any alleged infringement of such proprietary rights.  
RheoGenX shall not, either directly or indirectly, contest nor assist others in  
contesting the validity of any such intellectual property rights. VSC shall be  
entitled to terminate this Agreement immediately upon written notice to RheoGenX  
if RheoGenX violates any of the foregoing obligations. RheoGenX shall not  
acquire any rights in or to the Products or  
  
  
  
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the VSC System, or any intellectual property rights thereto, by execution of  
this Agreement or performance hereunder or otherwise.  
  
 8.2 Trademarks. RheoGenX shall use the trademark(s), service xxxx(s)  
and trade name(s) designated by VSC in writing from time to time (collectively,  
the "Trademarks"), in promoting and soliciting orders for and selling the  
Products, shall not remove or alter any Trademarks on any Products and shall not  
use any other trademarks or other marks in connection with such activities  
without the prior written consent of VSC. Upon the appointment under section 3.2  
becoming effective, VSC hereby grants to RheoGenX a nonexclusive,  
nontransferable, limited license to use the Trademarks in the performance of  
RheoGenX's obligations under this Agreement. RheoGenX acknowledges that, as  
between VSC and RheoGenX, VSC (or its suppliers) is the owner of all right,  
title and interest in and to the Trademarks and any form or embodiment thereof  
and is the owner of the goodwill attached or which shall become attached to the  
Trademarks. All uses of the Trademarks by RheoGenX shall inure to the benefit of  
VSC (or its suppliers). RheoGenX shall not, at any time, do or suffer to be done  
any act or thing which may in any way adversely affect any rights of VSC (or its  
suppliers) in and to the Trademarks or which, directly or indirectly, may reduce  
the value of the Trademarks or detract from VSC's (or its suppliers')  
reputation. Should VSC notify RheoGenX in writing that RheoGenX's use of the  
Trademarks does not conform to standards set by VSC, RheoGenX shall immediately  
cease such nonconforming use and shall bring such use into conformance and  
provide VSC with specimens of such conforming use within five (5) days of  
receipt of VSC's notice. At VSC's request, RheoGenX shall execute any documents,  
including without limitation, registration documents or other agreements,  
reasonably required by VSC to confirm VSC's (or its suppliers') ownership of all  
rights in and to the Trademarks in the Territory and to confirm the rights of  
VSC (or its suppliers) under this Agreement. In the event that VSC desires to  
change any Trademark, RheoGenX will cooperate with VSC's instructions in making  
any such changes. RheoGenX shall not challenge, at any time, VSC's (or its  
suppliers') ownership or the validity of the Trademarks or any registrations or  
applications for registration thereof, or any rights of VSC (or its suppliers)  
therein. RheoGenX shall not apply for or acquire the registration of any  
Trademark. Should RheoGenX have any Trademark registered in its name or name of  
any other person, RheoGenX agrees that VSC (or its suppliers) shall have the  
right to have the registration canceled or transferred to VSC (or its supplier,  
as applicable).  
  
 8.3 Infringement. In the event that RheoGenX learns of any infringement  
of a Trademark or of any use by any person of any xxxx similar to a Trademark,  
RheoGenX will promptly notify VSC thereof. VSC (or its suppliers) thereupon  
shall take such action as they deem advisable for the protection of their rights  
in and to the Trademark and, if requested to do so by VSC, RheoGenX shall  
cooperate with VSC (and its suppliers) in all respects at VSC's sole expense. In  
no event, however, shall VSC be required to take any action if it deems it  
inadvisable to do so and RheoGenX shall have no right to take any action with  
respect to the Trademark without VSC's prior written approval.  
  
 8.4 Termination of Trademark Use. Upon the termination or expiration of  
this Agreement, RheoGenX shall immediately cease and desist any and all use of  
any Trademarks and all trade names, words or symbols of any nature indicating,  
explicitly or implicitly, that it is an authorized VSC representative, except as  
otherwise specifically authorized by VSC in writing.  
  
  
  
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 8.5 Third Party Rights. The parties acknowledge and agree that VSC has  
obtained or may obtain certain rights and licenses from Third Parties, including  
without limitation, it suppliers and licensors, and all rights and licenses  
granted to RheoGenX pursuant to this Agreement are subject to the rights of such  
Third Parties and the terms and conditions of the agreements between VSC and  
such Third Parties, and the licenses and rights granted by VSC in this Agreement  
are granted to the extent and only to the extent that VSC has the right to grant  
such licenses and rights. The parties further acknowledge and agree that VSC is  
bound by the terms and conditions of certain agreements with its suppliers  
relating to the Products. In order to effectuate the foregoing, RheoGenX hereby  
agrees that, in the event that any provision(s) of this Agreement would cause or  
result in a violation, breach or default of any such supplier agreement,  
RheoGenX will cooperate with VSC to do any and all things necessary and  
reasonably requested by VSC in order to prevent (or remedy, if prevention is  
impossible) such violation, default or breach, including without limitation,  
reforming the Agreement as necessary to prevent (or remedy) such violation,  
default or breach. Further, the parties agree that any provision(s) of this  
Agreement that violate or cause a default or breach of such supplier agreements  
by VSC are void. In the event that any provision of this Agreement is  
invalidated pursuant to the preceding sentence, the parties will work together  
in good faith to replace such provision with a provision that does not cause any  
such violation, default or breach of any supplier agreement(s), and which is  
consistent with the intents and purposes of this Agreement.  
  
 ARTICLE 9  
  
 INDEMNITY  
  
 9.1 Indemnity.  
  
 9.1.1 By VSC. VSC shall indemnify and hold RheoGenX harmless, and  
hereby forever releases and discharges RheoGenX, from and against all losses,  
liabilities, damages and expenses (including reasonable attorneys' fees and  
costs) resulting from all claims, demands, actions and other proceedings by any  
Third Party to the extent arising from (a) the breach of any representation,  
warranty or covenant of VSC under this Agreement, or (b) the gross negligence or  
willful misconduct of VSC, its affiliates or (sub)licensees in the performance  
of its obligations, and its permitted activities, under this Agreement.  
  
 9.1.2 By RheoGenX. RheoGenX shall indemnify and hold VSC harmless,  
and hereby forever releases and discharges VSC, from and against all losses,  
liabilities, damages and expenses (including reasonable attorneys' fees and  
costs) resulting from all claims, demands, actions and other proceedings by any  
Third Party to the extent arising from (a) the breach of any representation,  
warranty or covenant of RheoGenX under this Agreement, (b) the gross negligence  
or willful misconduct of RheoGenX, its affiliates or (sub)licensees in the  
performance of its obligations, and its permitted activities, under this  
Agreement, or (c) a Product (or the use thereof) sold to a customer pursuant to  
an order placed under this Agreement.  
  
 9.2 Procedure. A party (the "Indemnitee") that intends to claim  
indemnification under this Article 9 ("Indemnity") shall promptly notify the  
other party (the "Indemnitor") of any claim, demand, action or other proceeding  
for which the Indemnitee intends to claim such indemnification. The Indemnitor  
shall have the right to participate in, and to the extent the  
  
  
  
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Indemnitor so desires jointly with any other indemnitor similarly noticed, to  
assume the defense thereof with counsel selected by the Indemnitor; provided,  
however, that the Indemnitee shall have the right to retain its own counsel,  
with the fees and expenses to be paid by the Indemnitor, if representation of  
the Indemnitee by the counsel retained by the Indemnitor would be inappropriate  
due to actual or potential differing interests between the Indemnitee and any  
other party represented by such counsel in such proceedings. The indemnity  
obligations under this Article 9 ("Indemnity") shall not apply to amounts paid  
in settlement of any claim, demand, action or other proceeding if such  
settlement is effected without the prior express written consent of the  
Indemnitor, which consent shall not be unreasonably withheld or delayed. The  
failure to deliver notice to the Indemnitor within a reasonable time after  
notice of any such claim or demand, or the commencement of any such action or  
other proceeding, if prejudicial to its ability to defend such claim, demand,  
action or other proceeding, shall relieve such Indemnitor of any liability to  
the Indemnitee under this Article 9 ("Indemnity") with respect thereto, but the  
omission so to deliver notice to the Indemnitor shall not relieve it of any  
liability that it may have to the Indemnitee otherwise than under this Article 9  
("Indemnity"). The Indemnitor may not settle or otherwise consent to an adverse  
judgment in any such claim, demand, action or other proceeding, that diminishes  
the rights or interests of the Indemnitee without the prior express written  
consent of the Indemnitee, which consent shall not be unreasonably withheld or  
delayed. The Indemnitee, its employees and agents, shall reasonably cooperate  
with the Indemnitor and its legal representatives in the investigation of any  
claim, demand, action or other proceeding covered by this Article 9  
("Indemnity").  
  
 9.3 Insurance. Each party hereto shall maintain such insurance with  
respect to such party's performance of its obligations hereunder of such types  
and in such amounts as such party customarily maintains with respect to such  
activities. In addition, RheoGenX shall maintain product liability insurance  
with respect to the Products in such amounts as VSC shall specify and for the  
benefit of VSC and its suppliers. RheoGenX shall deliver a certificate of such  
insurance to VSC immediately upon VSC's request. To the extent required by VSC's  
suppliers, VSC shall maintain product liability insurance with respect to the  
Products in such amounts as are required by VSC's suppliers for the benefit of  
VSC's suppliers. VSC shall deliver a certificate of such insurance to its  
suppliers immediately upon such supplier's request. Each party hereto shall  
maintain such insurance during the term of this Agreement, and thereafter for so  
long as the parties shall mutually agree in writing.  
  
 ARTICLE 10  
  
 CONFIDENTIALITY  
  
 10.1 Confidential Information. During the term of this Agreement and  
any renewal hereof, and for a period of five (5) years following the expiration  
or earlier termination thereof or ten (10) years after the effective date of  
this Agreement, whichever is longer, each party shall maintain in confidence all  
Confidential Information disclosed by the other party, and shall not use,  
disclose or grant the use of the Confidential Information except on a  
need-to-know basis to those directors, officers, employees, consultants,  
clinical investigators, contractors, (sub)licensees, distributors or permitted  
assignees, to the extent such disclosure is reasonably necessary in connection  
with such party's activities as expressly authorized by this Agreement. To the  
extent that disclosure is authorized by this Agreement, prior to disclosure,  
each party  
  
  
  
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hereto shall obtain agreement of any such Person to hold in confidence and not  
make use of the Confidential Information for any purpose other than those  
permitted by this Agreement. Each party shall notify the other promptly upon  
discovery of any unauthorized use or disclosure of the other party's  
Confidential Information.  
  
 10.2 Terms of this Agreement. Except as otherwise provided in Section  
10.1 ("Confidential Information") above, neither party shall disclose any terms  
or conditions of this Agreement to any Third Party without the prior consent of  
the other party. Notwithstanding the foregoing, prior to execution of this  
Agreement, the parties shall agree upon the substance of information that can be  
used to describe the terms of this transaction, and each party may disclose such  
information, as modified by mutual agreement from time to time, without the  
other party's consent.  
  
 10.3 Permitted Disclosures. The confidentiality obligations contained  
in this Article 10 ("Confidentiality") shall not apply to the extent that the  
receiving party (the "Recipient") is required to disclose information by law,  
order or regulation of a governmental agency or a court of competent  
jurisdiction provided that the Recipient shall provide written notice thereof to  
the other party and sufficient opportunity to object to any such disclosure or  
to request confidential treatment thereof.  
  
 ARTICLE 11  
  
 TERM AND TERMINATION  
  
 11.1 Expiration. The term of this Agreement shall commence on the  
Effective Date and, unless terminated earlier pursuant to Section 11.2  
("Termination for Cause") below or Section 8.1 ("Proprietary Rights") above,  
this Agreement shall automatically terminate on the effective date of the  
earlier of (i) the termination of the Distributorship Agreement (the  
"Distributorship Agreement") between VSC and Asahi Medical Co., Ltd. ("Asahi"),  
dated December 31, 2001 (as such Distributorship Agreement may be amended or  
replaced by VSC and Asahi from time to time), or (ii) the termination of the  
license agreement between VSC and RheoGenX dated as of the date hereof.  
  
 11.2 Termination for Cause. Either party may terminate this Agreement  
upon or after the breach of any material provision of this Agreement by the  
other party, if the breaching party has not cured such breach within twenty (20)  
days after notice thereof from the other party. Without limiting the foregoing,  
a violation by RheoGenX of the terms of Section 3.5 ("Limitations on  
Activities") shall be deemed a breach of a material provision of this Agreement.  
  
 11.3 Post-Termination Orders. VSC's acceptance of any order after the  
expiration or termination of this Agreement shall not be construed as a renewal  
or extension of this Agreement, or as a waiver of the right to terminate or of  
any other matter or right. VSC shall have the right after the termination of  
this Agreement to deal with, and solicit orders from, any and all Persons,  
including customers or potential customers, who dealt with or placed orders  
through RheoGenX, without any liability of any kind to RheoGenX, except as  
expressly provided herein.  
  
  
  
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 11.4 Effect of Expiration and Termination. Expiration or termination of  
this Agreement shall not relieve the parties of any obligation accruing prior to  
such expiration or termination. Upon expiration or termination of this  
Agreement, RheoGenX will cease all marketing of and solicitation of orders for  
the Products and will immediately return to VSC all Confidential Information or  
other VSC documentation and all samples of Products or other items related  
thereto in its possession. The provisions of Sections 3.18 ("Records"), 3.22  
("Recalls"), and 12.1 ("Further Assurances"), and Articles 4 ("Financial  
Terms"), 5 ("Warranty"), 7 ("Limitation of Liability"), 8 ("Proprietary  
Rights"), 9 ("Indemnity"), 10 ("Confidentiality") and 11 ("Term and  
Termination") shall survive the expiration or termination of this Agreement.  
  
 ARTICLE 12  
  
 MISCELLANEOUS  
  
 12.1 Further Assurances. Each party hereto agrees to cooperate fully  
with the other party, to execute such further instruments, documents and  
agreements and to do all such acts and things as may be reasonably requested by  
the other party in order to effectuate the intents and purposes of this  
Agreement, including without limitation, such steps as are required to  
effectuate the terms of this Agreement in accordance with relevant regulatory  
requirements.  
  
 12.2 Notices. Any consent, notice or report required or permitted to be  
given or made under this Agreement by one of the parties to the other shall be  
in writing and addressed to such other party at its address indicated below, or  
to such other address as the addressee shall have last furnished in writing to  
the addressor, and shall be effective upon receipt by the addressee.  
  
 If to VSC: Vascular Sciences Corporation  
 0000 Xxxxx Xxxxx, Xxxxx 000  
 Xxxxxxxxxxx, Xxxxxxx, X0X 0X0  
 Attn: Xxxxx Xxxxxxxx  
  
 If to RheoGenX: RheoGenX Biosciences Corporation  
 0000 Xxxxxx Xxxx.  
 Xxxx, XX 00000  
 Attn: Xxxxxxx Xxxxx, M.D.  
 Telephone:  
 Telecopy:  
  
 12.3 Assignment. Except as otherwise expressly provided under this  
Agreement neither this Agreement nor any right or obligation hereunder may be  
assigned or otherwise transferred by RheoGenX (whether voluntarily, by operation  
of law or otherwise). Any permitted assignee shall assume all obligations of its  
assignor under this Agreement. Any purported assignment or transfer in violation  
of this Section 12.3 ("Assignment") shall be void.  
  
 12.4 Applicable Law. This Agreement shall be governed by and construed  
in accordance with the laws of the State of , without regard to the  
conflicts of law principles thereof.  
  
  
  
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 12.5 Entire Agreement. This Agreement and the Exhibits hereto contain  
the entire understanding of the parties with respect to the subject matter  
hereof. All express or implied representations, agreements and understandings,  
either oral or written, heretofore made are expressly superseded by this  
Agreement. This Agreement may be amended, or any term hereof modified, only by a  
written instrument duly executed by both parties.  
  
 12.6 Headings. The captions to the several Articles and Sections hereof  
are not a part of this Agreement, but are merely guides or labels to assist in  
locating and reading the several Articles and Sections hereof.  
  
 12.7 Independent Contractors. Each party hereby acknowledges that the  
parties shall be independent contractors and that the relationship between the  
parties shall not constitute a partnership, joint venture or agency. Neither  
party shall have the authority to make any statements, representations or  
commitments of any kind, or to take any action, which shall be binding on the  
other party, without the prior consent of the other party to do so.  
  
 12.8 Waiver. The waiver by a party of any right hereunder, or of any  
failure to perform or breach by the other party hereunder, shall not be deemed a  
waiver of any other right hereunder or of any other breach or failure by the  
other party hereunder whether of a similar nature or otherwise.  
  
 12.9 Force Majeure. A party shall neither be held liable or responsible  
to the other party, nor be deemed to have defaulted under or breached this  
Agreement, for failure or delay in fulfilling or performing any obligation under  
this Agreement (other than an obligation for the payment of money) to the  
extent, and for so long as, such failure or delay is caused by or results from  
causes beyond the reasonable control of such party including but not limited to  
fire, floods, embargoes, war, acts of war (whether war be declared or not),  
insurrections, riots, civil commotions, strikes, lockouts or other labor  
disturbances, acts of God, or acts, omissions or delays in acting by any  
governmental authority or the other party.  
  
 12.10 Other Activities. Except as otherwise expressly provided in this  
Agreement, nothing in this Agreement shall preclude either party from conducting  
other programs (either for its own benefit or with or for the benefit of any  
other Person) to conduct research, or to develop or commercialize products or  
services, for use in any field.  
  
 12.11 Counterparts. This Agreement may be executed in two or more  
counterparts, each of which shall be deemed an original, but all of which  
together shall constitute one and the same instrument.  
  
 12.12 Severability. In the event that any provision of this Agreement  
shall be unenforceable or invalid under any applicable law or be so held by  
applicable court decision, such unenforceability or invalidity shall not render  
this Agreement unenforceable or invalid as a whole, and, in such event, such  
provision shall be changed and interpreted so as to best accomplish the  
objectives of such provisions within the limits of applicable law or applicable  
court decisions.  
  
  
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 IN WITNESS WHEREOF, the parties have executed this Agreement as of the  
date first set forth above.  
  
  
  
 RHEOGENX BIOSCIENCES CORPORATION  
  
  
 By: /s/ Xxxxxxx X. Xxxxx  
 Name: Xxxxxxx X. Xxxxx  
 Title: Chairman, President and C.E.O.  
  
  
 VASCULAR SCIENCES CORPORATION  
  
  
 By: /s/ Xxxxx Xxxxxxxx  
 Name: Xxxxx Xxxxxxxx  
 Title: Director  
  
  
  
  
 16  
  
  
  
  
  
 Exhibit A  
  
 THE PRODUCTS  
  
  
1. The Products:  
  
 Rheofilter AR 2000 (currently manufactured and supplied by Asahi  
 Medical Co., Ltd.)  
  
 Plasmaflo OP-05 W (currently manufactured and supplied by Asahi Medical  
 Co., Ltd.)  
  
 OctoNova Apheresis Pump (currently manufactured and supplied by Mesys  
 GMBH)  
  
  
  
  
  
  
2. The Territory:  
  
 United States  
  
 Canada  
  
 Mexico  
  
  
  
  
  
  
 17