AGREEMENT  
  
 BY AND BETWEEN  
 JDS FITEL, INC.  
 AND  
 OPTICAL COATING LABORATORY, INC.  
  
  
 TABLE OF CONTENTS  
  
  
  
  
  
ARTICLE I 1  
1.1 Definitions 1  
  
ARTICLE II  
SCOPE OF RELATIONSHIP 3  
  
ARTICLE III  
MANUFACTURE OF WDM PRODUCTS 4  
  
 3.1 Manufacture of WDM Optical Filters by OCLI 4  
 3.2 Supply of WDM Products by JDS 4  
 3.3 Supply of WDM Optical Filters 5  
 3.4 Price for JDS's Services 5  
 3.5 Terms and Conditions 5  
  
ARTICLE IV  
DISTRIBUTION AGREEMENT 5  
  
ARTICLE V  
USE OF THIRD PARTY WDM OPTICAL FILTER SUPPLIERS 5  
  
 5.1 Price Competition 5  
 5.2 Competition Other Than Price 6  
 5.3 Price of Third Party Filters Included in Costs 6  
  
ARTICLE VI  
PROFIT SHARING 6  
  
 6.1 Quarterly Profit Sharing Adjustments 6  
 6.2 Profit Sharing for Non-Optical Filter WDMs 6  
 6.3 Failure of OCLI to Supply Filters 7  
 6.4 Right to Inspect and Audit Records 8  
 6.5 Audit Costs Necessitated by Agreement 8  
  
ARTICLE VII  
FORMATION OF JOINT VENTURE COMPANY 8  
  
 7.1 Option to Form Joint Venture Company 8  
 7.2 Formation of Joint Venture Company 8  
  
 (a) Form 9  
 (b) Location 9  
 (c) Capital 9  
 (d) Licensing of Technology 9  
 (e) Governance 9  
 (f) Profit Sharing 10  
  
 7.3 Assignment of Distribution Agreement 10  
 7.4 Assignment of Terms of the Agreement 10  
 7.5 Activities of the Company 10  
 7.6 Failure to Agree on Terms of the Company 10  
  
ARTICLE VIII  
EXCLUSIVITY 11  
  
 8.1 Scope of Exclusive Rights 11  
 8.2 Notification 12  
 8.3 Sale of Planar Waveguide and Fiber Xxxxx Gratings 12  
  
ARTICLE IX  
TERMINATION 12  
  
 9.1 Termination for Cause 12  
  
 (a) Termination by JDS 12  
 (b) Termination for Failure of OCLI  
 to Supply Filters 13  
 (c) Termination for Failure of JDS to  
 Supply Assembly Services 13  
 (d) Termination by Either party 14  
 9.2 [CONFIDENTIAL TREATMENT REQUESTED] 14  
 9.3 Effect of Termination 14  
  
  
ARTICLE X  
MANAGEMENT COMMITTEE 14  
  
 10.1 Management Committee 14  
 10.2 Chairman of the Management Committee 15  
 10.3 Delegation 15  
  
ARTICLE XI  
RESEARCH AND DEVELOPMENT 15  
  
 11.1 Funding of R&D 15  
 11.2 16  
  
ARTICLE XII THIRD PARTY LICENSING 16  
  
 12.1 16  
  
ARTICLE XIII ACQUISITIONS 17  
  
 13.1 17  
 13.2 17  
  
ARTICLE XIV  
CONFIDENTIAL INFORMATION 18  
  
 14.1 "Confidential Information" 18  
 14.2 19  
 14.3 19  
 14.4 19  
  
  
  
ARTICLE XV  
  
MISCELLANEOUS 20  
  
 15.1 Non-Supply of WDM Optical Filters to Third Parties 20  
 15.2 21  
 15.3 Order Backlog 21  
 15.4 JDS's Inventory 22  
 15.5 Constraints on Employee Transfers 22  
 15.6 Governing Law 22  
 15.7 Disputes 23  
 15.8 Attorneys' Fees 23  
 15.9 Notices 24  
 15.10 Public Announcements 25  
 15.11 Counterparts 25  
 15.12 Interpretation 26  
 15.13 Successors and Assigns 26  
 15.14 Waiver 26  
 15.15 Purchase By Competitor 26  
 15.16 Entire Agreement 27  
 15.17 Agency 27  
 15.18 Survival 27  
 15.19 Further Assurances and Approvals 27  
 15.20 Intellectual Property Indemnity Liability 28  
 15.21 Approval by Board of Directors 28  
  
  
 AGREEMENT  
  
 THIS AGREEMENT, made as of this 1st day of February, 1997, by and  
  
between JDS FITEL Inc., a Canadian corporation, having its principal place  
  
of business at 000 Xxxx Xxxx Xxxx Xxxx, Xxxxxx, Xxxxxxx X0X 0X0 Xxxxxx  
  
("JDS" and "Distributor") and OPTICAL COATING LABORATORY, INC., a Delaware  
  
corporation, having its principal place of business at 0000 Xxxxxxxxxx  
  
Xxxxxxx, Xxxxx Xxxx, Xxxxxxxxxx 00000-0000 ("OCLI").  
  
 W I T N E S S E T H :  
  
 WHEREAS, JDS and OCLI wish to combine their respective areas of  
  
expertise and capabilities in a joint effort for WDM Product Business as  
  
defined herein.  
  
 NOW, THEREFORE, in consideration of the mutual promises contained  
  
herein, the parties hereto agree to the following:  
  
 ARTICLE II  
 DEFINITIONS  
  
 1.1 Definitions. For purposes of this Agreement, the following  
  
definitions shall apply:  
  
 "Backlog" shall mean the customer orders that JDS has on hand for  
  
which WDM Products have not been shipped at (a) January 19, 1997 with  
  
respect to Section 15.3(a) and at (b) the effective date of this Agreement  
  
all other provisions under this Agreement;  
  
 "Company" shall have the meaning as set out in Section 7.1;  
  
 "Company Profit" with respect to the Company shall mean the Company's  
  
revenues, including from transactions with the Distributor or with any  
  
party to this Agreement, from the WDM Products Business, including related  
  
activities such as licensing of WDM Product or WDM Optical Filter  
  
technology, pursuant to this Agreement less Company related Costs.  
  
"Company Profit" can be either a profit or a loss.  
  
 "Confidential Information" shall have the meaning as set out in  
  
Section 14.1;  
  
 "Cost" shall be defined as set forth in Exhibit A attached hereto.  
  
 "Fiscal Year" shall mean a 12 month period of time ended October 31.  
  
"Fiscal Quarter" shall mean the quarters ended January 31, April 30, July  
  
31 and October 31.  
  
 "Management Committee" shall have the meaning as set out in Section  
  
10.1;  
  
 "Non-assignable" shall mean personal, non-transferable, indivisible  
  
and non-assignable.  
  
 "Passive" shall mean not electrically powered or electrically  
  
controllable or adjustable;  
  
 "Planar Waveguides" shall mean planar waveguides performing a  
  
wavelength discrimination function;  
  
 "Profit" shall mean the sum of the Transaction Profit of each party  
  
plus Company Profit. "Profit" can be either a profit or a loss.  
  
 "Transaction Profit" with respect to any party shall mean that party's  
  
revenues, including from transactions with the Company or with other  
  
parties to this Agreement from the WDM Products Business, including related  
  
activities such as licensing of WDM Product or WDM Optical Filter  
  
technology, pursuant to this Agreement less such party's related Costs.  
  
"Transaction Profit" can be either a profit or a loss. For greater  
  
certainty, Transaction Profit shall not include any revenue, Costs or  
  
Company Profit recognized by either party as a result of either  
  
consolidating, equity accounting or cost accounting for a party's ownership  
  
interest share in the Company.  
  
 "WDM Optical Filters" shall mean WDM Optical Filters A and WDM Optical  
  
Filters B;  
  
 "WDM Optical Filters A" shall mean any and all optical filters that  
  
are intended to be used in WDM Products A;  
  
 "WDM Optical Filters B" shall mean any and all optical filters that  
  
are intended to be used in WDM Products B;  
  
 [CONFIDENTIAL TREATMENT REQUESTED]  
  
  
 "WDM Product Business" shall mean the business of design, development,  
  
manufacture, supply of WDM Optical Filters or WDM Products, sales to  
  
Distributor and technical product marketing support to assist Distributor  
  
in sales and marketing of WDM Products, all related to WDM Optical Filters  
  
or WDM Products.  
  
 ARTICLE II  
 SCOPE OF RELATIONSHIP  
  
 2.1 The relationship created between JDS and OCLI as described in  
  
more detail herein encompasses a joint venture activity relating to the  
  
design and manufacture of WDM Optical Filters; the design and manufacture  
  
of WDM Products; and the marketing and sale of WDM Products. From this  
  
joint venture activity JDS will realize [CONFIDENTIAL TREATMENT REQUESTED]  
  
of all Profits and OCLI will realize [CONFIDENTIAL TREATMENT REQUESTED]  
  
of all Profits, subject to adjustment as set out herein. The activities  
  
for the design, test and manufacture of WDM Optical Filters are to be provided  
  
by OCLI and the design, assembly, test and manufacture and test of WDM  
  
Products are to be provided by JDS and upon the occurrence of certain  
  
circumstances as set out herein, these activities may be transferred to  
  
a separate legal entity. JDS shall be the exclusive entity through which  
  
all WDM Products from this joint venture activity are sold and JDS will  
  
perform all marketing and sale activities for WDM Products, with technical  
  
assistance from OCLI as set out herein.  
  
 OCLI represents that it has expertise in optical coating technology and  
  
optical design capabilities for making optical filters and is currently  
  
developing technology to address current and future market demands for  
  
telecommunications applications. JDS represents that it has know-how and  
  
expertise in fiber optic component technology including packaging and  
  
development, design and test, and manufacturing capabilities for fiber  
  
optic components, including WDM Products, for telecommunications  
  
applications, and is currently developing technology to address current and  
  
future market demands for telecommunications applications, and also has  
  
marketing and sales expertise relating to such optical components. At  
  
least until the establishment of the Company, it is intended that OCLI will  
  
use its expertise and facilities for manufacturing WDM Optical Filters for  
  
the joint venture, and JDS will use its expertise and facilities for  
  
manufacturing WDM Products for the joint venture.  
  
  
 ARTICLE III  
 MANUFACTURE OF WDM PRODUCTS  
   
 3.1 Manufacture of WDM Optical Filters by OCLI. Subject to  
  
Sections 7.5 and 9.1(b), and except for WDM Optical Filters supplied by JDS  
  
from inventory existing on the effective date of this Agreement pursuant to  
  
Section 15.4, OCLI agrees to commit all resources necessary and appropriate  
  
to provide manufacturing services to manufacture and supply WDM Optical  
  
Filters for use by JDS or the Company in WDM Products which are based on  
  
Distributor's customer requirements which have been translated into  
  
product, proof of concept product or prototype product specifications by  
  
Distributor where the required WDM Optical Filters specifications have been  
  
determined in consultation with OCLI with respect to WDM Optical Filters  
  
provided by OCLI.  
  
 3.2 Supply of WDM Products by JDS. Subject to Sections  
  
7.5 and 9.1(c), JDS agrees to commit all resources necessary and  
  
appropriate to provide services to design, assemble, test and supply to  
  
OCLI or the Company WDM Products which are based on Distributor's customer  
  
requirements which have been translated into product, proof of concept  
  
product or prototype product specifications by Distributor in consultation  
  
with JDS with respect to WDM Products provided by JDS.  
  
 3.3 Supply of WDM Optical Filters. Prior to formation  
  
of the Company, OCLI shall provide WDM Optical Filters at no charge to JDS  
  
for use in the manufacture of the WDM Products.  
  
 3.4 Price for JDS's Services. Prior to formation of the Company, and  
  
subject to Section 6.1 JDS shall charge OCLI for the design, assembly and  
  
testing of the WDM Products at JDS's Cost to design, assemble and test the  
  
WDM Products plus a percentage xxxx up fee of such Cost as agreed by the  
  
Management Committee. JDS shall invoice OCLI for WDM Products for which  
  
testing has been completed and are ready for shipment to Distributor or  
  
Distributor's customers.  
  
 3.5 Terms and Conditions. Payment terms for the sale of WDM Products  
  
and services by JDS to OCLI shall be net 45 days from the date of invoice.  
  
All payments not received when due shall be subject to an additional charge  
  
of 1.5% per month of the unpaid amount until the date of payment.  
  
 ARTICLE IV  
 DISTRIBUTION AGREEMENT  
  
 4.1 Contemporaneously with the execution of this Agreement, OCLI and  
  
Distributor shall enter into that certain Distribution Agreement attached  
  
hereto as Exhibit B pursuant to which OCLI shall sell WDM Products only to  
  
Distributor as the sole and exclusive distributor of WDM Products at a  
  
price equal to OCLI's Cost of WDM Products plus a percentage xxxx up fee of  
  
such Cost as agreed by the Management Committee.  
  
 ARTICLE V  
 USE OF THIRD PARTY WDM OPTICAL FILTER SUPPLIERS  
  
 5.1 Price Competition. The Management Committee may decide whether JDS  
  
or the Company may purchase WDM Optical Filters from third parties if it  
  
determines that the Profits would be greater than if equivalent WDM  
  
Optical Filters were supplied by OCLI.  
  
  
 5.2 Competition Other Than Price. In the event that OCLI  
  
or the Company is unable to provide WDM Optical Filters, as required by  
  
Distributor's customers, based on lack of technology, including but not  
  
limited to capacity, yield or delivery timeframes, JDS or the Company may  
  
purchase WDM Optical Filters from third parties.  
  
  
 5.3 Price of Third Party Filters Included in Costs. In the event WDM  
  
Optical Filters are purchased from third parties pursuant to Section 5.1  
  
or 5.2, the price paid for such filters are to be included in Costs for the  
  
purpose of determining profit sharing under Article VI.  
  
  
 ARTICLE VI  
 PROFIT SHARING  
  
  
 6.1 Quarterly Profit Sharing Adjustments. Within 30 days from  
  
the end of each Fiscal Quarter thereafter, OCLI, JDS, Distributor and  
  
the Company when formed will exchange accounting information regarding  
  
each party's respective Costs incurred and Profits realized from the  
  
WDM Products Business. The sale price of WDM Products from OCLI or  
  
the Company to Distributor under the Distribution Agreement or alternately  
  
prior to formation of the Company the xxxx-up fee under Section 3.4,  
  
shall be adjusted such that the portion of Profits realized by OCLI are  
  
equal to [CONFIDENTIAL TREATMENT REQUESTED] and the portion of Profits  
  
realized by JDS and Distributor combined are equal to [CONFIDENTIAL TREATMENT  
  
REQUESTED] of the Profits realized pursuant to the terms of this Agreement,  
  
subject to adjustment under Sections 6.2 and 6.3. The profit sharing  
  
adjustment of each party's portion of Profits shall be made retroactively  
  
for the Fiscal Quarter just ended in the form of a credit from one party to   
  
the other and prospectively such that the profit sharing expected for the  
  
current Fiscal Quarter will conform to the requirements of this section.  
  
 6.2 Profit Sharing for Non-Optical Filter WDMs. In the  
  
event the amount of sales of WDM Products by Distributor that incorporate  
  
means of wavelength selection other than WDM Optical Filters or other  
  
elements providing means of wavelength discrimination which all have  
  
originated from OCLI during any Fiscal Quarter constitute more than  
  
[CONFIDENTIAL TREATMENT REQUESTED] of the amount of all sales of WDM Products  
  
by Distributor, then the adjustment called for by Section 6.1 shall be such  
  
that the portion of Profits realized by OCLI are equal to [CONFIDENTIAL  
  
TREATMENT REQUESTED] and the portion of Profits realized by JDS and  
  
Distributor combined are equal to [CONFIDENTIAL TREATMENT REQUESTED] of  
  
the Profits realized pursuant to the terms of this Agreement. In the case  
  
of WDM Products containing both WDM Optical Filters and other means of  
  
wavelength selection, sales by Distributor shall be allocated to WDM  
  
Products sales in accordance with the relative value of the WDM Optical  
  
Filter elements or other elements providing means of wavelength   
  
discrimination which all have originated from OCLI to the total  
  
value of all wavelength selection elements employed in the WDM Products, as  
  
determined by the Management Committee. Notwithstanding the foregoing, the  
  
said other elements providing means of wavelength discrimination  
  
in WDM Products which all have originated from OCLI, shall only be used in  
  
the calculation in this subsection if such elements were not available from  
  
JDS at the time introduced by OCLI.  
  
 6.3. Failure of OCLI to Supply Filters. In the event, OCLI and the  
  
Company fail in any Fiscal Quarter to supply JDS or the Company with:  
  
 (i) [CONFIDENTIAL TREATMENT REQUESTED] of the requirements for WDM  
  
Optical Filters A, then the profit sharing adjustment pursuant to Section  
  
6.1 shall be further adjusted such that the portion of Profits that are  
  
realized during the next Fiscal Quarter by OCLI are equal to [CONFIDENTIAL  
  
TREATMENT REQUESTED] and the portion of Profits realized by JDS and  
  
Distributor combined are equal to [CONFIDENTIAL TREATMENT REQUESTED] of  
  
the Profits realized pursuant to the terms of this Agreement with respect  
  
to WDM Products A. This further profit sharing adjustment shall continue to  
  
apply until the Fiscal Quarter in which OCLI and the Company supplies the  
  
said [CONFIDENTIAL TREATMENT REQUESTED] of JDS's or the Company's  
  
requirements after which the profit sharing shall return to that specified  
  
pursuant to Section 6.1 in the next Fiscal Quarter; or  
  
 (ii) [CONFIDENTIAL TREATMENT REQUESTED] of the requirements for WDM  
  
Optical Filters B, then the profit sharing adjustment pursuant to Section  
  
6.1 shall be further adjusted such that the portion of Profits that are  
  
realized during the next Fiscal Quarter by OCLI are equal to [CONFIDENTIAL  
  
TREATMENT REQUESTED] and the portion of Profits realized by JDS and  
  
Distributor combined are equal to [CONFIDENTIAL TREATMENT REQUESTED] of the  
  
Profits realized pursuant to the terms of this Agreement with respect to  
  
WDM Products B. This further profit sharing adjustment shall continue to  
  
apply until the Fiscal Quarter in which OCLI and the Company supplies the  
  
said [CONFIDENTIAL TREATMENT REQUESTED] of Distributor's or the Company's  
  
requirements after which the profit sharing shall return to that specified  
  
pursuant to Section 6.1 in the next Fiscal Quarter; or  
  
 (iii) [CONFIDENTIAL TREATMENT REQUESTED] of the requirements for WDM  
  
Optical Filters, then the profit sharing adjustment pursuant to Section 6.1  
  
shall be further adjusted such that the portion of Profits that are realized  
  
during the next Fiscal Quarter by OCLI are equal to [CONFIDENTIAL  
  
TREATMENT REQUESTED] and the portion of Profits realized by JDS and  
  
Distributor combined are equal to [CONFIDENTIAL TREATMENT REQUESTED] of the  
  
Profits realized pursuant to the terms of this Agreement with respect to  
  
WDM Products. This further profit sharing adjustment shall continue to  
  
apply until the Fiscal Quarter in which OCLI and the Company supplies the  
  
said [CONFIDENTIAL TREATMENT REQUESTED] of JDS's or the Company's  
  
requirements after which the profit sharing shall return to that specified  
  
pursuant to Section 6.1 in the next Fiscal Quarter.  
  
 The following formula shall be used to determine whether OCLI or OCLI  
  
and the Company have satisfied the requirements set out in this Section 6.3  
  
to supply WDM Optical Filters A, WDM Optical Filters B or WDM Optical  
  
Filters:  
  
 S = A/B  
  
Where:  
  
 (i) "S" represents the percentage of the requirements for WDM Optical  
  
Filters A, WDM Optical Filters B or WDM Optical Filters, as the case may  
  
be, supplied by OCLI and the Company;  
   
 (ii) "A" represents the number of WDM Optical Filters A, WDM Optical  
  
Filters B or WDM Optical Filters, as the case may be, supplied by OCLI and  
  
the Company and incorporated into WDM Products shipped by the Distributor  
  
in the relevant Fiscal Quarter; and  
  
 (iii) "B" represents the number of WDM Optical Filters A, WDM Optical  
  
Filters B or WDM Optical Filters, as the case may be, that are required by  
  
the Distributor in the relevant Fiscal Quarter to satisfy (a) purchase  
  
order delivery commitments for WDM Optical Filters incorporated into WDM  
  
Products and (b) reasonable requirements to qualify, test and market  
  
prototype or demonstration products but excluding any delivery commitments  
  
not satisfied due to causes other than OCLI's failure to supply WDM Optical  
  
Filters that meet the required WDM Optical Filter specifications based on  
  
Distributor's customer requirements.  
  
 In any event, this Section 6.3 shall cease to apply after January 31,  
  
2002.  
  
 6.4 Right to Inspect Audit Records. Each party hereto shall have the  
  
right, upon reasonable notice and during normal business hours, to  
  
inspect and conduct an audit of any other party's or the Company's  
  
accounting records for the purpose of verifying such party's Costs  
  
and Profits.  
  
 6.5 Audit Costs Necessitated by Agreements. Except for Section  
  
6.4, in the event a financial audit other than a party's normal annual or  
  
quarterly audit required for its own business, is required at any time  
  
to determine any matter or calculation hereunder, the costs of such  
  
audit shall be included in Costs.  
   
  
 ARTICLE VII  
 FORMATION OF JOINT VENTURE COMPANY  
  
 7.1 Option to Form Joint Venture Company. Subject to Section 7.2  
  
and only where the sales of WDM Products by Distributor exceeds  
  
[CONFIDENTIAL TREATMENT REQUESTED] for any four consecutive Fiscal Quarters,  
  
either party hereto may exercise an option to cause to be formed a  
  
joint venture company (the "Company"). Such option shall be exercisable  
  
by either party by giving sixty (60) days written notice thereof to  
  
the other party.  
  
 7.2 Formation of Joint Venture Company. Prior to either party  
  
exercising the option under Section 7.1, OCLI and JDS shall upon  
  
written notice negotiate in good faith for a period of sixty (60)  
  
days following such notice and agree upon all the terms and conditions  
  
relating to the formation and operation of the Company, including but  
  
not limited to the terms set forth below. Where the parties are not able  
  
to agree on all such terms or conditions, the terms and conditions the  
  
parties have not agreed upon shall be addressed in accordance with  
  
Section 7.6 below.  
  
 (a) Form. The Company will be formed as a general partnership,  
  
limited liability company or other "flow-through" entity [CONFIDENTIAL  
  
TREATMENT REQUESTED].  
  
 (b) Location. The Company will be located in a location agreed  
  
upon by OCLI and JDS which provides a favorable tax treatment for all  
  
parties, location to competent labor force, access to markets and  
  
convenience to the management of OCLI and JDS.  
  
 (c) Capital. OCLI and JDS will provide capital in the form of  
  
equity or working capital loans on commercially reasonable terms as needed.  
  
 (d) Licensing of Technology. Subject to Sections 11 and 13.1,  
  
OCLI and JDS shall license the Company on a royalty free, nonexclusive, Non-  
  
assignable basis all intellectual property rights, excluding trademarks,  
  
service marks and tradenames, owned by either party for WDM Products  
  
Business. OCLI and JDS shall at no charge provide technical assistance to  
  
the Company to help the Company to implement, and utilize in the Company's  
  
WDM Product Business, such licensed intellectual property rights. JDS will  
  
use reasonable efforts to obtain a nonexclusive license of intellectual  
  
property rights owned by Furukawa but only if agreeable to Furukawa and  
  
necessary to enable the Company to conduct WDM Product Business for a  
  
commercially reasonable royalty, provided same are Non-assignable by the  
  
Company. Intellectual property rights owned by either party's subsidiaries  
  
in which the party has majority ownership and where the party has control  
  
to cause said subsidiaries to grant an intellectual property rights license  
  
relating to the WDM Products Business which is necessary to enable the  
  
Company to conduct WDM Product Business, shall be offered to the Company on  
  
a nonexclusive, Non-assignable basis for a commercially reasonable royalty.  
  
 (e) Governance. The governance and control of the Company will  
  
be negotiated by the parties acting in good faith prior to the exercise of  
  
the option under Section 7.1, by taking into consideration, in addition to  
  
all other factors: [CONFIDENTIAL TREATMENT REQUESTED]  
  
 (f) Profit Sharing. The parties' respective percentage interest  
  
in the earnings and profits of the Company shall be such as to reflect  
  
the sharing of Profits provided for in Article VI of this Agreement.  
  
 7.3 Assignment of Distribution Agreement. Upon formation of the  
  
Company, the Distribution Agreement shall be assigned by OCLI to the  
  
Company.  
  
 7.4 Assignment of Terms of the Agreement. The Company, shall also  
  
agree to be bound by the same obligations that JDS and OCLI have to  
  
each other before the formation of the Company that relate to protecting  
  
each party's interests, including but not limited to, Sections 3.1 and  
  
3.2, Article IV Distribution; Article VI Profit Sharing; Article VIII  
  
Exclusivity; Article IX Termination; Article XI Research and Development;  
  
Article XIII Acquisitions; Article XIV Confidential Information and  
  
Article XV Miscellaneous.  
  
 7.5 Activities of the Company. After the formation of the  
  
Company, the parties shall determine what activities as set out in Article  
  
III shall be assumed by the Company or shall continue to be provided by one  
  
or both of the parties.  
  
 7.6 Failure to Agree on Terms of the Company. In the event the  
  
parties do not reach agreement on all the terms and conditions relating to  
  
the formation and operation of the Company within the 60-day notice period  
  
or any extensions of time mutually agreed to by the parties, the parties  
  
agree to immediately submit any such terms and conditions that the parties  
  
have failed to agree on to arbitration pursuant to Section 15.7 except that  
  
such arbitration shall not be binding on the parties save as expressly set  
  
out in this Article VII. The factors set forth in Section 7.2(e)(i) and  
  
(ii) shall not in any manner be disclosed to the arbitrators. The  
  
arbitrators shall determine such terms and conditions taking into account:  
  
 (a) all of the factors listed in Section 7.2 but without any reference  
  
to the factors set forth in Section 7.2(e)(i) and (ii), (b) other  
  
provisions of this Agreement and (c) the conduct of the parties under this  
  
Agreement. The arbitration proceeding shall be completed within 90 days  
  
following the conclusion of good faith negotiations. After conclusion of  
  
the arbitration of all such terms and conditions that the parties had  
  
failed to agree on, and where OCLI is not satisfied with the arbitrators'  
  
decision OCLI shall have the option, exercisable by notice, given within 30  
  
days of the date of the arbitrators' decision, to (i) terminate this  
  
Agreement on six months notice provided notice is given after January 31,  
  
1999, (ii) agree to form the Company upon the terms decided by the  
  
arbitrators if, and only if, JDS also, in its sole and unfettered  
  
discretion, whether or not acting reasonably, agrees to form the Company  
  
upon such terms or (iii) continue this Agreement without the formation of  
  
the Company. In the event the parties continue this Agreement without the  
  
formation of the Company, either of the parties may elect, on one  
  
subsequent occasion only, to initiate the process to form the Company  
  
pursuant to this Article VII any time after a date that is 24 months after  
  
the date of the arbitrators' decision. In no event shall either party have  
  
any rights or obligations under this Article VII upon the conclusion of the  
  
second arbitration and this Article VII shall thereafter be null and void.  
  
 ARTICLE VIII  
 EXCLUSIVITY  
  
 8.1 [CONFIDENTIAL TREATMENT REQUESTED]  
  
 Notwithstanding any term to the contrary, all such activities for  
  
making for or selling to third parties by either OCLI or JDS, in compliance  
  
with this section, are deemed to be completely outside of the scope of this  
  
Agreement and for greater certainty, Costs and that party's Transaction  
  
Profits associated with such sales shall not be considered in calculation  
  
of Profits under this Agreement.  
  
  
 8.2 [CONFIDENTIAL TREATMENT REQUESTED]  
  
  
 8.3 Sale of Planar Waveguide and Fiber Xxxxx Gratings. Either party  
  
may at anytime make for or resell to third parties Fiber Xxxxx grating  
  
or Planar Waveguide or other technology based WDM Products where the  
  
party's Transaction Profit on such sales is included in calculating  
  
Profits under this Agreement.  
  
 ARTICLE IX  
 TERMINATION  
  
 9.1 Termination for Cause.  
  
 a) Termination by JDS. JDS may terminate this Agreement upon 30 days  
  
written notice, unless within such period OCLI cures the condition giving  
  
rise to JDS's right to terminate this Agreement (whereupon all intellectual  
  
property rights owned by each party shall be retained by such party and all  
  
intellectual property rights jointly owned shall continue to be jointly  
  
owned provided however that either party may thereafter exploit such joint  
  
intellectual property rights without the consent or accounting to the other  
  
party) in the event that OCLI fails to either provide: [CONFIDENTIAL  
  
TREATMENT REQUESTED] or (ii) in sufficient quantities for proof of  
  
concept or prototype WDM Product samples for product qualification, system  
  
and performance verification to meet Distributor's customers' requirements.  
  
  
 b) Termination for Failure of OCLI to Supply Filters. (If OCLI and  
  
the Company fail for any two consecutive Fiscal Quarters to supply the  
  
Distributor or the Company with:  
  
  
 (i) [CONFIDENTIAL TREATMENT REQUESTED] of the requirements for WDM  
  
Optical Filters A, then JDS may immediately terminate this Agreement  
  
upon 30 days notice given within 30 days following the end of the said  
  
two consecutive Fiscal Quarters; or  
  
 (ii) [CONFIDENTIAL TREATMENT REQUESTED] of the requirements for WDM  
  
Optical Filters B, then JDS may immediately terminate the parties rights and  
  
obligations herein with respect to WDM Products B upon 30 days notice given  
  
within 30 days following the end of the said two consecutive Fiscal  
  
Quarters; or  
  
 (ii) [CONFIDENTIAL TREATMENT REQUESTED] of the requirements for WDM  
  
Optical Filters, JDS may terminate this Agreement upon 30 days notice given  
  
within 30 days following the end of the said two consecutive Fiscal Quarters.  
  
 The said two consecutive Fiscal Quarter period described above shall not  
  
commence until such filters become commercially available to the  
  
Distributor or the Company.  
  
 The following formula shall be used to determine whether OCLI or OCLI and  
  
the Company have satisfied the requirements set out in this provision to  
  
supply WDM Optical Filters A, WDM Optical Filters B or WDM Optical Filters,  
  
as the case may be,:  
  
 S = A/B  
  
Where:  
  
 (i) "S" represent the percentage of the requirements for WDM Optical  
  
Filters A, WDM Optical Filters B or WDM Optical Filters, as the case may  
  
be, supplied by OCLI and the Company;  
  
 (ii) "A" represents the number of WDM Optical Filters A, WDM Optical  
  
Filters B or WDM Optical Filters, as the case may be, supplied by OCLI and  
  
the Company and incorporated into WDM Products shipped by the Distributor  
  
in the relevant two consecutive Fiscal Quarter; and  
  
 (iii) "B" represents the number of WDM Optical Filters A, WDM Optical  
  
Filters B or WDM Optical Filters, as the case may be, that are required by  
  
the Distributor in the relevant two consecutive Fiscal Quarter to satisfy  
  
(a) purchase order delivery commitments for WDM Optical Filters  
  
incorporated into WDM Products and (b) reasonable requirements to qualify,  
  
test and market prototype or demonstration products but excluding any  
  
delivery commitments not satisfied due to causes other than OCLI's failure  
  
to supply WDM Optical Filters that meet the required WDM Optical Filter  
  
specifications based on Distributor's customer requirements [CONFIDENTIAL  
  
TREATMENT REQUESTED].  
  
 Once the Company has demonstrated that it has the ability in any Fiscal  
  
Quarter to supply [CONFIDENTIAL TREATMENT REQUESTED] of the requirements for  
  
WDM Optical Filters and [CONFIDENTIAL TREATMENT REQUESTED]  
  
of the requirements for WDM Optical Filters A, then this provision and  
  
Section 3.1 shall cease to apply. In any event, this provision shall cease  
  
to apply after January 31, 2000 provided that if the right to terminate  
  
this Agreement pursuant to this subsection 9.1(b) arises prior to January  
  
31, 2000, then this subsection continues until January 31, 2002.  
  
 (c) Termination for Failure of JDS to Supply Assembly Services. If  
  
JDS, or JDS and the Company combined, has not supplied [CONFIDENTIAL  
  
TREATMENT REQUESTED] of the requirements for WDM Product assembly services  
  
for WDM Products A or [CONFIDENTIAL TREATMENT REQUESTED] of the requirements  
  
for WDM Products B for two consecutive Fiscal Quarters, and provided that  
  
such assembly services are or have been commercially available to third  
  
parties, then OCLI may terminate this Agreement upon 30 days notice given  
  
within 30 days following the end of the said two consecutive Fiscal Quarters.  
  
If such assembly services are not or have not been commercially available,  
  
the said two consecutive Fiscal Quarter period described above shall not  
  
commence until such assembly services become commercially available. Once  
  
the Company has demonstrated that it has the ability to supply 85% of the  
  
requirements for such WDM product assembly services for a Fiscal Quarter,  
  
then this provision and Section 3.2 shall cease to apply. In any event,  
  
this provision shall cease to apply after January 31, 2000.  
  
 d) Termination by Either party. Beginning on [CONFIDENTIAL  
  
TREATMENT REQUESTED], either party may at anytime terminate this Agreement  
  
upon 30 days notice unless prior to such notice sales of WDM Products by  
  
Distributor for any four consecutive Fiscal Quarter period exceed  
  
[CONFIDENTIAL TREATMENT REQUESTED] ("the Sales Goal"). Either party may  
  
also terminate this Agreement pursuant to this provision if, for such  
  
period, Profits are not positive.  
  
 9.2 [CONFIDENTIAL TREATMENT REQUESTED]  
  
 9.3 Effect of Termination. Subject to Section 14.4, in the event that  
  
either this Agreement or the Distributor Agreement, Exhibit C, is  
  
terminated pursuant to any provision hereunder or for breach,, both this  
  
Agreement and said Distributor Agreement shall terminate and all  
  
intellectual property rights owned by each party shall be retained by such  
  
party and all intellectual property rights jointly owned shall continue to  
  
be jointly owned provided however that either party may thereafter exploit  
  
such joint intellectual property rights without the consent or accounting  
  
to the other party. In addition, in the event the Company has been formed,  
  
the parties shall use their best efforts to effect an orderly dissolution  
  
and wind-up of the Company by discharging all debts and obligations of the  
  
Company with the remaining equity to be distributed to the parties in  
  
accordance with their respective interests in Profits; provided that all  
  
assets of the Company are dealt with as follows. All assets of the Company  
  
shall be transferred to the parties as mutually agreed. No Company asset  
  
shall be conveyed, sold, leased or otherwise disposed of to a third party  
  
unless both parties agree in writing to such disposal in their respective  
  
sole discretion. Should the Company not have sufficient monetary assets to  
  
discharge all debts and all obligations of the Company, each of the parties  
  
shall share in the discharge of such debts and obligations in accordance  
  
with their respective interests in Company.  
  
 ARTICLE X  
 MANAGEMENT COMMITTEE  
  
 10.1 Management Committee. OCLI and JDS shall each appoint two  
  
persons to serve as a Management Committee. The Management Committee shall  
  
have the authority, acting reasonably, to manage the design, development,  
  
manufacture and technical product marketing support of WDM Products  
  
Business pursuant to this Agreement and until the formation of the Company.  
  
Meetings of the Management Committee may be called by any member thereof  
  
upon one business day notice to the other Management Committee members and  
  
attendance may be by telephone, video conference or other means agreed to  
  
by such members. Three members, or their designated representatives, must  
  
be present for a quorum and no business shall be conducted by the  
  
Management Committee except at such meetings where a quorum is present.  
  
The affirmative vote of three members is required to authorize all actions  
  
of the Management Committee. In the event the Management Committee reaches  
  
a deadlock, including consistent failure or refusal of one or more party's  
  
members to attend meetings, the chief executive officers then in office of  
  
JDS and OCLI shall jointly appoint one non-affiliated business person to  
  
serve as the fifth member of the Management Committee to break such  
  
deadlock. If the chief executive officers of OCLI and JDS are unable to  
  
agree on who should serve as the fifth member of the Management Committee,  
  
each shall select one non-affiliated business person, and the two non-  
  
affiliated business persons so selected shall select a third non-affiliated  
  
business person who alone will then join the Management Committee as the  
  
fifth member to break such deadlock.  
  
 10.2 Chairman of the Management Committee. A member of the Management  
  
Committee initially selected by OCLI shall serve as chairman for a nine-  
  
month term. Thereafter, JDS shall choose the chairman to serve for a nine-  
  
month term, and thereafter the parties shall continue to rotate in the  
  
selection of the chairman for succeeding nine-month terms. The duties of  
  
the chairman shall be to organize and preside at meetings of the  
  
Management Committee and to perform such other duties as from time to time  
  
may be determined by the Management Committee. The parties may adjust the  
  
term of the chairman by mutual agreement.  
  
 10.3 Delegation. The Management Committee may delegate duties to one  
  
or more persons who need not be members of the Management Committee.  
  
 ARTICLE XI  
 RESEARCH AND DEVELOPMENT  
  
 11.1 Funding of R&D. The parties may propose any R&D projects that  
  
relate to WDM Products Business to the Management Committee or the Company.  
  
Notwithstanding the voting provisions contained in Section 10.1, if the  
  
Company or the Management Committee, acting through members or  
  
representatives that are unaffiliated with the offering party, elects to  
  
conduct the R&D project, the Company, or OCLI or JDS as determined by the  
  
Management Committee, shall fund the R&D project which funding shall  
  
constitute Costs and the results shall be owned by the Company or equally  
  
by OCLI and JDS. Where the Company or said members of the Management  
  
Committee decline to undertake the R&D project, either party may conduct  
  
the R&D project provided that the Company or said members of the Management  
  
Committee shall have the right for a period of 60 days after declining to  
  
conduct the R&D project to accept the R&D project in which case the total  
  
cost of the R&D project shall be funded by the Company, or OCLI or JDS as  
  
determined by the Management Committee, which funding shall constitute  
  
Costs. In the event the Company or said members of the Management  
  
Committee elect not to conduct the R&D project, or exercise the 60 day  
  
option described above, either party is free to conduct the R&D project  
  
with the results being owned by such party with no obligation to license or  
  
otherwise share the results with the Company or the other party and any  
  
products based on the R&D project shall be deemed to fall outside of the  
  
definition of WDM Products. In the event a party elects not to present an  
  
R&D project to the Management Committee or the Company, and the results of  
  
the R&D project has application in the WDM Products Business, at the end of  
  
the R&D project such party will offer the Company a nonexclusive, Non-  
  
assignable license limited to use the results of such R&D project solely  
  
for the WDM Product Business, based on commercially reasonable terms  
  
including lump sum and royalty terms, which amounts shall be included in  
  
Costs but not be included in the licensing party's revenues for the purpose  
  
of determining such party's Transaction Profits. The Company shall have a  
  
period of thirty (30) days from the date of such offer to accept such  
  
license. In the event the Company does not take a license within said time  
  
period, any products based on such R&D project shall be deemed to fall  
  
outside of the definition of WDM Products and the party owning such results  
  
shall have no obligation to license or otherwise share the results with the  
  
Company or the other party.  
  
 11.2. All OCLI R&D, development and capital costs associated with or  
  
related to OCLI complying with its obligations to develop WDM Optical  
  
Filters as set out in Section 9.1(a), shall be paid for completely by OCLI  
  
and not be included in Costs, and shall fall within the intellectual  
  
property rights that OCLI must license under Section 7.2(d).  
  
 ARTICLE XII  
 THIRD PARTY LICENSING  
  
 12.1 Where the parties agree that a third party license of  
  
intellectual property rights is needed to carry out the activities  
  
hereunder, the costs of such license shall be included in Costs for the  
  
purpose of sharing Profits under Article VI.  
  
 ARTICLE XIII  
 ACQUISITIONS  
  
 13.1 Where either party makes an acquisition in which it  
  
has majority ownership and the acquiring party has control to cause the  
  
acquisition to offer an intellectual property license relating to WDM  
  
Products Business to the Company, immediately after the completion of the  
  
acquisition the Company will be offered a nonexclusive, Non-assignable  
  
license limited to use for the WDM Product Business based on commercially  
  
reasonable terms including lump sum and royalty terms. The Company shall  
  
have a period of thirty (30) days from the date of such offer to accept  
  
such license. Neither party is otherwise obligated to license or otherwise  
  
share such intellectual property with the Company or the other party.  
  
 13.2 Notwithstanding the voting provision contained in  
  
Section 10.1, Where either OCLI or JDS makes an acquisition in which it  
  
has majority ownership (the "Acquiring Party") and the acquisition's  
  
existing business includes WDM Products Business, the Acquiring Party shall  
  
offer to the joint venture, immediately after the completion of the  
  
acquisition, acting through the members of the Management Committee or the  
  
governing body of the Company who are unaffiliated with the Acquiring  
  
Party, the right to have the Acquiring Party's share of Transaction Profits  
  
of the acquisition's WDM Products Business included in the calculation of  
  
Profit sharing between the parties pursuant to Article VI of this  
  
Agreement. If the joint venture so elects within thirty (30) days from the  
  
date of such offer to so participate, as consideration for the right to so  
  
share in such Transaction Profits, the Acquiring Party shall be compensated  
  
by the non-acquiring party (the "Other Party"), in cash or other  
  
consideration acceptable to the Acquiring Party, an amount that shall be  
  
equal to the portion of the acquisition costs, including expenses  
  
(including costs associated with determining the portion of the acquired  
  
company's business allocable to the WDM Products Business), that is  
  
attributed to the WDM Business of the acquired company times [CONFIDENTIAL  
  
TREATMENT REQUESTED] where OCLI is the Other Party and [CONFIDENTIAL  
  
TREATMENT REQUESTED] where JDS is the Other Party. Alternatively, the  
  
Acquiring Party may at its sole option agree with the Other Party to adjust  
  
the Profit sharing pursuant to Article VI to replace a portion or all of the  
  
said cash amount. If the joint venture does not so elect within the  
  
specified time period, the acquired company's business shall be completely  
  
outside the scope of this Agreement and not be included in the calculation  
  
of Profit. For greater certainty, where the Acquiring Party is OCLI, the  
  
Other Party is JDS and vice-versa.  
  
 ARTICLE XIV  
 CONFIDENTIAL INFORMATION  
  
 14.1 "Confidential Information" shall mean any business,  
  
marketing, technical, scientific, financial or other information,  
  
specifications, designs, plans, drawings, software, prototypes or process  
  
techniques, of a party, which at the time of disclosure, is designated as  
  
confidential (or like designation), is disclosed in circumstances of  
  
confidence, or would be understood by the parties, exercising reasonable  
  
business judgement, to be confidential, but excludes any information which:  
  
 (a) is independently developed by or for the receiving party without  
  
reference to or use of Confidential Information;  
  
 (b) is lawfully received free of restriction from another source  
  
having the right to so furnish such confidential information;  
  
 (c) is or becomes lawfully in the public domain other than through a  
  
breach of this Agreement;  
  
 (d) was known by the receiving party prior to disclosure, as  
  
evidenced by its business records;  
  
 (e) disclosing party agrees in writing is free of such restrictions;  
  
 (f) is disclosed by the disclosing party to a third party without a  
  
duty of confidentiality on such third party; or  
  
 (g) is required or compelled by law to be disclosed, provided that  
  
the receiving party give all reasonable prior notice to the disclosing  
  
party to allow it to seek protective or other court orders.  
  
 14.2 Obligation to Keep in Confidence. Except as otherwise allowed  
  
under this Agreement, Receiving party shall keep Confidential Information  
  
of the disclosing party in confidence; disclose it only to individuals in  
  
the receiving party with a need to know and who are under confidentiality  
  
restrictions; and use or reproduce it only to the extent necessary for the  
  
activities contemplated hereunder. Each party shall protect Confidential  
  
Information of disclosing party with at least the same degree of care as  
  
it normally exercises to protect its own Confidential Information of a  
  
similar nature, but no less than a reasonable degree of care.  
  
 14.3 Irreparable Harm. Receiving party agrees that any violation or  
  
threat of violation of this section will result in irreparable harm to  
  
disclosing party for which damages would be an inadequate remedy and,  
  
therefore, in addition to its rights and remedies otherwise available at  
  
law, including without limitation the recovery of damages and expenses,  
  
including attorney's fees for breach of this Agreement, disclosing party  
  
shall be entitled to unilaterally seek equitable relief, including both  
  
temporary and permanent injunctions, to prevent any unauthorized use or  
  
disclosure, and to such other and further equitable relief as the court may  
  
deem proper under the circumstances.  
  
 14.4 [CONFIDENTIAL TREATMENT REQUESTED]  
  
 ARTICLE XV  
 MISCELLANEOUS  
  
 15.1 Non-Supply of WDM Optical Filters to Third Parties. Except for  
  
commitments to supply not more than a total of [CONFIDENTIAL INFORMATION]  
  
of WDM Optical Filters to third parties which commitments to deliver do not  
  
extend beyond June 1, 1997, OCLI represents and warrants to JDS that it is  
  
under no obligations whatsoever to supply WDM Optical Filters to any third  
  
party as of the date of this Agreement, and agrees not to supply any WDM  
  
Optical Filters to any third party except as expressly provided for herein.  
  
In addition, where OCLI provides optical filters for use in fiber optical  
  
product applications other than WDM Products, to any third party where such  
  
optical filters may also be used as a wavelength discrimination element,  
  
OCLI shall obtain from such third party an enforceable representation and  
  
warranty that such third party will not use such optical filter in WDM  
  
Products.  
  
 15.2 [CONFIDENTIAL TREATMENT REQUESTED]  
  
 15.3 Order Backlog. Notwithstanding any term to the contrary herein,  
  
the portion of Profits that OCLI shall realize from Profits, where Profits  
  
on Backlog shall be JDS' revenues from the sale of WDM Products less JDS'  
  
related Costs, whether or not Costs were incurred before or after the date  
  
of this Agreement and such JDS Costs related to Backlog shall be included  
  
in Costs, shall be as follows:  
  
 (a) where arising from Backlog from [CONFIDENTIAL TREATMENT REQUESTED]  
  
for WDM Products B shall be calculated as follows.  
  
 (i) where such Backlog is shipped in the two (2) months period  
  
 from the date of this Agreement, five percent (5%) of Profits on such  
  
 Backlog shipped during said period;  
  
 (ii) where such Backlog is shipped within the period from the end  
  
 of (2) months to four (4) months from the date of this Agreement, ten  
  
 percent (10%) of Profits on such Backlog shipped during said period;  
  
 (iii) where such Backlog is shipped within the period from the  
  
 end of four (4) months to six (6) months from the date of this  
  
 Agreement, fifteen percent (15%) of Profits on such Backlog shipped  
  
 during said period;  
  
 (iv) where such Backlog is shipped within the period from the end  
  
 of six (6) months to eight (8) months from the date of this Agreement,  
  
 twenty percent (20%) of Profits on such Backlog shipped during said  
  
 period;  
  
 (v) where such Backlog is shipped within the period from the end  
  
 of eight (8) months to ten (10) months from the date of this  
  
 Agreement, twenty-five percent (25%) of Profits on such Backlog  
  
 shipped during said period;  
  
 (vi) where such Backlog is shipped within the period from the end  
  
 of ten (10) months to twelve (12) months from the date of this  
  
 Agreement, thirty percent (30%) of Profits on such Backlog shipped  
  
 during said period;  
  
 (vii) where such Backlog is shipped after twelve (12) months from  
  
 the date of this Agreement, the portion of Profits of OCLI shall be  
  
 determined pursuant to the terms of this Agreement.  
  
 (b) arising from Backlog from [CONFIDENTIAL TREATMENT REQUESTED] for  
  
WDM Products A where such Backlog is shipped after the effective date of  
  
this Agreement shall be included in this Agreement;  
  
 (c) arising from purchase orders received by JDS on or after January  
  
20, 1997 from [CONFIDENTIAL TREATMENT REQUESTED] for WDM Products B which  
  
are shipped after the effective date of this Agreement, shall be included in  
  
this Agreement;  
  
 (d) all other Backlog shall be considered completely outside of this  
  
Agreement; and  
  
 15.4 JDS's Inventory. JDS's current inventory of WDM Optical Filters  
  
on hand at the effective date of this Agreement ("JDS's Inventory Filters")  
  
shall be treated as follows:  
  
 (a) notwithstanding any term to the contrary herein, for sales of WDM  
  
Products A that contain JDS's Inventory Filters after the effective date of  
  
this Agreement to a maximum of the lesser of (i)[CONFIDENTIAL TREATMENT  
  
REQUESTED], where Profits on Inventory Sales shall be JDS' revenues from  
  
the sale of WDM Products A less JDS's related Costs, whether or not Costs  
  
were incurred before or after the date of this Agreement and such JDS Costs  
  
related to Inventory Orders shall be included in Costs, the portion of  
  
Profits that OCLI shall realize from such Profits shall be as follows:  
  
 (i) where Inventory Sales are shipped in the two (2) months  
  
 period from the date of this Agreement, five percent (5%) of Profits  
  
 on Inventory Orders shipped during said period;  
  
 (ii) where Inventory Sales are shipped within the period from the  
  
 end of two (2) months to four (4) months from the date of this  
  
 Agreement, ten percent (10%) of Profits on Inventory Orders shipped  
  
 during said period;  
  
 (iii) where Inventory Sales are shipped within the period from  
  
 the end of four (4) months to six (6) months from the date of this  
  
 Agreement, fifteen percent (15%) of Profits on Inventory Orders  
  
 shipped during said period;  
  
 (iv) where Inventory Sales are shipped within the period from the  
  
 end of six (6) months to eight (8) months from the date of this  
  
 Agreement, twenty percent (20%) of Profits on Inventory Orders shipped  
  
 during said period;  
  
 (v) where Inventory Sales are shipped within the period from the  
  
 end of eight (8) months to ten (10) months from the date of this  
  
 Agreement, twenty-five percent (25%) of Profits on Inventory Orders  
  
 shipped during said period;  
  
 (vi) where Inventory Sales are shipped within the period from the  
  
 end of ten (10) months to twelve (12) months from the date of this  
  
 Agreement, thirty percent (30%) of Profits on Inventory Orders shipped  
  
 during said period;  
  
 (vii) where Inventory Sales are shipped after twelve (12) months  
  
 from the date of this Agreement, the portion of Profits of OCLI shall  
  
 be determined pursuant to the terms of this Agreement;  
  
 (b) Except with respect to WDM Products shipped prior to the  
  
effective date of this Agreement, JDS shall receive a credit from OCLI at  
  
the effective date of this Agreement for the current inventory of WDM  
  
Optical Filters JDS has on hand at the effective date of this Agreement as  
  
follows:  
  
 (i) for all such WDM Optical Filters purchased from OCLI suitable  
  
 for use under Section 15.3(b) for Backlog from [CONFIDENTIAL TREATMENT  
  
 REQUESTED] for WDM Products A, OCLI shall provide JDS with a credit  
  
 of [CONFIDENTIAL TREATMENT REQUESTED] per WDM Optical Filter A, and  
  
 JDS shall be entitled to include [CONFIDENTIAL TREATMENT REQUESTED] per  
  
 WDM Optical Filter A in Costs hereunder;  
  
 (ii) for all such WDM Optical Filters purchased from OCLI  
  
 suitable for use under Section 15.3(a) for Backlog from [CONFIDENTIAL  
  
 TREATMENT REQUESTED] for WDM Products B, OCLI shall provide JDS with  
  
 a credit of an amount equal to the purchase price JDS actually paid  
  
 less the Costs (whether or not Costs were incurred before or after the  
  
 date of this Agreement) of such WDM Optical Filters B, and JDS shall be  
  
 entitled to include such WDM Optical Filters B Costs (whether or not  
  
 Costs were incurred before or after the date of this Agreement) in  
  
 Costs hereunder; and  
  
 (iii) for all such WDM Optical Filters suitable for use under  
  
 Section 15.4(a) for Inventory Orders for WDM Products A:  
  
 (A) OCLI shall provide JDS with a credit of an amount equal to the  
  
 purchase price JDS actually paid to OCLI less the Costs (whether or  
  
 not Costs were incurred before or after the date of this Agreement) of  
  
 such WDM Optical Filters A, and JDS shall be entitled to include such  
  
 WDM Optical Filters A Costs (whether or not Costs were incurred before  
  
 or after the date of this Agreement) in Costs hereunder, and  
  
 (B) for such WDM Optical Filters made by JDS, JDS shall be  
  
 entitled to include such WDM Optical Filters A Costs (whether or not  
  
 Costs were incurred before or after the date of this Agreement) in  
  
 Costs hereunder.  
  
 15.5 Constraints on Employee. For a period of two years following  
  
the termination of employment of an employee of either party, the other  
  
party shall be prohibited from employing such employee without prior  
  
written consent of the other party; provided, however, that this  
  
restriction shall terminate two years after the termination of this  
  
Agreement.  
  
 15.6 Governing Law. This Agreement shall be construed  
  
in accordance with and governed by the laws of the State of Delaware  
  
without regard to the conflict of law principles or without regard to the  
  
United Nations Convention on the Contracts for the International Sale of  
  
Goods.  
  
 15.7 Disputes. Except for breach of Article XIV Confidential  
  
Information, and subject to Sections 7.6 and 10.1, except where the  
  
parties fail to take any required actions to resolve their differences  
  
or there is no resolution under Section 10.1, if a dispute, breach  
  
or failure to agree shall occur between the parties concerning this  
  
Agreement, both parties may require the other party promptly to submit  
  
the reasons for its position, in writing to the requesting party, and  
  
then to enter into good faith negotiations, including the involvement,  
  
if appropriate, of senior management of each of the Parties to attempt  
  
to resolve the disagreement. If such dispute, breach or failure to agree  
  
cannot be settled by good faith negotiation between the parties within  
  
30 days, the matter shall be finally settled by mandatory, binding  
  
arbitration, in accordance with the rules and procedures  
  
of the American Arbitration Association applicable to commercial  
  
transactions then in force, provided that arbitration proceedings may not  
  
be instituted until sixty (60) days after delivery of any such notice of  
  
arbitration and where the other party has not remedied the matter within  
  
said time period. The arbitration panel shall consist of three (3)  
  
arbitrators one of which shall be appointed by each party and the third  
  
selected by the two so appointed. Costs of arbitration shall be borne by  
  
the parties in accordance with the decision of the arbitrators. Judgment  
  
upon the award rendered may be entered in any court having competent  
  
jurisdiction thereof, or application may be made to such court for a  
  
judicial acceptance of the award and an order of enforcement as the case  
  
may be. The arbitration proceedings shall be conducted at a reasonable  
  
location selected by the parties or by the arbitrators. The factors set  
  
forth in Section 7.2(e)(i) shall not in any manner be disclosed to the  
  
arbitrators. Notwithstanding the foregoing, the parties may apply to any  
  
court of competent jurisdiction to compel arbitration in accordance with  
  
this paragraph, without breach of this arbitration provision.  
  
 15.8 Attorneys' Fees. In case suit is brought or arbitration  
  
proceedings commenced by either party because of the  
  
breach of any term, covenant or condition contained in this Agreement, the  
  
prevailing party shall be entitled to recover against the other party the  
  
full amount of its costs, including expert witness fees and reasonable  
  
attorneys' fees. If neither party prevails entirely, such fees and  
  
expenses shall be prorated based upon the relative success of each party to  
  
the relief being sought.  
  
 15.9 Notices. All notices, offers, acceptances, approvals and other  
  
communications under this Agreement shall be in writing and shall be given  
  
to such party, addressed to it, at its address or telecopy number set  
  
forth below or such other address or telecopy number as such party may  
  
in the future specify for such purpose by notice to the other party.  
  
Each such notice, information, request or communication shall be  
  
effective upon actual receipt by the party at the address specified below:  
  
 If to OCLI:  
  
 Optical Coating Laboratory, Inc.  
 0000 Xxxxxxxxxx Xxxxxxx  
 Xxxxx Xxxx, Xxxxxxxxxx 00000-0000  
 Telephone: 000-000-0000  
 Telecopier: 000-000-0000  
 Attention: General Counsel  
 (Xxxxxx X. Xxxx, Esq.)  
  
 With a copy to (which is not required to constitute notice to  
  
OCLI):  
  
 Xxxxxxxx & Xxxxxxxx  
 000 Xxxxxxxxxx Xxxxxx, Xxxxx 0000  
 Xxx Xxxxxxxxx, Xxxxxxxxxx 00000  
 Telephone: 000-000-0000  
 Telecopier: 000-000-0000  
 Attention: Xxxx X. Xxxxxxxx, Esq.  
  
 If to JDS or Distributor:  
  
 JDS FITEL, Inc.  
 000 Xxxx Xxxx Xxxx Xxxx  
 Xxxxxx, XX X0X 0X0 Xxxxxx  
 Telephone: 000-000-0000  
 Telecopier: 000-000-0000  
 Attention: President (Xxxxx Xxxxxx, Ph.D.)  
  
 With a copy to (which is not required to constitute notice to  
  
JDS):  
  
 JDS FITEL, Inc.  
 000 Xxxx Xxxx Xxxx Xxxx  
 Xxxxxx, XX X0X 0X0 Xxxxxx  
 Telephone: 000-000-0000  
 Telecopier: 000-000-0000  
 Attention: General Counsel  
 (Xxxxxx Xxxxxx, Esq.)  
  
Any party may from time to time specify as its address or telecopy number  
  
for purposes of this Agreement any other address or telecopy number upon  
  
the given of 10 days notice thereof to the other party.  
  
 15.10 Public Announcements. The parties shall not issue a press  
  
release or other publicly available document containing any information  
  
regarding the other party, this Agreement, the transactions contemplated  
  
herein or the operating or financial results of the Company without the  
  
prior written approval of the other party. At least 72 hours prior to  
  
the issuance of such information, the issuing party shall provide the  
  
other party with notice of its intention to disclose such information  
  
as well as the draft wording of the information to be released.  
  
Where a party refuses to approve the wording of the information to be  
  
released, the party shall provide the reasons for such refusal and both  
  
parties agree to use their best efforts to negotiate the appropriate  
  
wording of the information to be released. However, nothing contained  
  
herein shall prevent a party from disclosing any information that is  
  
required to be disclosed pursuant to Securities Law and the rules or  
  
regulations promulgated thereunder. Where a party issues a press release  
  
containing any information regarding the other party, this Agreement,  
  
the transactions contemplated herein or the operating or financial  
  
results of the Company, a copy of such release shall be provided to the  
  
other party forthwith.  
  
 15.11 Counterparts. This Agreement may be executed in two or more  
  
counterparts, each of which shall be deemed an original. A photocopy or  
  
facsimile copy of the signatures of the parties to this Agreement shall  
  
be considered authenticated signatures admissible into evidence where the  
  
authenticity of the signatures are placed into question.  
  
 15.12 Interpretation. The table of contents and the headings to  
  
the various subdivisions of this Agreement are for convenience of reference  
  
only and shall not define or limit any of the terms or provisions hereof.  
  
All pronouns shall be deemed to refer to the masculine, feminine, neuter,  
  
singular or plural as the identity of the Person or Persons referred to  
  
may require. The language in all parts of this Agreement will in all  
  
cases be construed as a whole and in accordance with its fair meaning  
  
and not restricted for or against either party.  
  
 15.13 Successors and Assigns. This Agreement and any rights or  
  
licenses granted herein are personal to each party and shall be binding  
  
upon and inure to the benefit of the parties hereto and their respective  
  
successors and permitted assigns, provided, however, neither party shall  
  
assign any of its rights or privileges hereunder without the prior written  
  
consent of the other party. Should either party attempt an assignment in  
  
derogation of the foregoing, the other party shall have the right to  
  
immediately terminate this Agreement by written notice to the other party.  
  
 15.14 Waiver. The failure of either party to give notice to the  
  
other party of the breach or non-fulfillment of any term, clause,  
  
provision or condition of this Agreement shall not constitute a waiver  
  
thereof, nor shall the waiver of any breach or non-fulfillment of any  
  
term, clause, provision or condition of this Agreement constitute a waiver  
  
of any other breach or non-fulfillment of that or any other term, clause,  
  
provision or condition of this Agreement.  
  
 15.15 Purchase By Competitor. [CONFIDENTIAL TREATMENT REQUESTED]   
  
 15.16 Entire Agreement. This Agreement sets forth the entire  
  
agreement and understanding between the parties with respect to the subject  
  
matter hereof and supersedes and cancels all previous negotiations,  
  
agreements, commitments, and writings in respect to the subject matter  
  
hereof, and neither party shall be bound by any term, clause, provision or  
  
condition save as expressly provided in this Agreement or as duly set forth  
  
on or subsequent to the date of execution hereof in writing, signed by duly  
  
authorized officers of the parties.  
  
 15.17 Agency. Subject to Article VII, each party acknowledges that  
  
it does not intend to create or imply a legal partnership with the other  
  
parties by virtue of this Agreement and the parties agree that nothing in  
  
this Agreement shall be construed as establishing or implying any legal  
  
partnership between the parties hereto, and nothing in this Agreement shall  
  
be deemed to constitute either of the parties hereto as the Agent of the  
  
other party or authorize either party to incur any expenses on behalf of  
  
the other party or to commit the other party in any way whatsoever,  
  
without obtaining the other party's prior written consent. The parties  
  
further agree that when any party hereto deals with a third party as a  
  
result of this Agreement that such third party will be notified that every  
  
party hereto is acting on its own behalf.  
  
 15.18 Survival. The provisions of Sections 9.3, 14 and 15.5,  
  
15.6,15.7, 15.8, 15.9, 15.12, 15.13, 15.14, 15.18, 15.19 and 15.20,  
  
and in Exhibit B, Article V and Article IX shall survive termination  
  
of this Agreement. The provisions of Section 6.4 shall survive for a  
  
period of 18 months following termination of this Agreement.  
  
Notwithstanding any term to the contrary: (a) where at the date of  
  
termination of this Agreement, (i) the Profit is negative or (ii)  
  
Costs exist but there is no Profit; or (b) where after the date of  
  
termination of this Agreement (i) if any obligations, including but  
  
not limited to customs and duties, arise with respect to any Cost that  
  
would have been included in Costs if the obligation was identified  
  
during the period that the Agreement was in effect,  
  
(ii) if any liability arose during the period that the Agreement was in  
  
effect, including but not limited to any liability under Section 15.20 or  
  
Exhibit B Article V, but which was not identitifed or determined until  
  
after the date of termination of this Agreement, or (iii) bona fides bad  
  
debts arise for which revenues have been used in the calculation of Profits;  
  
then in all cases the parties agree to share the Costs such that OCLI shall  
  
be responsible for paying one-third and JDS and Distributor combined shall  
  
be responsible for paying two-thirds of all such Costs, regardless of which  
  
party actually paid such Costs. The parties shall promptly make payment to  
  
the other party as appropriate to ensure that each party has fulfilled its  
  
obligation under this Section 15.18 with regard to such Costs.  
  
 15.19 Further Assurances and Approvals. The parties agree to make,  
  
do, execute, endorse, acknowledge and deliver or cause and procure to be  
  
made, done, executed, endorsed, acknowledged, filed, registered and  
  
delivered any and all further acts and assurances including any conveyance,  
  
deed, transfer, assignment, share certificate or other instrument in  
  
writing as may be necessary to give effect to the terms and conditions  
  
provided for and contemplated by this Agreement. The parties further  
  
agree that where any term, warranty, representation, option or condition  
  
provided for or contemplated by this Agreement requires prior regulatory  
  
or shareholder approval to give effect to such term, warranty,  
  
representation, option or condition, the parties shall not enforce such  
  
term, warranty, representation, option or condition unless and until  
  
such approval is obtained.  
  
 15.20 Intellectual Property Indemnity Liability. Where any threatened  
  
or actual proceeding or claim against any party alleging that any WDM  
  
Product or WDM Optical Filter furnished hereunder infringes  
  
any third party intellectual property rights, including without limitation  
  
any patents, trademarks and copyright, the parties agree to jointly (i)  
  
defend or settle any such matter, (ii) equally share any costs, including  
  
without limitation all legal or expert fees and disbursements which were  
  
incurred as a result of such defense or settlement, and (iii) equally  
  
share in the payment of all damages and costs assessed by final judgment  
  
against any party and attributable to such matter.  
  
 15.21 Approvals. The signatures provided below shall not be  
  
deemed effective unless and until all required or counseled government or  
  
regulatory filings are made and all approvals or consents are obtained.  
  
 15.22 Representations and Warranties. Each party represents and  
  
warrants that:  
  
 (a) it has full right and title to all of the Confidential Information  
  
it discloses to the other party under this Agreement;  
  
 (b) to the best of its knowledge, there are no material liens,  
  
encumbrances of any kind against its intellectual property which relates to  
  
the WDM Product Business and that it is not subject to any outstanding  
  
agreements, assignments or encumbrances that are inconsistent with the  
  
provisions of this Agreement;  
  
 (c) to the best of its knowledge, there are no material actual or  
  
threatened suits, actions at law, proceedings in equity, arbitrations or  
  
other proceedings or actions against the party; and  
  
 (d) the execution, delivery and performanace of this Agreement by each  
  
party are within each party's corporate powers.  
  
 15.23 Force Majuere. Neither party be responsible or liable for any  
  
delay or failure to deliver goods or perform services under this Agreement  
  
due to any unforeseen circumstances or causes beyond that party's control,  
  
including but not limited to, acts of God, fire, flood, explosion,  
  
earthquake, war, insurrection, embargo, acts of civil or military  
  
authorities, delay in delivery by suppliers, accident, strike or other  
  
labour dispute, inability to secure labour, material, facilities, energy or  
  
transportation. In the event of a force majeure condition, the time for  
  
delivery or other performance will be extended for a period of time equal  
  
to the duration of such force majeure condition.  
  
 IN WITNESS WHEREOF, the parties have executed this Agreement to be  
  
effective as of the date first above written.  
  
 OPTICAL COATING LABORATORY, INC.  
  
  
  
 By /S/XXXXXXX X. XXXXXX, XX.  
 Name Xxxxxxx X. Xxxxxx, Xx.  
 Its Chairman, President & CEO  
  
  
 JDS FITEL Inc.  
  
  
  
 By /S/XXXXX XXXXXXX  
 Name Xxxxx Xxxxxx  
 Its President & CEO