EXHIBIT 10.42  
  
  
 IMAGING DIAGNOSTIC SYSTEMS, INC.  
 DISTRIBUTION AGREEMENT  
  
 This Distribution Agreement ("Agreement") is made and entered into as  
of 7/16/2001, by and between Medical Imaging Services, a corporation duly  
incorporated under the laws of the United Kingdom (the "Distributor"), and  
Imaging Diagnostic Systems, Inc., a corporation organized and existing under the  
laws of the State of Florida ("IDSI").  
  
 WITNESSETH:  
  
 RECITALS  
  
 WHEREAS, IDSI is the owner, and manufacturer of a state-of-the-art  
laser imaging system for detection and analysis of masses in the breast  
("CTLM(R)"), and ancillary equipment as more fully described on Exhibit A hereto  
and incorporated herein (the "Equipment").  
  
 WHEREAS, IDSI is the owner of a certain Patents, Patents pending and  
Patent applications, trade secrets and other proprietary information in  
connection with the Equipment and represents that it has the legal right to  
manufacture, sell and distribute the Equipment, either individually or through  
others;  
  
 WHEREAS, IDSI wishes to grant to Distributor and Distributor wishes to  
obtain the exclusive right to be supplied with, sell, distribute and market the  
Equipment, in the Territory.  
  
 NOW THEREFORE, in consideration of the mutual covenants and agreements  
herein contained, and for other good and valuable consideration, the parties  
hereto agree as follows:  
  
1. DEFINITIONS. For purposes of this Agreement the following terms shall have  
the definition set forth below.  
  
 (a) Equipment. The term "Equipment" shall mean and include only those  
 products listed on Exhibit A, as amended from time to time. IDSI may  
 add to, upgrade or change the Equipment from time to time by providing  
 written notice not less than thirty (30) days prior to any such  
 change.  
  
 (b) Software. The term "Software" shall mean the license for the use of  
 the Software. IDSI retains sole ownership and rights to the Software  
 itself. This Software is included with the CTLM(R).  
  
 (c) Territory. The term "Territory" shall mean the territories set forth  
 on Exhibit "B" hereto and incorporated herein.  
  
 (c) Directive. The term "Directive" shall mean European Council Directive  
 93/42/EEC of June 14 1993 concerning Medical Devices.  
  
 (d) Putting into Service. The term "Putting into Service" means the stage  
 at which a device has been made available to the final user as being  
 ready for use on the Community market for the first time for its  
 intended purpose.  
  
  
2. TERM. This Agreement shall be for a term of two (2) years from the date of  
its execution by Distributor. This  
  
  
  
Agreement will automatically renew for an additional two (2) years provided that  
Distributor meets the Performance Standards set forth in Section 5. and,  
provided that Distributor satisfactorily fulfills all other terms and conditions  
of this Agreement.  
  
3. RIGHT TO SELL, DISTRIBUTE AND MARKET. During the term of this Agreement and  
any renewal hereof, IDSI hereby grants to Distributor, as its exclusive agent,  
the right to sell, distribute, and market the Equipment in the Territory.  
Distributor shall also have the right to use the trade names, and trademarks  
associated with the Equipment in connection with the promotion, sale, marketing  
and distribution of the Equipment. Distributor hereby acknowledges and agrees  
that all trade names and trademarks associated with the Equipment are the  
property of and proprietary to IDSI.  
  
4. DISTRIBUTOR'S DUTIES, REPRESENTATIONS AND WARRANTIES. Distributor agrees to  
use its best efforts to sell, market and/or distribute the Equipment in the  
Territory. Distributor agrees that it will perform at its expense the following  
duties to IDSI's reasonable satisfaction:  
  
 (a) Promotion and Marketing.  
  
 (i) Distributor will maintain a qualified and competent sales  
and distribution organization which will provide sales personnel, advertisement,  
marketing and distribution support for the solicitation of customers and  
potential customers in the Territory for the sale of the Equipment.  
  
 (ii) Any sales promotion, promotional activities, marketing or  
advertising strategies, pamphlets, advertisements, brochures or other  
promotional materials, other than those provided by IDSI, must have the prior  
written approval of IDSI. At least one copy of all Distributor's advertising and  
sales promotion materials in which the Equipment of IDSI is mentioned, must be  
provided for IDSI's review and approval prior to the time of first use. All  
advertisements, pamphlets, brochures or other promotional materials, other than  
those provided by IDSI shall be at the sole cost of the Distributor. The  
Distributor shall have the continuing right to use any promotional materials  
produced by IDSI while this Agreement is in effect.  
  
 (iii) Distributor, at its sole cost, will attend the RSNA and be  
 present in the IDSI booth for at least 4 hours per day.  
  
 (iv) Distributor will exhibit the CTLM(R)in at least one major  
 exhibit in the Territory or in the countries surrounding the Territory  
  
 (v) Any costs incurred in the promotion, promotional activities,  
 advertising, marketing and exhibits of the Equipment will be the full  
 responsibility of the Distributor.  
  
 (b) Bi-monthly Reports. Distributor shall promptly prepare and  
 deliver to IDSI, bi-monthly reports identifying each purchaser of Equipment by  
 name, address and designation of type of business, date of sale, date of  
 installation, model and serial number for each unit of Equipment sold and a  
 forecast of requirements for Equipment, as well as a description of all  
 training, support, and advertising and sales promotional activities undertaken  
 during such period. In addition, such Report shall contain a statement of the  
 Distributor's sales activities, performance and then current inventory of  
 spare parts and technical literature available for customer service,  
 maintenance and support of the Equipment. Such reports should be in Excel  
 Master Activity Sales Report (MASR) e-mail format. An officer of the  
 Distributor shall certify the Report.  
  
 (c) General Conduct. Distributor shall at all times conduct its  
business in a manner that reflects favorably on IDSI and its Equipment and will  
not engage in any deceptive, misleading, illegal or unethical business  
practices.  
  
 (d) Service and Support. Distributor's personnel will be required  
to be trained at IDSI's headquarter facilities in sales and support techniques  
for all of the Equipment and services. All service personnel must successfully  
pass a CTLM service training program. IDSI will not charge for such initial  
  
 2  
  
  
  
training, however Distributor shall be responsible for all travel, accommodation  
and other expenses. Any cost for subsequent training, shall be borne solely by  
the Distributor.  
  
Distributor will provide competent installation, customer service, and  
maintenance and support for the Equipment in the Territory. Distributor will  
establish and maintain a staff of certified trained technicians and purchase and  
maintain stock of spare parts and technical literature necessary in order to  
provide competent installation, customer service, maintenance and support of the  
Equipment in the Territory. Distributor hereby agrees to provide such service  
and support in a prompt and workmanlike manner to any user of the Equipment in  
the Territory.  
  
IDSI retains the right to monitor the maintenance and service of the CTLM(R)  
from time to time and withdraw its certification in the event of a breach of  
performance standards.  
  
 (e) Service Agreements. All service agreements must be approved  
 by IDSI.  
  
 (f) Competitive Products. Distributor will do everything within its  
power to feature, promote, and advertise, as part of its merchandising and sales  
policy, the Equipment and use its best efforts to stimulate and increase  
interest in IDSI's Equipment. IDSI understands that some existing and some new  
customers may request competitors' products. Distributor will use its best  
efforts to sell, market and distribute the IDSI Equipment to such customers.  
Distributor will give IDSI the opportunity to assist with these accounts.  
  
 (f) Customer Requirements. With a view to maximizing the potential  
market for the Equipment within the Territory, Distributor will report to IDSI  
on a bi-monthly basis, and assist IDSI in the assessment of the needs and  
requirements of the potential customer base in the Territory with respect to the  
Equipment, including, but not limited to: (i) a rolling twelve-month quantity  
forecast, (ii) quality of the Equipment, (iii) design, functional capability and  
additional features of the Equipment and related modifications, improvements and  
enhancements, and (iv) general market conditions of the Territory.  
  
 (g) Co-marketing Protection. Distributor will maintain  
 confidentiality of IDSI supplied prospective customers and not conduct  
 any direct efforts to persuade such clients toward competitive  
 equipment or services.  
  
 (h) Purchase Orders. Distributor shall forward all orders promptly to  
IDSI. The orders shall state clearly the name of the purchaser, the quantity  
purchased, the time and place of delivery, location of the end-user and the  
end-user's national language.  
  
 (i) Delivery. Distributor shall give IDSI at least 90 days prior  
written notice before each shipment is required.  
  
 (j) Expenses and Taxes. Distributor is an independent contractor, and  
as such shall pay all expenses, including compensation of salespeople, rentals,  
travel, and all taxes, including assessments, which may be made against the  
salary or wages of those directly employed by Distributor.  
  
 (k) Relationship of Parties. Except as set forth herein, Distributor  
shall have no right or authority to create any obligation on the part of IDSI or  
bind IDSI to any agreement.  
  
 (1) Offices. Distributor shall maintain a suitable office in the  
 Territory with a Telephone, facsimile line, and email with Microsoft Word,  
 PowerPoint and Excel, suitable for use for the sale of the Equipment. The  
 office shall contain a suitable display area where the Equipment shall be  
 prominently displayed at all times. This display area or another area shall  
 be suitable for and used for the demonstration of and training in the use  
 of, the Equipment. The office shall be staffed from 9:00 a.m. to 5:00 p.m.,  
 Monday through Friday, subject to recognized national holidays.  
  
 (m) Complaints. Any event that causes injury or that might have  
caused injury to patient or health professional once the Equipment has been "Put  
  
 3  
  
  
into Service" must be reported to IDSI with 24 hours. Each report should contain  
the name of the individual injured, customer name, address, serial number of  
Equipment and installation information. Failure to report any such injury,  
pursuant to "Guidelines On A Medical Devices Vigilance System" (MEDDEV  
2.12/1-rev.3) shall result in a breach of this Agreement and the Distribution  
would be subject to liability pursuant to Section 19 of this Agreement. Further,  
any installation or service problems must be reported immediatly to IDSI  
together with a full report of the situation.  
  
 (n) The Distributor shall notify IDSI of any product or healthcare  
related information including but not limited to changes in the member state's  
medical reimbursement system, breast cancer treatment, hospital procedural  
changes, etc.  
  
 (o) A Distributor may not unilaterally start a recall.  
  
 (p) All records must be retained for at least five (5) years after  
the last date of manufacture or the length of time as set forth in the member  
states's or territories' Rules and Regulations, if the period is longer then  
five (5) years.  
  
 (q) The Distributor agrees to abide by the "Directive".  
  
5. PERFORMANCE STANDARDS.  
  
  
If the following performance standards (the "Minimum Performance Standards") are  
not met, IDSI will notify Distributor, in writing, that it is in default of this  
Agreement. If Distributor does not cure the deficiency within 30 days from  
receipt of the notice, IDSI, at its sole option, may: (i) continue this  
Agreement on a nonexclusive basis; (ii) continue this Agreement on a  
nonexclusive basis and limit the Territory; or (iii) terminate this Agreement.  
Any such action taken by IDSI shall be without prejudice to the rights of the  
parties with respect to Equipment already ordered, sold or delivered.  
  
YEAR. NUMBER OF CTLM(TM)UNITS  
--------- -----------------------  
1 To Be Determined\*  
2 To Be Determined\*  
3 To Be Determined\*  
 \*Quotas will be determined after sufficient market research has been  
 conducted by distributor-initial Report of anticipated sales for year 1  
 shall be submitted by MIS in less than 120 days from activation of  
 contract, if both parties cannot reach an agreement as to sales quotas and  
 performance this contract will be null and void.  
  
6. PURCHASE OF EQUIPMENT.  
  
 (a) Orders. Orders from Distributor for equipment shall be made by  
delivery of a purchase order to IDSI. As soon as practicable after receipt of  
such purchase order, IDSI will: (i) if such order is accepted, return to  
Distributor IDSI's standard form of Sales Acknowledgment (the "Acknowledgment")  
setting forth dates on which delivery will be made, or (ii) notify Distributor  
in writing that such order is rejected. IDSI will use its best efforts to make  
prompt delivery of the Equipment accepted by IDSI on the delivery dates  
specified in the Acknowledgment, F.O.B. IDSI, 0000 00xx Xxxxx, Xxxxxxxxxx,  
Xxxxxxx, at the time and to the entities and destinations listed in the purchase  
orders. IDSI shall not be liable for any failure to deliver, if such failure has  
been occasioned by fire, embargo, strike, failure to secure materials from a  
usual source of supply, acts of god or any circumstance beyond IDSI's control,  
which shall prevent IDSI from making deliveries in the normal course of its  
business. Risk of loss passes to buyer upon delivery of products by IDSI to  
common carrier. In particular, the Parties acknowledge that IDSI is reliant on  
outside suppliers, which supply the components for its Equipment. Should these  
suppliers fail to produce the required components in a timely manner, than IDSI  
shall be excused from the delivery obligations under this Agreement until such  
time as the components can be manufactured, delivered and installed in the  
Equipment. In no event shall IDSI be responsible for any loss or liability  
suffered by Distributor as a result of delay in delivery of any order.  
  
 4  
  
  
 (b) Cancellation of Orders. Distributor may not cancel an order once  
the letter of credit has been approved by IDSI. Should such cancellation occur,  
the Distributor is responsible for the full purchase price of all Equipment  
ordered.  
  
 (c) Rescheduling Orders. Distributor may at any time, upon not less  
than forty-five (45) days written notice to IDSI, reschedule and/or postpone the  
delivery date relating to an order (or any part thereof) for up to thirty (45)  
days. The postponement of delivery to a date more than forty-five (45) days from  
the delivery date specified in the initial order shall be deemed a cancellation  
of such order. DISTRIBUTOR MAY NOT POSTPONE THE DELIVERY DATE MORE THAN ONCE  
WITH RESPECT TO ANY ORDER. THIS SECTION DOES NOT AFFECT THE TERMS OF THE LETTER  
OF CREDIT.  
  
7. PRICE.  
  
 (a) Purchase Price. The purchase price for the Equipment to be sold  
hereunder shall initially be as set forth on IDSI's Price List attached hereto  
as Exhibit "C", which may be discounted based on the cumulative quantities of  
such Equipment purchased by Distributor during the term hereof or any Additional  
Term. Discounts shall not apply retroactively to prior purchases of Equipment.  
IDSI shall have the sole right to set the price and other terms of the sales of  
the Equipment. IDSI, at its sole discretion, reserves the right to change  
prices, materials used, Equipment line and the components of the Equipment. IDSI  
will provide reasonable notice of any price or other changes to Distributor as  
to not disrupt the sales and distribution of the Equipment. IDSI reserves the  
right to amend Exhibit "C" with respect to any Additional Term.  
  
 (b) Price Changes. IDSI may change the prices to be charged for  
Equipment sold hereunder by amending its published Price List and giving  
Distributor thirty (30) days prior notice. All orders received and accepted by  
IDSI prior to the effective date of the price increase for shipment within  
thirty (30) days of such effective date will be billed at the prices in effect  
at the time of acceptance of the order; provided, however, that if Distributor  
notifies IDSI in writing prior to the effective date of such price increase that  
it quoted the original price in an outstanding bid submitted prior to receipt of  
IDSI's amended Price Lists, any order relating to such bid accepted by IDSI  
prior to the effective date of such price increase for shipment within ninety  
(90) days of such effective date will be billed at the prices in effect at the  
time of acceptance. All other shipments after thirty (30) days (or ninety days,  
if applicable) of such effective date shall be billed at the prices set forth in  
the amended Price List.  
  
 (d) Payment. All payments hereunder shall be in United States dollars  
 and shall be effected by means of confirmed, irrevocable letters  
 of credit on a United States bank established, upon execution of  
 this Agreement, to IDSI's satisfaction. All exchange, interest,  
 banking, collection and other charges shall be the sole expense  
 of the Distributor.  
  
 (e) Taxes. Distributor shall be responsible for the payment of all  
 taxes, levies or assessments pertaining to the sale of the  
 CTLM(R).  
  
Shipment will be made upon receipt of the letter of credit approved by IDSI.  
  
8. TERMS AND CONDITIONS OF SALE. This Agreement and all sales of Equipment  
hereunder by IDSI to Distributor shall be subject to IDSI's Standard Terms and  
Conditions of Sale as set forth on the applicable Acknowledgment. A copy of  
IDSI's current Standard Terms and Conditions of Sale is attached hereto as  
Exhibit "D" and incorporated herein. To the extent that IDSI's standard terms  
and conditions are inconsistent with express provisions of this Agreement, the  
provisions of this Agreement shall prevail. Distributor agrees that although it  
may use its standard forms for others or other notices hereunder, said standard  
forms will be governed by the terms and conditions of this Agreement and any  
applicable Acknowledgment shall have no force and effect. Distributor agrees to  
place the following legend on its standard forms submitted to IDSI hereunder:  
  
 5  
  
  
"NOTWITHSTANDING ANY OTHER TERMS AND CONDITIONS APPEARING HEREON, THIS PURCHASE  
SHALL BE GOVERNED BY THE TERMS AND CONDITIONS OF SALE SET FORTH IN THE IDSI  
DISTRIBUTION AGREEMENT."  
  
9. PRODUCT WARRANTY.  
  
 (a) Distributor Warranty. The sole warranties provided by IDSI to  
Distributor with respect to the Equipment are those contained in IDSI's Standard  
Terms and Conditions. Notwithstanding the foregoing, with respect to Equipment  
for which IDSI is not the original manufacturer, the sole warranties provided by  
IDSI to Distributor shall be equivalent to the sole warranties provided by the  
original manufacturer to IDSI (current original manufacturer warranties and the  
Equipment to which they pertain are set forth on Exhibit A).  
  
IDSI DISCLAIMS ALL OTHER WARRANTIES, WARRANTS OF TITLE, MERCHANTABILITY, AND  
FITNESS FOR A PARTICULAR PURPOSE AND AGAINST INFRINGEMENT UPON THE RIGHTFUL  
CLAIM OF ANY THIRD PERSON. IDSI DISCLAIMS LIABILITY FOR ALL CONSEQUENTIAL  
DAMAGES IN ANY FORM, EVEN THOUGH IDSI MAY HAVE BEEN ADVISED OR MAY OTHERWISE  
KNOW OF THE POSSIBILITY OF SUCH DAMAGES.  
  
Nothing contained in this warranty shall make IDSI liable beyond the express  
limitations of this warranty for loss or damage to the business of Distributor,  
including any claims as to breach of contract, lost receipts or profits,  
business interruptions or other tangible business loss.  
  
 (b) End-User Warranty. Distributor is hereby authorized, subject to the  
succeeding sentence, to offer the warranties set forth in Section 9 (a) to  
customers to whom it sells the Equipment, and IDSI agrees to honor such  
warranties. Distributor acknowledges and agrees that the warranty period set  
forth in the Acknowledgment commences, with respect to both Distributor and its  
customers, on the date of delivery to Customer one year from the date of the  
Certificate of Acceptance (A formal declaration signed by the authorized end  
user or distributor that the CTLM equipment purchased, including serial number,  
has been successfully received and installed, and is ready for use by the  
customer). In the event that the Distributor extends or otherwise represents to  
a customer that the warranties are more extensive or encompassing than those set  
forth herein, the Distributor shall indemnify IDSI for any warranty claims made  
by a customer based on Distributor's representations.  
  
10. MAINTENANCE.  
  
 (a) Distributor's Obligation to Provide Service. Distributor agrees  
that IDSI shall have no obligation to maintain the Equipment except for the  
warranty obligations specified in Section 9. Distributor acknowledges and agrees  
that it will perform, at no expense to IDSI, maintenance and repair of Equipment  
sold or leased to the Distributors customers  
  
 (b) Consignment of Spare Parts. IDSI may, at its sole discretion,  
consign to Distributor, from time to time, as it may deem necessary, spare parts  
to support warranty repair service in Distributor's Territory. The title to such  
parts shall at all times remain with IDSI and Distributor shall have no right,  
title or interest therein until such time as payment is made to IDSI as set  
forth below. In the event that such parts used for non-warranty repair service,  
Distributor will purchase the part used or to be used for non-warranty repair  
services at prices listed in Exhibit A, as may be amended from time to time.  
Distributor will provide IDSI with a monthly report, not later than 15 days  
after the first day of each month, which will indicate the Customers name,  
address and phone number, the work performed, the parts used and whether the  
repair was under warranty. The report shall also include a total dollar amount  
for parts used for non-warranty repair and be accompanied by a check for full  
payment therefore.  
  
 6  
  
  
11. TERMINATION.  
  
 (a) Either party may, by written notice to the other party, terminate  
this Agreement immediately upon the occurrence of any one or more of the  
following events:  
  
 (i) Upon the failure of the other party to pay any monies when  
due hereunder, if such default continues for five (5) business days or more  
after written notice to the defaulting party;  
  
 (ii) Upon material failure of a party to observe, keep or  
perform any of the covenants, terms or conditions herein, if such default  
continues for thirty (30) business days or more after written notice to the  
defaulting party;  
  
 (iii) In the event: (A) a party makes a general assignment for  
the benefit of creditors or transfers all or a substantial portion of its  
assets; (B) a receiver is appointed and not discharged within 30 days of  
appointment, or (C) the other party has become insolvent.  
  
 (b) IDSI may, by written notice to Distributor, terminate this  
Agreement effective immediately upon occurrence of any one more of the following  
events:  
  
 (i) In the event that Distributor solicits orders for Equipment  
 outside its Territory;  
  
 (ii) In the event of any dispute, disagreement or controversy  
between or among the owners, partners, managers, officers or stockholders of  
Distributor which in the opinion of IDSI adversely affects the ownership,  
operation, management, business or interests of Distributor, or in the event of  
a change in control or majority ownership of Distributor;  
  
 (iii) If Distributor ceases to function as a going concern or to  
 conduct its operations in the normal course of business; or  
  
 (iv) If the Distributor unilaterally commences a recall of the  
 Equipment listed on Exhibit "A", IDSI may file suit for consequential  
 and liquidated damages against the Distributor;  
  
 (v) Failure to comply with the Regulatory Compliance Section of  
 the Council Directive;  
  
 (vi) Failure to comply with National Rules and Regulations;  
  
 (vii) Distributor financial problems,  
  
 (viii) Failure to comply with confidentiality requirements, or  
  
 (ix) Direct efforts to persuade prospective customers towards  
 competitive equipment or services.  
  
 (c) If Distributor fails to meet the Minimum Performance Standards set  
forth in Section 5, IDSI shall have the right, upon 30 days written notice to  
the Distributor, to terminate this Agreement. Distributor shall have the right  
to cure the deficiency within such 30-day period. If Distributor does not cure  
the Deficiency within such 30-day period, IDSI may terminate this Agreement on  
the 30th day.  
  
 (d) Upon termination or expiration of this Agreement, for any reason  
Distributor shall discontinue the use of IDSI's name, trademarks, trade names,  
labels, copyrights, and other advertising media and shall remove all signs and  
displays relating thereto: and will no longer identify itself as a distributor  
of IDSI or indicate, in any way, that it is associated with IDSI. Distributor  
shall promptly return to IDSI all marketing and selling materials, all manuals,  
all technical data, all other documents and copies thereof previously supplied  
by IDSI and all spare parts consigned to Distributor by IDSI.  
  
 7  
  
  
 (e) Upon termination or expiration of this Agreement, for any reason,  
IDSI shall have the option to repurchase its Equipment and spare parts then in  
possession of the Distributor, at prices originally billed to the Distributor if  
the Equipment and spare parts are new and at an adjusted price if the Equipment  
is used, and with deductions for money due or to become due to IDSI under this  
Agreement. As to any of the IDSI's Equipment or spare parts not repurchased by  
IDSI, Distributor shall have the right to dispose of them in the regular course  
of its business and for this purpose only, the restrictions of preceding sub  
paragraph shall be deferred until three months after the termination of this  
Agreement.  
  
 (f) It is expressly understood and agreed that the rights of  
termination as provided in this Agreement are absolute and that both parties  
hereto have considered the costs and expenditures associated with the  
preparation and performance of this Agreement and the possible losses and  
damages which may be incurred by both parties in the event of its termination.  
The parties hereto acknowledge and agree, by execution hereof that they have  
entered into this Agreement with full knowledge of such possibilities, and  
except as provided herein neither party hereto shall be responsible to the other  
for compensation, damages, losses, or otherwise, for termination of this  
Agreement as set forth above.  
  
12. TRADEMARKS: MARKINGS.  
  
 (a) Trademarks and Names. Distributor is hereby granted permission to  
use during the term of this Agreement, and any renewal hereof, the trademarks  
and trade names used by IDSI in connection with the Equipment. Such permission  
is expressly limited to uses by Distributor necessary to performance of  
Distributor's obligations under this Agreement, and Distributor hereby admits  
and recognizes IDSI's exclusive ownership of such marks and names and the renown  
of IDSI's marks and names, both worldwide and specifically in the Territory.  
Distributor agrees not to take any action, inconsistent with such ownership and  
further agrees to take any action, including without limitation the conduct of  
legal proceedings, which IDSI deems necessary to establish and preserve IDSI's  
exclusive rights in and to its trademarks and trade names. Reproductions of  
IDSI'S trademarks, logos, symbols, etc. shall be true reproductions and shall be  
done photographically, in a manner, which enhances the reputation and status of  
IDSI.  
  
 (b) Markings. Distributor will not remove or make or permit any  
alterations in any labels or other identifying markings placed by IDSI on any of  
the Equipment without written consent by IDSI.  
  
 (c) No Additional Rights. No rights to manufacture, alter, or use the  
Equipment for purposes other than those contained herein are granted by this  
Agreement. Moreover, no licenses are granted or implied by this Agreement under  
any patents owned or controlled by IDSI or under which IDSI has a right, except  
the right to sell, market and distribute IDSI's Equipment, as contemplated  
herein, during the term of this Agreement.  
  
13. IDEMNIFICATION. Distributor shall indemnify and hold harmless IDSI, its  
officers, directors, employees, or agents (collectively referred to in this  
Section 13, as "IDSI") for damages or expenses resulting from any claim, suit or  
proceeding brought against IDSI, with regard to any untrue statement or alleged  
untrue statement, misrepresentation or alleged misrepresentations, promise or  
agreements made or allegedly made by Distributor or arising from the marketing,  
sale or distribution of the Product by Distributor. This provision shall not  
apply to Distributor or any person controlling Distributor in respect of any  
losses, claims, damages, liabilities or actions arising out of or based upon any  
untrue statement or alleged untrue statement, misrepresentation or alleged  
misrepresentations, promise or agreement made or allegedly made by Distributor  
or arising from the marketing, sale or distribution of the Product by  
Distributor, if such untrue statement or alleged untrue statement,  
misrepresentation or alleged misrepresentations, promise or agreement was made  
in reliance upon information furnished in writing to Distributor by IDSI  
specifically for use in connection with the sale, marketing or distribution of  
the Equipment. IDSI agrees that Distributor has the right to defend, or at its  
option to settle, and Distributor agrees, at its own expense, to defend or at  
its option to settle, any claim, suit or proceeding brought against IDSI.  
Distributor agrees to pay any costs of litigation, investigation or defense  
incurred by IDSI, including reasonable attorney fees, and final judgment,  
entered against IDSI on such issue in any such suit or proceeding.  
  
 8  
  
  
Distributor also indemnifies IDSI for any intentional tort, fraudulent behavior,  
unintentional or unintentional violation of statures, national rules and  
regulations, or Council Directives, or any damages caused solely by Distributor.  
  
14. RISK OF LOSS. Title to the Equipment shipped shall pass upon shipping,  
subject to full payment. Distributor assumes the risk of loss and damage of the  
Equipment in transit from IDSI's shipping point to the point of destination.  
  
15. COMPLIANCE WITH LAWS. Distributor shall comply with all material applicable  
present and future federal, state, county, local and foreign laws, ordinances  
and regulations relating to the importation and sale of the Equipment.  
Distributor will take all steps necessary to obtain the proper import licenses,  
if applicable and Distributor shall be solely responsible for any excise tax,  
duties, insurance or other costs for the importation of the Equipment.  
  
16. NON-CIRCUMVENTION AGREEMENT. The respective Parties involved in this  
Agreement, agree not to circumvent each other. The Parties agree that they will  
not make any contact, directly or indirectly, written, oral, electronic or by  
any medium of contact whatsoever, with any Sources without the express written  
consent of the other introducing Party. Each of the listed Parties hereto,  
accepts and understands that any overt or covert action of circumvention, or  
unauthorized disclosure shall constitute a breach of trust and shall be  
considered a breach of the terms and conditions of this agreement. Such action  
shall be subject to judicial action, and recompense.  
  
If either Party shall bring an action to recover payment or other compensation  
pursuant to the terms of this Agreement, the prevailing Party shall be entitled  
to reasonable attorney's fees and expenses as may be awarded, including legal  
fees and costs, and recovery for liquidated damages and punitive damages as may  
be awarded by and through any legal process or jurisdiction.  
  
For the purposes of this Section 16, the term "Party" or "Parties" shall be  
considered to include and be binding upon the parties to this Agreement, any  
individual, entity or entities, including but not limited to, associates,  
partners, assigns, spouses, employees, agents, principals, clients,  
corporations, companies, subsidiaries, divisions, affiliated, associations,  
collateral providers or the like, which the Parties hereto may now or in the  
future be associated with during the term of this Agreement and any renewal  
thereof.  
  
For the purposes of this Section 16, the term "Sources" shall be considered to  
include any business opportunity, principal, individual, entity or entities,  
including but not limited to, customers and distributors, their associates,  
partners, assigns, spouses, employees, agents, principals, clients,  
corporations, companies, subsidiaries, divisions, affiliated partnerships,  
associations or the like, introduced to or brought to the attention of a Party  
to the other Party during the term of this Agreement or any renewal thereof.  
  
Distributor acknowledges and agrees that no separate or additional payment will  
be required to be made to it in consideration of its undertakings in this  
Section 16.  
  
17. NO COPYING. Without the prior written consent of IDSI, Distributor shall  
refrain from copying, reverse engineering, disassembling, translating or  
modifying the Equipment for its benefit, or granting any other person or entity  
the right to do so.  
  
18. NOTICES. Any notice required or permitted by this Agreement shall be in  
writing and shall be delivered by U.S. Certified Mail, return receipt requested,  
or by special messenger service with receipt (such as Federal Express), by  
facsimile delivery or by hand, to the parties at the following addresses or such  
substitute person or address of which notice is given in like manner:  
  
  
Imaging Diagnostics Systems, Inc.  
0000 XX 00 Xxxxx  
Xxxxxxxxxx, Xxxxxxx 00000  
Phone (000) 000-0000  
Fax (000) 000-0000  
  
 9  
  
  
Distributor:  
Medical Imaging Systems  
Attn: Xxxxxxx Xxxxx  
00 Xxxxxxxxx Xxxxxxx Xxxxxx  
Xxxxxx Xxxx  
Xxxxxx  
XX00XX  
Xxxxxx Xxxxxxx  
Phone 000 00 000 000 0000  
Fax 000 00 000 000 0000  
xxxx://xxx.xxxxxxx-xxxxxxx-xxxxxxx.xx.xx  
  
Or to such other address as either of them, by notice to the other may designate  
from time to time. All Distributors must have an E-mail address. The  
transmission confirmation receipt from the sender's facsimile machine shall be  
conclusive evidence of successful facsimile delivery. Time shall be counted to,  
or from, as the case may be, the delivery in person or by mailing.  
  
19. GOVERNING LAW. VENUE AND ARBITRATION. This Agreement shall be deemed to be  
executed in the State of Florida and governed by the laws of the State of  
Florida, the member state and the Council Directive. Any controversy or claim  
arising out of or relating to this Agreement or to the interpretation, breach or  
enforcement thereof, except a claim for injunctive relief, shall be submitted to  
an arbitrator and settled by arbitration in Broward County, Florida, in  
accordance with the rules then obtaining of the American Arbitration  
Association. Any award made by the arbitrator shall be final, binding and  
conclusive on all parties hereto for all purposes, and judgment may be entered  
thereon in any court having jurisdiction thereof. Nothing contained herein shall  
serve to prohibit the parties from seeking injunctive relief in a court of  
competent jurisdiction.  
  
20. GENERAL.  
  
 (a) Independent Contractor. Distributor will act as an independent  
contractor under the terms of this Agreement and not an agent or legal  
representative of IDSI for any purpose, whatsoever, and, except for the  
extension of the warranty set forth in Section 9, Distributor has no right or  
authority to assume or create any obligation of any kind, express or implied, on  
behalf of IDSI to Distributor's customers or to any other person.  
  
 (b) Product Changes. IDSI reserves the right to make design and other  
modifications in the Equipment at any time but shall not be obligated to  
implement such modifications in Equipment that has previously been delivered,  
unless it has implemented the design change as a result of an injury or recall.  
  
 (c) Confidential Information. Distributor agrees not to disclose to any  
person outside of its employ, use its best efforts to prohibit disclosure by  
third parties and not to use for any purpose other than to fulfill its  
obligations under this Agreement, any confidential or proprietary information  
which is disclosed to Distributor by IDSI and which is not otherwise publicly  
available. Distributor agrees to take all preventative measures and precautions  
to guard against and prevent any use or disclosure of such confidential  
information by its partners, employees, agents, or other persons consistent with  
the intent of this paragraph. Distributor further agrees not to disclose to IDSI  
any information, which Distributor deems to be confidential, and it is  
understood that any information received by IDSI will not be of a confidential  
nature.  
  
In the event of a breach by the Distributor IDSI will be entitled to institute  
and prosecute proceedings in any court of competent jurisdiction, to enjoin  
Distributor from breaching the provisions of this Agreement and this  
Confidentiality clause. In such action, IDSI will not be required to plead or  
prove irreparable harm or lack of an adequate remedy at law. Nothing contained  
in this Agreement shall be construed to prevent IDSI from seeking any other  
remedy, in law or equity, as the Company may elect.  
  
 10  
  
  
 (d) Waiver and Amendment. Any party shall not construe the waiver by  
any party to this Agreement of a breach of any provision hereof by any other  
party as a waiver of any subsequent breach. The failure by either party at any  
time to enforce the provisions of this Agreement, or to exercise any election or  
option provided herein, shall in no way be construed as a waiver of such  
provisions or options, nor in any way to affect the validity of this Agreement  
or any part thereof, or the right of either party thereafter to enforce each and  
every such provision. No provision of this Agreement may be terminated, amended,  
supplemented, waived or modified other than by an instrument in writing signed  
by the party against whom the enforcement of the termination, amendment,  
supplement, waiver or modification is sought.  
  
 (e) No Other Warranty or Representation. Distributor hereby  
acknowledges that it has not entered into this Agreement in reliance upon any  
warranty or representation by any person or entity except for the warranties or  
representations specifically set forth herein.  
  
 (f) Language. This Agreement is in the English language only, which  
language shall be controlling in all respects, and all versions hereof in any  
other language shall be for accommodation only and shall not be binding upon the  
parties hereto. All communications and materials made or given pursuant to this  
Agreement, including without limitation any operations and maintenance manuals,  
shall be in the national language of the member state in which the Equipment is  
going to be shipped to. IDSI shall have no obligations or liabilities to  
Distributor or any other person for loss of profits, loss of use or incidental,  
special or consequential damages, even if IDSI has been advised of the  
possibility thereof, arising out of or in connection with the translation from  
English into any other language of any materials made or given pursuant to this  
Agreement, including without limitation any operations and maintenance manuals.  
  
 (g) Licenses and Permits. Distributor will secure all import licenses  
and permits required in connection with the importation, marketing, sale and  
distribution of the Equipment. Each party will furnish any information and  
assistance reasonably required by the other party in connection with securing  
any such licenses and permits.  
  
 (h) Import/Export Controls. IDSI's obligations hereunder shall be at  
all times subject to the export administration and control laws and regulations  
of the United States Government, and any amendments thereof and the import  
administration and control laws and regulations of the Territory, and any  
amendments thereof. Distributor shall provide IDSI with any written assurances  
it may reasonably request with respect to Distributor's compliance with such  
laws or regulations. Distributor agrees that, with respect to the import, resale  
or any other disposition of Equipment and any printed commercial and technical  
data and information supplied by IDSI, Distributor will comply fully with the  
import/export administration and control laws and regulations of the United  
States of America and the Territories, and any amendments of such laws and  
regulations.  
  
 (i) Compliance with Laws. IDSI represents that, with respect to the  
production of Equipment to be furnished hereunder, IDSI will fully comply with  
all applicable laws of the United States, the State of Florida, the rules and  
regulations of the member state and the Council Directive. Distributor  
represents that, with respect to the purchase, marketing, sale and distribution  
of the Equipment furnished hereunder, Distributor will comply with all  
applicable laws of the Territory.  
  
 (j) Entire Agreement. This Agreement constitutes the entire agreement  
and understanding between the parties concerning the subject matter hereof and  
supersedes all prior agreements, negotiations and understandings of the parties  
with respect thereto. No representation, promise, modification or amendments  
shall be binding upon either party as a warranty or otherwise, unless in writing  
and signed on behalf of each party by a duly authorized representative.  
Although, Distributor may use its standard purchase order form to give any order  
or other notice provided for hereunder, said order or notice will be governed by  
the terms and conditions of this Agreement any applicable Acknowledgment, and  
any term or condition set forth in any such standard form which is inconsistent  
with or in addition to the terms and conditions of this Agreement and any  
applicable Acknowledgment shall have no force or effort.  
  
 11  
  
  
 (k) Attorney's Fees. In the event any action is commenced with regard  
 to this Agreement, the prevailing party shall be entitled to reasonable  
 attorney's fees, costs and expenses.  
  
 (l) Severability Clause. In the event any parts of this Agreement are  
found to be void, the remaining provisions of this Agreement shall nevertheless  
be binding with the same effect as though the void parts were deleted.  
  
 (m) Successors. Subject to the provisions of this Agreement, this  
Agreement shall be binding upon and inure to the benefit of the parties hereto  
and their respective successors and assigns, subject to limitations set forth in  
paragraph (q) of this Section.  
  
 (n) Section and Paragraph Headings. The section and paragraph headings  
 in this Agreement are for reference purposes only and shall not affect the  
 meaning or interpretation of this Agreement.  
  
 (o) Counterparts. This Agreement may be executed in one or more  
counterparts, each of which shall be deemed an original but all of which  
together shall constitute one and the same instrument. The execution of this  
Agreement may be by actual or facsimile signature, provided however that  
original signatures must be provided within ten days from the date of signing.  
  
 (p) Further Assurances. The Parties hereto agree to execute and deliver  
from time to time at the other Party's request, without further consideration,  
such additional documents and to take such other action necessary to consummate  
the transactions contemplated herein.  
  
 (q) Assignment. This Agreement may be assigned by IDSI. Distributor  
 will not be permitted to assign this Agreement with out the prior written  
 consent of IDSI.  
  
  
  
 IN WITNESS WHEREOF, the parties have executed this Agreement on the day  
and year set forth below.  
  
Dated: 07/10/01  
In the presence of: Imaging Diagnostic Systems, Inc.  
  
  
  
/s/ Xxxxxxx Xxxxx BY: /s/Xxxxx Xxxxxx, President  
  
  
  
 12  
  
  
  
  
  
  
 EXHIBIT "A"  
  
 DESCRIPTION OF EQUIPMENT  
  
  
  
  
 CTLM(R)  
  
  
  
  
 13  
  
  
 EXHIBIT "B"  
  
 TERRITORIES  
  
Distributors may not solicit orders outside their territory without prior  
written consent by IDSI.  
  
  
  
  
 United Kingdom  
 Ireland  
  
  
  
  
 14  
  
  
  
  
  
  
  
  
 EXHIBIT "C"  
  
 PRICING  
  
  
  
  
  
  
  
  
 15  
  
  
  
 EXHIBIT "D"  
  
 IMAGING DIAGNOSTIC SYSTEMS, INC.  
 STANDARD TERMS AND CONDITIONS  
  
1. PAYMENT  
  
 Payments hereunder shall be made through confirmed, irrevocable letters  
of credit in U.S. dollars, opened by DISTRIBUTOR/PURCHASER and advised through  
First Union National Bank of Florida, in the full amount of the Purchase Price  
for all Equipment, including an amount estimated for freight and insurance.  
DISTRIBUTOR/PURCHASER shall open the letter of credit upon issuance of any  
purchase order. IDSI shall receive disbursement under the letter of credit upon  
presentment to the issuing/confirming bank of (i) an airway xxxx, xxxx of lading  
or similar certificate issued by the transportation IDSI, and (ii) a copy of  
IDSI's invoice for goods shipped (including freight and insurance). No other  
documents shall be required. All interest, banking, collection, or other charges  
shall be at the sole expense of DISTRIBUTOR/PURCHASER. Payment shall be made  
without regard to whether DISTRIBUTOR/PURCHASER has made or may make any  
inspection or use of the Equipment. Shipment will not be made until receipt of  
the letter of credit has been approved.  
  
 Each shipment shall be treated as a separate transaction, but in the  
event of any default of DISTRIBUTOR/PURCHASER, IDSI may decline to make further  
shipments without in any way affecting its rights hereunder. If, despite any  
default by DISTRIBUTOR/PURCHASER, IDSI elects to continue to make shipments,  
IDSI's action shall not constitute a waiver of any default by  
DISTRIBUTOR/PURCHASER or in any way effect IDSI's legal remedies for any such  
default.  
  
2. TAXES  
  
 The purchase price is exclusive of any sales, use or privilege tax,  
customs or import duty, excise tax based on gross revenue or any similar tax or  
charge which might be levied as a result of the production, sale or shipment of  
any Equipment or the use of any Equipment by DISTRIBUTOR/PURCHASER.  
DISTRIBUTOR/PURCHASER agrees to pay and otherwise be fully responsible for any  
such taxes (except for taxes based on the net income of IDSI). Any personal  
property taxes assessable on the Equipment after delivery shall be borne by  
DISTRIBUTOR/PURCHASER. IDSI shall have the right, but shall not be obligated, to  
pay any such taxes directly, in which event DISTRIBUTOR/PURCHASER shall promptly  
reimburse IDSI in the amount thereof upon presentation by IDSI of evidence of  
payment.  
  
3. DELIVERY  
  
 The Equipment shall be delivered to DISTRIBUTOR/PURCHASER F.O.B. IDSI's  
plant in Plantation, Florida. Delivery of the Equipment to a common carrier  
shall be deemed a satisfactory delivery by IDSI to DISTRIBUTOR/PURCHASER.  
DISTRIBUTOR/PURCHASER agrees to pay all freight, insurance, packing and other  
transportation charges related to said delivery. IDSI shall have the right, but  
shall not be obligated, to prepay such charges, in which event  
DISTRIBUTOR/PURCHASER shall promptly reimburse IDSI in the amount thereof upon  
presentation by IDSI of evidence of payment. In connection with the delivery of  
the Equipment, DISTRIBUTOR/PURCHASER may designate in writing, not less than ten  
(10) business days prior to the shipment date, the carrier for shipment and the  
amount of insurance and nature of coverage. If DISTRIBUTOR/PURCHASER fails to so  
designate any or all such items, IDSI, at its discretion, may specify any item  
not so designated. IDSI shall select, at its discretion, the types, amount of  
crating, and the carrier of any insurance. The purchase price does not include  
any maintenance, installation, or training except as provided for under the  
Warranty and section 9. . IDSI will use its best efforts to make prompt delivery  
of the EQUIPMENT on the delivery date specified, to the entities and  
destinations listed above. IDSI shall not be liable for any failure to deliver,  
if such failure has been occasioned by fire, embargo, strike, failure to secure  
materials and/ or components from a usual source of supply in a timely manner,  
or any circumstance beyond IDSI's control. Should these suppliers fail to  
  
 16  
  
  
produce the required components in a timely manner, than IDSI shall be excused  
from the delivery obligations under this Advance Purchase Order until such time  
as the components can be manufactured, delivered and installed in the EQUIPMENT.  
In no event shall IDSI be responsible for any loss or liability suffered by  
DISTRIBUTOR/PURCHASER as a result of delay in delivery of any order.  
  
4. CANCELLATION OF ORDERS.  
  
 Distributor may not cancel an order once the DISTRIBUTOR/PURCHASER has  
secured a letter of credit. Should such cancellation occur, the Distributor is  
responsible for the full purchase price of all Equipment ordered.  
  
5. RESCHEDULING ORDERS.  
  
 DISTRIBUTOR/PURCHASER may at any time, upon not less than thirty (30) days  
written notice to IDSI, reschedule and/or postpone the delivery date relating to  
an order (or any part thereof) for up to thirty (30) days. The postponement of  
delivery to a date more than thirty (30) days from the delivery date specified  
in the initial order shall be deemed a cancellation of such order.  
DISTRIBUTOR/PURCHASER MAY NOT POSTPONE THE DELIVERY DATE MORE THAN ONCE WITH  
RESPECT TO ANY ORDER. THIS SECTION DOES NOT AFFECT THE TERMS OF THE LETTER OF  
CREDIT.  
  
  
6. RISK OF LOSS; SECURITY INTEREST  
  
 Title and risk of loss or damage to the Equipment shall pass to  
DISTRIBUTOR/PURCHASER upon delivery by IDSI to a common carrier for shipment.  
DISTRIBUTOR/PURCHASER assumes the risk of loss and damage of the EQUIPMENT in  
transit from IDSI's shipping point to the point of destination.  
  
 IDSI retains a security interest in the Equipment, any replacements of  
the Equipment, and all proceeds of the Equipment or its replacements, including,  
but not limited to, insurance proceeds, to secure performance of all  
DISTRIBUTOR/PURCHASER's payment obligations under this Agreement. If  
DISTRIBUTOR/PURCHASER shall fail to pay any portion of the purchase price or any  
related charges when due, IDSI shall have the right, without liability, to  
repossess the Equipment and to avail itself of any legal remedy.  
DISTRIBUTOR/PURCHASER agrees to execute and deliver such financing statements  
and other documentation as IDSI may reasonably request to perfect and protect  
IDSI's interests in the Equipment.  
  
7. PROGRAMS LICENSE  
  
 IDSI hereby grants to DISTRIBUTOR/PURCHASER a nonexclusive license to  
use the Programs solely in connection with the use of the EQUIPMENT.  
DISTRIBUTOR/PURCHASER shall not assign, transfer, or sublicense any Programs to  
any third party, without the express written consent of IDSI. IDSI shall retain  
all right, title and interest in and to any Programs provided or licensed to  
DISTRIBUTOR/PURCHASER. DISTRIBUTOR/PURCHASER agrees to maintain the  
confidentiality of the Programs and to instruct and obligate its employees and  
agents to do the same. Without limiting the generality of the foregoing,  
DISTRIBUTOR/PURCHASER shall not reproduce or modify all or any portion of the  
Programs, nor shall DISTRIBUTOR/PURCHASER disclose, sell, sublicense or  
otherwise transfer or make available all or any portion of the Programs to any  
third party, without the prior express written consent of IDSI. In addition to  
any other remedy IDSI may have, IDSI reserves the right to terminate  
DISTRIBUTOR/PURCHASER's license if DISTRIBUTOR/PURCHASER fails to comply with  
any term or condition hereof. DISTRIBUTOR/PURCHASER's license, granted pursuant  
to this paragraph 6 shall also terminate at such time as DISTRIBUTOR/PURCHASER  
shall permanently cease to use the EQUIPMENT. DISTRIBUTOR/PURCHASER agrees, upon  
notice from IDSI of any termination of the license granted pursuant to this  
paragraph 6 and, in accordance with any more specific directions from IDSI, to  
deliver immediately to IDSI all Software and copies thereof, and all Firmware  
  
 17  
  
  
chips and printed circuit boards and other tangible items and materials in the  
possession or custody of DISTRIBUTOR/PURCHASER embodying the Programs. As used  
herein, the word "Programs" shall include IDSI' Firmware and Software, each of  
which is defined as follows: (a) "Firmware" shall mean all fixed electrical  
circuits (including printed circuit boards and chips embodying such circuits)  
placed in the EQUIPMENT by IDSI that perform predetermined programs and routines  
in the EQUIPMENT in response to specific inputs. (b) "Software" shall mean all  
alterable programs and routines for the internal operation of the EQUIPMENT  
placed in the EQUIPMENT by IDSI, or furnished with or for the EQUIPMENT by IDSI.  
IDSI retains all ownership rights to the Software. The license to the Software  
is sold with the Equipment.  
  
  
8. PROPRIETARY TECHNICAL MATERIALS  
  
 Documentation, maintenance manuals and drawings relating to the  
Equipment or the Programs (collectively, "Proprietary Technical Material") that  
IDSI may furnish shall be in DISTRIBUTOR/PURCHASER's or customer's possession  
pursuant only to a restrictive, nonexclusive license under which  
DISTRIBUTOR/PURCHASER or customer may use such Proprietary Technical Materials  
solely for the purpose of operating, servicing and repairing the Equipment and  
the Programs and for no other purpose. One installation, maintenance and  
operation manual will be provided with each system purchased hereunder.  
DISTRIBUTOR/PURCHASER agrees to maintain the confidentially of all Proprietary  
Technical Materials and to instruct and obligate its employees and agents to do  
the same. Without limiting the generality of the foregoing,  
DISTRIBUTOR/PURCHASER may not reproduce or copy any Proprietary Technical  
Material or transfer, assign, sublicense, loan, disclose or otherwise make  
available all or any portion of such Proprietary Technical Materials to any  
other person or entity, without prior express written consent of IDSI. Title to  
and ownership of the Proprietary Technical Materials shall at all time remain in  
IDSI. In addition to any other remedy IDSI may have, IDSI reserves the right to  
terminate DISTRIBUTOR/PURCHASER's license granted pursuant to this paragraph 8  
if DISTRIBUTOR/PURCHASER fails to comply with any term or condition hereof.  
DISTRIBUTOR/PURCHASER's license granted pursuant to this paragraph 8 shall also  
terminate at such time as DISTRIBUTOR/PURCHASER shall permanently cease to use  
the Equipment. DISTRIBUTOR/PURCHASER agrees, upon notice from IDSI of any  
termination of the license granted pursuant to this paragraph 6 and, in  
accordance with any more specific directions from IDSI, to deliver immediately  
to IDSI all Proprietary Technical Material and all copies thereof.  
  
9. LIMITED WARRANTY  
  
 With respect to Equipment for which IDSI is the original IDSI, IDSI  
warrants to DISTRIBUTOR/PURCHASER that, for a period of twelve (12) months from  
installation each item of Equipment will conform in all materials and  
workmanship. A Certificate of Acceptance must be signed by the  
DISTRIBUTOR/PURCHASER for the warranty to be effective. IDSI's obligation under  
this warranty is limited to, at IDSI's option, repairing or replacing, at IDSI's  
facility or at the location of the Equipment, any Equipment or parts thereof  
that do not conform to this warranty. DISTRIBUTOR/PURCHASER shall promptly  
notify IDSI in writing of any alleged defects in the Equipment and specifically  
describe the problem. Upon receipt of such notice, IDSI shall either advise  
DISTRIBUTOR/PURCHASER that warranty service shall be provided at the location of  
the Equipment or shall instruct DISTRIBUTOR/PURCHASER as to the part or parts of  
the Equipment that DISTRIBUTOR/PURCHASER shall ship back to IDSI for repair or  
replacement. IDSI will pay the costs of transporting Equipment to IDSI which to  
have been defective; otherwise, DISTRIBUTOR/PURCHASER shall pay all costs of  
transportation in both directions.  
  
 With respect to Equipment for which IDSI is the original manufacturer,  
IDSI warrants to DISTRIBUTOR/PURCHASER that the Programs provided to  
DISTRIBUTOR/PURCHASER in connection with such Equipment will conform to and  
perform in accordance with the then existing Equipment documentation for a  
period of one (1) year from shipment of the last item of Equipment in  
conjunction with which the Programs are to be used if properly used on the  
Equipment. IDSI's obligation under this warranty is limited to, at IDSI's  
option, correcting, repairing or replacing, at IDSI's option, at IDSI's facility  
or the location of the Programs, any Program or parts thereof that do not  
conform to this warranty.  
  
 18  
  
  
 With respect to Equipment for which IDSI is not the original  
manufacture, the sole warranties provided by IDSI to DISTRIBUTOR/PURCHASER shall  
be equivalent to the sole warranties provided by the original manufacturer to  
IDSI (current original manufacturer warranties and the identification of  
Equipment to which they pertain shall be provided to DISTRIBUTOR/PURCHASER upon  
request).  
  
 The foregoing warranties shall not apply to any Equipment or Programs  
which have been (i) used or operated in a manner inconsistent with the license  
granted by IDSI, (ii) modified or repaired by anyone other than IDSI personnel  
or IDSI's authorized service representatives in a manner which adversely affects  
their operations or reliability, or (iii) damaged because of accident, neglect  
or misuse by anyone other than IDSI personnel, failure or surge of electrical  
power, air conditioning or humidity control, transportation, or other than  
ordinary use.  
  
THE FOREGOING WARRANTIES APPLY ONLY TO THE ORIGINAL DISTRIBUTOR/PURCHASER AND  
ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING  
WITHOUT LIMITATION IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY UPON THE  
RIGHTFUL CLAIM OF ANY THIRD PERSON.  
  
10. LIMITATION OF LIABILITY  
  
 IDSI shall in no event have obligations or liabilities to  
DISTRIBUTOR/PURCHASER or any other person for loss of profits, loss of use or  
incidental, special or consequential damages, whether based on contract, tort  
(including negligence), strict liability, or any other theory or form of action,  
even if IDSI has been advised of the possibility thereof, arising out of, or in  
connection with, the sale, delivery, use, repair or performance of the Equipment  
or the Programs, or any failure or delay in connection with any of the  
foregoing, which resulted from unauthorized use of the EQUIPMENT.  
  
11. PATENTS AND TRADEMARK INDEMNITY  
  
 IDSI will defend, at its own expense, any suit or proceeding against  
DISTRIBUTOR/PURCHASER in a court of the United States for the direct  
infringement of United States patents and trademarks by Equipment from which  
IDSI is the original IDSI purchased from IDSI hereunder. IDSI shall pay all  
damages and costs finally awarded against DISTRIBUTOR/PURCHASER because of  
direct infringement; provided, however, that IDSI shall not be obligated to  
defend or be liable for costs or damages awarded in any suit or proceeding for  
infringement of patents by any other products, or any completed equipment,  
system, assembly, combination, method or process, in which, or in the  
manufacture or testing of which, any Equipment purchased from IDSI may be used;  
and provided further that IDSI's obligations to pay such damages and costs shall  
not apply to any alleged infringement occurring after DISTRIBUTOR/PURCHASER has  
received notice of such alleged infringement unless IDSI thereafter gives to  
DISTRIBUTOR/PURCHASER written consent for such continuing alleged infringement.  
IDSI's liability hereunder shall not exceed the purchase price paid by  
DISTRIBUTOR/PURCHASER for the infringing Equipment, and IDSI shall not be liable  
for any collateral, incidental, or consequential damages awarded against  
DISTRIBUTOR/PURCHASER.  
  
 IDSI's duties under this paragraph 11 are conditioned upon  
DISTRIBUTOR/PURCHASER giving IDSI prompt written notice of commencement of any  
suit or proceeding or any claim of infringement and furnishing to IDSI a copy of  
each communication relating to the alleged infringement and giving to IDSI all  
authority (including the right to exclusive control of the defense of any such  
suit or proceeding), information and assistance (at IDSI's expense) necessary to  
defend or settle such suit or proceeding. IDSI shall not be bound by any  
settlement made without IDSI's prior written consent.  
  
 If in any such suit or proceeding, DISTRIBUTOR/PURCHASER's continued  
use of any item Equipment is enjoined or, if by reason of any claim of  
infringement, IDSI deems it advisable to do so, IDSI may, at its option and  
expense, (i) procure for DISTRIBUTOR/PURCHASER the right to continue using such  
Equipment, (ii) modify or replace such Equipment with non-infringing Equipment,  
provided that such modification does not materially affect performance, or (iii)  
remove such Equipment, grant DISTRIBUTOR/PURCHASER a credit thereon as  
depreciated on a straight-line-3-year basis and accept its return. If an  
  
 19  
  
  
infringement is alleged prior to completion of deliveries of the Equipment, IDSI  
may decline to make further shipments without being in breach hereunder.  
  
 IDSI shall not be obligated to defend any suit or proceeding, or be  
liable for any costs or damages, if the infringement arises out of compliance  
with DISTRIBUTOR/PURCHASER's specifications or any marking or branding applied  
at the request of DISTRIBUTOR/PURCHASER. DISTRIBUTOR/PURCHASER agrees, at its  
own expense, to defend and to pay costs and damages finally awarded in any suit  
or proceeding against IDSI based on any such infringement, provided that  
DISTRIBUTOR/PURCHASER is promptly notified by IDSI in writing of the  
commencement or threat of such suit or proceeding or claim of infringement and  
is given all authority (including the right to exclusive control of the defense  
of any such suit or proceeding), information and assistance (at  
DISTRIBUTOR/PURCHASER's expense) necessary to defend or settle such suit  
proceeding.  
  
12. COMPLIANCE WITH LAWS.  
  
 PURCHASER shall comply with all applicable present and future  
federal, state, county, local and foreign laws, ordinances, and regulations  
relating to the importation and sale of the EQUIPMENT. DISTRIBUTOR/PURCHASER  
will take all steps necessary to obtain the proper import licenses, if  
applicable and DISTRIBUTORURCHASER shall be solely responsible for any excise  
tax, duties or other costs for the importation of the EQUIPMENT.  
  
13. IMPORT/EXPORT CONTROLS.  
  
 IMDS's obligations hereunder shall be at all times subject to the  
export administration and control laws and regulations of the United States  
Government, and any amendments thereof and the import administration and control  
laws and regulations of the country to which the EQUIPMENT is being shipped, and  
any amendments thereof. Purchaser shall provide IMDS with any written assurances  
it may reasonably request with respect to Purchaser's compliance with such laws  
or regulations. Purchaser agrees that, with respect to the import, resale or any  
other disposition of EQUIPMENT and any printed commercial and technical data and  
information supplied by IMDS, Purchaser will comply fully with the import/export  
administration and control laws and regulations of the United States of America  
and the Territory, and any amendments of such laws and regulations.  
  
14. FORCE MAJEURE  
  
 If the performance hereof or any obligation hereunder, except the  
making of payments hereunder, is prevented, restricted or interfered with by  
reason by fire, flood, earthquake, explosion or other casualty or accident;  
strikes or labor disputes; inability to procure parts, supplies or power; war or  
other violence; any law, order, proclamation, regulation, ordinance, demand or  
requirement of any government agency; or any other or condition whatsoever  
beyond the reasonable control of the affected party, the party so affected, upon  
giving prompt notice to the other party, shall be excused from such performance  
to the extent of such prevention, restriction or interference; provided,  
however, that the party so affected shall take all reasonable steps to avoid or  
remove such causes of nonperformance and shall resume performance hereunder with  
dispatch whenever such causes are removed.  
  
 20  
  
  
15. ASSIGNMENT  
  
 The rights of DISTRIBUTOR/PURCHASER hereunder may not be assigned in  
whole or in part, by operation of law or otherwise, without the express written  
consent of IDSI.  
  
16. APPLICABLE LAW  
  
 The validity, construction and effect of this Agreement and the  
respective rights and obligations of the parties hereunder, shall be governed by  
and determined in accordance with the laws of the state of Florida in the United  
States of America as such laws are applied to contracts between Florida  
residents entered into and to be performed entirely within the state of Florida,  
without reference to principles of conflicts of law. The parties hereby agree to  
opt out of coverage of the United Nations Convention on Contracts for the  
International Sale of Good. The parties hereby agree that this Agreement shall  
be governed by the Uniform Commercial Code ("UCC") as adopted by the state of  
Florida.  
  
17. FORUM AND SERVICE OF PROCESS  
  
 All actions and proceedings arising out of or relating to this  
Agreement shall be heard and determined in a state or federal court sitting in  
the County of Broward, State of Florida. Service of process shall be considered  
effective if done pursuant to any of the methods set forth in Rule 4(i), Federal  
Rule of Civil Procedure or pursuant to Florida law.  
  
18. ATTORNEY'S FEES AND COSTS OF LITIGATION  
  
 If any action or proceeding arising out of or relating to this  
Agreement is commenced the prevailing party shall be entitled to its reasonable  
attorney's fees, costs, and expenses including the costs, expenses, and fees  
associated with the enforcement or collection of any judgment.  
  
  
  
 21