EXHIBIT 10.21  
  
 DISTRIBUTION AGREEMENT BETWEEN  
  
 TECH DATA PRODUCT MANAGEMENT, INC.  
  
 AND  
  
 OSICOM TECHNOLOGIES, INC.  
  
 1/24/97  
  
  
  
 DISTRIBUTION AGREEMENT  
  
THIS AGREEMENT, dated as of this 25 day of MARCH, 1997 is between TECH DATA  
PRODUCT MANAGEMENT, INC., a Florida corporation ("Tech Data"), with its  
principal corporate address at 0000 Xxxx Xxxx Xxxxx, Xxxxxxxxxx, Xxxxxxx 00000  
and OSICOM TECHNOLOGIES, INC., a corporation ("Osicom with its principal  
corporate address at 0000 00xx Xxxxxx, Xxxxx 000, Xxxxx Xxxxxx, Xxxxxxxxxx  
00000.  
  
 RECITALS  
  
Tech Data desires to purchase certain Products from Osicom from time to time and  
Osicom desires to sell certain Products to Tech Data in accordance with the  
terms and conditions set forth in this Agreement.  
  
Osicom desires to appoint Tech Data as its non-exclusive distributor to market  
Products within the Territory (as hereinafter defined) and Tech Data accepts  
such appointment on the terms set forth in this Agreement.  
  
NOW, THEREFORE, in consideration of the Recitals, the mutual covenants contained  
in this Agreement and other good and valuable consideration, Tech Data and  
Osicom hereby agree as follows:  
  
 ARTICLE 1. DEFINITIONS, APPOINTMENT AND TERM OF AGREEMENT  
  
Definitions The following definitions shall apply to this Agreement.  
  
"Customers" of Tech Data shall include dealers, resellers, value added  
resellers, mail order resellers and other entities that acquire the Products  
from Tech Data.  
  
DOA shall mean Product, or any portion thereof, which fails to operate properly  
on initial burn in, boot, or use, as applicable.  
  
"Documentation" shall mean user manuals, training materials, Product  
descriptions and specifications, brochures, technical manuals, license  
agreements, supporting materials and other printed information relating to the  
Products, whether distributed in print, electronic, or video format.  
  
(d) Effective Date shall mean the date on which this Agreement is signed and  
dated by a duly authorized representative of Tech Data.  
  
(e) "End Users" shall mean the final retail purchasers or licensees who have  
acquired Products for their own use and not for resale, remarketing or  
redistribution.  
  
(f) Non-Saleable Products shall mean any Product that has been returned to Tech  
Data by its Customers that has had the outside shrink wrapping or other  
packaging seal broken; any components of the original package are missing,  
damaged or modified; or is otherwise not fit for resale.  
  
(g) "Products" shall mean, individually or collectively as appropriate,  
hardware, licensed software, Documentation, supplies, accessories, and other  
commodities related to any of the foregoing produced by Osicom, as more  
particularly described in Schedule 1.1.g. attached hereto.  
  
(h) "Return Credit' shall mean a credit to Tech Data in an amount equal to the  
price paid by Tech Data for Products less any price protection credits but not  
including any early payment or prepayment discounts.  
  
(i) "Services" means any warranty, maintenance, advertising, marketing or  
technical support and any other services performed or to be performed by Osicom.  
  
  
  
(j) "Territory" shall mean worldwide.  
  
1.2 Term of Agreement The term of this Agreement shall commence on the Effective  
Date and, unless terminated by either party as set forth in this Agreement,  
shall remain in full force and effect for a term of one (1) year, and will be  
automatically renewed for successive one (1) year terms unless prior written  
notification of termination is delivered by one of the parties in accordance  
with the notice provision of this Agreement.  
  
1.3 Appointment as Distributor Osicom hereby grants to Tech Data the  
non-exclusive right to distribute Products within the Territory during the term  
of this Agreement. This Agreement does not grant Osicom or Tech Data an  
exclusive right to purchase or sell Products and shall not prevent either party  
from developing or acquiring other vendors or customers or competing Products.  
Tech Data will use commercially reasonable efforts to promote sales of the  
Products. Osicom agrees that Tech Data may obtain Products in accordance with  
this Agreement for the benefit of its parent, affiliates and subsidiaries of  
Tech Data. Said parent, affiliates and subsidiaries of Tech Data shall be  
entitled to order Products directly from Osicom pursuant to this Agreement.  
  
 ARTICLE II PURCHASE ORDERS  
  
2.1 Issuance and Acceptance of Purchase Order.  
  
(a) This Agreement shall not obligate Tech Data to purchase any Products or  
Services except as specifically set forth in a written purchase order.  
  
(b) Tech Data may issue to Osicom one or more purchase orders identifying the  
Products Tech Data desires to purchase from Osicom. Notwithstanding any  
preprinted terms or conditions on Tech Data 's purchase orders, the terms and  
conditions of this Agreement shall apply to and govern all purchase orders  
accepted or shipped by Osicom hereunder, except that purchase orders may include  
other terms and conditions which are consistent with the terms and conditions of  
this Agreement, or which are mutually agreed to in writing by Tech Data and  
Osicom. Purchase orders will be placed by Tech Data by fax or electronically  
transferred.  
  
(c) A purchase order shall be deemed accepted by Osicom unless Osicom notifies  
Tech Data in writing within five (5) days of the date of the purchase order that  
Osicom does not accept the purchase order.  
  
2.2 Purchase Order Alterations or Cancellations Prior to shipment of Products,  
 Osicom shall accept alterations or cancellation to a purchase order in  
 order to: 336156 change a location for delivery, (ii) modify the quantity  
 or type of Products to be delivered or (iii) correct typographical or  
 clerical errors. Tech Data must provide sixty (60) days prior written  
 notice in order to cancel or alter an order for customized Products,  
 however, Tech Data may not cancel orders for customized Products after  
 such time as the Products have been altered to a point where such Products  
 are no longer capable of resale by Osicom after reasonable efforts.  
  
2.3 Evaluation or Demonstration Purchase Orders. Osicom shall provide to Tech  
Data a reasonable number of demonstration or evaluation Products at no charge.  
  
2.4 Product Shortages. If for any reason Osicom's production is not on schedule,  
Osicom may allocate available inventory to Tech Data and make shipments based  
upon a fair and reasonable percentage allocation among Osicom's customers. Such  
allocations shall not impact the calculation of performance rebates.  
  
 ARTICLE III. DELIVERY AND ACCEPTANCE OF PRODUCTS  
  
3.1 Acceptance of Products Tech Data shall, after a reasonable time to inspect  
each shipment, accept Product (the "Acceptance Date") if the Products and all  
necessary documentation delivered to Tech Data are in accordance with the  
purchase order. Any Products not ordered or not otherwise in accordance with the  
purchase order (e.g. mis-shipments, overshipments) may be returned to Osicom at  
Osicom's expense (including without limitation costs of shipment or storage).  
Osicom shall refund to Tech Data within ten (10) business days following notice  
thereof, all monies paid in respect to such rejected Products. Tech Data shall  
not be required to accept partial shipment unless Tech Data agrees prior to  
shipment.  
  
  
  
3.2 Title and Risk of Loss. FOB Origin. Title and risk of loss or damage to  
Products shall pass to Tech Data at the time the Products are delivered to the  
common carrier.  
  
3.3 Transportation of Products. Osicom shall deliver the Products clearly marked  
on the Product package with serial number, Product description and machine  
readable bar code (employing UPC or other industry standard bar code) to Tech  
Data at the location shown and on the delivery date set forth in the applicable  
purchase order or as otherwise agreed upon by the parties. Charges for  
transportation of the Products shall be paid by Tech Data. Osicom shall use only  
those common carriers preapproved by Tech Data or listed in Tech Data's  
published routing instructions, unless prior written approval of Tech Data is  
received.  
  
 ARTICLE IV. RETURNS  
  
4.1 Inventory Adiustment Osicom agrees to accept return of overstocked Products  
as determined by Tech Data, in Tech Data's reasonable discretion. Shipments of  
Product being returned shall be new, unused and in sealed cartons. Vendor shall  
credit Tech Data's account in the amount of the Return Credit.  
  
4.2 Defective Products/Dead on Arrival (DOA) Tech Data shall have the right to  
return to Osicom for Return Credit any DOA Product that is returned to Tech Data  
within ninety (90) days after the initial delivery date to the End User and any  
Product that fails to perform in accordance with Osicom's Product warranty.  
Osicom shall bear all costs of shipping and risk of loss of DOA and in-warranty  
Products to Osicom's location and back to Tech Data or Tech Data's Customer.  
  
4.3 Obsolete or Outdated Product Tech Data shall have the right to return for  
Return Credit, without limitation as to the dollar amount, all Products that  
become obsolete or Osicom discontinues or are removed from Osicom's current  
price list; provided Tech Data returns such Products within ninety (90) days  
after Tech Data receives written notice from Osicom that such Products are  
obsolete, superseded by a newer version, discontinued or are removed from  
Osicom's price list.  
  
4.4 Miscellaneous Returns.  
  
(a) Bad Box Tech Data shall have the right to return to Osicom for Return Credit  
Products which have boxes that are or become damaged.  
  
(b) Non-Saleable Tech Data shall have the right to return to Osicom for Return  
Credit NonSaleable Products.  
  
4.5 Condition Precedent to Returns. As a condition precedent to returning  
Products, Tech Data shall request and Osicom shall issue a Return Material  
Authorization Number RMA in accordance with and subject to Section 8.9 of this  
Agreement.  
  
 ARTICLE V. PAYMENT TO VENDOR  
  
5.1 Changes, Prices and Fees for Products Charges, prices, quantities and  
discounts, if any, for Products shall be determined as set forth in Schedule  
1.1.g., or as otherwise mutually agreed upon by the parties in writing, and may  
be confirmed at the time of order. In no event shall charges exceed Osicom's  
then current established charges. Tech Data shall not be bound by any of  
Osicom's suggested prices.  
  
5.2 Payment Except as otherwise set forth in this Agreement, any undisputed sum  
due to Osicom pursuant to this Agreement shall be payable as follows: 1%-15, net  
30 days after the invoice receipt. Osicom shall invoice Tech Data no earlier  
than the applicable shipping date for the Products covered by such invoice.  
Products which are shipped from outside the United States, shall not be invoiced  
to Tech Data prior to the Products being placed on a common carrier within the  
United States for final delivery to Tech Data. The due date for payment shall be  
extended during any time the parties have a bona fide dispute concerning such  
payment. Notwithstanding anything herein to the contrary, for the initial order  
only, payment terms shall be net ninety (90) days and Tech Data may return any  
of the Products delivered under the initial order for Return Credit.  
Notwithstanding anything contained in the Agreement or in any other agreements  
between Tech Data and Osicom, including Osicom's invoices, Tech Data has the  
right to delay payment for any Products ordered or received by Tech Data until  
Tech Data's sale of the Products.  
  
5.3 Invoices. A "correct" invoice shall contain 336156 Osicom's name and invoice  
date, (ii) a reference to the  
  
  
  
purchase order or other authorizing document, (iii) separate descriptions, unit  
prices and quantities of the Products actually delivered, (iv) credits (if  
applicable), (v) shipping charges (if applicable) (vi) name (where applicable),  
title, phone number and complete mailing address as to where payment is to be  
sent, and (vii) other substantiating documentation or information as may  
reasonably be required by Tech Data from time to time. Notwithstanding any  
pre-printed terms or conditions on Osicom's invoices, the terms and conditions  
of this Agreement shall apply to and govern all invoices issued by Osicom  
hereunder, except that invoices may include other terms and conditions which are  
consistent with the terms and conditions of this Agreement, or which are  
mutually agreed to in writing by Tech Data and Osicom.  
  
5.4 Taxes. Tech Data shall be responsible for franchise taxes, sales or use  
taxes or shall provide Osicom with an appropriate exemption certificate. Osicom  
shall be responsible for all other taxes, assessments, permits and fees,.  
however designated which are levied upon this Agreement or the Products, except  
for taxes based upon Tech Data's income. No taxes of any type shall be added to  
invoices without the prior written approval of Tech Data.  
  
5.5 Fair Pricing and Terms. Osicom represents that the prices charged and the  
terms offered to Tech Data are and will be at least as beneficial to Tech Data  
as those charged or offered by Osicom to any of its other distributors or  
customers in the channel. If Osicom offers price discounts, payment discounts,  
promotional discounts or other special prices to its other distributors or  
customers in the channel, Tech Data shall also be entitled to participate and  
receive notice of the same no later than other distributors or customers in the  
channel.  
  
5.6 Price Adjustments  
  
(a) Price Increases Osicom shall have the right to increase prices from time to  
time, upon written notice to Tech Data not less than thirty (30) days prior to  
the effective date of such increase. All orders placed prior to the effective  
date of the increase, for shipment within sixty (60) days after the effective  
date, shall be invoiced by Osicom at the lower price.  
  
(b) Price Decreases Osicom shall have the right to decrease prices from time to  
time, upon written notice to Tech Data not less than thirty (30) days prior to  
the effective date of such decrease. Osicom shall grant to Tech Data, its  
parent, affiliates and subsidiaries and Tech Data's Customers a price credit for  
the full amount of any Osicom price decrease on all Products on order, in  
transit and in their inventory on the effective date of such price decrease.  
Tech Data and its Customers shall, within sixty (60) days after receiving  
written notice of the effective date of the price decrease, provide a list of  
all Products for which they claim a credit. Osicom shall have the right to a  
reasonable audit at Osicom's expense.  
  
5.7 Advertising  
  
(a) Cooperative Advertising Osicom offers a two percent (2%) co-op program and  
may offer additional advertising credits, or other promotional programs or  
incentives to Tech Data as it offers to its other distributors or customers.  
Tech Data shall have the right, at Tech Data's option, to participate in such  
programs. Attached as Schedule 5.7 is a copy of Osicom's co-op policy.  
  
(b) Advertising Support Osicom shall provide at no charge to Tech Data and the  
Customers of Tech Data, marketing support, and advertising materials in  
connection with the resale of Products as are currently offered or that may be  
offered by Osicom. Tech Data reserves the right to charge Osicom for  
advertising, marketing and training services.  
  
(c) Launch Funds Prior to receipt of the initial purchase order, Osicom shall  
pay Tech Data for all launch funds expenditures to which Osicom and Tech Data  
have agreed  
  
 ARTICLE VI. WARRANTIES, INDEMNITIES AND OTHER OBLIGATIONS OF VENDOR  
  
6.1 Warranty. Osicom hereby represents and warrants that Osicom has all right,  
 title, ownership interest and marketing rights necessary to provide the  
 Products to Tech Data. Osicom further represents and warrants that it has  
 not entered into any agreements or commitments which are inconsistent with  
 or in conflict with the rights granted to Tech Data in this Agreement; the  
 Products are new and shall be free and clear of all liens and  
 encumbrances; Tech Data and its Customers and End Users shall be entitled  
 to use the Products without disturbance; the Products have been listed  
 with Underwriters' Laboratories or other nationally recognized testing  
 laboratory whenever such listing is required; the Products meet all FCC  
 requirements; the Products do and will conform to all codes, laws or  
 regulations; and the Products conform in all respects to the Product  
 warranties. Osicom agrees that Tech Data shall be entitled to pass through  
 to Customers of Tech Data and End Users of the Products all Product  
 warranties granted by Osicom. Tech Data shall have no authority to alter  
 or extend any  
  
  
  
 of the warranties of Osicom expressly contained or referred to in this  
 Agreement without prior approval of Osicom. Osicom has made express  
 warranties in this Agreement and in Documentation, promotional and  
 advertising materials. EXCEPT AS SET FORTH HEREIN OR THEREIN, Osicom  
 DISCLAIMS ALL WARRANTIES WITH REGARD TO THE PRODUCTS, INCLUDING WITHOUT  
 LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A  
 PARTICULAR PURPOSE. THIS SECTION SHALL SURVIVE TERMINATION OR EXPIRATION  
 OF THIS AGREEMENT.  
  
6.2 Proprietary Rights Indemnification Osicom hereby represents and warrants  
that the Products and the sale and use of the Products do not infringe upon any  
copyright, patent, trademark, trade secret or other proprietary or intellectual  
property right of any third party, and that there are no suits or proceedings,  
pending or threatened alleging any such infringement. Osicom shall indemnify and  
hold Tech Data, Tech Data's parent, affiliates and subsidiaries and their  
respective, officers, directors, employees and agents harmless from and against  
any and. all actions, claims, losses, damages, liabilities, awards, costs and  
expenses, which they or any of them incur or become obligated to pay resulting  
from or arising out of any breach or. claimed breach of the foregoing warranty.  
Tech Data shall inform Osicom of any such suit or proceeding filed against Tech  
Data and shall have the right, but not the obligation, to participate in the  
defense of any such suit or proceeding at Tech Data's expense. Osicom shall, at  
its option and expense, either (i) procure for Tech Data, its Customers and End  
Users the right to continue to use the Product as set forth in this Agreement,  
or (ii) replace, to the extent Products are available, or modify the Product to  
make its use non-infringing while being capable of performing the same function  
without degradation of performance. If neither of the foregoing alternatives  
336156 or (ii) is reasonably available, Osicom shall accept a return of the  
Products from Tech Data, at Osicom's sole cost and expense, and shall refund to  
Tech Data the full amount of the price paid by Tech Data for said returned  
Products, less any price protection credits, but not including any early payment  
or prepayment discounts. Osicom shall have no liability under this Section 6.2  
for any infringement based on the use of any Product, if the Product is used in  
a manner or with equipment for which it was not reasonably intended. Osicom's  
obligations under this Section 6.2 shall survive termination or expiration of  
this Agreement.  
  
6.3 Indemnification  
  
(a) Vendor Osicom shall be solely responsible for the design, development,  
supply, production and performance of the Products. Osicom agrees to indemnify  
and hold Tech Data, its parent, affiliates and subsidiaries and their officers,  
directors and employees harmless from and against any and all claims, damages,  
costs, expenses (including, but not limited to, reasonable attorney s fees and  
costs) or liabilities that may result, in whole or in part, from any warranty or  
Product liability claim, or any claim for infringement, or for claims for  
violation of any of the warranties contained in this Agreement.  
  
(b) Tech Data Tech Data agrees to indemnify and hold Osicom, its officers,  
directors and employees harmless from and against any and all claims, damages,  
costs, expenses (including, but not limited to, reasonable attorneys fees and  
costs) or liabilities that may result, in whole or in part, from Tech Data's  
gross negligence or willful misconduct in the distribution of the Products  
pursuant to this Agreement, or for representations or warranties made by Tech  
Data related to the Products in excess of the warranties of Osicom.  
  
6.4 Insurance.  
  
(a) The parties shall be responsible for providing Workers Compensation  
insurance in the statutory amounts required by the applicable state laws.  
  
(b) Without in any way limiting Osicom's indemnification obligation as set forth  
in this Agreement, Osicom shall maintain Commercial General Liability or  
Comprehensive General Liability Insurance in such amounts as is reasonable and  
standard for the industry. Either policy form should contain the following  
coverages: Personal and Advertising Injury, Broad Form Property Damage, Products  
and Completed Operations, Contractual Liability, employees as Insured and Fire  
Legal Liability.  
  
c) Osicom will provide evidence of the existence of insurance coverages referred  
to in this Section 6.4 by certificates of insurance which should also provide  
for at least thirty (30) days notice of cancellation, non-renewal or material  
change of coverage to Tech Data. The certificates of insurance shall name Tech  
Data, its parent, affiliates and subsidiaries as an additional insured for the  
limited purpose of claims arising pursuant to this Agreement.  
  
6.5 Limitation of Liability NEITHER PARTY SHALL BE LIABLE TO THE OTHER PURSUANT  
TO THIS  
  
  
  
AGREEMENT FOR AMOUNTS REPRESENTING INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL,  
OR PUNITIVE DAMAGES OF THE OTHER PARTY ARISING FROM THE PERFORMANCE OR BREACH OF  
ANY TERMS OF THIS AGREEMENT.  
  
6.6 ECCN/Export Osicom agrees to provide Tech Data, upon signing this Agreement  
and at any time thereafter that Osicom modifies or adds Products distributed or  
to be distributed by Tech Data, with the Export Control Classification Number  
(ECCN) for each of Osicom's Products, and information as to whether or not any  
of such Products are classified under the U.S. Munitions List.  
  
6.7 Financial Statements  
  
 Osicom agrees that for the term of this Agreement, Osicom shall provide  
financial statements annually and semi annually as follows:  
  
 a. Within one hundred and twenty (120) days after the end of Osicom's  
fiscal year audited financial statements for the fiscal year prepared by an  
independent certified public accountant.  
  
 b. Within sixty (60) days after the end of Osicom's second fiscal quarter,  
semi-annual unaudited financial statements, prepared by Osicom's authorized  
representative. Such financial statements shall include profit and loss  
statement, balance sheets and such other accounting data as may be requested by  
Tech Data and be acknowledged by Osicom's authorized representative in writing  
as true and correct. In addition, Osicom shall provide other financial  
information upon reasonable request by Tech Data.  
  
6.8 Vendor Reports. Osicom shall, if requested, render monthly reports to Tech  
Data setting forth the separate Products, dollars invoiced for each Product, and  
total dollars invoiced to Tech Data for the month, and such other information as  
Tech Data may reasonably request.  
  
6.9 Tech Data Reports. Tech Data shall, if requested, render monthly sales out  
reports on Tech Data's BBS system. Information provided will include: month and  
year sales activity occurred, internal product number (assigned by Tech Data),  
written description, state and zip-code of Customers location, unit cost  
(distributors cost at quantity 1), quantity and extended cost (cost times  
quantity). A monthly inventory report will be provided on a paper format once a  
month. Osicom agrees that any such information provided by Tech Data shall be  
received and held by Osicom in strict confidence and shall be used solely for  
sell through or compensation reporting information and shall not be used for  
purposes related to Osicom's direct sales activities.  
  
6.10 Trademark Usage. Tech Data is hereby authorized to use trademarks and  
tradenames of Osicom and third parties licensing Osicom, if any, used in  
connection with advertising, promoting or distributing the Products. Tech Data  
recognizes Osicom or other third parties may have rights or ownership of certain  
trademarks, trade names and patents associated with the Products. Tech Data will  
act consistent with such rights, and Tech Data shall comply with any reasonable  
written guidelines when provided by Osicom or third parties licensing Osicom  
related to such trademark or trade name usage. Tech Data will notify Osicom of  
any infringement which Tech Data has actual knowledge. Tech Data shall  
discontinue use of Osicom's trademarks or trade names upon termination of this  
Agreement, except as may be necessary to sell or liquidate any Product remaining  
in Tech Data s inventory.  
  
 ARTICLE VII TERMINATION; EXPIRATION  
  
7.1 Termination  
  
 (a) Termination With or Without Cause: Either party may terminate this  
Agreement, without cause, upon giving the other party thirty (30) days prior  
written notice. In the event that either party materially or repeatedly defaults  
in the performance of any of its duties or obligations set forth in this  
Agreement, and such default is not substantially cured within thirty (30) days  
after written notice is given to the defaulting party specifying the default,  
then the party not in default may, by giving written notice thereof to the  
defaulting party, terminate this Agreement or the applicable purchase order  
relating to such default as of the date specified in such notice of termination.  
  
 (b) Termination for Insolvency or Bankruptcy Either party may immediately  
terminate this Agreement and any purchase orders by giving written notice to the  
other party in the event of (i) the liquidation or insolvency of the other  
party, (ii) the appointment of a receiver or similar officer for the other  
party, (iii) an assignment by the other party for the benefit of all or  
substantially all of its creditors, (iv) entry by the other party into an  
agreement for the composition, extension, or readjustment of all or  
substantially all -of its obligations, or (v) the filing of a petition in  
bankruptcy by or against a party under any bankruptcy or debtors' law for its  
relief or reorganization which is not dismissed within ninety (90) days.  
  
  
  
7.2 Rights Upon Termination or Expiration  
  
 (a) Termination or expiration of this Agreement shall not affect Osicom's  
right to be paid for undisputed invoices for Products already shipped and  
accepted by Tech Data or Tech Data's rights to any credits or payments owed or  
accrued to the date of termination or expiration. Tech Data's rights to credits  
upon termination or expiration shall include credits against which Tech Data  
would, but for termination or expiration, be required under this Agreement to  
apply to future purchases.  
  
(b) Osicom shall accept purchase orders from Tech Data for additional Products  
which Tech Data is contractually obligated to furnish to its Customers and does  
not have in its inventory upon the termination or expiration of this Agreement;  
provided Tech Data notifies Osicom of any and all such transactions in writing  
within sixty (60) days following the termination or expiration date.  
  
(c) Upon termination or expiration of this Agreement, Tech Data shall  
discontinue holding itself out as a distributor of the Products.  
  
7.3 Repurchase of Products Upon Termination or Expiration Upon the effective  
date of termination or expiration of this Agreement for any reason, Osicom  
agrees to repurchase all Products in Tech Data's inventory or which are returned  
to Tech Data within sixty (60) days following the effective date of termination  
or expiration. Osicom will repurchase the Products at the original purchase  
price, less any deductions for price protection. The repurchase price shall not  
be reduced by any deductions or offsets for early pay or prepay discounts. Such  
returns shall not reduce or offset any co-op payments or obligations owed to  
Tech Data. Tech Data shall submit to Osicom, within sixty-five (65) days after  
the termination or expiration date, the quantity of Product that Tech Data will  
be returning to Osicom for repurchase. Osicom will issue an RMA to Tech Data for  
all such Products; provided, however, that Osicom shall accept returned Products  
in accordance with this Section absent an RMA if Osicom fails to issue said RMA  
within five (5) business days of Tech Data's request. Osicom shall credit any  
outstanding balances owed to Tech Data. If such credit exceeds amounts due from  
Tech Data, Osicom shall remit in the form of a check to Tech Data the excess  
within ten (10) business days of receipt of the Product. Customized Products  
shall not be eligible for repurchase pursuant to this Section.  
  
7.4 Survival of Terms. Termination or expiration of this Agreement for any  
 reason shall not release either party from any liabilities or obligations  
 set forth in this Agreement which (i) the parties have expressly agreed  
 shall survive any such termination or expiration, or (ii) remain to be  
 performed or by their nature would be intended to be applicable following  
 any such termination or expiration. The termination or expiration of this  
 Agreement shall not affect any of Osicom's warranties, indemnification  
 obligations or obligations relating to returns, co-op advertising  
 payments, credits or any other matters set forth in this Agreement that  
 should survive termination or expiration in order to carry out their  
 intended purpose, all of which shall survive the termination or expiration  
 of this Agreement.  
  
 ARTICLE VIII. MISCELLANEOUS  
  
8.1 Binding Nature, Assignment, and Subcontractin This Agreement shall be  
binding on the partiesand their respective successors and assigns. Neither party  
shall have the power to assign this Agreement without the prior written consent  
of the other party.  
  
8.2 Counterparts This Agreement may be executed in several counterparts, all of  
which taken together shall constitute one single agreement between the parties.  
  
8.3 Headings. The Article and Section headings used in this Agreement are for  
reference and convenience only and shall not affect the interpretation of this  
Agreement.  
  
8.4 Relationship of Parties Tech Data is performing pursuant to this Agreement  
only as an independent contractor. Nothing set forth in this Agreement shall be  
construed to create the relationship of principal and agent between Tech Data  
and Osicom. Neither party shall act or represent itself, directly or by  
implication, as an agent of the other party.  
  
8.5 Confidentiality. Each party acknowledges that in the course of performance  
of its obligations pursuant to this Agreement, it may obtain certain information  
specifically marked as confidential or proprietary. Each party hereby agrees  
that all such information communicated to it by the other party, its parent,  
affiliates, subsidiaries, or Customers, whether  
  
  
  
before or after the Effective Date, shall be and was received in strict  
confidence, shall be used only for purposes of this Agreement, and shall not be  
disclosed without the prior written consent of the other party, except as may be  
necessary by reason of legal, accounting or regulatory requirements beyond  
either party's reasonable control. The provisions of this Section shall survive  
termination or expiration of this Agreement for any reason for a period of one  
(1) year after said termination or expiration.  
  
8.6 Arbitration Any disputes arising under this Agreement shall be submitted to  
arbitration in accordance with such rules as the parties jointly agree. If the  
parties are unable to agree on arbitration procedures, arbitration shall be  
conducted where the respondent party is headquartered, in accordance with the  
Commercial Arbitration Rules of the American Arbitration Association. Any such  
award shall be final and binding upon both parties.  
  
8.7 Notices, Wherever one party is required or permitted to give notice to the  
other party pursuant to this Agreement, such notice shall be deemed given when  
actually delivered by hand, by telecopier (if and when immediately confirmed in  
writing by any of the other means provided herein ensuring acknowledgment of  
receipt thereof for purposes of providing notice of default or termination), via  
overnight courier, or when mailed by registered or certified mail, return  
receipt requested, postage prepaid, and addressed as follows:  
  
In the case of Osicom: In the Case of Tech Data:  
Osicom Technologies, Inc. Tech Data Product Management, Inc.  
0000 00xx Xxxxxx 0000 Xxxx Xxxx Xxxxx  
Xxxxx 000 Xxxxxxxxxx, XX 00000  
Xxxxx Xxxxxx, XX 00000 Attn: Xxxxx Xxxx  
Attn: Xxxx Xxxxx Vice President of Marketing Operations  
President cc: Contracts Administration  
  
Either party may from time to time change its address for notification purposes  
by giving the other party written notice of the new address and the date upon  
which it will become effective.  
  
8.8 Force Majeure. The term "Force Majeure" shall be defined to include fires or  
other casualties or accidents, acts of God, severe weather conditions, strikes  
or labor disputes, war or other violence, or any law, order, proclamation,  
regulation, ordinance, demand or requirement of any governmental agency.  
  
 (a) A party whose performance is prevented, restricted or interfered with  
by reason of a Force Majeure condition shall be excused from such performance to  
the extent of such Force Majeure condition so long as such party provides the  
other party with prompt written notice describing the Force Majeure condition  
and immediately continues performance until and to the extent such causes are  
removed.  
  
 (b) If, due to a Force Majeure condition, the scheduled time of delivery  
or performance is or will be delayed for more than ninety (90) days after the  
scheduled date, the party not relying upon the Force Majeure condition may  
terminate, without liability to the other party, any purchase order or portion  
thereof covering the delayed Products.  
  
8.9 Return Material Authorization Numbers. Osicom is required to issue an RMA to  
Tech Data within four (4) business days of Tech Data's request; however, if the  
RMA is not received by Tech Data within four (4) business days, Osicom shall  
accept returned Products absent an RMA.  
  
8.10 Credits to Tech Data. In the event any provision of this Agreement or any  
other agreement between Tech Data and Osicom requires that Osicom grant credits  
to Tech Data's account, and such credits are not received within thirty (30)  
days, all such credits shall become effective immediately upon notice to Osicom.  
In such event, Tech Data shall be entitled to deduct any such credits from the  
next monies owed to Osicom. In the event credits exceed any balances owed by  
Tech Data to Osicom, Osicom shall, upon request from Tech Data, issue a check  
payable to Tech Data within ten (10) days of such notice. Credits owed to Tech  
Data shall not be reduced by early payment or prepayment discounts. Tech Data  
shall have the right to set off against any amounts due to Osicom under this  
Agreement or any invoices issued by Osicom related to this Agreement any and all  
amounts due to Tech Data from Osicom, whether or not arising under this  
Agreement.  
  
8.11 Severability. If, but only to the extent that, any provision of this  
Agreement is declared or found to be illegal, unenforceable or void, then both  
parties shall be relieved of all obligations arising under such provision, it  
being the  
  
  
  
intent and agreement of the parties that this Agreement shall be deemed amended  
by modifying such provision to the extent necessary to make it legal and  
enforceable while preserving its intent.  
  
8.12 Waiver. A waiver by either of the parties of any covenants, conditions or  
agreements to be performed by the other party or any breach thereof shall not be  
construed to be a waiver of any succeeding breach thereof or of any other  
covenant, condition or agreement herein contained.  
  
8.13 Remedies All remedies set forth in this Agreement shall be cumulative and  
in addition to and not in lieu of any other remedies available to either party  
at law, in equity or otherwise, and may be enforced concurrently or from time to  
time.  
  
8.14 Entire Agreement This Agreement, including any Exhibits and documents  
referred to in this Agreement or attached hereto, constitutes the entire and  
exclusive statement of Agreement between the parties with respect to its subject  
matter and there are no oral or written representations, understandings or  
agreements relating to this Agreement which are not fully expressed herein. The  
parties agree that unless otherwise agreed to in writing by the party intended  
to be bound, the terms and conditions of this Agreement shall prevail over any  
contrary terms in any purchase order, sales acknowledgment, confirmation or any  
other document issued by either party affecting the purchase or sale of Products  
hereunder.  
  
8.15 Governing Law. This Agreement shall have Florida as its situs and shall be  
governed by and construed in accordance with the laws of the State of Florida,  
without reference to choice of laws. The parties agree that this Agreement  
excludes the application of the 1980 United Nations Convention on Contracts for  
the International Sale of Goods, if otherwise applicable.  
  
8.16 Software Licenses. Whenever the Products described in this Agreement shall  
include software licenses, Osicom hereby grants to Tech Data a non-exclusive  
right to market, demonstrate and distribute the software to Customers of Tech  
Data. Tech Data acknowledges that no title or ownership of the proprietary  
rights to any software is transferred by virtue of this Agreement  
notwithstanding the use of terms such as purchase, sale or the like within this  
Agreement.  
  
8.17 Time of Performance. Time is hereby expressly made of the essence with  
respect to each and every term and condition of this Agreement.  
  
IN WITNESS WHEREOF, the parties have each caused this Agreement to be signed and  
delivered by its duly authorized officer or representative as of the Effective  
Date.  
  
Osicom Technologies TECH DATA PR9DUCT MANAGEMENT, INC.  
  
  
By: /s/ Xxxx Xxxxx By: /s/XXXXX X. XXXXXXXX  
Printed Name Xxxx Xxxxx Printed Name: XXXXX X. XXXXXXXX  
Title: President Title: Senior Vice President  
 Sales and Marketing  
  
Date: March 20, 1997 Date:  
  
 SCHEDULE 5.7  
  
 CO-OP GUIDELINES  
  
To increase the effectiveness of advertising and sales promotions Tech Data has  
developed the following advertising requirements:  
  
HOW CO-OP IS EARNED:  
- Co-op dollars will be at least two percent (2%) of the purchases made by  
 Tech Data, net of returns.  
- Co-op dollars will be accrued on a monthly basis.  
  
HOW CO-OP IS SPENT:  
  
  
  
- Tech Data will obtain Vendors prior approval for all co-op expenditures.  
- Tech Data will be reimbursed for 100% of the cost for ads or promotions  
 that feature Vendor products.  
- -Co-op dollars will be used within the 12 months immediately following  
 the month in which they are earned.  
  
HOW CO-OP IS CLAIMED:  
  
- Claims for co-op will be submitted to vendor within 60 days of the event date.  
- -Claims for co-op will be submitted with a copy of vendor prior approval  
 and proof of performance.  
- -Payment must be remitted within 30 days of the claim date, or Tech Data  
 reserves the right to deduct from the next invoice.  
  
CO-OP REPORTING:  
- Vendor will submit a monthly co-op statement outlining (i) co-op earned, (ii)  
 co-op used and (iii) co-op claims paid.  
-  
  
Accepted:  
-  
- /s/ Xxxx Xxxxx  
-  
Name: Xxxx Xxxxx  
  
Title: President  
  
Date: March 20, 1997