

*Thill
Current*

INDEPENDENT CONTRACTOR AGREEMENT

THIS AGREEMENT, effective the 1st day of July, 2003, by and between Independent Medical Distributors Association, ("IMDA"), 5524 Falmouth Road, Fairway, KS 66201, and Mark Thill ("Thill"), 226 S. Rammer Avenue, Arlington Heights, Illinois 60004.

IMDA is a national trade association whose members are engaged in the business of acting as specialty distributors of medical devices and products.

Thill is an individual who has determined that he wishes to perform work on behalf of IMDA on an independent contractor basis. IMDA has further determined that it wishes to utilize Thill's services to perform certain duties, including public relations duties, as set forth in greater detail below.

Now, intending to be legally bound hereby and in consideration of the mutual covenants, duties, and obligations set forth herein, the parties agree as follows:

1. **SERVICES TO BE PROVIDED**

a. Thill will perform a variety of duties on behalf of IMDA, as set forth in this Agreement and Exhibit A attached hereto and made part hereof, conduct business in such a manner as to maintain and increase the good will and reputation of IMDA and its members, and conform to all laws, regulations and codes of ethics that are applicable to his duties and conduct.

b. During the pendency of this Agreement, Thill will perform the services required of him under this Agreement for IMDA.

c. Thill will create, write, and edit a newsletter, as provided in Exhibit A hereof.

d. Thill will diligently perform services to promote the interests of IMDA, including, but not limited to working to increase membership and to promote IMDA's visibility among potential members and manufacturers and purchasers of medical products. Among the services he may perform to carry out these objectives include evaluating and creating cost-effective advertising; creating monthly mailings to other trade associations; promoting constructive economically beneficial relationships with purchasers, including hospital and organizational purchasers; and working with and expanding IMDA's data base of individuals and companies to which to distribute information relative to these goals.

e. Thill will work closely with the IMDA Board of Directors and management executives in performing his services and to the greatest extent possible will utilize the services and facilities of IMDA's staff to prepare and disseminate the materials, newsletters, and correspondence that he creates.

f. Thill will attend all meetings of IMDA's Board of Directors and will present a report of his activities at each such meeting.

g. Thill will obtain authorization for all expenditures, except for incidental expenditures such as telephone calls and individual mailings, from IMDA's Board of Directors or from IMDA's President. All issues that arise or questions that Thill has regarding the performance of his services pursuant to this contract will be discussed with the President of IMDA. Periodically, as and when requested by IMDA's Board of Directors, Thill will submit a written or oral report to the directors of IMDA detailing the services that he has performed for IMDA pursuant to the terms of this contract and the services that he intends to perform in the future to further the promotion of the interests of IMDA as enunciated in this agreement.

h. Thill will obtain authorization from the IMDA Board of Directors before undertaking specific projects in carrying out the goals of this Agreement.

i. Thill shall have no authority to bind IMDA without specific, written authority from IMDA.

j. Thill warrants that he is not under any obligation, contractual or otherwise, to any other person or entity that could interfere with his performance of this Agreement.

k. As consideration for the performance of his services under this Agreement, IMDA shall pay to Thill the sum of \$33,600.00 per year, payable \$8,400.00 per quarter, on or before the first day of January, April, July and October of each year. In addition, IMDA will reimburse Thill for all reasonable expenses incurred in performing his services pursuant to the terms of this Agreement, including, but not limited to, long distance telephone expenses and travel expenses.

l. IMDA will, when it is efficient to do so, provide administrative services for the production and mailing of IMDA's newsletter and any other materials prepared by Thill.

2. **TERM OF AGREEMENT.** This Agreement will be in effect from July 1, 2003 until June 30, 2004. The Agreement shall renew for successive one year periods unless thirty days' written notice is given prior to the end of the initial term or any term thereafter or unless terminated in accordance with any other provision of this Agreement.

3. **DEATH OR DISABILITY.** In the event of death or disability of Mark Thill; Thill, or his estate, will be entitled only to such sums as he has already earned.

4. **ASSIGNMENT OF AGREEMENT.** This Agreement may not be transferred or assigned by Thill, as IMDA is contracting with Thill based on his individual abilities and experience.

5. **ASSIGNMENT OF AND RIGHTS TO MATERIALS.** All rights in any materials, products, or programs developed by Thill on behalf of IMDA shall be the exclusive property of and belong to IMDA. Thill hereby assigns all of his rights therein to IMDA and agrees to execute any instruments necessary to accomplish such assignment. All materials that Thill creates or develops for IMDA shall remain the separate and exclusive property of IMDA and Thill shall not, during the terms of this Agreement or at any time thereafter, disclose such materials to any person, firm, association, or other entity for any reason or purpose.

6. **ADVERSE ACTIVITIES.** During the period of this Agreement and for a period of one year after the termination or expiration of the Agreement by either party, Thill will not do anything that could directly or indirectly adversely affect the interests of IMDA. In the event of Thill's actual or threatened breach of the provisions of this paragraph, IMDA shall be entitled to an injunction restraining Thill from breaching the provisions this paragraph. Nothing shall be construed as prohibiting IMDA from pursuing any other available remedies for such breach or threatened breach, including the recovery of damages from Thill.

7. **TERMINATION.**

a. Notwithstanding any provision in this Agreement to the contrary, IMDA may terminate this Agreement upon thirty days' written notice to Thill of the following in the event that Thill does not or can not satisfy the complaint to the satisfaction of IMDA within such thirty day period:

- i. Failure to perform services provided for in Exhibit A in a competent and timely manner;
- ii. Failure to respond promptly to the reasonable requests of the officers and directors of IMDA in connection with the services Thill is to perform pursuant to the terms of this Agreement;
- iii. Failure of Thill to use his best efforts to support the aims and continued viability of IMDA;
- iv. The disability of Mark Thill preventing him from performing any of the duties set forth herein.

b. In addition, IMDA may terminate this Agreement without notice in the following events:

- i. Breach by Thill of any of the provisions of this Agreement;
- ii. Institution of prosecution by indictment or information against Thill for any felony or misdemeanor;
- iii. Any violation by Thill of federal or state law;
- iv. The death of Mark Thill.

c. Upon termination or expiration of this Agreement, Thill will prepare a list of all pending and unfinished business and give it to IMDA.

8. **NOTICE.** Any Notice required to be given under this Agreement shall be deemed given if in writing and sent by first-class mail, postage prepaid, to the address of Thill stated above, or to the address of IMDA stated above. Either party can change the address to which Notice is to be given by giving Notice as provided herein.

9. **WAIVER OF BREACH.** The waiver by IMDA of a breach of any provision of this Agreement by Thill shall not operate or be construed as a waiver of any subsequent breach by Thill. No waiver shall be valid unless in writing and signed by an authorized officer of IMDA.

10. **RETURN OF IMDA'S PROPERTY.** At IMDA's request, or if Thill is terminated or terminates this Agreement for any reason, or if this Agreement is not renewed, Thill shall return all of IMDA's property, including literature, equipment, information contained in databases, any other material or property belonging to **IMDA**.

11. **INDEPENDENT CONTRACTOR.** It is agreed that Thill is for all purposes an independent contractor.

12. **APPLICABLE LAW.** This Agreement shall be considered as having been entered into in the State of Kansas. The Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

13. **COMPLETE AGREEMENT.** This Agreement constitutes the entire agreement between Thill and IMDA. No modifications of this Agreement shall be binding on either party unless made in writing and signed by both parties. This Agreement supersedes and cancels any and all previous contracts, agreements, arrangements, or understandings, oral and/or written, that may have existed or may exist between the parties. There are no understandings, representations, or warranties of any kind, express or implied, that are not expressly set forth herein. This Agreement shall be binding on the heirs, executors, and administrators of Thill.

14. **SEVERABILITY OF AGREEMENT.** Should any provision of this Agreement be found, held, or deemed to be unenforceable, voidable, or void as contrary to law or public

policy, the parties intend that the remaining provisions of the Agreement shall continue in full force and be binding upon the parties, their heirs, personal representatives, executors, and assigns.

15. **ARBITRATION.** Any controversy arising between the parties hereto relating to or arising out of this Agreement shall be resolved by binding, nonappealable arbitration under the rules of and before the American Arbitration Association in the State of Kansas. Such arbitration may result in an award of injunctive relief, as well as an award of damages. Judgment or decree may be entered in any court of competent jurisdiction in accordance with the Federal Arbitration Act and shall be nonappealable. The arbitrator shall have the authority to determine all issues between the parties, including the issue of arbitrability.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

**INDEPENDENT MEDICAL DISTRIBUTORS
ASSOCIATION**

Attest: _____

By: _____

Title: _____

Date: _____

Witness: _____

MARK THILL

Date: _____

imda/thill.agr

EXHIBIT A**SPECIFIC DUTIES TO BE PERFORMED BY INDEPENDENT CONTRACTOR**

1. Write newsletter (10 to 12 issues per year), work with artist on design.
2. Adapt newsletter for manufacturers.
3. Work with webmaster to keep website updated and contemporary-looking.
4. Work with board and artist to design IMDA brochures.
5. Produce articles about specialty sales and marketing for other publications (e.g., Medical Device & Diagnostic Industry, MX and Repertoire).
6. Assist recruitment efforts by making necessary phone calls to keep prospect lists updated.
7. Assist in Annual Conference plans by contacting potential speakers, performing administrative tasks for the board (e.g., sketching out agendas), and working with headquarters to publicize event (through the newsletter, e-mails and mailings).
8. Answer questions about speciality sales and marketing from manufacturers, on a periodic basis.
9. Assist members of the board and officers of IMDA to draft letters and other communications, as necessary and as requested, dealing with the functions of IMDA.
10. Attend conferences, board meetings and other functions of or relating to IMDA as reasonably requested by the board.