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 Exhibit 10.5  
  
 DISTRIBUTION AGREEMENT  
  
 This DISTRIBUTION AGREEMENT (the "Agreement") is entered into as of the  
29th day of December, 1999, by and between AKRON BIO-MEDICAL CORP., an Ohio  
corporation ("ABMC") and XXXXXXXX RESONANCE ENTERPRISES, INC., a Nevada  
corporation ("JRSE").  
  
 WITNESSETH, THAT:  
  
 WHEREAS, JRSE has developed and has an exclusive license with respect  
to certain technologies for use in the production of magnetic resonance  
machines; and  
  
 WHEREAS, JRSE and ABM Manufacturing, Inc. ("ABM Manufacturing"), a  
corporation affiliated with ABMC, have entered into a certain License Agreement  
of even date herewith (the "License Agreement") whereby JRSE has granted to ABM  
Manufacturing the right to manufacture said magnetic resonance machines; and  
  
 WHEREAS, JRSE has agreed to grant to ABMC a license to sell and  
distribute certain magnetic resonance machines, upon the terms and subject to  
the conditions set forth in this Agreement; and  
  
 WHEREAS, JRSE has further agreed to grant to ABMC a non-exclusive  
license to use the Proprietary Marks (as such term is hereinafter defined) in  
connection with the sale and distribution of certain magnetic resonance  
machines, upon the terms and subject to the conditions set forth in this  
Agreement.  
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Prior to following-up on any Sales Lead (as such term is hereinafter defined)  
received by ABMC with respect to the distribution of one or more Other Unit,  
ABMC shall first notify JRSE, and then all other distributors to whom JRSE has  
granted the right to distribute the Other Units, concerning the Sales Lead. In  
the event any other distributor sells one or more Other Units as a result of a  
Sales Lead received from ABMC, ABMC shall be entitled to receive a royalty  
payment of two percent (2%) thereon in accordance with the terms of Section 5(b)  
hereof. The parties agree that JRSE has final decision-making authority as to  
the selection of representation concerning the Other Units. JRSE agrees that the  
terms of any distributorship agreement, whether written or oral, that it may  
enter into with another distributor with respect to the Other Units shall be  
consistent with the terms of this Section 2(b) and Section 5(b) hereof. For  
purposes of this Agreement, the term "Sales Lead" shall mean any lead that ABMC  
or JRSE may receive with respect to the sale or distribution of the Portable  
Units or the sale, distribution or leasing of the Other Units, as the case may  
be.  
  
 (c) JRSE agrees that in the event it receives any Sales Leads  
with respect to the Portable Units or the Other Units, it shall promptly notify  
ABMC and, if it so chooses, any other distributor who would have the right to  
sell said units, concerning the Sales Lead.  
  
 (d) For purposes of this Agreement, the term "Territory" shall  
mean all geographical locations within the United States (including Alaska and  
Hawaii), Mexico, Canada and the Caribbean (as such term is defined on Exhibit  
"A" hereto).  
  
 (e) JRSE agrees that, except as expressly provided herein, the  
rights granted to ABMC hereunder with respect to the marketing, sale and  
distribution of the Portable Units via electronic media shall be exclusive in  
nature. JRSE further agrees that in the event JRSE or any third party intend to  
sell the Portable Units via electronic media with the prior written approval of  
  
  
  
  
  
  
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ABMC, as required hereunder, JRSE or said third party shall purchase said  
Portable Units from ABMC unless ABMC agrees otherwise.  
  
 3. GRANT OF LICENSE. Subject to the additional terms set forth in this  
Agreement, JRSE hereby grants to ABMC a non-exclusive license to use the  
Proprietary Marks in connection with the distribution and marketing of the  
Portable Units and the Other Units as described in Section 2 hereof.  
  
 4. TERM AND TERMINATION.  
  
 (a) TERM OF AGREEMENT. Subject to the terms of this Section 4,  
the initial term of this Agreement shall commence as of the date first written  
above and shall continue for a period of eight (8) years thereafter (the  
"Initial Term"). This Agreement shall be automatically renewed for two (2)  
additional terms of eight (8) years each (the "Renewal Terms") following the  
expiration of the Initial Term unless ABMC provides JRSE with written notice of  
its desire not to renew this Agreement at least ninety (90) days prior to the  
expiration thereof. For purposes of this Agreement, the terms "Initial Term" and  
"Renewal Terms" are sometimes collectively referred to as the "Term". If this  
Agreement has been renewed for both Renewal Terms and has not been earlier  
terminated, then, during the last ninety (90) days of the second of the Renewal  
Terms, JRSE and ABMC shall negotiate in good faith to reach a mutually  
acceptable agreement for the further extension of this Agreement. If JRSE and  
ABMC are unable to reach such an agreement within that period of time, then this  
Agreement shall automatically terminate at the end of the second of the Renewal  
Terms.  
  
 (b) RIGHT TO TERMINATE - PERFORMANCE CRITERIA. JRSE and ABMC  
agree that notwithstanding anything to the contrary contained herein, JRSE shall  
have no right to terminate this Agreement during the first one (1) year period  
of the Initial Term, except for breach of this  
  
  
  
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Agreement by ABMC. At the end of said initial one (1) year period, JRSE and  
ABMC shall mutually determine reasonable performance criteria with respect to  
ABMC's sale of the Portable Units hereunder based upon the results of ABMC's  
test marketing and realistic business growth patterns. If JRSE and ABMC are  
unable to reach an agreement on reasonable performance criteria within thirty  
(30) days after the end of the initial one (1) year period, then either party  
may terminate this Agreement by written notice of termination to the other party  
delivered within forty-five (45) days after the end of the initial one (1) year  
period. For purposes hereof, "reasonable performance criteria" is defined as  
that which is logically attainable in terms related to the empirical data  
gleaned from market analyses established during the course of the first year of  
this Agreement from the date of execution based upon mutual and independent  
inquiry by both parties hereto. If ABMC fails to adhere to said performance  
criteria at any time following the end of said initial one (1) year period, JRSE  
agrees to provide ABMC with written notice of ABMC's failure to perform. ABMC  
shall have one (1) month following the date on which it receives the written  
notice from JRSE to begin taking reasonable steps to cure its failure to perform  
and shall have three (3) months from said date to cure said failure to JRSE's  
reasonable satisfaction. If it fails to do so, JRSE shall have the right to  
terminate this Agreement upon five (5) days written notice to ABMC.  
  
  
 (c) RIGHT TO TERMINATE - FAILURE TO PAY FEE. If ABMC fails to  
make any payment due hereunder within thirty (30) days of the date on which said  
payment is due, the following shall apply: (i) ABMC shall pay interest thereon  
from and including the thirty-first (31st) day after the date on which such  
payment becomes due until the date the entire amount is paid in full at a rate  
equal to one percent (1%) per annum over the prime rate being charged by  
CitiBank, N.A., in New York as of the close of the business on the date the  
payment first becomes due, but in no event greater than the highest rate  
permitted by law; and (ii) if such default shall continue  
  
  
  
  
  
  
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uncured for a period of forty-five (45) days after said payment is due, JRSE  
shall have the right to terminate this Agreement upon written notice of  
termination to ABMC. ABMC shall have the option of preventing the termination of  
this Agreement by taking corrective action that cures the default, if such  
corrective action is taken prior to the end of the time period stated in the  
previous sentence and if there are no other defaults during such time period.  
  
 (d) RIGHT TO TERMINATE - TERMINATION OF LICENSE AGREEMENT. If the  
License Agreement is terminated for any reason and JRSE is unable to provide  
Portable Units or Other Units to AMBC for distribution and sale because of such  
termination, then JRSE shall have a grace period of 180 calendar days in which  
to license other manufacturers to produce Portable Units and the Other Units and  
to restore production of Portable Units and Other Units to a sufficient level to  
permit ABMC to distribute and sell substantially the same number of Portable  
Units and Other Units as ABMC had been distributing and selling prior to the  
disruption in production caused by the termination of the License Agreement. If  
JRSE fails to cause production of the Portable Units and the Other Units to so  
resume with such period of 180 calendar days, then ABMC, at its sole discretion,  
may terminate this Agreement forthwith by written notice.  
  
 (e) OTHER MATERIAL BREACH. If ABMC or JRSE otherwise fails to  
perform any of the material terms, conditions, agreements or covenants in this  
Agreement on its part to be performed (hereinafter referred to as "Other  
Default") and such Other Default is not curable, or if such default is curable  
but continues uncured for a period of thirty (30) days after notice thereof has  
been given to the defaulting party in writing by the other party or all  
reasonable steps necessary to cure such Other Default have not been taken by the  
defaulting party within said  
  
  
  
  
  
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 NOW, THEREFORE, in consideration of the foregoing and for other good  
and valuable consideration, the receipt and sufficiency of which are hereby  
expressly acknowledged, the parties hereto do hereby agree as follows:  
  
 1. DESCRIPTION OF UNITS AND PROPRIETARY MARKS.  
  
 (a) JRSE has developed and has an exclusive license with respect  
to certain technologies (collectively, the "Technology") used in the production  
of a portable magnetic resonance machine (the "Portable Unit") and non-portable  
magnetic resonance machines (collectively, the "Other Units"). For purposes  
hereof, the terms "Portable Units" and "Other Units" shall be deemed to include  
any improvements, upgrades or modifications made to the Portable Units or the  
Other Units, as the same exist as of the date of this Agreement, or any future  
models thereof.  
  
 (b) The parties further agree and acknowledge that JRSE has  
obtained or may during the term of this Agreement obtain rights to various trade  
names, trademarks, service marks and related logos associated with the Portable  
Units and/or the Other Units (collectively, the "Proprietary Marks"). For  
purposes of this Agreement, the term Proprietary Marks shall be deemed to  
include any trade names, trademarks, service marks and logos associated with the  
Portable Units and/or the Other Units, including but not limited to those names,  
marks and logos which are registered with the Federal Patent and Trademark  
Office or any state agency.  
  
 2. APPOINTMENT.  
  
 (a) Upon the terms and subject to the conditions set forth in  
this Agreement, JRSE hereby appoints ABMC as the exclusive distributor of the  
Portable Units in the Territory (as such term is hereinafter defined) and grants  
to ABMC the exclusive right to market the Portable Units via television  
(including all cable television outlets), radio and direct mailings and the  
non-exclusive right to market the Portable Units via the internet, newspapers  
and magazines.  
  
 (b) In addition, JRSE hereby appoints ABMC as a non-exclusive  
distributor of the Other Units in the Territory; provided, however, that ABMC  
shall not be entitled to distribute or enter into any arrangement for the  
distribution of Other Units without the prior approval of JRSE.  
  
  
  
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thirty (30) day period, the other party, at its sole election, may terminate  
this Agreement forthwith by written notice.  
  
 (f) BANKRUPTCY, INSOLVENCY AND RELATED OCCURRENCES.  
  
 (i) AUTOMATIC TERMINATION. In the event that ABMC files a  
petition in bankruptcy, is adjudicated as bankrupt or files a petition or  
otherwise seeks relief under or pursuant to any bankruptcy, insolvency or  
reorganization statute or proceeding, or if a petition in bankruptcy is filed  
against it, which is not vacated within sixty (60) days, or it becomes insolvent  
or makes an assignment for the benefit of its creditors or a custodian, receiver  
or trustee is appointed for it or a substantial portion of its business or  
assets, which custodian, receiver or trustee is not discharged within ninety  
(90) days, this Agreement shall terminate automatically and forthwith.  
  
 (ii) NO RIGHT OF ABMC REPRESENTATIVES TO CONTINUE AGREEMENT.  
The rights granted herein are personal to ABMC and no assignee for the benefit  
of creditors, custodian, receiver, trustee in bankruptcy, sheriff or any other  
officer of the court or official charged with taking over custody of ABMC's  
assets or business shall have any right to continue this Agreement or to exploit  
or in any way use the Technology or the Proprietary Marks if this Agreement  
terminates pursuant to this subsection 3(e).  
  
  
 (iii) JRSE RIGHT OF FIRST REFUSAL. Notwithstanding the  
provisions of subsection 3(f)(ii) above, in the event that, pursuant to local  
bankruptcy law, a trustee in bankruptcy of ABMC or ABMC, as debtor, is permitted  
to assume this Agreement and does so and, thereafter, desires to assign this  
Agreement to a third party, which assignment satisfies the requirements of that  
bankruptcy law, the trustee or ABMC, as the case may be, shall notify JRSE of  
same in writing. Said notice shall set forth the name and address of the  
proposed assignee, the proposed  
  
  
  
  
  
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consideration of the assignment and all other relevant details thereof. The  
giving of such notice shall be deemed to constitute an offer to JRSE to have  
this Agreement assigned to it or to its designee for such consideration, or its  
equivalent in money, and upon such terms as are specified in the notice. The  
aforesaid offer may be accepted only by written notice given to the trustee or  
ABMC, as the case may be, by JRSE within fifteen (15) days after JRSE's receipt  
of the notice from such party. If JRSE fails to give its notice to such party  
within the said fifteen (15) days, such party may complete the assignment  
referred to in its notice, but only if such assignment is to the entity named in  
said notice and for the consideration and upon the terms specified herein.  
Nothing contained herein shall be deemed to preclude or impair any rights which  
JRSE may have as a creditor in any bankruptcy proceeding.  
  
 5. LICENSING FEE.  
  
 (a) In consideration of the rights granted to it hereunder, ABMC  
hereby agrees to pay the following to JRSE:  
  
 (i) ABMC shall pay a one-time fee in the amount of Fifty  
Thousand Dollars ($50,000.00), payable as follows:  
  
 A. ABMC shall pay Twenty Thousand Dollars ($20,000.00)  
to JRSE in readily available funds upon the execution of this Agreement by both  
parties hereto.  
  
 B. ABMC shall pay the remaining Thirty Thousand Dollars  
($30,000.00) to JRSE in three (3) consecutive annual installments of Ten  
Thousand Dollars ($10,000.00) each, with interest on the outstanding principal  
balance due hereunder from time to time at the Prime Rate (as such term is  
hereinafter defined) in effect as of the date hereof. The principal amount due  
hereunder and the interest due thereon shall be payable in three (3) consecutive  
annual installments commencing on the first year anniversary of this Agreement  
and  
  
  
  
  
  
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continuing annually thereafter until all amounts due hereunder have been paid in  
full. ABMC shall be entitled to prepay all or any portion of the amount due  
hereunder at any time without penalty. For purposes hereof, the term "Prime  
Rate" shall mean the rate publicly announced by ABMC's primary commercial lender  
as its base rate for commercial lending purposes.  
  
 (ii) In addition, ABMC shall pay to JRSE an amount equal to  
fifteen percent (15%) of ABMC's Net Sales Revenue (as such term is hereinafter  
defined) with respect to all sales or leases of the Portable Units or the Other  
Units made by ABMC during the Term, payable no later than thirty (30) days  
following the end of each (A) calendar quarter during the first year of the Term  
and (B) month thereafter for the rest of the Term. For purposes of this  
Agreement, the term "Net Sales Revenue" shall mean all revenue that ABMC  
collects from its sale or leasing of the Portable Units or the Other Units  
during the period in question, minus the following: (i) the amount of any  
federal, state and local taxes that ABMC is required to pay in connection  
therewith, other than taxes on ABMC's income; (ii) the amount of any costs and  
expenses reasonably incurred by ABMC with respect to the shipment of said units;  
and (iii) customer returns of said units. Notwithstanding the foregoing, in the  
event a customer returns a Portable Unit or Other Unit that ABMC sold to it  
after ABMC has paid a royalty with respect to said unit to JRSE, ABMC shall be  
entitled to deduct the amount of said royalty from the royalties due to JRSE for  
the next fiscal period. With respect to any bulk sales of the Portable Units  
made hereunder, said Portable Units shall be deemed to have been sold and the  
sales revenue collected at the time of shipment to a customer, F.O.B. point of  
departure.  
  
 (iii) Within thirty (30) days following the end of each (A)  
calendar quarter during the first year of the Term and (B) month thereafter for  
the rest of the Term, ABMC shall furnish to JRSE its report for the preceding  
period prepared in accordance with the  
  
  
  
  
  
  
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terms hereof. Each report that ABMC furnishes to JRSE shall contain the  
following information: (i) a description of each Portable Unit or Other Unit  
sold or leased by ABMC during the period in question; (ii) the amount of revenue  
that ABMC collected during the period in question from its sale or leasing of  
and the price of each of the Portable Units or Other Units and the amount of  
federal, state and local taxes, if any, that ABMC is required to pay in  
connection therewith; (iii) the amount of the royalty payment being paid to JRSE  
hereunder; and (iv) such additional information as JRSE may reasonably request.  
  
 (b) With respect to any Other Units sold or leased by another  
distributor following ABMC notifying the distributor of a Sales Lead in  
accordance with Section 2(b) hereof, the parties agree that JRSE shall pay to  
ABMC an amount equal to one-eighth (1/8) of the royalty that JRSE is entitled to  
receive from the other distributor with respect to the sale or leasing of the  
Other Unit(s), payable no later than thirty (30) days following the month of  
JRSE's receipt thereof. In order to provide JRSE with the information necessary  
to pay to ABMC any amounts owed to it under this subsection (b), ABMC shall  
periodically during the Term provide JRSE with an updated list of any Sales  
Leads of which it notifies another distributor pursuant to Section 2(b) hereof.  
  
 6. OWNERSHIP AND USE OF TECHNOLOGY AND PROPRIETARY MARKS.  
  
 (a) ABMC hereby acknowledges that Xxxxxxxx is and shall at all  
times remain the owner, and that JRSE is and shall at all times remain the sole  
and exclusive licensor, of all right, title and interest in and to the  
Technology and the Proprietary Marks and that its distribution of the Portable  
Units and Other Units and use of the Proprietary Marks hereunder shall not  
create in ABMC's favor any right, title or interest in or to the Technology or  
the Proprietary Marks or any goodwill associated therewith. During the Term and  
at all times thereafter, ABMC shall not  
  
  
  
  
  
  
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knowingly do or cause to be done any act or thing which may in any way impair or  
tend to impair the rights, title and interest of JRSE in and to the Technology  
or the Proprietary Marks or any registrations with respect thereto, or which may  
reduce the value of the Technology or detract from its reputation, nor shall  
ABMC in any manner represent that it has any interest therein except as set  
forth herein. ABMC further acknowledges and agrees that as the sole and  
exclusive licensee of the Technology and the Proprietary Marks, JRSE shall have  
the sole and exclusive right to use, license or otherwise transfer any and all  
of its rights, title and interest in and to the Technology and the Proprietary  
Marks, in accordance with the terms of this Agreement, the License Agreement and  
any other agreement affecting JRSE's right, title and interest in and to the  
Technology or the Proprietary Marks that JRSE may be a party to or may enter  
into at a later date. Upon the termination of this Agreement for any reason, all  
rights to distribute the Portable Units and Other Units and to use the  
Proprietary Marks granted to ABMC hereunder shall terminate and revert to JRSE,  
except to the extent said rights are sublicensed, assigned or transferred to  
another party with the prior consent of JRSE in accordance with Section 9  
hereof. To the extent that any use of the Technology or Proprietary Marks by  
ABMC confers rights therein to ABMC other than those granted herein, ABMC hereby  
assigns said rights to JRSE, subject to all of the terms hereof.  
  
 (b) With respect to ABMC's use of the Proprietary Marks  
hereunder, the parties hereby agree as follows:  
  
 (i) No use of the Proprietary Marks shall state that the  
owner of the Proprietary Marks is any party other than Xxxxx X. Xxxxxxxx, D.D.S.  
("Xxxxxxxx").  
  
 (ii) All uses of the Proprietary Marks shall at all times be  
in accordance with applicable laws and regulations.  
  
  
  
  
  
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 (iii) ABMC shall at no time make the Proprietary Marks  
available for use by any third party except as authorized by JRSE in writing.  
  
 7. WARRANTIES AND REPRESENTATIONS OF PARTIES.  
  
  
 (a) WARRANTIES AND REPRESENTATIONS OF JRSE. JRSE represents and  
warrants to ABMC the following:  
  
 (i) JRSE is a corporation duly organized and existing under  
the laws of the State of Nevada and has the full corporate power and authority  
to enter into and perform this Agreement and has taken all necessary corporate  
action to authorize and approve the execution, delivery and performance hereof;  
  
  
 (ii) This Agreement constitutes a legal, valid and binding  
obligation of JRSE, enforceable in accordance with the terms hereof;  
  
 (iii) With the exception of those rights granted to ABM  
Manufacturing in the License Agreement, Xxxxxxxx owns all rights to and interest  
in the Technology, as well as certain design and engineering drawings, tooling  
and fixture data, specifications, written descriptions, procedure documentation,  
operating and maintenance manuals and like materials associated with the  
Technology, and has granted to JRSE an exclusive license therein pursuant to  
which JRSE has the right and the ability to grant to ABMC the right to  
distribute the Portable Units and Other Units as set forth herein;  
  
 (iv) Xxxxxxxx owns all rights to and interest in the  
Proprietary Marks and has granted to JRSE an exclusive license in the  
Proprietary Marks pursuant to which JRSE has the right and ability to grant to  
ABMC a license to use the same as set forth herein; and  
  
  
 (v) Xxxxxxxx and/or JRSE, as appropriate, have taken all  
necessary actions and has obtained all necessary governmental approvals,  
opinions, certifications, licenses and permits that may be required in  
connection with the manufacture, sale and leasing of the Portable  
  
  
  
  
  
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Units and the Other Units, including but not limited to those actions and  
approvals which are required for the retail sale of the Portable Units to the  
general public.  
  
 (b) JRSE shall defend and hereby indemnifies and otherwise holds  
ABMC harmless from and against any and all losses, liability, claims, damages  
and expenses (including reasonable attorneys' fees and expenses) which ABMC may  
sustain by reason of a third party action or claim arising out of or resulting  
from a breach JRSE of their representations and warranties hereunder. ABMC must  
give JRSE prompt written notice of any such action, claim or proceeding and  
JRSE, in its sole discretion, then may take such action as it deems advisable to  
defend such action, claim or proceeding on behalf of ABMC. In the event  
appropriate action is not taken by JRSE within thirty (30) days after its  
receipt of notice from ABMC, ABMC shall have the right to defend such action,  
claim or proceeding, but no settlement thereof may be made without the approval  
of JRSE, which approval shall not be unreasonably withheld. In either case, ABMC  
and JRSE shall keep each other fully advised of all developments, shall provide  
each other with copies of all documents exchanged in court, and shall cooperate  
fully with each other in all respects in connection with any such defense as is  
made. Such indemnification shall be deemed to apply solely to (a) the amount of  
the judgment, if any, against ABMC, (b) any sums paid by ABMC in settlement, and  
(c) the expenses incurred by ABMC in connection with its defense. Such  
indemnification by JRSE shall not apply to any damages sustained by ABMC by  
reason of such infringement other than those specified above, and in no event  
shall apply to consequential damages, unless those consequential damages are  
included in the amount of the judgment against ABMC. The provisions of this  
subsection (7)(b) and JRSE's obligations hereunder shall survive the expiration  
or termination of this Agreement.  
  
  
  
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 (d) WARRANTIES AND REPRESENTATIONS OF ABMC. ABMC represents and  
warrants to JRSE the following:  
  
 (i) ABMC is a corporation duly organized and existing under  
the laws of the State of Ohio and has the full corporate power and authority to  
enter into and perform this Agreement and has taken all necessary corporate  
action to authorize and approve the execution, delivery and performance hereof;  
  
 (ii) This Agreement constitutes a legal, valid and binding  
obligation of ABMC, enforceable in accordance with the terms hereof; and  
  
 (iii) ABMC shall at all times use the Proprietary Marks in  
accordance with the terms of this Agreement.  
  
  
 (d) OWNER'S ASSURANCE. Xxxxxxxx acknowledges that he is the owner  
of the Technology and the Proprietary Marks and that he has granted a license  
therein to JRSE that enables JRSE to grant a license therein to ABMC.  
  
 8. INDEMNIFICATION.  
  
 (a) ABMC agrees to indemnify and hold harmless JRSE and its  
officers, directors, shareholders, employees, agents, successors and assigns  
from and against any and all claims, demands, defenses, injuries, set-offs,  
counterclaims, damages, losses, judgments, liabilities, penalties or fines of  
any nature whatsoever (including any damage to person or property), and any  
reasonable costs and expenses related thereto, including reasonable attorneys'  
fees, arising out of or relating to ABMC's breach of any of its covenants,  
obligations, warranties or representations arising under the terms of this  
Agreement, including but not limited to those warranties and representations set  
forth in Section 7 hereof.  
  
  
  
  
  
  
  
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 (b) JRSE agrees to indemnify and hold harmless ABMC and its  
officers, directors, shareholders, employees, agents, successors and assigns  
from and against any and all claims, demands, defenses, injuries, set-offs,  
counterclaims, damages, losses, judgments, liabilities, penalties or fines of  
any nature whatsoever (including any damage to person or property), and any  
reasonable costs and expenses related thereto, including reasonable attorneys'  
fees, arising out of or relating to the following:  
  
 (i) JRSE's breach of any of its covenants, obligations,  
warranties or representations arising under the terms this Agreement, including  
but not limited to those warranties and representations set forth in Section 7  
hereof; or  
  
 (ii) Any failure of the Portable Units or the Other Units to  
perform in a reasonably satisfactory manner according to specifications if such  
failure is attributable to any act or omission of JRSE, its employees or agents  
(with the exception of ABM Manufacturing).  
  
 9. ASSIGNMENT, SUBLICENSE OR TRANSFER. The rights and benefits  
conferred upon ABMC hereunder shall inure to the sole benefit of ABMC, shall not  
be deemed to be coupled with an interest and shall not, in whole or in part, be  
assigned, sublicensed or otherwise transferred by ABMC to any third party  
without the prior written consent of JRSE. Notwithstanding the foregoing, the  
parties agree that ABMC shall be entitled to sublicense, with the written  
consent of JRSE (which consent may not be unreasonably withheld), all or a  
portion of its rights to distribute the Portable Units and/or the Other Units  
hereunder if, after considering the sales and marketing capabilities and other  
related performance criteria with respect to the potential sublicensee, it may  
reasonably be concluded that said sublicensee could perform such activities in a  
manner that is reasonably consistent with ABMC's performance thereof.  
  
  
  
  
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 10. AGENCY. Both parties agree and acknowledge that ABMC and its  
respective employees and agents shall not, at any time for any reason, be deemed  
to be employees or agents of JRSE.  
  
 11. NON-DISCLOSURE. Neither party shall release, or cause or permit to  
be released, any press notices, publicity (oral or written) or advertising, or  
otherwise announce or disclose, or cause or permit to be announced or disclosed,  
in any manner whatsoever, the existence of this Agreement and its contents  
without first obtaining the express written consent of the other party hereto.  
Notwithstanding the foregoing, nothing set forth in the preceding sentence shall  
be deemed to: (a) prevent either party from discussing this Agreement and its  
contents with said parties' legal counsel and accountants, or any employees and  
agents who, in the normal course of the parties' business, have a need to know  
such information; (b) prevent ABMC from marketing the Portable Units in the  
manner it deems appropriate and without the prior consent of JRSE, subject to  
the terms of this Agreement; or (c) prevent JRSE from making any public  
disclosure or filing of this Agreement without ABMC's consent if JRSE's legal  
counsel deems such disclosure and/or filing necessary or advisable to comply  
with applicable federal and/or state laws.  
  
 12. BOOKS AND RECORDS; RIGHT TO AUDIT. ABMC shall prepare and maintain  
complete and accurate books of account and records (specifically including  
without limitation the originals or copies of documents supporting entries in  
the books of account) covering all transactions required to be reported to JRSE  
under this Agreement. JRSE and its duly authorized representatives shall have  
the right, at JRSE's sole cost, upon no less than five (5) days prior notice,  
during regular business hours at ABMC's principal offices, for the duration of  
this Agreement and for six (6) months thereafter, to audit said books of account  
and records of ABMC and examine all other documents and material in the  
possession or under the control of ABMC with respect to matters which are  
required to be reported to JRSE under this Agreement and to make extracts and  
copies thereof.  
  
  
  
  
  
  
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ABMC's accounting records of sales shall be maintained separately from ABMC's  
accounting records relating to other items manufactured or sold by ABMC. All  
such books of account, records and documents shall be kept available by ABMC for  
at least five (5) years after the end of each year to which they relate. In  
connection with any audit or examination pursuant to this Section 12, JRSE and  
its duly authorized representatives shall have the right to examine and inspect  
ABMC's physical inventory of Portable Units and Other Units, wherever same is  
kept. JRSE shall have a period of time of six (6) months following the close of  
any audit to assert any claims for discrepancies. Any claims not asserted within  
the six (6) month period following the close of any audit will be barred.  
  
 13. RESTRICTIONS ON USE OF NAME. ABMC shall not have the right to use  
the name "Xxxxxxxx Resonance Enterprises" in the name of its corporation, as an  
assumed name or in connection with any of its trademarks, logos, etc. without  
JRSE's prior written permission.  
  
 14. ABMC'S COOPERATION. At JRSE's request, ABMC shall execute any  
documents reasonably required by JRSE to confirm Xxxxxxxx'x ownership of all  
rights in and to the Technology and the Proprietary Marks and the respective  
rights of JRSE and ABMC pursuant to this Agreement. ABMC shall cooperate with  
JRSE in connection with the filing and prosecution of applications to register  
the Technology and the Proprietary Marks and the maintenance and renewal of such  
registrations as may issue, at no cost to ABMC.  
  
 15. LEGAL REQUIREMENTS. ABMC shall use the Technology and the  
Proprietary Marks strictly in compliance with the legal requirements pertaining  
thereto in connection therewith as may be required by applicable legal  
provisions. ABMC shall cause to appear on all Portable Units and Other Units  
that it distributes hereunder, and on all materials on or in connection  
therewith, such legends, markings and notices as may be reasonably necessary in  
order to give appropriate notice of any trademark, trade name or other rights  
therein or pertaining thereto.  
  
  
  
  
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 16. PROHIBITION AGAINST CHALLENGES BY ABMC. ABMC never shall challenge  
Xxxxxxxx'x ownership of or the validity of the Technology or the Proprietary  
Marks, or any application for registration thereof, or any trademark  
registration thereof, or any rights of JRSE therein.  
  
 17. INFRINGEMENT ACTIONS. In the event that either JRSE or ABMC learns  
of any infringement or imitation of the Technology or Proprietary Marks or of  
any use by any person of a Patent similar to the Technology, they promptly shall  
notify the other party. JRSE thereupon shall take such action as it deems  
advisable for the protection of its rights in and to the Technology and the  
Proprietary Marks and, if requested to do so by JRSE, ABMC shall cooperate with  
JRSE in all reasonable respects, at JRSE's sole expense. In no event, however,  
shall JRSE be required to take any action if it deems it inadvisable to do so.  
If JRSE deems it inadvisable to take any action, ABMC may then take such action  
at its own expense provided it first obtains the written approval of JRSE, which  
approval shall not be unreasonably withheld. JRSE recognizes that in regard to  
any counterfeiting of the Technology, ABMC may take immediate legal action, at  
its own expense, upon prior notification and approval by JRSE. Such approval  
shall be deemed to have been granted unless within four (4) business days after  
the receipt of such a request, JRSE notifies ABMC in writing of its disapproval.  
JRSE shall cooperate with ABMC in taking such legal action, at no cost to JRSE.  
Any award or recovery obtained by JRSE in an action commenced by JRSE shall be  
solely retained by JRSE. Any award or recovery obtained by ABMC in a permitted  
action commenced by ABMC may be solely retained by ABMC. ABMC shall not defend  
any action brought against it challenging its right to use the Technology or the  
Proprietary Marks unless it shall first make written demand upon JRSE to do so  
and JRSE fails to defend such action on behalf of ABMC.  
  
  
  
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 18. INSURANCE.  
  
 (a) LIABILITY INSURANCE. ABMC shall procure and maintain at its  
own expense in full force and effect at all times during the Term, with a  
responsible insurance carrier reasonably acceptable to JRSE, a products  
liability insurance policy with respect to Licensed Property with a limit of  
liability of not less than One Million Dollars ($1,000,000). Such insurance  
policy shall name JRSE as an additional insured and shall provide for at least  
thirty (30) days prior written notice to said parties of the cancellation or  
substantial modification thereof. Such insurance may be obtained by ABMC in  
conjunction with a policy of products liability insurance which covers products  
other than the Portable Units or the Other Units. ABMC shall deliver a  
certificate of such insurance to JRSE promptly upon issuance of said insurance  
policy and, from time to time, promptly shall furnish to JRSE evidence of the  
maintenance of said insurance policy. Nothing contained in this Section 18 shall  
be deemed to limit in any way the indemnification provisions of Section 8  
hereof.  
  
 (b) RELATIONSHIP OF THE PARTIES. ABMC is not granted any right or  
authority to assume or create any obligation or responsibility, express or  
implied, on behalf of or in the name of JRSE or to bind JRSE in any manner or  
thing whatsoever. ABMC shall obtain all required workers' compensation and  
employer's liability insurance covering all sales persons and other employees.  
ABMC accepts full and exclusive liability for the payment of any and all taxes,  
contributions or other sums payable for unemployment compensation insurance and  
retirement benefits, as well as all of the payroll taxes payable by reason of  
employment of sales persons or other employees. ABMC shall be responsible for  
and hold JRSE harmless for all claims, demands and suits resulting from any  
misconduct or negligence of ABMC's sales persons and other employees.  
  
  
  
  
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 19. RIGHTS ON EXPIRATION OR TERMINATION.  
  
 (a) INJUNCTIVE RELIEF WITH RESPECT TO LICENSED PROPERTY. ABMC  
hereby acknowledges the irreparable harm that JRSE will incur from any  
unauthorized use of the Technology and the Proprietary Marks. Notwithstanding  
any termination or expiration of this Agreement, JRSE shall have and hereby  
reserves all rights and remedies which it has, or which are granted to it by  
operation of law or equity, to prohibit the unlawful or unauthorized use of the  
Technology and the Proprietary Marks, including but not limited to, seeking a  
temporary restraining order, preliminary and/or permanent injunction. The  
provisions of Section 21 hereof requiring a cooling off period and compulsory  
arbitration shall not apply to this section.  
  
 (b) INVENTORY. Upon the expiration or termination of this  
Agreement, ABMC immediately shall deliver to JRSE a complete and accurate  
schedule of ABMC's inventory of Portable Units and Other Units and of related  
work in process then on hand ("Inventory").  
  
 (c) SALE OF INVENTORY BY ABMC. If this Agreements expires or is  
terminated, ABMC shall be entitled, for an additional period of six (6) monthly  
only on a non-exclusive basis to sell and dispose of its Inventory. Such sales  
shall be made subject to all of the provisions of this Agreement and to an  
accounting for and the payment of Sales Royalty thereon. Such accounting and  
payment shall be due within thirty (30) days after the close of the said six (6)  
month period. JRSE shall have the right for a period of fifteen (15) days  
following such expiration or termination to purchase all of ABMC's Inventory at  
ABMC's cost plus twenty percent (20%).  
  
 (d) REVERSION OF RIGHTS TO JRSE, APPOINTMENT OF ATTORNEY-IN-FACT,  
RETURN OF MATERIALS. Except as specifically provided in subsection 19(c) above,  
on the expiration or termination of this Agreement, all of the rights of ABMC  
under this Agreement shall terminate forthwith and shall revert immediately to  
JRSE, all royalties on sales theretofore made shall become  
  
  
  
  
  
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immediately due and payable and ABMC shall discontinue forthwith all use of the  
Technology and the Proprietary Marks, no longer shall have the right to use the  
Technology and the Proprietary Marks or any variation or simulation thereof, and  
shall promptly transfer to JRSE, free of charge, all registrations, filings, and  
rights with regard to the Technology and the Proprietary Marks which it may have  
possessed at any time.  
  
 ABMC hereby irrevocably appoints JRSE as ABMC's attorney-in-fact,  
effective upon the termination or expiration of this Agreement, to take any  
necessary steps on ABMC's behalf to cancel any recordation of the license  
granted hereunder and to execute any instruments necessary or desirable to  
confirm termination of ABMC's rights under this Agreement.  
  
 20. BROKERAGE INDEMNITY. Each of the parties represents that a broker  
was not used in connection with the introduction of the parties and the  
consummation of this Agreement. Both JRSE and ABMC hereby indemnifies the other  
and holds it harmless from any and all liabilities (including, without  
limitation, reasonable attorneys' fees and disbursements paid or incurred in  
connection with any such liabilities) for any brokerage commissions or finders'  
fees in connection with this Agreement or the transactions contemplated hereby  
insofar as such liabilities shall be based on arrangements or agreements made by  
it or on its behalf.  
  
 21. RESOLUTION OF DISPUTES.  
  
 (a) JURISDICTION. The parties hereby irrevocably submit to the  
personal jurisdiction of the federal and state courts of the State of Florida,  
in the venue of Palm Beach County (the "Courts"), in any action or proceeding  
arising out of or relating to this Agreement. In any court proceeding, the  
Courts shall have exclusive jurisdiction over the subject matter of this  
Agreement. JRSE agrees that service may be made upon it by serving Broad and  
Xxxxxx in the manner provided for the giving of notice. ABMC agrees that it may  
be served process in the manner provided for the  
  
  
  
  
  
  
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giving of notice. The parties hereby irrevocably waive, to the fullest extent  
they may effectively do so, the defense of an inconvenient forum to the  
maintenance of such action or proceeding.  
  
 (b) WAIVER OF IMMUNITY. To the extent that the parties have or  
hereafter may acquire any immunity from jurisdiction of any court or from any  
legal process with respect to itself or its property, the parties hereby  
irrevocably waive such immunity with respect to their obligations under this  
Agreement.  
  
 (c) SOLE METHOD OF DISPUTE RESOLUTION. In the event of a dispute  
between the parties, including all events of default, except failure to pay any  
licensing fee or royalty pursuant to Section 5 of this Agreement, neither party  
may commence formal legal action or commence arbitration proceedings unless and  
until the senior level executives (and their representatives, if they wish) of  
both parties meet face to face in a meeting(s) in an attempt to settle the  
dispute (the "Cooling Off Period"). This Cooling Off Period shall last for  
fifteen (15) days from the first date one of the parties identifies to the other  
party the existence of a dispute. In the event that the senior executives of the  
parties are unable to work out a mutually agreeable resolution during the  
Cooling Off Period, the parties hereby agree to binding arbitration before a  
single arbitrator mutually agreeable to both parties who shall follow the Rules  
of the American Arbitration Association. The arbitrator shall be an attorney  
specializing in licensing at one of the intellectual property firms in Florida  
and neither the attorney nor the firm have any prior or current relationship  
with either party. The fees of the arbitrator shall be evenly shared between the  
parties. If within thirty (30) days the parties cannot mutually agree upon a  
single arbitrator, either party may file an arbitration in accordance with the  
Rules of the American Arbitration Association in Florida. If the breach is one  
which is not curable, the arbitrator's decision must include a provision that  
this Agreement may not be terminated if ABMC shall pay to JRSE an amount which  
the arbitrator shall determine will  
  
  
  
  
  
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compensate JRSE for the breach. Notwithstanding the foregoing, JRSE shall have  
the right to seek immediate relief in court, including but not limited to, a  
temporary restraining order, a preliminary injunction and/or a permanent  
injunction if ABMC or any of its officers, agents and employees does anything to  
damage the value of the Technology or the Proprietary Marks. ABMC shall have the  
right to seek equitable relief to enforce its rights hereunder in the event ABMC  
believes it is being irreparably harmed. In the event either party is seeking  
equitable relief from a court in accordance herewith, the party seeking such  
relief shall provide the other party with prior written notice of the  
application for relief and a copy thereof. The Cooling Off Period shall not  
apply in the event JRSE or ABMC should decide to seek immediate relief in court  
in accordance herewith.  
  
 22. MISCELLANEOUS.  
  
 (a) ENTIRE AGREEMENT. This Agreement represents the entire  
understanding of the parties with respect to the subject matter hereof.  
  
 (b) AMENDMENT OR MODIFICATION OF THIS AGREEMENT. This Agreement  
may be amended or modified from time to time only by a written instrument  
executed by both of the parties hereto.  
  
 (c) NOTICE. All notices required or permitted by this Agreement  
shall be in writing and shall be deemed to have been duly given if delivered in  
person or sent by overnight delivery, confirmed telecopy or prepaid first class  
registered or certified mail, return receipt requested, to the following  
addresses, or such other addresses as are given to the other parties to this  
Agreement in the manner set forth herein:  
  
 JRSE: Xxxxxxxx Resonance Enterprises, Inc.  
 00000 X.X. Xxxxxxx Xxx, Xxxxx 000  
 Xxxx Xxxxx, XX 00000  
 Attn: Xxxxx X. Xxxxxxxx, D.D.S.,  
 Chairman and CEO  
 Telephone: (000) 000-0000  
 Telecopier: (000) 000-0000  
  
  
  
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 Xxxxxxxx: Xxxxx X. Xxxxxxxx, D.D.S.  
 0000 Xxxxxxxx Xxxxxx  
 Xxxxxxx, XX 00000-0000  
 Telephone: (000) 000-0000  
 Telecopier: (000) 000-0000  
  
 With a copy to: Xxxxx xxx Xxxxxx  
 Xxxxx 0000, Xxxxxxx Financial Centre  
 000 X. Xxxxxxx Xxxxxxxxx  
 Xx. Xxxxxxxxxx, XX 00000  
 Attn: Xxxxxxx X. Xxxxxxxxx, P.A.  
 Telephone: (000) 000-0000  
 Telecopies: (000) 000-0000  
  
 ABMC: 00 X. Xxxxxx Xxxx  
 Xxxxx, XX 00000  
 Attn: Xxxxxx Xxxxx  
 Telephone: (000) 000-0000  
 Telecopies: (000) 000-0000  
  
 With a copy to: Xxxxx & Xxxxx Co., LPA  
 00 Xxxxx Xxxx Xxxxxx, Xxxxx 0000  
 Xxxxx, XX 00000-0000  
 Attn: Xxxxxx X. Xxxxx, Esq.  
 Telephone: (000) 000-0000  
 Telecopier: (000) 000-0000  
  
Any such notices shall be effective when delivered in person or sent by  
telecopy, one (1) business day after being sent by overnight delivery or five  
(5) business days after being sent by registered or certified mail. Any of the  
foregoing addresses may be changed by giving notice of such change in the  
foregoing manner, except that notices for changes of address shall be effective  
only upon receipt.  
  
 (d) FLORIDA LAW CONTROLLING. The laws of the state of Florida  
shall govern the validity of this Agreement, the construction of its terms and  
the interpretation of the rights and duties of the parties hereto.  
  
 (e) BINDING NATURE. Except as otherwise provided in Section 9  
hereof, this Agreement shall be binding upon and shall inure to the benefit of  
the parties hereto and their respective successors and assigns.  
  
 [THE NEXT PAGE IS THE SIGNATURE PAGE]  
  
  
  
  
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 IN WITNESS WHEREOF, the parties have executed this Agreement as of the  
date first written above.  
  
SIGNED IN THE PRESENCE OF: "JRSE"  
 XXXXXXXX RESONANCE ENTERPRISES, INC.  
  
 /s/ Xxxxx Xxxxxxxx By: /s/ Xx. Xxxxx X. Xxxxxxxx  
----------------------------------- -----------------------------------  
 Xxxxx X. Xxxxxxxx, D.D.S.,  
 Its Chairman and CEO  
 /s/ X.X. Xxxxxxxx  
------------------------------------  
  
 "ABMC"  
 AKRON BIO-MEDICAL CORP.  
  
 /s/ Xxx X. Xxxxxx By: /s/ Xxxx Xxxxxx  
------------------------------------ -----------------------------------  
 Xxxx Xxxxxx, President  
  
 /s/ Xxx Xxxxxxxx  
------------------------------------  
  
 As to Section 7(d) only:  
  
 /s/ Xxxxx Xxxxxxxx /s/ Xx. Xxxxx X. Xxxxxxxx  
------------------------------------ ---------------------------------------  
 XXXXX X. XXXXXXXX, D.D.S., individually  
  
 /s/ X.X. Xxxxxxxx  
------------------------------------  
  
  
  
  
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 EXHIBIT "A"  
  
 The following countries will be deemed to constitute the "Caribbean"  
for purposes of this letter agreement:  
  
Antigua and Barbuda  
Anguilla  
Aruba  
The Bahamas  
Barbados  
Belize  
Bermuda  
The British Virgin Islands  
The Cayman Islands  
Cuba  
Dominica  
The Dominican Republic  
Grenada  
Haiti  
Jamaica  
Montserrat  
Puerto Rico  
St. Kitts and Nevis  
St. Lucia  
St. Xxxxxxx and the Grenadines  
Trinidad  
Turks and Caicos Islands  
The United States Virgin Islands