

## INDEPENDENT CONTRACTOR AGREEMENT *(version 03.01.10)*

*(Note: The base agreement has no project or client specific information.  
All details of a particular project are defined in Exhibit A.)*

This Independent Contractor Agreement (the “Agreement”) is entered into as of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”) by and between Doctor-Sonics, a sole proprietorship (the “Contractor”), and \_\_\_\_\_, a \_\_\_\_\_ (the “Company,” and together with the Contractor, the “Parties”).

### RECITALS

**WHEREAS**, the Company wishes to engage the Contractor as an independent contractor for the Company for the purpose of completing certain specified tasks on the terms and conditions set forth below; and

**WHEREAS**, the Contractor wishes to provide the Services (as defined below) in accordance with the terms of this Agreement; and

**WHEREAS**, each Party is duly authorized and capable of entering into this Agreement.

**NOW THEREFORE**, in consideration of the above recitals and the mutual promises and benefits contained herein, the Parties hereby agree as follows:

#### 1. RESPONSIBILITIES

- (a) Of the Contractor. The Contractor agrees to do each of the following:
  - A. Perform the Services set forth in Exhibit A attached hereto and made a part hereof (collectively, the “Services”) in accordance with standards prevailing in the Company’s industry.
  - B. Devote as much productive time, energy, and ability to the performance of its duties hereunder as may be necessary to provide the required Services in a timely and productive manner. The Company understands that the Contractor may be performing work for multiple clients at any one time and that fulltime engagement on the Contractor’s part is not warranted.
  - C. Perform the Services in a safe, good, and workmanlike manner by fully-trained, skilled, competent, and experienced personnel using at all times adequate equipment in good working order.
  - D. Communicate with the Company regarding progress the Contractor has made in performing the Services.

- E. Supply all software, equipment, instrumentation and supplies required to perform the work under this Agreement, except to the extent that the Contractor's work must be performed on or with the Company's equipment.
  - F. Provide services (including the Services) and end products that are satisfactory and acceptable to the Company.
  - G. Correct all or any portion of the work or end products found defective or unsuitable, without additional cost to the Company.
- (b) Of the Company. The Company agrees to do each of the following:
- A. Engage the Contractor as an independent contractor to perform the Services set forth in Exhibit A to this Agreement.
  - B. Provide relevant information in a timely manner to assist the Contractor with the performance of the Services and compliance with deadlines.
  - C. Communicate to the Contractor in a timely manner the project schedule and any deadlines applicable to the Contractor's work, and communicate to the Contractor any changes to the project schedule or deadlines once work by the Contractor commences.
  - D. Review the Contractor's work and notify the Contractor of any known noncompliance with codes, ordinances or acts or incompatibility with any associated systems.
  - E. Satisfy all of the Contractor's reasonable requests for assistance in its performance of the Services.

## **2. NATURE OF RELATIONSHIP**

The Contractor agrees to perform the Services hereunder solely as an independent contractor. The Parties agree that nothing in this Agreement shall be construed as creating a joint venture, partnership, franchise, agency, employer/employee, or similar relationship between the Parties, or as authorizing either Party to act as the agent of the other. The Contractor is and will remain an independent contractor in its relationship to the Company. The Company shall not be responsible for withholding taxes with respect to the Contractor's compensation hereunder. The Contractor shall have no claim against the Company hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. Nothing in this Agreement shall create any obligation between either Party and a third party.

### **3. CONFIDENTIAL INFORMATION**

- (a) The Contractor agrees, during the Term (as defined below) and thereafter, to hold in strictest confidence, and not to use, except for the benefit of the Company, or to disclose to any person, firm, or corporation without the prior written authorization of the Company, any Confidential Information of the Company.
- (b) “Confidential Information” means any of the Company’s proprietary information that is provided to the Contractor for use while completing the Services and also clearly labeled as “Confidential” by the Company. Confidential information may include technical data, trade secrets, or know-how, research, product plans, products, services, customer lists, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances, or other business information disclosed to the Contractor by the Company, either directly or indirectly.
- (c) The Contractor may use the Confidential Information to the extent necessary for negotiations, discussions, and consultations with Company personnel or authorized representatives or for any other purpose the Company may hereafter authorize in writing.
- (d) The Services performed by the Contractor under this Agreement shall be considered confidential. The Contractor shall not use the name of the Company, any reference to any project of the Company or the name or any reference to the Client of the Company for the benefit or promotion of the Contractor.

### **4. REPRESENTATIONS AND WARRANTIES**

The Parties each represent and warrant as follows:

- (a) Each Party has full power, authority, and right to perform its obligations under the Agreement.
- (b) This Agreement is a legal, valid, and binding obligation of each Party, enforceable against it in accordance with its terms (except as may be limited by bankruptcy, insolvency, moratorium, or similar laws affecting creditors’ rights generally and equitable remedies).
- (c) Entering into this Agreement will not violate the charter or bylaws of either Party or any material contract to which that Party is also a party.

## 5. COMPENSATION

- (a) Terms and Conditions. The Company shall pay the Contractor in accordance with the terms and conditions set forth in Exhibit A.
- (b) Timing of Payment. Unless otherwise defined in Exhibit A, payments shall be made to the Contractor within sixty (60) days of the Contractor's invoice date for all Services performed to the Company's satisfaction in accordance with Exhibit A.
- (c) Expenses. Unless otherwise defined in Exhibit A, expenses incurred by the Contractor while completing Services are reimbursable to the Contractor by the Company and will be invoiced with backup receipts by the Contractor in addition to professional fees.
- (d) Employment Taxes. The Contractor is solely responsible for the payment of all income, social security and employment-related taxes incurred as a result of the performance of the Services by the Contractor under this Agreement and for all obligations, reports, and timely notifications relating to such employment taxes. The Company shall have no obligation to pay or withhold any sums for such employment taxes.
- (e) Sales Taxes. Compensation to the Contractor (as defined in Exhibit A) does not include sales, use, property or value added taxes. If the Contractor is required to pay federal, state or local sales, use, property, or value added taxes in association with the Services provided under this Agreement, the taxes shall be billed to the Company. The Company shall be responsible for paying any interest or penalties incurred due to late payment or nonpayment of any taxes of these sorts by the Company.

## 6. REPORTING

The Contractor shall report only to one designated contact person at the Company as defined in Exhibit A or a subsequent amendment thereof.

## 7. WORK FOR HIRE

The Contractor expressly acknowledges and agrees that any work prepared by the Contractor under this Agreement shall be considered "work for hire" and the exclusive property of the Company unless otherwise specified. To the extent such work may not be deemed a "work for hire" under applicable law, the Contractor hereby assigns to the Company all of its right, title, and interest in and to such work.

## **8. NO CONFLICT OF INTEREST; OTHER ACTIVITIES**

The Contractor hereby warrants to the Company that, to the best of its knowledge, it is not currently obliged under an existing contract or other duty that conflicts with or is inconsistent with this Agreement. During the Term (as defined below) and thereafter, the Contractor is free to engage in other independent contracting activities, including similar services for other companies that could be perceived as competitors of the Company. The Contractor warrants to the Company that it shall not accept work, enter into contracts, or accept obligations that directly pose a conflict of interest with the Contractor's obligations or the scope of Services to be rendered for the Company pursuant to this Agreement.

## **9. NONCOMPETE**

For the Term (as defined below) of this Agreement, and for a period of time thereafter as designated in Exhibit A (collectively to be known as the "Noncompete Period"), the Contractor shall not directly work, in any capacity, for the client of the Company as defined in Exhibit A.

## **10. TERM**

This Agreement shall become effective as of the Effective Date and, unless otherwise terminated in accordance with the provisions of Section 11 of this Agreement, will continue until the Services have been satisfactorily completed (the "Term").

## **11. TERMINATION**

This Agreement may be terminated by either Party on provision of seven (7) days written notice to the other Party, with or without cause. Following the termination of this Agreement for any reason, the Company shall promptly pay the Contractor according to the terms of Exhibit A for Services rendered before the effective date of the termination.

## **12. RETURN OF PROPERTY**

Within seven (7) days of the termination of this Agreement, whether by expiration or otherwise, and upon written direction by the Company to do so, the Contractor agrees to return to the Company all Company property and documents, retaining no copies or notes relating to the Company's business. If not instructed by the Company in writing to return the property of the Company, the Contractor will retain the property pursuant to section 3 of this Agreement in the event that Company enters into future service agreements with the Contractor.

### **13. INDEMNIFICATION**

- (a) Of Company by Contractor. The Contractor shall indemnify and hold harmless the Company and its officers, members, managers, employees, agents, contractors, sublicensees, affiliates, subsidiaries, successors, and assigns from and against any and all damages, liabilities, costs, expenses, claims, and/or judgments, including, without limitation, reasonable attorneys' fees and disbursements (collectively, the "Claims") that any of them may suffer from or incur and that arise or result primarily from (i) any gross negligence or willful misconduct of the Contractor arising from or connected with Contractor's carrying out of its duties under this Agreement, or (ii) the Contractor's breach of any of its obligations, agreements, or duties under this Agreement.
  
- (b) Of Contractor by Company. The Company shall indemnify and hold harmless the Contractor from and against all Claims that it may suffer from or incur and that arise or result primarily from (i) the Company's operation of its business, (ii) the Company's breach or alleged breach of, or its failure or alleged failure to perform under, any agreement to which it is a party, or (iii) the Company's breach of any of its obligations, agreements, or duties under this Agreement.

### **14. USE OF TRADEMARKS**

Each Party recognizes the other's right, title, and interest in and to all service marks, trademarks, and trade names and agrees not to engage in any activities or commit any acts, directly or indirectly, that may contest, dispute, or otherwise impair the right, title, and interest therein, nor shall either Party cause diminishment of value of said trademarks or trade names through any act or representation. The Parties shall not apply for, acquire, or claim any right, title, or interest in or to any such service marks, trademarks, or trade names that may be confusingly similar to those of the other Party, through advertising or otherwise. Effective as of the termination of this Agreement, whether by expiration or otherwise, the Parties shall cease to use all of the other's trademarks, marks, and trade names.

### **15. MODIFICATION**

No amendment, change, or modification of this Agreement shall be valid unless in writing and signed by both Parties.

### **16. ASSIGNMENT**

Neither Party may, without the written consent of the Company, assign, subcontract, or delegate its obligations under this Agreement. The Contractor has the right to hire assistants, or to use employees to provide the services defined in this agreement.

## **17. SUCCESSORS AND ASSIGNS**

All references in this Agreement to the Parties shall be deemed to include, as applicable, a reference to their respective successors and assigns. The provisions of this Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the Parties.

## **18. FORCE MAJEURE**

A Party shall be not be considered in breach of or in default under this Agreement on account of, and shall not be liable to the other Party for, any delay or failure to perform its obligations hereunder by reason of fire, earthquake, flood, explosion, strike, riot, war, terrorism, or similar event beyond that Party's reasonable control (each a "Force Majeure Event").

## **19. NO IMPLIED WAIVER**

The failure of either Party to insist on strict performance of any covenant or obligation under this Agreement, regardless of the length of time for which such failure continues, shall not be deemed a waiver of such Party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation.

## **20. LIABILITY LIMITS**

It is the responsibility of the Company to review the work of the Contractor and to ensure complete compliance with any and all requirements including design criteria, codes, ordinances or acts as well as complete coordination with the requirements of any architectural, structural, theatrical, mechanical, electrical, plumbing, conveying, sound and audiovisual systems related to the Contractor's work. The Contractor's pricing reflects the following allocation of risk and limitation of liability. The Contractor's total liability to the Company under this Agreement for damages, costs, and expenses shall not exceed the compensation received by the Contractor under this Agreement. Neither Party to this Agreement shall be liable for the other's lost profits or special, incidental or consequential damages.

## **21. NOTICE**

Any notice or other communication provided for herein or given hereunder to a Party hereto shall be in writing and shall be given in person, by overnight courier, or by mail (registered or certified mail, postage prepaid, return-receipt requested) to the respective Parties as follows:

If to the Company:

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If to the Contractor:

Doctor-Sonics  
c/o: Gary S. Madaras  
5539 S. Nashville Ave.  
Chicago, IL 60638

**22. GOVERNING LAW**

This Agreement shall be governed by the laws of the state of Illinois. In the event that litigation results from or arises out of this Agreement or the performance thereof, the Parties agree to reimburse the prevailing Party's reasonable attorneys' fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing Party may be entitled.

**23. COUNTERPARTS/ELECTRONIC SIGNATURES**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. For purposes of this Agreement, use of a facsimile, e-mail, or other electronic medium shall have the same force and effect as an original signature.

**24. SEVERABILITY**

Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provisions had never been contained herein.

**25. ENTIRE AGREEMENT**

This Agreement, constitutes the final, complete, and exclusive statement of the agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other prior and contemporaneous agreements and understandings, both written and oral, between the Parties.

[SIGNATURE PAGE FOLLOWS]



**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first above written.

**COMPANY**

[COMPANY NAME]

By: \_\_\_\_\_

Name:

Title:

**CONTRACTOR**

DOCTOR-SONICS

By: \_\_\_\_\_

Name: Gary S. Madaras

Title: Founder + Principal Consultant

**EXHIBIT A**

A. **COMPANY CONTACT.** The Contractor will report directly to and receive direction only from:

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B. **BASIC SERVICES.** The Contractor will perform the following services:  
(Services not specifically listed shall be considered additional services and may require additional compensation.)

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C. **DELIVERABLES / DEADLINES.** The Parties agree that the Contractor will submit the following deliverables on or before the dates designated.

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D. **SPECIFICATIONS.** The Parties agree to the following additional specifications related to the services to be provided:

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E. **COMPENSATION.** In consideration of the services to be performed by the Contractor, the Company agrees to pay the Contractor the compensation amount defined below:

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F. **EXPENSES.** Only the expenses listed below, if incurred by the Contractor while completing the Services in this Agreement, are NOT reimbursable. All other expenses are reimbursable.

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G. **PAYMENT TERMS.** Both Parties agree to the following payment terms: (if blank, then payment terms shall be per Section 5 of this Agreement.)

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[SIGNATURE PAGE FOLLOWS]

By signing below, the Parties agree to comply with all of the requirements contained in this Exhibit A.

Dated: \_\_\_\_\_

**COMPANY**

[COMPANY NAME]

By: \_\_\_\_\_

Name:

Title:

**CONTRACTOR**

DOCTOR-SONICS

By: \_\_\_\_\_

Name: Gary S. Madaras

Title: Founder + Principal Consultant