

# **Independent Contractor Agreement for Software Consultant**

This Agreement is made between Measurement Technology Northwest ("Client"), with a principal place of business at 4211 24<sup>th</sup> Avenue W, Seattle WA 98199, and MetaMagix ("Contractor"), with a principal place of business at 27305 83<sup>rd</sup> Avenue NW, Stanwood WA 98292.

## **1. Services Performed by Consultant**

Consultant agrees to perform the following services:

- Development and/or modification of firmware for Thermal Manikin project, as required.
- Electronic design for Thermal Manikin project, as required.
- Consultation on system design for Thermal Manikin project.
- Integration and testing of firmware and electronics as required.

## **2. Payment**

Consultant shall be compensated at the rate of \$85 per hour. This rate may be changed by mutual agreement.

## **3. Invoices**

Consultant shall submit invoices weekly for all services rendered. Client shall pay the amounts due within 30 days of the date of each invoice.

Late payments by Client shall be subject to late penalty fees of 1.5% per month from the due date until the amount is paid.

## **4. Expenses**

Contractor shall be responsible for all expenses incurred while performing services under this Agreement.

## **5. Materials and Equipment**

Consultant will furnish all materials, equipment and supplies used to provide the services required by this Agreement.

Consultant will furnish a general development environment including such items as personal computers and their peripherals, printers, operating environment, e-mail and Internet access, etc., which are required to provide the services required by this Agreement. Consultant will also furnish compilers, debuggers, test equipment, and other hardware and software required for embedded development.

Client will provide prototype hardware specific to the Product. Consultant agrees to return these items upon the payment of the final invoice or upon termination of this Agreement.

## **6. Term of Agreement**

This agreement will become effective when signed by both parties and will terminate on the

earlier of:

- the date Contractor completes the services required by this Agreement and is paid in full, or
- October 31, 2002, or
- the date a party terminates the Agreement as provided below.

## **7. Terminating the Agreement**

With reasonable cause, either party may terminate this Agreement effective immediately by giving written notice of termination for cause. Reasonable cause includes:

- a material violation of this agreement, or
- nonpayment of Consultant's compensation after 20 days written demand for payment.

Consultant shall be entitled to full payment for services performed prior to the effective date of termination.

## **8. Consultant an Independent Contractor**

Consultant is an independent contractor, and neither Consultant nor Consultant's staff is, or shall be deemed, Client's employees. In its capacity as an independent contractor, Consultant agrees and represents, and Client agrees, as follows:

- Consultant has the right to perform services for others during the term of this Agreement subject to noncompetition provisions set out in this Agreement, if any.
- Consultant has the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed.
- Consultant has the right to perform the services required by this Agreement at any place or location and at such times as Consultant may determine.
- Consultant will furnish all equipment and materials used to provide the services required by this Agreement, except to the extent that Consultant's work must be performed on or with Client's hardware.
- The services required by this Agreement shall be performed by Consultant, or Consultant's staff, and Client shall not be required to hire, supervise or pay any assistants to help Consultant.
- Consultant is responsible for paying all ordinary and necessary expenses of its staff.
- Neither Consultant nor Consultant's staff shall receive any training from Client in the professional skills necessary to perform the services required by this Agreement.
- Neither Consultant nor Consultant's staff shall be required to devote full time to the performance of the services required by this Agreement.
- Client shall not provide insurance coverage of any kind for Consultant or Consultant's

staff.

- Client shall not withhold from Consultant' s compensation any amount that would normally be withheld from an employee' s pay.

## **9. Intellectual Property Ownership**

Consultant assigns to Client its entire right, title and interest in anything created or developed by Consultant for Client under this Agreement ("Work Product") including all patents, copyrights, trade secrets and other proprietary rights. This assignment is conditioned upon full payment of the compensation due Consultant under this Agreement.

Consultant shall, at no charge to Client, execute and aid in the preparation of any papers that Client may consider necessary or helpful to obtain or maintain—at Client' s expense—any patents, copyrights, trademarks or other proprietary rights. Client shall reimburse Consultant for reasonable out-of-pocket expenses incurred under this provision.

## **10. Consultant's Materials**

Consultant owns or holds a license to use and sublicense various materials in existence before the start date of this Agreement ("Consultant' s Materials"). Consultant may, at it' s option, include Consultant' s Materials in the work performed under this Agreement.

Consultant retains all right, title and interest, including all copyright, patent rights and trade secret rights in Consultant' s Materials. Subject to full payment of the consulting fees due under this Agreement, Consultant grants Client a nonexclusive worldwide license to use and sublicense the use of Consultant' s Materials for the purpose of developing and marketing its products, but not for the purpose of marketing Consultant' s Materials separate from its products. The license shall have a perpetual term and may not be transferred by Client. Client shall make no other commercial use of Consultant' s Materials without Consultant' s written consent.

## **11. Confidentiality**

During the term of this Agreement and for three years afterward, Consultant will use reasonable care to prevent the unauthorized use or dissemination of Client' s confidential information. Reasonable care means at least the same degree of care Consultant uses to protect its own confidential information from unauthorized disclosure.

Confidential information is limited to information clearly marked as confidential, or disclosed orally and summarized and identified as confidential in a writing delivered to Consultant within 15 days of disclosure.

Confidential information does not include information that:

- the Consultant knew before Client disclosed it
- is or becomes public knowledge through no fault of Consultant
- Consultant obtains from sources other than Client who owe no duty of confidentiality to Client, or

- Consultant independently develops.

## **12. Warranties**

Consultant warrants that all services performed under this Agreement shall be performed consistent with generally prevailing professional or industry standards. Client must report any deficiencies in Consultant' s services to Consultant in writing within 60 days of performance to receive warranty remedies.

Client' s exclusive remedy for any breach of the above warranty shall be the reperformance of Consultant' s services. If Consultant is unable to reperform the services, Client shall be entitled to recover the fees paid to Consultant for the deficient services.

THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS OR STATEMENTS MADE PRIOR TO THIS AGREEMENT.

## **13. Limitation on Consultant's Liability to Client**

- In no event shall Consultant be liable to Client for lost profits of Client or special, incidental or consequential damages (even if Consultant has been advised of the possibility of such damages).
- Consultant' s total liability under this Agreement for damages, costs and expenses, regardless of cause, shall not exceed the total amount of fees paid to Consultant by Client under this Agreement.
- Client shall indemnify Consultant against all claims, liabilities and costs, including reasonable attorney fees, of defending any third party claim or suit, other than for infringement of intellectual property rights, arising out of or in connection with Client' s performance under this Agreement. Consultant shall promptly notify Client in writing of such claim or suit and Client shall have the right to fully control the defense and any settlement of the claim or suit.

## **14. Taxes**

The charges included here do not include taxes. If Consultant is required to pay any federal, state or local sales, use, property or value added taxes based on the services provided under this Agreement, the taxes shall be separately billed to Client. Consultant shall not pay any interest or penalties incurred due to late payment or nonpayment of such taxes by Client.

## **15. Contract Changes**

Client and Consultant recognize that:

- Consultant' s original cost and time estimates may be too low due to unforeseen events, or to factors unknown to Consultant when this Agreement was made

- Client may desire a mid-project change in Consultant' s services that would add time and cost to the project and possibly inconvenience Consultant, or
- Other provisions of this Agreement may be difficult to carry out due to unforeseen circumstances.

If any intended changes or any other events beyond the parties' control require adjustments to this Agreement, the parties shall make a good faith effort to agree on all necessary particulars. Such agreements shall be put in writing, signed by the parties and added to this Agreement.

## **16. Resolving Disputes**

If a dispute arises under this Agreement, the parties agree to first try to resolve the dispute with the help of a mutually agreed-upon mediator in Snohomish County, WA. Any costs and fees other than attorney fees associated with the mediation shall be shared equally by the parties. If it proves impossible to arrive at a mutually satisfactory solution through mediation, the parties agree to submit the dispute to a mutually agreed-upon arbitrator in Snohomish County, WA. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction to do so. Costs of arbitration, including attorney fees, will be allocated by the arbitrator.

## **17. General Provisions**

- Sole agreement: This is the entire Agreement between Consultant and Client.
- Applicable law: This Agreement will be governed by the laws of the State of Washington.
- Notices: All notices and other communications given in connection with this Agreement shall be in writing and shall be deemed given as follows:
  - When delivered personally to the recipient' s address as appearing in the introductory paragraph to this Agreement;
  - Three days after being deposited in the United States mails, postage prepaid to the recipient' s address as appearing in the introductory paragraph to this Agreement, or
  - When sent by fax or telex to the last fax or telex number of the recipient known to the party giving notice. Notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first class or certified mail, or the recipient delivers a written confirmation of receipt.
- Any party may change its address appearing in the introductory paragraph to this Agreement by giving notice of the change in accordance with this paragraph.
- No partnership: This Agreement does not create a partnership relationship. Consultant does not have authority to enter into contracts on Client' s behalf.

**18. Signatures**

**Client:** Measurement Technology Northwest

*By:*

Signature

[Typed or Printed Name]

*Title:*

*Date:*

**Contractor:** MetaMagix

*By:* 

Signature

Ned (Edward T.) Konz

[Typed or Printed Name]

*Title:* Owner

*Taxpayer ID Number:* 184-48-0620

*Date:* September 16, 2002