

**DYNAMIC SEAWALL MAINTENANCE SYSTEM, INC.**  
**NON-EXCLUSIVE CONTRACTOR AND LICENSE AGREEMENT**

NON-EXCLUSIVE CONTRACTOR AND LICENSE AGREEMENT dated as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of the State of \_\_\_\_\_, and having its principal place of business at \_\_\_\_\_, \_\_\_\_\_, and a mailing address at \_\_\_\_\_ (“Contractor”), and DYNAMIC SEAWALL MAINTENANCE SYSTEM, INC., a corporation organized under the laws of the State of Florida and having principal place of business at 994 North Barfield Drive, Unit #19, Marco Island, FL 34145, and a mailing address at Post Office Box 1612, Marco Island, FL 34146-1612 (“DSMS”).

**RECITALS**

DSMS has developed a proprietary and innovative dynamic seawall-maintenance system (the “System”), primarily used to repair and maintain seawalls, bulkheads, retaining walls and other waterfront structures. The System includes DSMS’s proprietary and patented anchors, incorporating helixes that create a mechanically inserted screw tie back installed from the water side, and proprietary installation techniques to install these screw tie backs.

The Contractor recognizes the benefits to be derived from being granted non-exclusive DSMS distribution rights; selling and installing DSMS’s proprietary products; and obtaining a license to use DSMS’s proprietary System and proprietary installation techniques.

DSMS is willing to grant to Contractor a non-exclusive right to sell and install DSMS’s proprietary products, and further grant a non-exclusive license to use DSMS’s proprietary system and proprietary installation techniques.

IN CONSIDERATION of the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereto agree as follows:

**1. Definitions.** Capitalized terms used in the Agreement shall be defined as follows:

**"Agreement"** shall mean this NON-EXCLUSIVE CONTRACTOR AND LICENSE AGREEMENT.

**"Confidential Information"** shall mean all information and data provided by DSMS to the Contractor relating to the System and the methods and means of installing the Products (including without limitation all Technical Information), except any portion thereof that: or is known to the Contractor, as evidenced by the Contractor’s written record, before receipt hereof under this Agreement; or is disclosed to the Contractor by a third person who has a right to make such disclosure; or is or becomes part of the public domain through no fault of the Contractor.

**"Products"** shall mean those products distributed by DSMS and the prices thereto, that are listed on the Product Price List provided by DSMS. New Products may be added to the Product Price List from time to time by mutual agreement of the Parties.

**"Product Specifications"** shall mean the specifications for the Products set forth in the Product Price List provided by DSMS. Specifications may be amended from time to time by mutual agreement of the parties. Specifications for new Products shall be added to the Product Price List provided by DSMS from time to time by mutual agreement of the parties.

**"System"** shall mean DSMS’s proprietary system primarily used to repair and maintain seawalls, bulkheads, retaining walls, and other waterfront structures, or otherwise repair and maintain retaining walls by using the Installation Apparatus to install the Products.

**"Technical Information"** means all technical information, equipment, requirements, drawings, specifications, manuals, trade secrets, and know-how, now or hereafter developed by DSMS or by Contractor during the term of this Agreement, relating to the methods and processes for use in the operation of the System, and installing the Products.

**2. Appointment.** DSMS hereby appoints Contractor as its non-exclusive contractor and Licensee.

**3. Acceptance.** Contractor hereby accepts the foregoing appointment, and agrees to use its reasonable best effort to promote the use and sale of, to sell and deliver, service, install, and assure customer satisfaction of, the Products.

**4. Assistance.** DSMS agrees to assist and cooperate with Contractor in marketing and securing regulatory approval for the Products during the term of this Agreement. Such assistance includes sale to Contractor of such quantity of Products reasonably required by Contractor for purposes of clinical trials and marketing demonstrations. The price of Products sold for such purposes shall be determined on a per job, per market value basis, with all freight, taxes, shipping, and insurance costs to be paid by Contractor.

**5. Grant of License.** DSMS hereby grants to Contractor, subject to all the terms and conditions of this Agreement, a non-exclusive, non-transferable license to apply, use, and practice the System and all associated technical information. The license granted to Contractor is intended solely for System installation projects. Without the prior consent of DSMS, Contractor may not use any Technical Information or re-sell Products to a Third Party.

**6. Patents.** DSMS may (but shall not be obligated to), seek patent protection for any patentable elements of the System, and the Installation Apparatus of the Technical information. Any such patents shall remain the sole and exclusive property of DSMS, but shall be subject to the license granted hereby.

Initials:  
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DSMS: \_\_\_\_\_

**7. Sublicenses.** The license rights granted herein are exclusive to the Contractor and may not be sublicensed, assigned, or otherwise transferred.

**8. Product Purchases.** DSMS agrees to make System product components available for purchase by Contractor at the wholesale dealer price and on the Contractor credit terms, as such price and terms shall be established from time to time by DSMS. Contractor acknowledges that all purchases of Products, including timing and amount of such purchases, shall be made at the sole discretion of the Contractor and the Contractor acknowledges the Contractor shall be under no obligation to purchase any specified amount of Products from DSMS. Contractor agrees to strictly comply with all credit terms as established by DSMS from time to time.

**9. Taxes.** Contractor shall bear all taxes and duties that shall be levied upon the Products.

**10. Non-Exclusive Territory.** DSMS does not designate exclusive territories and Contractor acknowledges that Contractor shall have no right to exclusively market, sell or install the System in its locality. DSMS will, however, exercise discretion in appointing additional DSMS Contractors in a geographical area.

**11. Promotional Materials.** DSMS agrees to develop and supply to Contractor, on an at-cost basis, sales aides and advertising materials promoting the System. All purchases of such materials by Contractor, including the timing and amount of such purchases, shall be made at the sole discretion of the Contractor and Contractor acknowledges that Contractor shall be under no obligation to purchase any specified amount of such materials. Any advertising copy, promotional materials, selling materials, press releases, labels, packaging or any materials concerning the System or displaying the DSMS logo which are supplied by any source other than DSMS must be submitted to DSMS to receive DSMS prior written approval as a condition to use thereof by Contractor.

**12. Limited Warranty.** DSMS warrants that its third party manufacturers will use reasonable care in the manufacture of its Products and that the Products will be free from defects in material and workmanship under normal use and service.

**13. Disclaimer of Warranties.** CONTRACTOR ACKNOWLEDGES AND AGREES THAT THE EXPRESS LIMITED WARRANTY SET FORTH IN SECTION 12 CONSTITUTES THE ENTIRE WARRANTY OF DSMS WITH RESPECT TO THE PRODUCTS AND ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITH OUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. Except as expressly set forth, DSMS makes no representations, warranties, or guarantees upon which the Contractor may rely. Nor does DSMS assume any liability or obligation to the Contractor by providing any waiver, approval, consent, or suggestion to the Contractor in connection with this Agreement, or by reason of any neglect, delay, or denial of any request therefore unless such conduct would otherwise constitute a breach of an express obligation of DSMS under this Agreement.

**14. Indemnification and Hold Harmless.** The Contractor shall indemnify and hold harmless DSMS from any and all actions, judgments, claims, demands, damages, liabilities, losses, costs, and expenses (including reasonable attorney's fees and costs, even if incident to appellate, post-judgment, or bankruptcy proceedings), to which DSMS becomes subject or that DSMS incurs arising from or relating to claims brought by third parties relating in any manner to the Contractor's ownership or operation of the license, including but not limited to any claims relating to the Contractor's improper installation of, use, or misuse of DSMS Products. The Contractor shall pay claims and losses in connection with the all of the foregoing and shall investigate and defend all claims, suits, or actions of any kind or nature, including appellate proceedings in the name of the applicable indemnified party, and shall pay all costs, and judgments, and attorney's fees that may issue thereon. In no event, however, need the Contractor indemnify DSMS for any matter caused Directly by DSMS's gross negligence or intentional misconduct. Notwithstanding the expiration or sooner termination of the Agreement, this indemnity and hold harmless provision continues in full force and effect.

**15. Operation of Dealership.** Contractor agrees to market, sell and install the System aggressively, competently and honestly to its customers. Contractor agrees that Contractor will sell the System only to end users, and that no sale of the System will be made without installation by Contractor. Contractor acknowledges that the conduct of its business shall be determined by the Contractor in its own judgment, subject only to compliance with the terms of this Agreement and DSMS's quality control standards and specifications as announced from time to time. Contractor shall be solely responsible for determining the prices and terms on which the System will be sold and installed for the end-users. Contractor agrees to promptly and thoroughly address all complaints and concerns of its customers. Contractor acknowledges the Contractor must properly fulfill its responsibilities in this regard in order to protect the goodwill of the System. Contractor agrees to make every reasonable effort to satisfy its customers. Contractor shall report to DSMS all complaints which it is unable to resolve on a prompt basis.

**16. Quality Control.** Contractor acknowledges that DSMS shall have the right to establish from time to time quality control standards and specifications for the purpose of maintaining and enhancing the public image and goodwill of the System. Contractor agrees to comply with such standards and specifications in marketing, selling and installing the System. DSMS shall be entitled to monitor Contractor's compliance with such standards and specifications by inspection, upon ten (10) days advanced notice to Contractor, of Contractor's business and installations of the System completed by the Contractor. Contractor agrees to cooperate in inspections undertaken by DSMS, and to make appropriate arrangements for inspections of completed jobs.

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DSMS: \_\_\_\_\_

**17. Use of Trademark.** All use of the Trademark by the Contractor shall inure solely to the benefit of DSMS and the goodwill represented by the Trademark. Contractor will not use the Trademark in any manner which may be detrimental to the reputation of DSMS or which is inconsistent with the standards and specifications DSMS may establish from time to time for the use and display as the Trademark. Contractor shall Not use “DSMS” or “Dynamic Seawall Maintenance System” or any confusingly similar words as part of the Contractor’s formal name or as any part of any assumed, fictitious, or trade name under which the Contractor does business. Contractor may, however, hold itself out to the public as being an “Authorized (DSMS or Dynamic Seawall Maintenance System) contractor”.

**18. Insurance.** DSMS will continue to maintain product liability insurance coverage in an amount consistent with industry custom and practice. Through the entire term, the Contractor shall maintain at its expense insurance coverage. Such a policy shall be issued by an insurance carrier reasonably acceptable to DSMS, listing DSMS as additionally insured, and provide for minimum of thirty (30) days written notice to DSMS prior to cancellation, termination, non-renewal or change of such insurance. A copy of such policy, or appropriate evidence thereof, and any renewals of such policy, shall be delivered to DSMS. At a minimum, such policies should include the following:

- (i) commercial general liability insurance, completed-operations, and independent-contractors coverage in the amount of \$1,000,000, per person/per occurrence for bodily injury and property damage combined with a general aggregate of \$2,000,000;
- (ii) workers’-compensation coverage, and/or USL&H and/or Jones Act if applicable in the amount of at least \$100,000/\$500,000/\$100,000, unemployment insurance and employer’s liability insurance, as well as such insurance as may be required by statute or rule of the state in which the Contractor is located;
- (iii) automobile liability insurance-including coverage of vehicles not owned by the Contractor, but used by employees in connection with the Dealership-with a combination of primary and excess limits of not less than \$1,000,000.

**19. Term.** Contractor’s dealership and the license granted hereunder shall extend for a term of one (1) year from the effective date of this Agreement and shall automatically renew for additional successive terms of one (1) year each, unless terminated at the end of the initial or any renewal term, by either party giving the other party notice of such termination at least (30) days prior to the end of the initial or any renewal term. A party’s decision to terminate this Agreement upon the expiration of the initial or any renewal term may be for any reason or no reason whatsoever. In the event of such extension, the terms and conditions of this Agreement shall otherwise remain in full force and effect unless the parties agree in writing to any appropriate change or modification.

**20. Termination for Cause.** DSMS shall be entitled to terminate this Agreement in the event the Contractor fails to cure any non-compliance with the terms of this Agreement within thirty (30) days after DSMS has notified the Contractor in writing of the events constituting such non-compliance; provided, however, that DSMS shall not be required to provide an opportunity to cure any non-compliance by the Contractor (and may immediately terminate this Agreement upon written notice to the Contractor) if DSMS has, within the immediately preceding twelve (12) month period, notified Contractor in writing of any previous event on non-compliance by the Contractor (regardless of whether such previous event of non-compliance was thereafter cured by the Contractor).

**21. Events upon Termination.** Upon termination of this Agreement by either party at the expiration of the initial or any renewal term or by DSMS for cause, the dealership and license granted hereunder shall immediately be canceled and the Contractor shall have no further right to hold itself out to the public as a DSMS or Dynamic Seawall Maintenance System contractor or to use the license for any purpose whatsoever. Upon termination, Contractor shall immediately return to DSMS all promotional or advertising materials concerning the System, and any confidential information which DSMS may have provided the Contractor during the term of the Agreement. Termination of this Agreement shall not constitute a release of Contractor of any amounts owing to DSMS and Contractor agrees to promptly pay all such amounts owing to DSMS. Neither party shall be responsible to the other party for any damages arising out of the termination of this Agreement in accordance with its terms, including any claim for lost or anticipated profits or recoupments of expenditures.

**22. Relationship.** Contractor is, and shall remain at all times during the term of this Agreement, an independent contractor, and Contractor shall not be considered a joint venture, partner, agent or employee of DSMS. Neither party shall have the ability or right to bind the other party contractually in any respect whatsoever.

**23. Limitation on Damages; Costs and Attorneys Fees.** Notwithstanding any other term or condition of this Agreement, the total liability of DSMS, if any, and Contractor's sole and exclusive remedy for damages for any claim of any kind whatsoever under this Agreement, regardless of the legal theory or the delivery or non-delivery of the Products, shall not be greater than the actual purchase price of the Products with respect to which such claim is made. Under no circumstances shall DSMS be liable to Contractor for any special, indirect, incidental, or consequential damages of any kind or nature whatsoever. If DSMS incurs any cost or expenses (including, without limitation, attorney’s fees) in attempting to collect any amounts owing from the Contractor or in otherwise enforcing the terms of this Agreement, Contractor agrees to reimburse DSMS for its costs and expenses incurred in connection therewith and acknowledges that such cost and expense shall be reimbursed regardless of whether DSMS has instituted any legal proceedings to collect amounts owing or otherwise enforce this Agreement.

Initials:  
Contractor: \_\_\_\_\_  
DSMS: \_\_\_\_\_

**24. Notices.** All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given and delivered on the next business day following the day on which said notice was delivered to a recognized overnight courier guarantying next business day delivery or on the second day after mailing if such notice is mailed by first class mail, registered or certified, postage pre-paid, and properly addressed to the address listed in the first paragraph of this Agreement. Either party may change its address for purposes of this section by giving the other party written notice of the new address in a manner set forth above.

**25. Assignment.** Contractor shall have no right to assign, convey or otherwise transfer this Agreement or the license granted hereunder, whether on a voluntary basis or operation of law, and any such assignment, conveyance or transfer, if purportedly undertaken by the Contractor, shall be null and void and confer no rights upon transferee.

**26. Dispute Resolution.** In connection with any dispute arising under or relating to this Agreement, before any arbitration takes place, either party may, at its option, submit the controversy or claim to nonbinding mediation before the American Arbitration Association in accordance with its Commercial Mediation Procedures. The place of mediation shall be Collier County, Florida, and the language for mediation shall be English. Before mediation begins, the Contractor shall execute a confidentiality agreement reasonably satisfactory to DSMS concerning the mediation. Once the controversy or claim is submitted to mediation, the obligation to attend mediation is binding on both parties. Each party bears its own costs with respect to the mediation. The fee for mediation, however, will be split equally.

**27. Arbitration.** Subsequent to Mediation as set forth above, except as expressly stated to the contrary, any controversy or claim arising out of or relating to this Agreement, including any question regarding its existence, validity or termination shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrators may be entered into any court having jurisdiction thereof. The place of arbitration shall be Collier County, Florida, and the language for arbitration shall be English. The panel shall consist of three (3) arbitrators to be mutually agreed on by both parties. The prevailing party shall be entitled to award by the arbitrators of its costs and expenses incurred in mediation and in arbitration, including an award or reasonable attorney's fees. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

**28. Representations.** It is specifically recognized and acknowledged by the Contractor that the success of the license granted to the Contractor hereunder depends upon the ability of the Contractor as an independent entrepreneur as well as market conditions beyond the control of either DSMS or the Contractor. Contractor acknowledges that the Contractor has entered into this Agreement after making independent investigation of DSMS's Products and not in reliance upon any representations by DSMS as to revenues, profits or success which the Contractor may realize.

**29. Entire Agreement.** This Agreement constitutes the entire Agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiation, preliminary agreements and all prior and contemporaneous discussions, understanding and agreements of the parties in connection with the subject matter hereof.

**30. Non-Waiver.** The failure of DSMS to exercise any right or power given to it hereunder, or to insist upon strict compliance with the terms hereof by the Contractor, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach hereof, nor a waiver by DSMS of its right at any time thereafter to require exact and strict compliance with all of the terms and conditions hereof.

**31. Amendment.** No amendment, change or variance from the terms of this Agreement shall be binding on either party unless in writing and executed by the party against whom enforcement of such amendment, change or variance is sought.

**32. Effective Date.** This Agreement shall be deemed effective as of the date of execution by DSMS (the "Effective Date").

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers the day and year first below written.

**THE CONTRACTOR:**

**DYNAMIC SEAWALL MAINTENANCE  
SYSTEM, INC.:**

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

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

**Print Name:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

Initials:  
Contractor: \_\_\_\_\_  
DSMS: \_\_\_\_\_