# Scientist Agreement

**THIS INDEPENDENT CONTRACTOR AGREEMENT** (the “***Agreement***”) is entered into by and between [CLIENT NAME HERE] (“***Company***”), and Brian David Bower LLC, a North Carolina limited liability company (the “***SCIENTIST***”), as of the date the last party executes this Agreement (the “***Effective Date***”).

## Background

Company desires to engage the SCIENTIST to provide certain services to Company, and SCIENTIST desires to contract with Company for the performance of the services, all on the terms and conditions set forth in this Agreement. In consideration of the mutual covenants and agreements herein, Company and SCIENTIST agree as follows:

## **1. Services; Work Product.**

(a) SCIENTIST shall provide the services (“***Services***”) described in the Statement of Work (“***SOW***”), which shall be substantially in the form attached as Exhibit A and incorporated by reference herein. SCIENTIST shall not contract with others for the provision of Services, in whole or in part, except upon the prior written consent of Company, which consent may be withheld for any reason.

(b) Any materials, computer code (source and object codes), reports, inventions, and any other materials created or furnished by SCIENTIST to Company in the course of performing the Services hereunder shall be referred to herein as the “***Work Product***.” Any materials, computer code (source and object codes), reports, inventions, or other materials created in whole or in part by the SCIENTIST before entering into this Agreement that are not related to the specific Work Product contracted by Company, and which would not otherwise conflict with any other stipulations herein, shall remain the sole property of the SCIENTIST (“***Property of SCIENTIST***”), and the SCIENTIST shall retain all rights associated therewith.

(c) Nothing contained in this Agreement shall be construed as a right of SCIENTIST to continued engagement as an independent contractor of Company, or as a limitation of the right of Company to discharge SCIENTIST, with or without cause. Company has no knowledge of SCIENTIST’s dependence on revenues from Company in proportion to SCIENTIST’s revenues from other engagements.

(d) SCIENTIST agrees and acknowledges that the Services hereunder are performed by SCIENTIST on an independent contractor basis, and that SCIENTIST is not an employee of the Company for any purpose, including, but not limited to, for purposes of federal, state and local taxes, nor shall SCIENTIST hold itself out to be an employee of the Company. SCIENTIST agrees that, as an independent contractor, compensation paid hereunder is not subject to withholdings for social security or federal, state or local income taxes, and SCIENTIST expressly acknowledges full responsibility for the reporting of all compensation and payment of all applicable taxes, including self-employment taxes, arising therefrom. SCIENTIST acknowledges and agrees that where worker’s compensation coverage is applicable to Services performed hereunder, it shall be SCIENTIST’s responsibility to provide such coverage for itself.

(e) The Company agrees that neither the Company, nor the Company’s agents or representatives, shall have any right to control or direct the details, manner or means by which SCIENTIST accomplishes the results of the SCIENTIST’s Services as set forth in the SOW. SCIENTIST shall perform the Services at any place of SCIENTIST’s choosing and SCIENTIST shall have no obligation to work any particular schedule, except to the extent set forth in the SOW.

(f) SCIENTIST has no authority to act, enter into any contract or incur any liability on behalf of the Company, without the prior consent of the Company’s management.

## **2. Representations**

In addition to any other representations and warranties in this Agreement (including the SOW), SCIENTIST represents and warrants to Company that:

(a) SCIENTIST has sufficient expertise, training and experience to satisfactorily provide the Services;

(b) The Services will be performed in a professional and workmanlike manner, and the Services, including the Work Product, will be as required by Company and suitable for Company’s business purposes;

(c) No Proprietary Information (as such term is defined in Section 5(a) below) of third parties and no third-party intellectual property shall be used by SCIENTIST in the performance of the Services, or incorporated into any Work Product, except upon the prior written consent of Company, which may be withheld for any reason, and such third party;

(d) SCIENTIST is not presently under, nor will SCIENTIST enter into during the term hereof, any agreement or other obligation which would in any way prevent, limit or otherwise impair the provision by SCIENTIST of the Services to Company or the other obligations of SCIENTIST hereunder;

(e) SCIENTIST will notify Company in writing when SCIENTIST has good cause to be uncertain of the status of ownership of intellectual property used in the Work Product; and

(g) SCIENTIST shall comply fully with all directives provided by Company concerning any regulations applicable to the Company and the maintenance of records related thereto.

## **3. Payment**

(a) Company agrees to pay SCIENTIST for Services rendered as specified in the applicable SOW (“***Service Fees***”). No change in the Service Fees is permissible under this Agreement without the prior written consent of the parties.

(b) If required under the applicable SOW, SCIENTIST shall submit to Company an invoice in Company’s standard or other mutually agreed-upon format for each month. Company agrees to remit payment to SCIENTIST for approved invoices within thirty (30) days after receipt of SCIENTIST’s complete invoice.

(c) Company will reimburse SCIENTIST for all reasonable out-of-pocket expenses (other than normal daily working and commuting expenses) incurred in connection with the performance of the Services and only to the extent that such expenses have been pre-approved by the Company in writing. SCIENTIST shall keep accurate and complete expense reports showing all costs and expenses incurred, including original receipts and/or other appropriate documentation acceptable to Company.

(d) SCIENTIST acknowledges that she is solely responsible for the payment of any federal, state and local income taxes assessed on or otherwise relating to any payment, other compensation or other benefit made available to SCIENTIST by Company pursuant to the provisions of this Agreement. SCIENTIST shall also be responsible for maintaining any insurance coverage as may be required by Company or governmental authorities and applicable laws.

## **4. Term and Termination**

(a) The term of this Agreement shall commence on the Effective Date and continue for a period of one (1) year, to be renewed automatically for additional one-year terms, unless this Agreement is otherwise earlier terminated as hereinafter permitted.

(b) This Agreement and/or any SOW may be terminated by SCIENTIST or by Company at any time. Failure to terminate this Agreement shall not constitute a waiver of a non-breaching party’s rights under this Agreement and applicable law.

(c) Upon termination, SCIENTIST shall promptly deliver to Company all Work Product and work-in-progress, if any, and will immediately cease use of and deliver to Company all tangible incidents of Proprietary Information (as defined below) in SCIENTIST’s possession, retaining no copies. In the event of termination, Company’s sole obligation shall be limited to the payment of SCIENTIST in accordance with SOW for Services properly rendered through the termination date and all pre-approved expenses incurred by SCIENTIST as of the date of termination.

## **5. Confidentiality**

(a) Company has invested and will continue to invest considerable effort and expense in the development and creation of products and services, and has taken steps and will continue to take steps necessary to protect the secrecy of the Confidential Information (as defined below) and Trade Secrets (as defined below) of Company (collectively, “***Proprietary Information***”).

(b) SCIENTIST acknowledges and agrees that SCIENTIST’s position with Company will afford SCIENTIST an opportunity to access and acquire Proprietary Information of Company which is not generally available to the public, and that the misappropriation, unauthorized use, or disclosure of Proprietary Information of Company would cause irreparable harm to Company. SCIENTIST recognizes and agrees that Company must take reasonable steps to safeguard the confidentiality of such Proprietary Information. Further, SCIENTIST acknowledges and agrees that the disclosure of the Proprietary Information does not confer upon SCIENTIST any license, interest or rights of any kind in or to the Proprietary Information except for those limited rights pursuant to which the SCIENTIST may use the same, only as permitted in this Agreement.

1. SCIENTIST agrees that, with respect to Confidential Information (as defined below) of Company during the term of this Agreement and for the five (5) years following termination of this Agreement, and with respect to Trade Secrets (as defined below) of Company for as long as such information remains a Trade Secret, SCIENTIST will hold such Proprietary Information in a fiduciary capacity for the benefit of Company, and shall not directly or indirectly use, copy, reproduce, distribute, duplicate, report, publish, disclose or cause to be disclosed, reverse engineer, or otherwise transfer, such Proprietary Information to any third party, or utilize such information for any purpose (whether or not such information was developed or compiled by SCIENTIST), except as expressly contemplated by this Agreement or authorized by Company in writing. Further, SCIENTIST will not disclose Proprietary Information except to the extent required by applicable federal, state or local law, regulation, court order or other legal process; *provided*, *however*, that in the event of a proposed disclosure hereunder, SCIENTIST must (i) give the Company reasonable advance written notice of the proceeding resulting in such order, so that the Company may seek a protective order if it chooses to do so, (ii) disclose only the minimum amount of information legally required to be disclosed and (iii) use its best efforts to obtain confidential treatment for any such information required to be disclosed. Upon termination of this Agreement for any reason, SCIENTIST agrees to return to the Company or destroy, upon written request by the Company, the Proprietary Information, including without limitation all documents or other materials of any kind, containing or pertaining to any Proprietary Information, together with any and all copies, reproductions and samples of any of the foregoing.
2. (i) The term “***Trade Secrets***” means information of Company, without regard to form, including, but not limited to, technical or nontechnical data, formulae, patterns, compilations, programs, devices, methods, techniques, drawings, processes, financial data, financial plans, product plans, and lists of actual and potential customers and suppliers which is not commonly known by or available to the public and which information: (A) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who could obtain economic value from its disclosure or use; and (B) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Nothing in this Agreement is intended, or shall be construed, to limit the protections of the Uniform Trade Secrets Act of the State of North Carolina or any other applicable law protecting trade secrets or other confidential information.

(ii) The term “***Confidential Information***” as used in this Agreement means confidential or proprietary information, other than Trade Secrets, of value to Company, including without limitation, future business plans, materials, licensing strategies, information regarding executives and employees, and the terms and conditions of this Agreement, as well as any data or information defined herein as a Trade Secret, but which is determined by a court not to be a trade secret under applicable law. This definition shall not limit any definition of “confidential information” or any equivalent term under applicable state or federal law.

(e) The rights specified in this Agreement are in addition to any and all other rights Company has under applicable law.

(f) The foregoing obligations shall not apply if and to the extent that SCIENTIST establishes that the information communicated by Company was: (i) already known to SCIENTIST, without an obligation to keep such information confidential, at the time of SCIENTIST’s receipt from Company; (ii) received by SCIENTIST in good faith from a third party lawfully in possession thereof and having no obligation to keep such information confidential; (iii) was independently developed by SCIENTIST without any use of the Company’s Proprietary Information; or (iv) publicly known at the time of SCIENTIST’s receipt from Company or became publicly known other than by breach of this Agreement; provided that the particular methodology through which the Company uses and depicts public information shall nevertheless remain Confidential Information.

(g) SCIENTIST shall implement procedures to limit, control and supervise the use of the Proprietary Information of Company, which shall be at least reasonable precautions; and shall notify Company in writing of any suspected or known breach of the obligations and/or restrictions set forth in this Section 5. SCIENTIST will take all reasonable measures to ensure that no unauthorized person shall have access to the Proprietary Information. SCIENTIST shall comply with all applicable federal and state laws, rules and regulations protecting the Proprietary Information and privacy rights of the Company, and any relevant third parties.

## **6. Covenant Not to Solicit Personnel.**

SCIENTIST agrees that SCIENTIST will not, for any reason, during the term of this Agreement and for a period of two (2) years thereafter (the “***Restrictive Period***”), hire, solicit for employment, attempt to employ, or affirmatively assist any other person or entity in employing or soliciting for employment any person employed or hired by Company with whom SCIENTIST had contact with while engaged by Company.

## **7. Covenant Not to Compete.**

SCIENTIST agrees with the Company that during the term hereof and during the Restrictive Period, SCIENTIST shall not, directly or indirectly, either for SCIENTIST or for or through any other person or entity, participate within the Territory (as defined below) in any business or enterprise conducting business that is similar to the Business (as defined below). For purposes of this Agreement, (i) the term “***participate in***” includes having any direct or indirect interest in any entity or proprietorship, whether as a sole proprietor, owner, stockholder, partner, joint venture, creditor or otherwise, or rendering any direct or indirect service or assistance to any entity or proprietorship (whether as a director, officer, manager, supervisor, employee, agent, consultant or otherwise), other than owning up to two percent (2%) of the outstanding stock of any class that is publicly traded, (ii) the term “***Business***” means [TO BE SPECIFIED BY CLIENT HERE] , and (iii) the term “***Territory***” means the world. SCIENTIST hereby acknowledges and agrees that the Company operates throughout the Restricted Territory as of the Effective Date, and that the scope of the Restricted Territory is reasonable and necessary to protect the legitimate business interests of the Company.

## **8. Covenant Not to Solicit Customers.**

SCIENTIST agrees that, during the term of this Agreement and during the Restrictive Period, SCIENTIST shall not, on SCIENTIST’s own behalf or on behalf of any person, firm, partnership, association, corporation or business organization, entity or enterprise, solicit, contact, call upon or communicate with any customer or any prospective customer of Company or its subsidiaries or affiliates, with a view to market, distribute, license, sell, develop or provide any product or service competitive or potentially competitive with any product or service offered, sold, provided or under current development by Company.

## **9. Reasonableness; Remedies.**

The restrictions contained in Sections 5, 6, 7 and 8 of this Agreement (including without limitation their respective time, geographic and/or activity limitations) are considered by the parties hereto to be fair, reasonable and necessary for the protection of the legitimate business interests of Company. In the event SCIENTIST is in breach of, or threatens to breach any such covenants of, this Agreement, SCIENTIST acknowledges and agrees that Company will be greatly damaged and such damage(s) will be irreparable and difficult to quantify; therefore, Company will be entitled to injunctive or other equitable relief to restrain such breach or threat of breach, without impairing, invalidating, negating or voiding Company’s rights to relief in either law or equity. In the event that any or all of the covenants hereunder are determined by a court of competent jurisdiction to be invalid or unenforceable, by reason that the breadth of restrictions is too great or for any other reason, these covenants shall be modified and interpreted to extend over the maximum geographic area, period of time, range of activities or other restrictions to which they may be enforceable.

## **10. Survival**

Any section of this Agreement which by its nature survives after the termination or expiration hereof, including but not limited to Sections 2, 4(c), 5, 6, 7, 8, 9, 10, 11, 13, 14, and 15 of this Agreement, shall survive termination or expiration of this Agreement.

## **11. Assignment of Rights.**

(a) The parties acknowledge and agree that all Work Product will be created by SCIENTIST at the expense, in the laboratories and at the request of Company and SCIENTIST hereby assigns such works of authorship or inventorship to Company. SCIENTIST acknowledges that all right, title and interest in and to the Work Product shall be solely owned by Company, including without limitation all worldwide copyright, patent, trade secret, trademarks and other proprietary rights. Accordingly, SCIENTIST shall execute prior to the provision of any Services, an Assignment of Works in the form attached hereto as Exhibit B.

(b) Whenever an invention or discovery is made under this Agreement by SCIENTIST, either solely or in collaboration with others, including employees of Company, SCIENTIST shall promptly provide Company written notice thereof and shall furnish Company with complete information thereon, including, at a minimum (i) a complete written disclosure of each such invention or discovery, and (ii) information concerning the date and identity of any private or public use, sale or publication of such invention or discovery made by or known to SCIENTIST or of any contemplated publication known to SCIENTIST. As used herein, the term “***invention***” or “***discovery***” includes any art, machine, process, manufacture, design or composition of matter, or any new and useful improvement thereof, whether or not it is or may be patentable under the patent laws of any country; and the term “***made***” when used in relation to any invention or discovery, means the conception of the actual or constructive reduction to practice of such invention.

(c) SCIENTIST shall execute and deliver all assignments and documents reasonably requested by Company to perfect Company’s ownership interests under this Agreement in such Work Product, including inventions and discoveries. Further, SCIENTIST represents and warrants that she has the right to transfer, and does hereby assign the rights to Company to secure, the rights of Company stated in this Agreement.

## **12. Compliance with Laws**

SCIENTIST agrees that, in carrying out her duties and responsibilities under this Agreement, she will neither undertake nor cause, nor permit to be undertaken, any activity which either (i) is illegal under any applicable laws, decrees, rules or regulations, or (ii) would have the effect of causing Company to be in violation of any laws, decrees, rules or regulations.

## **13. Limitation of Liability.**

Except for a party’s intentional misconduct, each party’s liability arising out of or relating to this Agreement shall in no event include lost profits, incidental, consequential, punitive, or exemplary damages.

## **14. Arbitration.** *(\_\_\_\_\_\_/\_\_\_\_\_ Initials)*

(a) Except with respect to equitable remedies such as injunctions and disputes related to the ownership and protection of Proprietary Information, the parties agree that any dispute, claim or controversy arising hereunder or relating in any way to this Agreement, shall be settled by binding arbitration in Raleigh, North Carolina, in accordance with the commercial arbitration rules of Judicial Arbitration and Mediation Services (“***JAMS***”, www.jamsadr.com/). The arbitrator shall issue a written decision specifying the basis for the award made.

(b) The party filing a claim or counterclaim in the arbitration proceeding shall pay the deposit(s) determined by JAMS with respect to such claim or counterclaim. All other costs associated with the arbitration and imposed by JAMS shall be paid as determined by the arbitrator(s) and, in absence of such determination, equally by each party to the arbitration. In addition, unless the arbitrator awards payment of reasonable attorney and other fees to a party, each party to the arbitration shall be responsible for its own attorneys’ fees and other professional fees incurred in connection with the arbitration. Determinations of the arbitrator will be final and binding upon the parties to the arbitration, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be. The arbitrator shall apply the substantive law of the State of North Carolina, without giving effect to its conflict of laws rules.

(c) EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTER-CLAIM (WHETHER IN CONTRACT, STATUTE, EQUITY, OR TORT (SUCH AS NEGLIGENCE), OR OTHERWISE RELATING TO THIS AGREEMENT.

## **15. Miscellaneous.**

(a) SCIENTIST shall not delegate her obligations hereunder without Company’s written consent, and shall not assign or transfer this Agreement to any party without the prior written consent of Company.

(b) The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision, and any such finding of invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. In the event that any provision of this Agreement is held to be invalid or unenforceable, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision. It is expressly understood, however, that the parties hereto intend each and every provision of this Agreement to be valid and enforceable, and hereby knowingly waive all rights to object to any provision of this Agreement. Accordingly, if any part of this Agreement is determined to be invalid or unenforceable pursuant to applicable law, then the invalid or unenforceable provision(s) will, rather than be stricken in their entirety, be deemed superseded by valid, enforceable provisions that most closely match the intent of the original provisions and the remainder of the Agreement shall continue in effect.

(c) Subject to the arbitration provisions of Section 15, any action related to or arising out of this Agreement shall be brought solely in the state and federal courts seated in Raleigh, North Carolina and the parties irrevocably commit to the jurisdiction of said courts and waive any objection to the forum or venue of any litigation lodged in such court as being inconvenient.

(d) The headings and captions used in this Agreement are for convenience of reference only, and shall in no way define, limit, expand or otherwise affect the meaning or construction of any provision of this Agreement.

(e) Any notice required or permitted to be given pursuant to this Agreement shall be deemed sufficiently pursuant to this Agreement shall be deemed sufficiently given when: delivered in person; deposited in the United States mail, registered or certified mail, postage prepaid, addressed to the respective party at the address shown with the party's signature below; deposited with an overnight courier that provides delivery receipt; sent by facsimile to the recipient’s known facsimile number with confirmation of transmission; or sent by e-mail with receipt confirmed.

(f) This Agreement, together with the Exhibits and Statements of Work hereto, constitutes the entire agreement between Company and SCIENTIST with respect to the subject matter of this Agreement, and supersedes any prior agreements or understandings, whether oral or written, between Company and SCIENTIST with respect to such subject matter. No amendment or waiver of this Agreement or any provision hereof shall be effective unless in writing signed by both of the parties.

**[Signatures on Next Page.]**

## **SIGNATURE PAGE**

IN WITNESS WHEREOF, SCIENTIST and Company have executed and delivered this Scientist Agreement as of the Effective Date.

|  |  |  |
| --- | --- | --- |
| **[CLIENT NAME HERE]**  By:  Name:  Title: | **Brian David Bower LLC**  By:  Name:  Title: |  |

# EXHIBIT A: Statement of Work

Capitalized terms used but not defined herein shall have the meanings given to them in that certain Scientist Agreement, dated [DATE HERE], by and between [CLIENT NAME HERE] and the undersigned contractor (the “***Agreement***”).

**A.1** **Services To Be Performed:**

[TO BE FILLED OUT BY CLIENT]

**A.2** **Term:**

The term of this Agreement shall commence on the Effective Date and continue until terminated by a party under Section 4 of the Agreement.

**A.3** **Service Fees:**

As consideration for the Services, the Company will award Scientist within thirty (30) days of the start date with [CLIENT NAME HERE] compensation of $[NEGOTIATED RATE HERE] per hour, but not to exceed [NEGOTIATED AVAILABILITY HERE] hours per week.

IN WITNESS WHEREOF, SCIENTIST and Company have executed and delivered this Statement of Work as of the Effective Date.

|  |  |
| --- | --- |
| [CLIENT NAME HERE]  By:  Name:  Title: | Signature: |

# EXHIBIT B: Assignment of Works

The undersigned (“***SCIENTIST***”) assigns and conveys to [CLIENT NAME HERE] (the “***Company***”), all of the worldwide right, title and interest of SCIENTIST in and to the Work Product created, invented, conceived, reduced to practice, authored, developed or delivered by SCIENTIST either solely or jointly with others, with respect to the Services rendered as an independent contractor, including all modifications, amendments, translations, upgrades, updates, enhancements, derivative works and any other changes thereto, including worldwide trademark, copyright, trade secret, patent and all other proprietary rights (collectively, “***Works***”). SCIENTIST shall provide Company with all materials or information prepared by SCIENTIST related to the Works, retaining no copies thereof without the prior written consent of Company.

Company, as the holder of the worldwide right, title and interest in the Works, shall have the right to use the Works, or any part or parts thereof, as Company sees fit. Company may alter the Works, add to them, or combine them with any other work or works at its sole discretion. Notwithstanding the foregoing, all material created in whole or part by SCIENTIST as part of the Works or as part of the process of creating the Works, including but not limited to data, programs, listings, printouts, documentation, documents, notes, flow charts, files, computer files, Internet web site content, correspondence, and programming aids, shall be the property of Company whether or not Company uses such material. No rights in the Works, whether legal or moral, are reserved by SCIENTIST.

In the event that SCIENTIST has any rights or interests in and to the Works that cannot be assigned to Company, then SCIENTIST hereby grants to Company, and its respective successors and assigns, an unconditional, exclusive, worldwide, fully paid license to use, including the right to sublicense the Works and grant others, such rights in any way and without any limitation whatsoever. The term of such license to Company will be the duration of SCIENTIST’s rights in the Works which are unassignable to Company. In the event that SCIENTIST has any rights in and to any Works that cannot be assigned, licensed or sublicensed to Company, SCIENTIST hereby irrevocably and unconditionally waives the enforcement of all such rights, and all claims and causes of action of any kind with respect to any of the foregoing against Company, its distributors, customers, clients and others, whether now known or hereafter to become known, and agree, at the request of Company and its respective successors and assigns, to consent to and join in any action to enforce such rights and to procure a waiver of such rights from the holders of such rights.

All programs, property, specifications, documentation, correspondence, data, drawings, files, computer files, Internet web site content, and all other technical and nontechnical information prepared in whole or in part by SCIENTIST in connection with the Works are, will become and shall remain Company’s sole property.

SCIENTIST agrees that she will not seek any form of intellectual property protection for any rights in any of the Works. SCIENTIST irrevocably waives her moral rights in the Works. SCIENTIST shall have no rights in, and shall not communicate to any third party the nature of or details relating to, the Works. SCIENTIST agrees that she shall take any and all acts, and execute any and all instruments, that Company may reasonably request to vest ownership of all Works in Company or its nominees.

Capitalized terms used but not defined herein shall have the meanings given to them in that certain Agreement, dated [DATE HERE], by and between Brian David Bower LLC and [CLIENT NAME HERE].

IN WITNESS WHEREOF, SCIENTIST has executed and delivered this Assignment of Works as of the Effective Date.

Signature: Printed Name: