

Beta Test Agreement

- 🔊 The Beta Test Agreement is used by the developer of a new software or computer hardware product to arrange for a test and evaluation of the product prior to release.
- 🔊 While the application Beta Test Agreement provides that the developer is not responsible for loss or damage from such events, it is always wise to fully disclose to the beta test user in writing, prior to the beta test, all of the potential risks and recommendations as to how to avoid them.



 Use this sample agreement when establishing a program for vendor support for retailer advertising.

Date: **[Date]**

To: **[Name of Beta Tester]**

From: **[Owner/Founder]**
[Company]

Subject: **Software / Hardware Beta Test Agreement**



Attached is a Beta Test Agreement which we need in place to enable you to have and use a pre-release version of our [product] in return for feedback that will help us make sure it's ready to for final release.

We very much appreciate your time, testing, evaluation and feedback!

I believe that it embodies everything we discussed.

Please read the agreement carefully.

We recommend that you also have it reviewed by your own qualified legal counsel.

Time is of the essence.

Please sign and return it to me asap.

Thank you very much!

From JIAN

NOTICE:

We wish we could provide an agreement that was tailored *exactly* to your business. While this is not always possible, we feel that we've come very close and that this document provides you with the head-start that you need to get your deal moving. Nevertheless, we must make this disclaimer:

- 🚫 **Do Not Use This Agreement 'As-Is.'**
- 🚫 **This Agreement Is Not Legal Advice.**
- 🚫 **Read it Thoroughly and Make All Appropriate Changes to Fit Your Requirements.**
- 🚫 **You Should Have this Agreement Reviewed and Approved by a Qualified Attorney at Law Before Using It.**
- 🚫 **JIAN Accepts No Liability for the Effectiveness of This Document For Your Purposes.**

Free Access to Attorneys, Accountants & Consultants in Your Area

We're building a network of business experts who are eager to help you when you need it. They can review your work, make suggestions, handle unique situations and introduce you to influential people. On our website you can search by expertise and location, then e-mail or jump straight to their website. Although they are professionals and charge for their services, most offer an initial consultation free of charge. They're in your area and you can contact them directly.


- Please visit our website under [Expert Referral Network](#).

Ongoing Update Service Keeps You Current


Things change, laws change, the world changes... new ideas come along all the time. When you register, you can access our website to get updates and changes... like new and improved spreadsheets and documents. They can be downloaded directly to your computer.

- Please visit our website under [Updates](#).
- Remember to bookmark our website: www.JIAN.com

Editing Your Sample Contract

Since this entire agreement is formatted in Word, you can edit it like any other Word document. You can jump from variable to variable by clicking the above  green arrows (JIAN Menu) which will take you forward / backward and highlight the entire sample text identified within the “[]” brackets – simply edit / type-over with your information.

To make sure you have filled in all the variables, use Word's 'FIND' function to locate any “[]” which may contain an unedited variable.

- Click the  icon in the JIAN menu above to turn the expert comments on/off.
- Upon completion, delete any unnecessary blank lines that remain.
- You may format this document any way you like.
- Delete this page.

Beta Test Agreement

- 🔊 This introductory paragraph lists the date and the parties to this Agreement. We formatted this agreement uniquely to make it easy on others (judge, arbitrator(s), etc. God forbid) to readily understand who is involved, when the agreement begins and some basic summary background information.

Effective Date **[Date]**

between **[Company Legal Name]**, (“Developer”)
a **[State]** **[Corporation/Partnership/Sole Proprietorship/Resident]**,
located at **[Address]**
 **[City]**, **[State]** **[Zip Code]**

and **[Tester]** (“Tester”)
a **[State]** **[Corporation/Partnership/Sole Proprietorship/Resident]**
located at **[Address]**.

Summary

- Developer is the owner of a prototype product identified **[Product Name]** (the "Product") which it desires to have tested by a prospective user in what is commonly referred to as "Beta Test".
- The Product contains valuable, confidential, trade secret information owned by Developer.
- The Tester desires to test and evaluate the Product's suitability for use in its business.

NOW, THEREFORE, in consideration of the promises set forth herein, the parties hereto agree as follows:

1. Arrangement

Developer agrees to provide to Tester the Product, and Tester accepts the Product, subject to the terms of this Agreement. Tester agrees to test and evaluate the Product as provided herein, report to Developer with respect to the usefulness and functionality of Product, and return the Product to Developer at the conclusion of the Beta Test, all pursuant to this Agreement.

2. Non-Disclosure

A. Tester acknowledges and agrees that in providing the Product, Developer may disclose to Tester certain confidential, proprietary trade secret information of Developer (the "Confidential Information"). Confidential Information may include, but is not limited to, the Product, computer programs, flowcharts, diagrams, manuals, schematics, development tools, specifications, design documents, marketing information, financial information or business plans. During this Agreement and for a period **[Non-Disclosure Period]** thereafter, Tester agrees that it will not, without the express prior written consent of Developer, disclose any Confidential Information or any part thereof to any third party, except to the extent that such Confidential Information:

- is or becomes generally available to the public through no fault of Tester;

- is rightfully received by Tester from a third party without limitation as to its use; or
- is independently developed by Tester.

At the termination of this Agreement, Tester will return the Product and all other Confidential Information to Developer.

B. Tester also agrees that it shall not duplicate, translate, modify, copy, printout, disassemble, decompile or otherwise tamper with the Product or any firmware, circuit board or software provided therewith.

3. License

Tester acknowledges that Testers shall have only a limited, non-exclusive, nontransferable license to use the Product for a period not to exceed [Beta Test Period] days. Tester acknowledges and agrees that it will not use the Product for any purpose that is illegal. Because the Product is a “Beta Test” version only and is not error or bug free, Tester agrees that it will use the Product carefully and will not use it in any way which might result in any loss of its or any third party's property or information.

4. Report

Tester shall report to Developer, as soon as practical, any perceived defect in the Product and, following the discovery of any material defect, shall terminate its use of the Product. At the conclusion of the Beta Test, Tester shall provide to Developer an evaluation of the Product, including both positive and negative aspects.

5. Termination

Tester may terminate this Agreement at any time prior to expiration of the Beta Test by returning the Product including all Confidential Information and copies thereof, to Developer, along with its evaluation report. Developer may terminate this Agreement upon notice to Tester, subject to Tester's obligation to return the Product, Confidential Information and all copies thereof. The obligations of Tester in Section 2 above shall survive the termination of this Agreement. If not earlier terminated, this Agreement shall terminate automatically upon the end of the period set forth in Section 3 and following Tester's return of the Product and the Confidential Information. Upon termination, Tester agrees to remove from Tester's computer any files related to the product.

6. Developer's Warranties

Developer represents and warrants that it has the requisite right and legal authority to grant the license and provide the Product and the Confidential Information as contemplated by this Agreement.

DEVELOPER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCT OR ANY OTHER CONFIDENTIAL INFORMATION AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. DEVELOPER'S SOLE LIABILITY FOR BREACH OF THE REPRESENTATION AND WARRANTY ABOVE, AND TESTER'S SOLE REMEDY, SHALL BE THAT DEVELOPER SHALL INDEMNIFY AND HOLD TESTER HARMLESS FROM AND AGAINST ANY LOSS, SUIT, DAMAGE, CLAIM OR DEFENSE ARISING OUT OF BREACH OF THE REPRESENTATION AND WARRANTY, INCLUDING REASONABLE ATTORNEYS' FEES.

7. General Provisions

🔊 The General Provisions that follow are fairly standard. These provisions enhance the balance of the Agreement by defining certain common issues such as notice, assignment, legal remedies, waiver, and attorney fees, etc..

7.1 **Independent Contractors.** The relationship between both parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to give either party the power to direct and control the day-to-day activities of the other. Neither party is an agent,

representative or partner of the other party. Neither party shall have any right, power or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture or partnership between the parties or to impose any liability attributable to such relationship upon either party.

☞ You may or may not want to make this deal public – at least limit that event by this agreement and work out if/how/when you want to do that later.

7.2 **Publicity.** Neither party will make any public announcement or issue any press release concerning the terms of this Agreement without the prior approval of both parties.

☞ Make it clear that you will not try to hire away each others employees. If you do or it happens then there is compensation built-in and you can avoid further legal proceedings.

7.3 **Non-Solicitation.** Neither party shall solicit for employment or hire the other's current or future employees, either directly or indirectly, during the Term of this Agreement, without obtaining the other's prior written approval. Should an employee change employment from one party to the other, the new employer shall pay the old employer a fee equivalent to Twenty Percent (20%) of the employee's new compensation, annualized for the first year.

☞ You must decide which  governs this Agreement and where any legal action would be taken. Generally, it is your (company's) state of residence.

7.4 **Governing Law & Jurisdiction.** This agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of [State], without reference to conflict of law principles. The parties hereby expressly consent to the jurisdiction and venue of the federal and state courts within the state of [State]. Each party hereby irrevocably consents to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to such party at its address set forth in the preamble of this Agreement, such service to become effective thirty (30) days after such mailing.

☞ This Agreement is intended to be the only Agreement and that no other documents or communications are binding. Therefore, it is very important to make sure that everything [Company] and [Client] have agreed to is included in this Agreement. Otherwise, it is as if it were not agreed to.

7.5 **Entire Agreement.** This Agreement, including the attached exhibits, constitutes the entire Agreement between both parties concerning this transaction, and replaces all previous communications, representations, understandings, and Agreements, whether verbal or written between the parties to this Agreement or their representatives. No representations or statements of any kind made by either party, which are not expressly stated in this Agreement, shall be binding on such parties.

☞ Any changes to this Agreement must be in writing and signed by the party against whom that writing is to be used.

7.6 **All Amendments in Writing.** No waiver, amendment or modification of any provisions of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom such waiver, amendment or modification is sought to be enforced. Furthermore, no provisions in either party's purchase orders or in any other business forms employed by either party will supersede the terms and conditions of this Agreement.

☞ All notices between the parties must be in writing and either delivered in person or by certified or registered mail, return receipt requested.

7.7 **Notices.** Any notice required or permitted by this Agreement shall be deemed given if sent by registered mail, postage prepaid with return receipt requested, addressed to the other party at the address set forth in the preamble of this Agreement or at such other address for which such party gives notice hereunder. Delivery shall be deemed effective three (3) days after deposit with postal authorities.

☞ In the event of a lawsuit or any legal proceeding involving this Agreement, the losing party will have to pay the winning party his or her costs and expenses, including reasonable attorney fees.

7.8 **Costs of Legal Action.** In the event any action is brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs of enforcement including, without limitation, attorneys' fees and court costs.

☞ Legal remedies, i.e., money damages, may not be sufficient; therefore, both parties agree to equitable remedies such as an injunction where the breaching party would be required to do or not to do something.

7.9 **Inadequate Legal Remedy.** Both parties understand and acknowledge that violation of their respective covenants and Agreements may cause the other irreparable harm and damage, that may not be recovered at law, and each agrees that the other's remedies for breach may be in equity by way of injunctive relief, as well as for damages and any other relief available to the non-breaching party, whether in law or in equity.

☞ Assuming the parties wish to use Arbitration in the event of a dispute, the following section should be included. You take your chances with an arbitrator, but it keeps legal costs down and keeps you out of a drawn out legal process.

7.10 **Arbitration.** Any dispute relating to the interpretation or performance of this Agreement shall be resolved at the request of either party through binding arbitration. Arbitration shall be conducted in [County], [State] in accordance with the then-existing rules of the American Arbitration Association. Judgment upon any award by the arbitrators may be entered by any state or federal court having jurisdiction. Both parties intend that this Agreement to arbitrate be irrevocable.

☞ Merely delaying to bring an action that one party has a right to bring does not cause that party to lose or waive his right to pursue that action.

7.11 **Delay is Not a Waiver.** No failure or delay by either party in exercising any right, power or remedy under this Agreement, except as specifically provided in this Agreement, shall operate as a waiver of any such right, power or remedy.

☞ Neither party will be blamed if there is a problem resulting from something beyond its control, such as an earthquake, flood, war.

7.12 **Force Majeure.** In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of any Act of God, strike, fire, flood, governmental acts, orders or restrictions, Internet system unavailability, system malfunctions or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence of the non-performing party (a "Force Majeure Event"), the party who has been so affected shall give notice immediately to the other party and shall use its reasonable best efforts to resume performance. Failure to meet due dates resulting from a Force Majeure Event shall extend such due dates for a reasonable period. However, if the period of nonperformance exceeds sixty (60) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been affected may, by giving written notice, terminate this Agreement effective immediately upon such notice or at such later date as is therein specified.

☞ This section limits the ability of either party to transfer any of its rights or delegate any of its duties to third parties.

☞ You want to make sure that you can sell your business along with all of the relationships you have developed along the way. (Often these relationships can add tremendous value to your business and you want to make sure that all of your agreements can be transferred to the new owners.) I wouldn't want to seek (let alone pay for) permission to sell my company.

☞ Generally, neither party may assign their respective rights to a third party; however, with the possible exception of assignment to a successor corporation or partnership, either party may

transfer its rights or obligations under this Agreement without the approval of the other party. This Agreement would be binding on the 3rd party.

☞ However, you may want to limit each other's ability to pass along this deal to another possibly unknown and possibly unfriendly entity. The second paragraph prevents unauthorized transfer of responsibilities...

☞ CHOOSE one or the other of these two following paragraphs.

7.13 **Assignability & Binding Effect.** Except as expressly set forth within this Agreement, neither party may transfer or assign, directly or indirectly, this Agreement or its rights and obligations hereunder without the express written permission of the other party, not to be unreasonably withheld; provided, however, that both parties shall have the right to assign or otherwise transfer this Agreement to any parent, subsidiary, affiliated entity or pursuant to any merger, consolidation or reorganization, provided that all such assignees and transferees agree in writing to be bound by the terms of this Agreement prior to such assignment or transfer. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

☞ --Or --

☞ This paragraph DOES NOT ALLOW either party to transfer its rights to a successor company without prior approval. 

7.13 **Non-Assignability & Binding Effect.** Except as otherwise provided for within this Agreement, neither party may assign any of its rights or delegate any of its obligations under this Agreement to any third party without the express written permission of the other. Any such assignment is deemed null and void.

☞ If any part of this Agreement is unenforceable or invalid, the balance of the Agreement should still be enforced. Basically, ignore any sections that are invalid.

7.14 **Severability.** If any provisions of this Agreement are held by a court of competent jurisdiction to be invalid under any applicable statute or rule of law, they are to that extent to be deemed omitted and the remaining provisions of this Agreement shall remain in full force and effect.

☞ The headings of the various sections are meant to explain or otherwise give meaning to those sections; they are for convenience only.

7.15 **Cumulative Rights.** Any specific right or remedy provided in this Agreement will not be exclusive but will be cumulative upon all other rights and remedies described in this section and allowed under applicable law.

7.16 **Headings.** The titles and headings of the various sections and sections in this Agreement are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify or place any construction upon or on any of the provisions of this Agreement.

☞ Every copy shall be just as valid as the original.

7.17 **Counterparts.** This Agreement may be executed in multiple counterparts, any one of which will be considered an original, but all of which will constitute one and the same instrument.

☞ Even after the termination of the Agreement, the parties may still have certain responsibilities such as keeping information confidential.

7.18 **Survival of Certain Provisions.** The warranties and the indemnification and confidentiality obligations set forth in the Agreement shall survive the termination of the Agreement by either party for any reason.

Understood, Agreed & Approved

We have carefully reviewed this contract and agree to and accept all of its terms and conditions. We are

executing this Agreement as of the Effective Date above.

[Company]

Tester

[Owner/Founder]

Tester Name

Title

Title

