

Advertising Cooperative Agreement

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

Date: **[Date]**

To: **[Name of Vendor]**

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

Subject: **Advertising Cooperative Agreement**

Attached is an Advertising Cooperative Agreement in order to establish the arrangement as to how we will advertise your product through our promotional efforts.

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!

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.**

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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.

Advertising Cooperative 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], (“[Company]”)
a [State] [Corporation/Partnership/Sole Proprietorship/Resident],
located at [Address]
[City], [State] [Zip Code]

and [Vendor Name], (“Vendor”)
a [State] [Corporation/Partnership/Sole Proprietorship/Resident]
located at [Address].

1. Term & Renewal

This Agreement, and shall remain in effect for [Company]’s then-current fiscal year (“Term”) until [Month, Day, Year], unless earlier terminated by either party, with or without cause and at no cost to either party, upon 60 days’ written notice to the other party. If market conditions warrant at the end of the term, or any renewal term(s), this Agreement shall be renewed for successive one year terms, unless either party has notified the other of its intent not to renew this Agreement 60 days prior to such date.

2. Funds Accrual

☞ Section 2 states that [Company] accrues an amount equal to [x]% at the dollar amount if spent on the Vendor’s products. You should register the appropriate percentage for your deal and insert that number below in the brackets.

[Company] shall accrue the following amount during the term or any renewal term(s) as the advertising promotional allowance (the “Advertising Promotional Allowance”): [x]% percent of total receivings during the term or any renewal term(s). “Total Receivings” shall mean [Company]’s total purchases from the Vendor, plus any Vendor products purchased by [Company] from distributors or suppliers, less any credits and returns, during the term or any renewal term(s).

3. Use of Funds

☞ This next section entitles [Company] to payment of the accrued amount on demand. The Vendor is responsible for payment of special costs incurred by [Company], but [Company] has the right to limit the dollar cost of [Company]’s promotional expenses to \$10,000.

[Company] shall, at all times (including without limitation, after the termination, expiration or renewal of this Agreement), be entitled to payment of the accrued portion of the advertising promotional allowance for promotion of Vendor’s products. [Company] shall use the advertising promotional allowance at its

discretion, but shall obtain the Vendor's consent if any individual promotion exceeds the cap of \$10,000 (the "Alliance Cap Amount"). If any Vendor product(s) are not released according to schedule and [Company] has reserved and is unable to cancel advertising for such product(s) without incurring additional costs, the Vendor agrees to pay for such advertising and any additional shipping costs within 30 days of [Company]'s invoice and agrees that such payments shall not reduce any advertising promotional Alliance funds available under this Agreement. In addition, the Vendor agrees to pay to [Company] \$200.00 per product for four-color illustration(s) for any product(s) that [Company] does not have art on file and agrees that such charges shall not reduce any advertising promotional alliance funds available under this Agreement.

4. Additional Advertising

☞ Section 4 states that [Company] can only bill for its expenses up to the amount it has accrued in its advertising promotional allowance from purchasing the Vendor's products. If [Company]'s expenses exceed that amount, they cannot bill for the excess until it accrues sufficient amounts in this advertising promotional allowance.

In the event that [Company]'s expenses for any particular promotion exceed the then-accrued advertising promotional allowance, [Company] shall bill the Vendor, to the extent of the then-accrued advertising promotional allowance, upon the implementation of the promotion in the applicable media. Any remaining balance not covered by the then-accrued advertising promotional allowance will be billed as sufficient advertising promotional allowance funds accrued or the Vendor shall agree to pay for the particular promotion according to the terms of a separate written Agreement between the parties.

5. Reporting & Payment

☞ In order for the parties to know how much marketing dollars [Company] is entitled to, [Company] has to report its purchases of the Vendor's products. This next section states that [Company] has to report its purchases to the Vendor every calendar quarter. [Company] will then invoice the Vendor for amounts due.

Within 15 business days following the end of each calendar quarter, [Company] will forward to the Vendor a Vendor summary report stating the accrued amount of advertising promotional allowance and how such amount has been used by [Company] during the previous accounting period(s). [Company] will bill the Vendor for promotion(s), to the extent covered by the then-accrued advertising promotional allowance or otherwise agreed upon, upon implementation of the promotion(s) in the applicable media. The Vendor agrees to pay such amounts to [Company] in cash (or credit memo, only if such amounts are less than or equal to [Company]'s then-current accounts payable balance to the Vendor) within 30 days of the date of [Company]'s invoice, and any such amounts not received during such period shall be deducted by [Company] from any outstanding balances owed to the Vendor. Upon termination or expiration of this Agreement, the Vendor shall pay all outstanding invoices, including without limitation, any invoices for promotions in accordance with the terms of Sections 3 or 4 of this Agreement.

6. Similar Agreements with Others

☞ [Company] operates similar programs for other Vendors. This next section states that the parties acknowledge that [Company] is not charging them more than other Vendors. Also, this section says that this is the entire agreement between the parties.

The parties acknowledge that any advertising promotional allowance or similar payments for advertising services by the Vendor shall be made available to all competing customers on proportionately equal terms.

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 state 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]

Vendor

[Owner/Founder]

Vendor Name

Title

Title