

International Licensing Agreement

- 🔊 This Agreement initially presumes that you are the developer/manufacturer/owner of a product that you want to license for production and/or distribution by another entity.
- 🔊 If you are the other entity, this Agreement can easily be reversed.
- 🔊 See also, the “International Distribution” agreement if you are looking for someone to just sell your product(s).
- 🔊 The first part of the Memorandum should be completed and distributed to the other party along with a copy of the International Licensing Agreement.

Date:

[Date]


To:

[Name of other party]

From:

[Your Name]
[Company]

Subject:

International Licensing Agreement

Attached is an International Licensing Agreement in order to license the right to manufacture, distribute and sell [Enter product] throughout the agreed upon Territory.

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](#).

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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.

International Licensing Agreement

☞ This is a standard introductory paragraph that lists the parties to the Agreement, their addresses and the date the Agreement is being entered into.

Effective Date **[Date]**

between **[Company Legal Name]**, (“[Company]”)

a [State] [Corporation / Partnership / Sole Proprietorship / Resident],

located at [Address]

[City], [State] [Zip Code]

and **[Licensee]**, (“Licensee”)

a [State of organization or residence) [Corporation / Partnership / Sole Proprietorship / Resident),

located at Address].

1. Summary

☞ Note that the Licensor is the owner of the item(s) being licensed and owns or will own any changes made by Licensee as well.

☞ Enter the name(s) of the item(s) being licensed. Complete Exhibit A (which is a thorough description of the items) at the end of this Agreement.

The Licensor is the owner of a certain item now known as [Insert item], as more fully described in Exhibit A attached to this Agreement, together with all modifications, all improvements (including all those made by the Licensee), all patents and all copyrights and trademarks originated by the Licensee used in connection with (collectively, the “Property”).

☞ Insert the specific geographic area(s) where the Licensee will be able to manufacture, distribute and sell the Property.

The Licensee desires to acquire from the Licensor, and the Licensor is willing to transfer to the Licensee, all rights in and to the Property pursuant to the Licensor’s grant to the Licensee of an exclusive license to manufacture, distribute and sell the Property throughout [Enter territory] (the “Territory”) on the terms and subject to the conditions of this Agreement.

In consideration for the mutual promises, covenants, and Agreements made below, the parties, intending to be legally bound, agree as follows:

2. Grant of License

☞ Licensee can pretty much do anything with the Licensed Products in the Territory. While it may manufacture the Products outside the Territory, it can not sell or distribute them there.

2.1 Grant of Exclusive License. The Licensor hereby grants to the Licensee an exclusive license (the “License”) to manufacture, distribute and sell, and to sublicense the manufacture, distribution and sale of, Licensed Products (defined below) in the Territory. The Licensee may manufacture the Licensed Products outside the Territory; provided, however, that in no event shall the Licensee distribute or sell the Licensed Products outside the Territory. Except as otherwise provided in Sections 9 and 11, the License specifically includes the right to exclude any person from manufacturing, distributing and selling

the Licensed Products in the Territory.

2.2 Licensed Products. The term “Licensed Products” means all products sold by the Licensee, any Affiliate or Subsidiary (as such terms are defined in Section 12.2.2), or any Sub licensee of the Licensee during the term of this Agreement that are based on the Property.

3. Term & Termination

3.1 Term. The term of this Agreement shall commence on the date stated above and shall continue until terminated as provided below.

☞ Obviously, it is much easier for the Licensee to terminate the Agreement than the Licensor. You should carefully review these termination provisions, deleting and / or adding where appropriate. Comments are not mentioned for each, as they are fairly straightforward.

☞ Insert the termination notice required by the Licensee, generally 30 days.

3.2 Termination. This Agreement may be terminated by the Licensee at any time upon [Enter amount of time] prior notice to the Licensor, and by the Licensor:

3.2.1 Upon any material breach of this Agreement by the Licensee that is not remedied within 30 days after the Licensee's receipt of notice of such breach;

3.2.2 If the Licensor does not receive payment of the advance against the royalties in accordance with Section 3.2;

3.2.3 Pursuant to Section 3.2.9.

☞ You should include this provision where the Licensee has agreed to present the Products at a certain trade show or fair. For example, if the Product was a toy, the Licensee might be required to present it at the New York City Toy Show.

☞ Insert the year and the name of the show or fair where the Licensee must present the Product.

3.2.4 If the Licensee does not present Licensed Products at the [Month, Day, Year];

☞ Insert the date on or before the Company must ship Products to its customers.

3.2.5 If the Licensee does not ship Licensed Products to its customers on or before [Month, Day, Year];

☞ Insert a time frame, for example, during 1996.

3.2.6 The Licensee notifies the Licensor of its intent not to manufacture Licensed Products during [Month, Day, Year];

☞ Insert a time period, for example 12 months. If the Licensee doesn't manufacture or sell during this time period, then the Licensor can terminate the Agreement.

3.2.7 If the Licensee does not manufacture and sell the Licensed Products for any consecutive [Enter time) period];

3.2.8 If the Licensee files a petition in bankruptcy, is adjudicated in a bankrupt, becomes insolvent, makes an arrangement or assignment for the benefit of creditors, or discontinues its business, or if a receiver or custodian is appointed for the Licensee or its business, or if a petition in bankruptcy is filed against the Licensee that is not dismissed within 90 days after the date of such filing; or

☞ For the first insert, enter the first year that the minimum guarantee applies. Normally this is the second year of the License. For the second insert, enter the amount of the minimum annual guarantee.

3.2.9 The Licensor may terminate this Agreement if within 30 days after the end of any calendar year

beginning with [Enter year), the Licensee has not paid to the Licensor royalties of at least \$[x] from the sale of the Licensed Products during such calendar year (the “Minimum Guarantee”).

- ☞ Section 3.3 addresses the effect of termination. These termination provisions are fairly routine. Rather than comment on all of the time periods, we have standard inputs for you; of course you can change them. Basically, they all relate to when the money is due to the Licensor by the Licensee; depending on the nature of that money, the times the money is due will vary.

3.3 Effect of Termination. Upon termination of this Agreement by either party:

- ☞ Upon termination the Licensee gets 120 days to sell its existing inventory; after that all rights revert to the Licensor.

3.3.1 All rights granted to the Licensee under this Agreement shall revert to the Licensor free and clear of any lien, security interest or other encumbrance, and the Licensee and its Affiliates and Subsidiaries shall as soon as practicable cease the manufacture, distribution, sale, promotion, advertising and marketing of Licensed Products; provided, however, that for a period of 120 days after the termination of this Agreement the Licensee and its affiliates and subsidiaries may complete any work in process and sell their existing inventories of the Licensed Products;

3.3.2 All portions of the advance against royalties described in Section 4.3 that has not been paid shall be immediately due and payable

3.3.3 All royalty payments due pursuant to Section 4 (other than royalty payments, if any, for the 120 day period during which the Licensee and its Affiliates and Subsidiaries may complete their work in process and sell their existing inventories of Licensed Products) shall be paid to the Licensor within 30 days after the date this Agreement is terminated;

3.3.4 All other amounts due under this Agreement, from either party to the other (except for amounts due from the Licensee's Sub-licensees that shall continue to be collected by the Licensee and paid to the Licensor in accordance with Sections 4) shall be paid within 150 days after the date this Agreement is terminated, at that time the Licensee shall submit to the Licensor a final account statement in accordance with Section 4.1.

4. Royalty

- ☞ For the first two inserts in Section 4.1, enter the royalty percentage to be paid to the Licensor. For the third insert, enter the maximum amount, either a fixed dollar or percentage, permitted for returns, discounts, allowances and credits. For the last insert, indicate the interest rate applied to late payments.

4.1 [x]% of the Net Sales. Except as otherwise provided in Section 4.2, the Licensee shall pay to the Licensor a royalty equal to [x]% of the Net Sales of all Licensed Products sold by the Licensee. The term “Net Sales” shall mean the gross sales price of all Licensed Products sold by the Licensee (and, with respect to Section 4.2, any Sub-licensee of the Licensee) less all returns and less reasonable discounts, allowances and credits not to exceed \$[x] of such gross sales price. Licensed Products shall be regarded as "sold" when either shipped or invoiced by the Licensee, whichever occurs first. The royalties shall be paid to the Licensor quarterly within 30 days after the end of each calendar quarter. The term "calendar quarter" shall mean the periods ending March 31, June 30, September 30, and December 31, in any given calendar year. Royalty payments shall be accompanied by account statements certified as accurate and complete by an authorized officer of the Licensee for the applicable calendar quarter setting forth the amount of gross sales, discounts, allowances and credits in the aggregate and separately for each Licensed Product by stock keeping number. Late payments of royalties shall bear interest at a rate of [x] % per annum, provided that such rate shall not exceed the maximum rate permitted by law.

☞ Section 4.2 deals with sales to the affiliates, subsidiaries and sub-licensees of Licensee. We have written this section so as to protect the Licensor from below market sales to the affiliates. Imagine what the Licensor's payments would be if the Licensee sold to an affiliate for one tenth of what the Product normally sold for. Section 4.2 ensures that the royalties resulting from sales to the affiliates are at least one half of what the Licensor normally gets or 50% of what the Licensee gets, whichever is greater.

☞ For the first insert, enter the royalty percentage to be paid to Licensor (this should be the same percentage as stated in Section 4.1). For the second insert, enter the maximum amount, either a fixed dollar or percentage, permitted for returns, discounts, allowances and credits. (This should also match Section 4.1). The third insert is merely one half the royalty; thus if the royalty is 5%, this insert would be 2.5%.

4.2 Notwithstanding anything to the contrary contained in Section 4.1, royalties paid to the Licensor in connection with the sale of Licensed Products by the Licensee to:

(1) any Affiliate or Subsidiary shall be based on [x]% of the gross sales price of all Licensed Products sold by them less all returns and less reasonable discounts, allowances and credits not to exceed [Enter fixed dollar or percentage] of such gross sales price;

(2) any Sub-licensee shall be based on the greater of 50% of all royalties, including advances against royalties, paid to the Licensee by each Sub-licensee or [x]% of the Net Sales of all Licensed Products sold by each Sub-licensee.

Royalties paid to the Licensor pursuant to this Section 4.2 shall be paid in accordance with Section 4.1 within 30 days after the end of the calendar quarter during which royalties are collected by the Licensee.

☞ If the Licensee will be advancing royalties to Licensor, insert the amount of the advance in the first insert. For the second, insert the schedule for those payments.

4.3 Advance Against Royalties. The Licensee shall pay to the Licensor the sum of \$[x] as a non-refundable advance against royalties from the sale of Licensed Products in accordance with the following schedule: [Insert schedule).

☞ The Licensee does not have to pay royalties on Products sold in close out sales, where products are sold at a 25% discount. If appropriate, you may wish to change the percentages.

4.4 Close Out Sales. The royalty provisions of this Agreement shall not apply to the Close Out Sales by the Licensee or its Sub-licensees. The term "Close Out Sales" shall mean any sale of Licensed Products at a net selling price of less than 75% of the Licensee's or its Sub-licensees customary wholesale price.

☞ You want access to books and records so you can audit as you feel necessary. This is a very common provision and should be kept in.

12.1 Access to Books & Records. Licensee shall keep complete and accurate books and records with respect to the manufacture, distribution and sale of Licensed Products. Licensor shall have the right, through an independent accountant retained by the Licensor, to inspect the Licensee's books and records relating to the subject matter of this Agreement once per year during the term of this Agreement and for a period of two years thereafter on reasonable notice to the Licensee, during regular business hours at the place where such books and records are normally kept and to the extent reasonably necessary to determine the accuracy of any royalty payments to be made under this Agreement.

☞ It is common and a fair practice for the Licensee to pay for the audit should any discrepancy exceeds 5%.

Should any discrepancy exist in favor of Licensor exceeding 5%, then Licensee shall pay to the Licensor all costs for the audit in addition to the additional amount owed. Should the discrepancy be less than 5%, Licensee shall pay Licensor the required payment, but the Licensor shall bear all costs of the audit.

Licensee shall be entitled to rely on the financial reports submitted to it by its Sub-licensees' and the Licensee shall not be required to verify such reports by actual inspection of its Sub-licensees, books and records. However, the Licensee shall require its Sub-licensees to keep complete and accurate books and records with respect to the manufacture, distribution and sale of the Licensed Products. Licensee shall make available to the Licensor the results of any audit it conducts of its Sub-licensees. Any and all information obtained by the Licensor in such inspections and in the royalty reports provided under Section 4.1 shall be considered strictly confidential and shall not be released or disclosed to any person, except in connection with any action to enforce the rights of the Licensor under this Agreement.

5. Representations & Warranties; Indemnification

☞ Section 5 contains a number of fairly typical representations and warranties by both parties, along with standard indemnification provisions in the event of a breach of warranty or misrepresentation.

5.1 The Licensor represents and warrants to the Licensee that:

(1) it is the owner of the Property and has the power to grant the License to the Licensee;

(2) it has not granted to any other person a license to manufacture, distribute or sell the Property in the Territory; and

(3) to the best of its knowledge, the Property does not infringe any patent, copyright, trademark or other proprietary right of any third party.

☞ In the event that the Licensor breaches any of the warranties contained in Section 5.1 to the Licensee, it will indemnify the Licensee, i.e., it will pay any and all damages and expenses resulting from that breach. In the event of such a claim, the Licensor can suspend payment of royalties.

5.2 The Licensor shall indemnify and hold the Licensee harmless from and against any and all damages, liabilities, costs and expenses incurred by the Licensee in connection with any final judgment arising out of or resulting from any breach by the Licensor of its representations and warranties contained in Section 5.1 to the extent any such claim, proceeding or judgment relates to aspects of the Licensed Products as originated by the Licensor; provided, however, that the Licensor's total liability pursuant to this section shall be limited to the aggregate amount of royalties paid to the Licensor during the term of this Agreement. In the event such a claim is asserted against the Licensee, the Licensee may suspend payment of the royalties due to the Licensor under this Agreement and apply such royalties toward the reasonable costs and legal expenses of defending such a claim and the payment of any ensuing settlement or judgment. Within 30 days after the resolution of any such claim, the Licensee shall remit to the Licensor the amount, if any, of royalties withheld from the Licensor and not applied to the defense or payment of such claim, together with a statement setting forth all costs and legal expenses to which such royalties were applied. The provisions of this section shall survive the termination of this Agreement. Such indemnification shall be in addition to any other remedies available to the Licensee.

5.3 The Licensee represents and warrants to the Licensor that this Agreement constitutes the legal, valid and binding obligation of the Licensee enforceable against the Licensee in accordance with its terms.

☞ In the event that the Licensee breaches its warranties, uses the property in an unauthorized manner, or manufactures the products incorrectly, it will indemnify the Licensor, i.e., it will pay any and all damages and expenses resulting from that breach.

5.4 The Licensee shall indemnify and hold the Licensor harmless from and against any and all damages, liabilities, costs and expenses incurred by the Licensor in connection with any final judgment arising out of or resulting from:

(1) the breach by the Licensee of its representations and warranties contained in Section 5.3;

(2) the manufacture, distribution or sale of Licensed Products (except insofar as such claims relate to the Licensor's representations and warranties contained in Section 5.1);

(3) any unauthorized use by the Licensee or any Affiliate, Subsidiary or Sub-licensee of the Property; and

(4) any defects (design or otherwise) or inherent dangers in the Property. The provisions of this section shall survive the termination of this Agreement.

Such indemnification shall be in addition to any other remedy available to the Licensor.

6. Product Liability Insurance

☞ Insert the minimum amount to be obtained for product liability insurance by the Licensee, generally \$1,000,000.00.

6.1 Product Liability Insurance. Promptly after the date this Agreement is executed (but in no event later than the date Licensed Products are first manufactured), the Licensee shall obtain and keep in effect during the term of this Agreement, at its sole cost and expense, all risk product liability insurance in an aggregate amount of not less than \$[x] naming the Licensor as an additional insured, and shall promptly provide the Licensor with evidence. Each insurance policy shall provide that if such insurance is canceled for any reason whatsoever, or if any substantial change is made in the coverage that affects the Licensor, or if such insurance is allowed to lapse for non-payment of any premium, such cancellation, change or lapse shall not be effective as to the Licensor until 30 days after receipt by the Licensor of written notice from the insurance Licensee.

7. Similar Products

☞ The Licensee is agreeing not to sell, manufacture or distribute competitive Products. Depending on the nature of your Products, you may need to clarify (in brackets) in words so they apply.

7.1 The Licensee agrees that throughout and after the term of this Agreement it will not manufacture, distribute or sell any product (other than Licensed Products manufactured, distributed or sold during the term of this Agreement) that [employs the basic principles or the basic concept of design of the Property). In the event that the Licensee does manufacture, distribute or sell any such product, the same shall be governed by the terms and conditions of this Agreement including, without limitation, the obligation to pay royalties in accordance with Section 4.

8. Patent, Copyright & Trademark

☞ The Licensor may, at its option, elect to seek a patent for the Product(s). Section 8 sets forth a number of formalities regarding patents.

8.1 Acquisition of Patent

8.1.1 The Licensor shall keep the Licensee apprised of the status of all patent applications, if any, filed by the Licensor with the United States Patent and Trademark Office, and shall promptly provide the Licensee with copies of any pending patent applications and patents issued. If the Licensor elects not to file and / or prosecute any such patent applications, the Licensee may do so at its sole cost and expense.

8.1.2 The Licensee in its sole discretion and at its sole cost and expense may apply for patents covering the Property in any foreign country in the Territory. At the Licensee's request, the Licensor shall assist the Licensee to the extent reasonably necessary in connection with any such patent applications.

8.1.3 Despite anything to the contrary contained in Sections 8.1 and 8.2, all patent applications filed and patents issued in connection with the Licensed Products shall be solely in the name of the Licensor; provided, however, that, at the request of the Licensee, all such patents issued shall be assigned to the

Licensee for the term of this Agreement.

☞ The Licensor is also the owner of all copyrights and trademarks relating to the Products; the Licensee is required to include notices of any applicable patent, copyright or trademarks on the Products.

8.2 The Licensor shall be designated by the Licensee as the owner of all patents, and all copyrights and trademarks originated by the Licensor, used in connection with the sale of Licensed Products. The Licensee shall affix patent, copyright and trademark notices on all Licensed Products and all materials related thereto including, without limitation, all advertising, packaging, promotional display, printed and other materials indicating the Licensor's ownership of all such patents, copyrights and trademarks.

8.3 As exclusive Licensee in the Territory, the Licensee shall assist the Licensor throughout the term of this Agreement, at the Licensor's sole cost and expense, in obtaining protection of any patent, and any copyright or trademark originated by the Licensor, used in connection with the sale of Licensed Products.

☞ The Licensee is required to get the Licensor's approval before using any of its Trademarks.

8.4 The Licensee shall not utilize any trademark in connection with any advertising, packaging, promotional display, printed or other material used in connection with the sale of Licensed Products without first submitting the same together with production samples to the Licensor for its approval that shall not be unreasonably withheld. The Licensor's approval shall be deemed given if it does not notify the Licensee of its disapproval within 10 days after each such submission.

9. Licensing Outside Territory

☞ The Licensor can license the property outside the Territory so long as the Licensee has no rights within the Licensee's Territory.

9.1 The Licensor intends to license the Property to third parties for manufacture, distribution and sale outside the Territory. Each such license shall specifically limit such third party's right to manufacture, distribute and sell the Property and any products derived from to the territory specified in such license that in no event shall include any part of the Territory. The Licensor shall cooperate with the Licensee to the extent reasonably necessary to prevent any such third party from manufacturing, distributing or selling the Property and any products derived from in the Territory.

10. Infringement

☞ If there is an infringement and the Licensor chooses to file an infringement suit, then it will keep the percentage (insert in the brackets) of any proceeds and give the Licensee the second bracketed percent less its costs. If the Licensor elects not to pursue an action, the Licensee may. In that event, the Licensee keeps the third bracketed percentage of the proceeds plus its costs, with the final bracketed percentage going to the Licensor.

10.1 The Licensee and the Licensor agree to promptly notify each other of any suspected infringement of their respective interests in and to the Property by any third party. In the event that any legal action against any third party is deemed necessary by either the Licensee or the Licensor for the protection of their respective interests in and to the Property in the Territory, the Licensee and the Licensor shall cooperate with each other and render all reasonably necessary assistance in connection with any such legal action; provided, however, that neither party shall settle any such action without the prior written consent of the other, which shall not be unreasonably withheld. Within 30 days after notice from the Licensee of a suspected infringement, the Licensor shall advise the Licensee of whether or not it shall prosecute a suit for infringement. If the Licensor elects to prosecute such a suit, it may select legal counsel and shall bear all legal fees and other costs and expenses incurred in connection therewith. Any money recovered after such costs and expenses are reimbursed shall be shared as follows: [x]% to the Licensor; and [x]% to the Licensee. If the Licensor chooses not to prosecute any such suit for

infringement, then the Licensee may do so after notice to the Licensor, and the Licensee may select legal counsel and shall bear all legal fees and other costs and expenses incurred in connection therewith. Any money recovered after such costs and expenses are reimbursed shall be shared as follows: [x]% to the Licensor; and [x]% to the Licensee.

☞ If the Licensor designates an agent to do those things that the Licensee is not licensed to do, then the Licensor and the Licensee will share equally in the proceeds.

11. Merchandising Rights

11.1 The Licensor may designate an agent (the “Agent”) to exploit all rights in and to the Property in the Territory (other than the right to manufacture, distribute and sell Licensed Products in the Territory) including, without limitation, book, television, cable, disc, videocassette, clothing and film rights and all other related media rights (collectively, the “Merchandising Rights”) by sublicensing to third parties the right to manufacture, distribute and sell any products based on the Merchandising Rights. All amounts paid to the Licensor by the Agent from the exploitation of the Merchandising Rights shall be shared equally between the Licensee and the Licensor after deduction of the Agent's fees and commissions including any fees and commissions paid by the Agent to its agents.

12. General Provisions

☞ The General Provisions that follow are fairly standard. These provision enhance the balance of the Agreement by explaining issues such as notice, assignment, legal remedies, waiver, and attorney fees.

12.1 **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.

☞ 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.

12.2 **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.

12.3 **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 was not agreed to.

12.4 **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.

12.5 **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.

12.6 **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.

12.7 **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.

12.8 **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.

12.9 **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. [Company] and [Client] 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.

12.10 **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.

12.11 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.

12.12 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.

12.12 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.

12.13 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.

12.14 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.

12.15 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.

12.16 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.

12.17 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.

Licensor:

Licensee:

Name

Name

Title

Title

Date

Date

Exhibit A

Description of the Product