


Mailing List Exchange Agreement

- ⏪ Often another company will have a customer base that would likely be receptive to an offer of yours. The other company will likely want to send an offer to your customer base as well. This agreement spells out the rules of that exchange.
- ⏪ The first part of the Memorandum should be completed and distributed to the other party along with a copy of the Mailing List Exchange Agreement.

Date: **[Date]**

To: **[Name of other party]**

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

Subject: **Mailing List Exchange Agreement**

Attached to this memorandum is a Mailing List Exchange Agreement, the purpose of which is to clearly establish the terms and conditions that we will share our mailing lists.

Please review it carefully to make sure that we have correctly set forth the exact uses of the lists and the number of times they can be used.

I believe that it embodies everything we discussed.

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.

Mailing List Exchange Agreement

☞ This is a standard introductory paragraph that lists the parties to the Agreement and the date it is being entered into. You need to enter the date of the Agreement, the names of the parties, the specific type of organizations they are and their addresses.

Effective Date **[Date]**

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

and **[Exchanger]**, (“Exchanger”).
a [State of organization] (Corporation / Partnership / Sole Proprietorship)
located at [Address], [City], [State] [zip code]

☞ This next paragraph states the general purpose of the Agreement. Delete the second sentence if approval is not required for each mailing.

Summary

☞ For the first insert, you should describe how the list will be used, whether it be for a single mailing, a multiple mailing, or other. For the second insert, enter the period of time during which the list may be used.

Both parties own mailing lists, and both parties wish to use the mailing list(s) of the other for [A single mailing / unlimited mailings] for a period of [xx months]. Each mailing is subject to the approval of the party whose list is being used for that mailing.

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

1. List Description

☞ The Lists are described in as much detail as possible. For the first and third inserts, enter the number of names on the list. For the second and fourth inserts, identify where the names have come from.

[Company]’s list is comprised of approximately [Enter number] names and addresses of persons and businesses that have [Purchased from catalogs / products / other] (“List 1”). The information embodied in List 1 is proprietary and confidential.

[Exchanger]’s list is comprised of approximately [Enter number] names and addresses of persons and

businesses that have [Purchased from catalogs / products / other] (“List 2”). The information embodied in List 2 is proprietary and confidential.

(Together List 1 and List 2 are referred to as the “Lists.”)

2. Approval

- ☞ Before using the other's list, an approval must be obtained for each mailing.
- ☞ For both sets of brackets, you should indicate whether the Owner can approve or disapprove in its sole discretion or whether the approval cannot be unreasonably withheld.

Prior to any mailings utilizing the other's list, the parties agree to submit a sample mail piece (the “Offer”) to the other for its approval. Such approval shall [be given or withheld in the exercise of the other’s sole discretion / not be unreasonably withheld]. The Offer shall be submitted in its entirety and any changes to the Offer including additions or deletions, however minor, shall also be subject to the prior written approval of the other [in its sole discretion / not to be unreasonably withheld]. In no event shall any one Exchanger's Offer promote or mention the other Party or its products, or any company or product competitive with it or its products, without its specific and express prior written approval, nor shall any significant changes be made to any Offer after approval, including but not limited to changes which alter the products, services, or sponsorship promoted in the Offer.

3. Use of List

- ☞ Section 3 sets forth the permissible scope and use of the mailing list. Of course, each party must have their mailings approved by the other.
- ☞ Section 3.1 states the specific parameters regarding the use of the List.
- ☞ For the first insert, indicate the number of permissible uses. For the second insert, indicate the time frame pursuant to which the List can be used. Lastly, state the permitted use for the List.

3.1 Upon execution of this Agreement and respective approval of Offers, [Company] is authorized to mail to List 2 [one time only], at any time within [Enter number] months of the date of this Agreement, and [Exchanger] is authorized to mail to List 1 [one time only], at any time within [xx] months of the date of this Agreement. The parties’ access to and use of the other's Lists are limited to [a direct mail offer for a product / any legal use the agreed specific merchandise or service described in the Offer.]

- ☞ For equality purposes, this says that the quality as well as the number of names exchanged will be comparable.

3.2 Unless otherwise agreed upon, each party will provide the other with access to an equal number of names of comparable quality from its databases.

- ☞ The parties can only use the Lists as specifically provided for in this Agreement.

3.3 The parties are prohibited from renting, selling, combining, transferring, or otherwise conveying the other's List to any other party in any form whatsoever except as specifically set forth in this Agreement.

- ☞ Generally, a mailing service bureau will do your mailings. You must receive approval for your bureau.

3.4 Each Party shall provide the other access to its list by causing its list maintenance organization to provide the List(s) to a mailing service bureau approved by the other. Such service bureau shall use the list(s) to mail the Offer on that Exchanger's behalf.

4. Prohibited Uses


- ☞ Section 4 specifically prohibits the parties from doing certain things with the list. You should review the list and delete or add where appropriate.

Neither Party nor its service bureau may:

- 4.1 Retain change of address information on a List obtained prior to, and expressly for, a given mailing.
- 4.2 Employ an “address-correction request” program on any List for the purpose of retaining the information derived from the program.
- 4.3 Add telephone numbers to the List or use it for telephone solicitations without prior Permission from the owner of that List.
- 4.4 Enhance the List with additional information, other than standard merge purge match coding, nor tag computer records with information related to or derived from the List.
- 4.5 Employ any method to detect decoy names or alter or eliminate decoy names; nor disclose the source of the List(s) or any information included in the list(s).

5. Service Bureau Authorization

- ☞ Section 5 states that each party's service bureau (if any) must be approved by the other. It authorizes that service bureau to do a merge purge to eliminate duplicates and to do certain list comparisons. It requires approval for an internal merge.

Provided that an Exchanger's  service bureau is approved by the other Exchanger, the service bureau is authorized to (1) include the List(s) in a computer merge purge operation for the sole purpose of eliminating duplicate names and addresses from multiple mailing lists, and (2) compare the List with other information (zip tape, credit rating) for the sole purpose of selecting or suppressing certain Parts of the List solely for the mailing and only with authorization from the owner of that List. No internal merge is allowed without prior approval of the owner.

6. Non-Disclosure & Damages

- ☞ This is a general non-disclosure restriction regarding the Lists. A more thorough restriction dealing with proprietary information in general is included below.

6.1 **Proprietary Lists.** Both parties agree that neither shall disclose or disseminate, or cause others to disclose or disseminate, the other's List to any other party without its prior written consent, with the exception that it may provide the List to a mailing house or similar vendor for the sole purpose of processing the List for the mailing described above, provided it requires such vendor(s) to exercise the same degree of care with regard to the disclosure and dissemination of the List.

Neither the Exchanger, its service bureau, nor their agents, employees, or contractors shall disclose, transfer, duplicate, reproduce, or retain in any form all or part of the list(s). Each Party acknowledges the other's exclusive right, title and interest in and to the List(s). Neither of the Exchangers, nor its service bureaus, may enhance its house file or any other file by using the names, addresses or any other information, whether specific or inferred obtained from the List(s). Retention of the List(s) for coding enhancements, analysts or any other purpose is prohibited.

- ☞ Below is a standard non-disclosure provision whereby both parties agree that any confidential information disclosed to the other is the property of the disclosing party and such information, in addition to the terms of this Agreement, may not be disclosed to third parties. The exception to this is when the disclosing party can prove that it already had the information, or the information becomes available to the general public. This non-disclosure requirement continues to be effective even upon or after termination of this Agreement.

6.2 **Proprietary Information.** Each party acknowledges that it may be furnished with or may otherwise receive or have access to information or material that relates to past, present or future products, software, research development, inventions, processes, techniques, designs or technical information and data, marketing plans, and so on (The “Proprietary Information”).

Each party agrees to preserve and protect the confidentiality of the Proprietary Information and all physical forms thereof, whether disclosed to the other party before this Agreement is signed or afterward, including the terms of this Agreement. In addition, a party shall not disclose or disseminate the Proprietary Information for its own benefit or for the benefit of any third party. The foregoing obligations do not apply to any information which

- (1) is publicly known;
- (2) is given to a party by someone else who is not obligated to maintain confidentiality; or
- (3) a party had already developed prior to the day this Agreement is signed, as evidenced by documents.

- ☞ It is important to use the list only as permitted by the Agreement. Otherwise, the breaching party will be liable for damages. Because damages might otherwise be difficult to measure, we have included a liquidated damages provision, that allows you to predetermine the amount of damages per name used in violation of this Agreement.
- ☞ Insert the amount of damages per name used in violation of this Agreement.

Neither party shall take or cause to be taken any physical forms of Proprietary Information (nor make copies of same) without the other party's written permission. Within three (3) days after the termination of this Agreement (or any other [] at the other party's request), a party shall return to the other party all copies of Proprietary Information in tangible form. Despite any other provisions of this Agreement, the requirements of this Section shall survive termination of this Agreement.

6.3 Liquidated Damages. If either Party or its service bureau use or allow its agents, employees, contractors, or anyone else who shall be given access to the List(s) to use the List(s) contrary to this Agreement, the Party shall be held unconditionally responsible for any and all damages sustained by the other Exchanger, including, but not limited to, all costs and reasonable attorney's fees related to litigation. In any such case, the breaching Party also consents to the entry of an order enjoining any use of the list in violation of this Agreement to prevent further and continuing damage, and the damaged Party shall have the option, in its sole discretion, to terminate this Agreement and any other list exchange Agreement. The parties acknowledges that in the event of any use of the List(s) in violation of this Agreement, it would be impracticable or extremely difficult to fix the amount of actual damages suffered by the owner of the List; therefore, the parties agree to pay as liquidated damages for each such use the minimum amount of \$[x] for each name on the List(s) or the portion of the List(s) used in violation of this Agreement, including but not limited to the confidentiality provisions contained herein.

7. Monitoring of Lists

- ☞ The parties agree to certain precautions taken to protect the List(s).

It is understood and agreed that the List(s) have been and will be monitored to prevent improper and unauthorized use by a combination of one or more methods of computer control and / of planted and / or varied names and addresses or combination of these and other methods, to all of which the parties consent and agree.

8. Return & Destruction of Lists

- ☞ Depending on how the names will be transferred, the parties agree to return the names and destroy any copies.
- ☞ For both inserts enter the way the names will be delivered.

The parties agree that all [magnetic tapes / cartridges / disks / other] will be "scratched" or destroyed within [enter amount] days after processing has been completed, and the [magnetic tapes / cartridges / disks / other] returned.

9. Limited Warranty

- Neither party makes any warranties regarding the List(s), and neither party is responsible for any damages resulting from the use of the list. Basically, each party takes the List(s) as they originally are.

List(s) should be carefully checked before use for any apparent discrepancies. No adjustments will be made after a mailing has been used. The parties hereby disclaim any guarantees, expressed or implied, regarding the List(s). Without limiting the foregoing, the parties make no warranty or representation of any kind as to the accuracy of any of the information contained in the List(s), the results to be obtained from use of the list(s), of the number of mailing pieces that are undeliverable. Under no circumstance shall either party be liable for loss of profits or for special consequential, or exemplary damages resulting from use of the List(s).

10. General Provisions

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

10.1 Independent Contractor. The relationship between both parties established by this Agreement is that of independent contractor 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 must decide which state governs this Agreement and where any legal action would be taken. Generally, it is your (company's) state of residence.

10.2 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.

10.3 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, that 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.

10.4 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.

10.5 **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.

10.6 **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.

10.7 **Inadequate Legal Remedies.** 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.

10.8. **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.

10.9 **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.

10.10 **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.

10.11 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.

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

10.11 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.

10.12 Certain Sections Invalid. 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.

10.13 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.

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

10.14 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]

[Exchanger]

[Owner/Founder]

[Exchanger Name]

Title

Title

