

# Intellectual Property Acquisition Agreement

- 🔊 This contract presumes that you are the party interested in acquiring another's IP.
- 🔊 If you are the seller, you can easily reverse this Agreement
- 🔊 The first part of this cover page should be completed and distributed to the other party along with a copy of the Agreement.

Date: **[Month, Day, Year]**

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



From: **[Owner/Founder]**

**[Company]**

Subject: **Intellectual Property Acquisition Agreement**

---

Attached is an Intellectual Property Acquisition Agreement.

Per our discussions, I think it will clearly establish the terms and conditions of our deal.

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](http://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.

# Intellectual Property Acquisition Agreement

Effective Date                    **[Date]**

between                            **[Seller]** (“Seller”),  
a                                        [State] corporation  
having its principal office at    [Address]

and                                    **[Owner/Founder]** (“[Company]”),  
a                                        [State] corporation  
having its principal office at    [Address]  
  [City] [State] [Zip Code]

## Summary

- Seller is the owner of all right, title and interest (including, but not limited to, copyright) in certain works specified in Exhibit A, which include [computer software programs] and/or written works;
- [Company] is in the business of [publishing and marketing business and educational products], and undertaking related research and development; and
- [Company] desires to purchase, and Seller desires to sell, all right, title, and interest to the works specified in Exhibit A on the terms and conditions set forth below;

The parties agree as follows:

### 1. Sale of Assets

(a) Seller hereby sells, assigns, and transfers to [Company], and [Company] purchases from Seller, the following assets of Seller (the “Purchased Assets”) as of the Effective Date:

(i) all worldwide right, title, and interest in and to the computer programs specified in Exhibit A (in source and object code form and in any and all media) and related programmer and end user documentation (collectively “Software”), including, but not limited to, all worldwide trade secrets, know-how, copyright rights (including, but not limited to, moral rights, rights in audiovisual works, and the exclusive right to create derivative works), patent rights, and other proprietary rights therein (collectively “Intellectual Property Rights”);

(ii) all worldwide right, title, and interest in and to the written works specified in Exhibit A (in any language and in any and all forms or media) (“Written Works”), including, but not limited to, all Intellectual Property Rights therein;

(iii) all rights and goodwill in the trademarks, trade names, and logos specified in Exhibit A;

☞ Use (i), (ii), or (iii) as appropriate.

(iv) any claims which Seller may have against any third party for infringement or misappropriation of Seller's Intellectual Property Rights in the Purchased Assets; Seller will cooperate with [Company] at [Company]'s expense in any legal proceeding which [Company] may initiate in connection with such infringement or misappropriation;

(v) Seller's existing masters and copies of any diskettes, CD-ROMs, tapes, printouts, and/or other media containing any Purchased Assets; and

(vi) all of Seller's files, technical manuals, customer lists, marketing and accounting records, and the like concerning the design, use, marketing, maintenance, and support of any of the Purchased Assets.

(b) Method of Transfer. The Software, and any other of the Purchased Assets specified by [Company],

will be transmitted by Seller to [Company] electronically via modem upon the Effective Date. The remainder of the Purchased Assets will be delivered to [Company] at the address specified above upon the Effective Date.

(c) **No Assumption of Liabilities.** [Company] is assuming no liabilities or obligations of Seller in connection with the Purchased Assets or otherwise. Seller will indemnify and hold [Company] harmless from and against all claims made by Seller's creditors for liabilities or obligations arising prior to the date of this Agreement in connection with any of the Purchased Assets.

## 2. Purchase Price

(a) **Purchase Price.** The purchase price for the Purchased Assets (the "Purchase Price") will be equal to \$[xxx], payable in full upon execution of this Agreement.

(b) **Taxes.** Any sales or other taxes which may become due by reason of the sale of the Purchased Assets will be borne by Seller, except for taxes on [Company]'s net income.

[(c) **Royalties.** [Company] will pay to Seller a per copy royalty for each copy of a computer program distributed by [Company] incorporating all of Software. [Company] will also pay to Seller a per copy royalty for each copy of a written work distributed by [Company] incorporating all of the Written Work. Subject to the royalty allocation set forth in subsection (e) below, such royalties will be equal to [x]% of the Net Revenues (as defined below) actually received by [Company] for the respective computer program and/or written work; ided, however, that:

(i) in no event will the maximum amounts payable by [Company] under this subsection (c) exceed \$[x] in the aggregate; and

(ii) in no event will the amounts payable by [Company] under this subsection (c) extend to Net Revenues received by [Company] following the [xx] anniversary of the Effective Date.

Such royalty payments will be made within [xx] days after the end of each calendar quarter. [Company] will provide to Seller with such payments a statement detailing how the royalties were calculated. Seller at its expense will have the right, once each calendar year, to audit [Company]'s records relevant to the payment obligations under this subsection (c) through independent certified public accountants on terms mutually agreeable to Seller and [Company]. A good faith dispute as to the determination or calculation of royalties due Seller under this Agreement will not be considered a breach of this Agreement provided that [Company] deposits the disputed amount in an interest bearing escrow account with a commercial bank and offers to arbitrate the dispute in accordance with Section 9(d).]

[(d) **Net Revenues.** "Net Revenues" is defined as [Company]'s gross receipts (exclusive of taxes, interest, service or processing charges, finance charges, installation, interest, maintenance and support, training, restocking, insurance, shipping, handling, and other transportation costs, and replacement units provided to end-users for a nominal fee) from all distribution of the Purchased Assets, minus (i) any credits or refunds for returns; (ii) any rebates and promotional allowances to customers; and (iii) any sales commissions.]

[(e) **Allocation of Royalties.** If [Company] distributes a product that is:

(i) a computer program incorporating all of the Software, and/or

(ii) is a written work incorporating all of a Written Work,

with one or more other computer programs and/or written works so as to offer a bundled product, the portion of the Net Revenues for such bundled product attributable to the Software and/or Written Works will be determined by multiplying the package price for the bundled product by a fraction whose numerator is the then or most recently quoted single copy published price established in good faith by [Company] for the Software and/or Written Work, as the case may be, and whose denominator is the sum of the single copy published prices for the bundled products contained in the package. For example, xxx.]

- ⏪ Regarding royalties for bundled products, (c) and (e) should be reviewed/ revised in light of the particular product acquired and the contemplated pricing.

### 3. Error Corrections & Right of First Refusal

(a) **Error Corrections.**

- ⏪ Are warranty repairs sufficient? See 5(e)

(b) **Right of First Refusal.**


- ⏪ Do you need Seller's future updates, new version, or new products?

### 4. Cooperation & Support

(a) Seller will cooperate with [Company], in obtaining patent, copyright, trademark, or other statutory protections for the Purchased Assets.

(b) [Company] will provide customers and dealers with support at its expense. During the warranty period specified in Section 5(e), Seller will be available during regular business hours to answer all of [Company]'s questions about the Purchased Assets without charge.

### 5. Warranties & Indemnity

Seller represents and warrants  follows:

(a) Seller is a corporation duly organized and existing in good standing. This Agreement and the transactions contemplated hereby have been duly authorized by all necessary actions on the part of Seller and will not result in a violation or breach of any other agreement of Seller which will in any way prevent the transfer or use of the Purchased Assets sold to [Company].

(b) Seller is the sole and exclusive owner of all of the Purchased Assets as delivered to [Company]. The Purchased Assets are free and clear of all liens, encumbrances, security interests, and restrictions on transfer of any type whatsoever. The Purchased Assets, as delivered to [Company], do not and will not infringe any third party patents, copyrights, trademarks, or other proprietary rights, and do not contain any misappropriated trade secrets.

(c) There are no actions, proceedings, claims, or investigations pending of which Seller has been notified related to the Purchased Assets.

(d) Seller agrees to defend, indemnify and hold [Company] harmless from any damages, settlements, or expenses [Company] may suffer (including, but not limited to, any reasonable attorney fees or court costs) by reason of any breach of any of the foregoing warranties of Seller during the [x] years following the Effective Date. [Company] will give Seller prompt written notice of such claims and will reasonably assist Seller in the defense of such claims.

(e) During the [xx] months following the Effective Date, the Purchased Assets will perform in accordance with (i) the specifications set forth in Exhibit B and (ii) industry accepted standards for operations of similar computer products. Seller will use its best efforts to correct any and all such failures in performance, and to deliver such corrections to [Company], as soon as possible.

(f) THE WARRANTIES IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, REGARDING THE PURCHASED ASSETS, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

### 6. Proprietary Rights

(a) **Ownership.** As of the Effective Date, [Company] will be the sole and exclusive owner of all right, title, and interest in and to the Purchased Assets worldwide. Seller is executing Exhibit C and will take steps and execute any additional documents (including, but not limited to, trademark and copyright

assignments) reasonably requested by [Company] at any time to record and perfect [Company]'s ownership of the Purchased Assets.

(b) **Non-Disclosure.** Seller will not at any time after the date of this Agreement disclose to third parties or make any use of any of the Purchased Assets or the information, concepts, or techniques therein, in whole or in part. Seller will take reasonable measures to prevent such disclosures.

🔊 You will need to check with your attorney regarding the enforceability of this next clause.

[(c) **Non-Competition.** For a period of [x] years after the Effective Date, neither Seller, [nor any of the individuals listed in Exhibit D,] will do any work in developing or marketing, or assisting in the development or marketing, of computer programs and/or written works which compete with any of the Purchased Assets.]

## 7. Damages

(a) **Limitation of Liability.** EXCEPT FOR A BREACH OF SECTION 5, IN NO EVENT WILL EITHER PARTY BE LIABLE TO SELLER FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. The parties have agreed that the limitations specified in this Section will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

(b) **Security for Damages.** [Company] may pay into an interest bearing escrow account with a commercial bank any royalties due Seller hereunder as security for payment of any damages arising from any material breach by Seller of any provision of this Agreement. Upon resolution of the claim, the amounts in escrow, including accrued interest, will be distributed to Seller after deduction of the amounts, if any, required to be paid to [Company].

## 8. Continuation of Provisions

In the event this Agreement ceases to remain in effect for any reason, the provisions contained in Sections 4(a), 5, and 6 will continue in effect in accordance with their terms.

## 9. 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..

9.1 **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.

9.2 **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.

9.3 **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.

**9.4 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 was not agreed to.

**9.5 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.

**9.6 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.

**9.7 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.

**9.8 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.

**9.9 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.

9.10 **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.

9.11 **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.

9.12 **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 Force Majeure Event shall extend such due dates for a reasonable period. However, if the period of non-performance 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 3<sup>rd</sup> 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.

9.13 **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.

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

9.14 **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.

9.15 **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.

9.16 **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.

9.17 **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.

9.18 **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  the Agreement, the parties may still have certain responsibilities such as keeping information confidential.

9.19 **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]

Seller

\_\_\_\_\_  
[Owner/Founder]

\_\_\_\_\_  
Vendor Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

EXHIBIT A

Purchased Assets

A. Software

B. Written Works



C. Trademarks, Trade names and Logos

# Exhibit B

Specifications



# EXHIBIT C

## Assignment of Copyright

As of the date below, \_\_\_\_\_ ("Seller") hereby sells, assigns, and transfers to [Company] Tools For Sales, Inc. the following assets of Seller:

(i) all worldwide right, title, and interest in and to the following computer programs (in source and object code form and in any and all media) and related programmer and end user documentation including, but not limited to, all worldwide trade secrets, know-how, copyright rights (including, but not limited to, moral rights, rights in audiovisual works, and the exclusive right to create derivative works), patent rights, and other proprietary rights therein; and

(ii) all worldwide right, title, and interest in and to the following written works (in any and all languages, forms, or media) in the countries specified below, including, but not limited to, all worldwide copyright rights (including, but not limited to, moral rights, rights in audiovisual works, and the exclusive right to create derivative works) and other proprietary rights therein.

1. Computer Programs

2. Written Works

Seller: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT D

Non-Competition Individuals

