


Letter of Intent for Negotiation & Information Exchange

- 🔊 This is an NDA on steroids – it presumes that you are going to go deeply into negotiations toward a definite agreement for some kind of joint venture.
- 🔊 The first part of the Memorandum should be completed and distributed to the other party along with a copy of the Letter of Intent for Negotiation and Information Exchange.

Date: **[Date]**

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

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

Subject: **Letter of Intent for Negotiation & Information Exchange**

Attached is a “Letter of Intent for Negotiation & Information Exchange” in order to outline the procedures for our discussions and negotiations and to set forth certain restrictions regarding materials we will be exchanging in the course of those negotiations.

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.

that further negotiations would be appropriate. As it is expected that these subsequent negotiations will involve frequent communications, including the exchange of proprietary information, they agree as follows.

Agreement

Other than the provisions relating to the Costs, Confidentiality, Concurrent Negotiations and Limitation of Liability, nothing in this Agreement is binding on the parties.

Except for Sections 2.3, 3, 4, 5, 7 and this section that are legally binding, and survive any cessation of negotiations or termination of this Agreement, this Agreement is only a statement of intent to conduct further negotiations and does not constitute a binding Agreement in any respect. Such a binding Agreement will arise only when all material terms have been set forth in a conclusive written Agreement, or sets of Agreements, executed by both parties (the “Final Agreement”). All drafts, “term sheets,” memoranda, and other communications prepared or exchanged in the course of negotiations, even if signed by one or both Contacts (defined below), are preliminary and have no legal effect unless subsequently incorporated into a Final Agreement.

1. Negotiations

Enter the names of the principal contacts for each of the parties.

1.1 Designation of Negotiators. The following persons (the “Contacts”) shall represent the parties in the negotiations:

- For [Company], [Owner/Founder].
- For Party 2, [Name].
- Either party may replace their Main Contact by giving written notice to the other party.

2. Conduct of Negotiations

We have tried to be as thorough as possible as to the Conduct of the Negotiations; you may wish to add or delete information where appropriate.

Enter a date that you desire to execute the Final Agreement. You should prepare a timetable that sets forth the schedule of negotiations (to be included as Exhibit A).

2.1 The parties desire to execute a Final Agreement by [Month, Day, Year] (the “Target Date”). The Contacts will talk regularly, schedule negotiations, and coordinate all exchanges of information, including recommendations, drafts, and proposals. A Timetable setting forth the preliminary schedule of negotiations is attached as Exhibit A. A reasonable number of employees, agents and advisers may accompany the Contacts at meetings and negotiations.

Enter the frequency of required status meetings, for example, no less than once per week.

2.2 No less than [Enter number] of executives of both parties will meet to review the progress of negotiations, and to identify and clarify issues. Following each meeting, the parties will decide whether to continue or terminate their negotiations.

The parties should review the following list and add or delete information where appropriate with the goal being to set forth all of the items that you will need to address in the course of negotiating the Deal.

The parties will negotiate with the goal of including the following items in the Final Agreement:

1. Defining who contributes what, as well as who prepares specifications.
2. Setting forth ownership rights of the parties in past, present and future works.

3. The respective rights of the parties to use any developed works, including the right to license or sublicense others and the right to make derivative works.

4. Who pays for costs and expenses incurred.

5. Structure of royalty payments.


6. Defining obligations regarding future development, modifications and enhancements.

7. Competitive restrictions.

🔊 Describe the particular nature of the Deal so that negotiations are not entered into with other parties that could possibly interfere or conflict with your negotiations.

2.3 No Simultaneous Negotiations. So long as the parties are actively engaged in negotiations with each other, both agree not to directly or indirectly enter into negotiations or arrangements with any third parties engaged in [Describe nature of the deal] that are the same as, or functionally equivalent to, the subject to these negotiations.

3. Costs & Expenses of Negotiation

3.1 Each party shall bear its  costs and expenses.

3.2 In the event that the parties agree to select a location other than at their respective offices, the cost will be shared equally.

4. Protection of Information

🔊 Section 4 is a fairly standard non-disclosure section. As there are numerous provisions set forth on how to treat any information received or disclosed by the parties, you ought to review it carefully. Basically, you should mark any information you provide as "Confidential Information." Such information may only be shared with others involved in the negotiations. You must get the other party's consent before issuing any press releases or making any public statements regarding the Confidential Information or the Negotiations themselves.

🔊 Enter the period commencing with the receipt of the Confidential Information, during which the Recipient cannot reveal the Information.

4.1 The parties agree to conspicuously mark all information exchanged or created in the course of negotiations as "Confidential Information." The receiving party along with its affiliates, agents, and employees (collectively "Recipient"), may use this Confidential Information for any purpose, including the manufacture, design or sale of the Recipient's Products and services. The Recipient's use of the Information is subject only to:

(1) an obligation, for a [Enter number] year period commencing from the date of receipt, to refrain from revealing any Confidential Information to third parties not engaged in these negotiations by using the same care and discretion that the Recipient employs to protect its own documents that it does not want disclosed, and

(2) the originating party's trademarks, copyrights, and patent rights that it may not interfere or otherwise use.

4.2 Any copies of the Confidential Information should be marked and treated as such.

4.3 If a Final Agreement has not been executed, then upon termination of this Agreement, the parties agree to return the other's Confidential Information, including all copies.

4.4 The parties agree to use their best efforts to avoid disclosure of the fact or object of their negotiations and to restrict all internal communications concerning the negotiations to those recipients to whom such information must be disclosed in order to effectively conduct the negotiations. Except as

otherwise required by law, the parties agree not to issue any press releases or make any public announcements regarding the negotiations without the prior written approval of the other.

4.5 Despite any captions, headings, or restrictions regarding proprietary matters or any nondisclosure notices or policy statements contained in the Confidential Information, this Section 4 constitutes the sole and exclusive Agreement of the parties concerning the Confidential Information and any information exchanged or disclosed in connection with the negotiations.

4.6 If the negotiations result in a Final Agreement, the Final Agreement may contain further terms and conditions respecting confidentiality.

5. Limitation of Liability

☞ If either party somehow suffers a loss related to the (termination of the) Negotiations or disclosure of the Confidential Information, the other party will not be liable for the resulting damages. You may wish to modify this at least with respect to the Confidential Information by starting the following paragraph with "Despite Section 4..." You would then delete Section 4 from the last sentence of the paragraph.

Neither party shall make a claim against, or be liable to, the other party or its affiliates or agents for any damages, including, without limitation, lost profits or injury to business reputation, resulting from the continuation or abandonment of negotiations and the consequences of that. Neither party shall make a claim against, or be liable to, the other party or its affiliates or agents for any special, incidental, or consequential damages, including, without limitation, lost profits, based on any breach, default, or negligence of such other party, its affiliates, or agents with respect to Sections 2.4 and 4 of this Agreement.

6. Term

This Agreement shall continue until either party gives written notice of its intention to abandon further negotiations, or until superseded by the execution of the Final Agreement.

7. General Provisions

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

7.1 **Independent Contractors.** The relationship between both parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to give either party the power to direct and control the day-to-day activities of the other. Neither party is an agent, representative or partner of the other party. Neither party shall have any right, power or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture or partnership between the parties or to impose any liability attributable to such relationship upon either party.

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

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

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

7.3 **Non-Solicitation.** Neither party shall solicit for employment or hire the other's current or future employees, either directly or indirectly, during the Term of this Agreement, without obtaining the other's

prior written approval. Should an employee change employment from one party to the other, the new employer shall pay the old employer a fee equivalent to Twenty Percent (20%) of the employee's new compensation, annualized for the first year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- ☞ This section limits the ability of either party to transfer any of its rights or delegate any of its duties to third parties.
- ☞ You want to make sure that you can sell your business along with all of the relationships you have developed along the way. (Often these relationships can add tremendous value to your business and you want to make sure that all of your agreements can be transferred to the new owners.) I wouldn't want to seek (let alone pay for) permission to sell my company.
- ☞ Generally, neither party may assign their respective rights to a third party; however, with the possible exception of assignment to a successor corporation or partnership, either party may transfer its rights or obligations under this Agreement without the approval of the other party. This Agreement would be binding on the 3rd party.
- ☞ However, you may want to limit each other's ability to pass along this deal to another possibly unknown and possibly unfriendly entity. The second paragraph prevents unauthorized transfer of responsibilities...
- ☞ CHOOSE one or the other of these two following paragraphs.

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

to the benefit of the parties hereto, their successors and assigns.

☞ ~ OR ~

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

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

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

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

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

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

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

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

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

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

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

Understood, Agreed & Approved

We have carefully reviewed this contract and agree to and accept all of its terms and conditions. We are executing this Agreement as of the Effective Date above.

[Company]

Vendor

[Owner/Founder], [Title]

[Party 2], [Title]

Exhibit A

Schedule of Negotiations

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