


Joint Development Agreement

- 🔊 This is a sample agreement to use when you are co-developing a software title, a website or any product that you will create and market together.
- 🔊 The first part of the Memorandum should be completed and distributed to the Vendor along with a copy of the Advertising Cooperative Agreement.

Date: **[Date]**

To: **[Name of Partner]**

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

Subject: **Joint Development Agreement**

Attached is a “Joint Development” Agreement in order to establish the arrangement as to how we will develop and promote our product through our each of our efforts.

I believe that it embodies everything we discussed.

Please read the agreement carefully.

We recommend that you also have it reviewed by your own qualified legal counsel.

Time is of the essence.

Please sign and return it to me ASAP.

Thank you very much!

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.


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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.

Master Joint Development Agreement

🔊 This introductory paragraph lists the date and the parties to this Agreement. We formatted this agreement uniquely to make it easy on others (judge, arbitrator(s), etc. God forbid) to readily understand who is involved, when the agreement begins and some basic summary background information.

Effective Date [Date]

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

AND [Company B], Inc. ([Company B])
a [State] Corporation
located at [Address]

Summary

- [Company] is in the business of [developing internet-based services and multimedia content]; and
- [Company B] is in the business of [publishing, distributing, and selling print and software] products;
- [Company B] and [Company] wish to cooperate jointly to create and exploit internet-based applications combining elements of the [Company B] Works (as hereinafter defined) together with elements of the [Company] Works (as hereinafter defined) into Products (as hereinafter defined).

In consideration of the promises and covenants recited below, it is hereby agreed by and between [Company B] and [Company] as follows:

Definitions

For purposes of this Agreement, the following terms will have the indicated definitions:

- **“Agreement”** This Agreement is by and between [Company] and [Company B].
- **“Co-Branded Site”** The [Company] web pages with suite of tools as represented and linked to the [Company B] Internet website co-branded with the [Company B] logo and with the [Company B] look and feel.
- **“End-User”** Any person or entity that purchases or licenses the Products / Services(s) directly from either party's Internet website.
- **“Personal Information”** includes personal identity, demographic, psychographic, and billing information and navigation of site visitors, and in the event such site visitor becomes a member of [Company],
- **“Intellectual Property Rights”** The intangible legal rights or interests evidenced by or embodied in

- any idea, design, concept, technique, invention, discovery, or improvement regardless of patentability, but including patents, patent applications, trade secrets and know-how;
 - any work of authorship, regardless of copyright-ability, but including copyrights and any moral rights recognized by law; and
 - any other similar rights, in each case on a worldwide basis.
- **“Products / Services”** The products and services owned by [Company B] and [Company] respectively and referred to by reference to their respective tradenames listed in Exhibit A attached to the bottom of this Agreement, along with all options to the Products / Services; all future versions of the Products / Services; and all enhancements, revisions, or modifications made to the Products / Services by [Company].
 - **“Term”** The duration of this Agreement.
 - **“Territory”** The entire world.
 - **“Trademarks”** The trademarks specified in Exhibit B (attached to the end of this Agreement).
 - **“Product”** means an application which is identified on a Product Schedule executed by the Parties in the form annexed hereto as Exhibit A (“Product Schedule”).
 - **“[Company] Works”** means computer software or documentation in hard copy, source, and object code form used in the creation of, or included in, any Product, including but not limited to development tools, systems, platforms, product drivers and all associated documentation and related materials.
 - **“Joint Effort”** means the cooperative, joint effort of [Company B] and [Company], subject to the terms and conditions of this Agreement, to jointly develop, market, sell or otherwise exploit Products and derivatives thereof.
 - **“Management Committee”** means a committee composed of (5) individuals, two (2) of whom shall be designated by [Company B] and three (3) of whom shall be designated by [Company].
 - **“[Company B] Works”** means any publications, photographs, illustrations, graphics, video, audio, electronic document and spreadsheet components including but not limited to any copies or derivative versions thereof such as digitized copies or copies reduced to CD-ROM and floppy diskette, which [Company B] owns or controls the rights to use in conjunction with a particular Product.
 - **“Platform”** means a particular combination of CPU hardware, operating system software and data access and deliver device.
 - **“Publications”** means magazines, periodicals, newsletters, books, videocassettes and software titles published by [Company B] and any copies or portions thereof, including, without limitation, any photographic images, text, animation, video, graphics, trademarks or trade names incorporated therein or appurtenant thereto.
 - **“Term”** means the period beginning on the Effective Date above and ending on the date that is Three (3) years from the Effective Date, unless terminated earlier, or renewed by [Company B], in accordance with the terms and conditions contained in this Agreement.

2. Joint Effort

2.1 Producer’s Contribution

[Company B], as its contribution to the development portion of the Joint Effort, grants to [Company] the [Company B] License (as hereinafter defined), and agrees, subject to the terms and conditions of this Agreement and at [Company B]’s expense, to provide [Company] with [Company B] Works identified on any Product Schedule.

2.2 [Company]’s Contribution

[Company], as its contribution to the development portion of the Joint Effort agrees to use its best efforts to design, develop and complete each Product, in consultation with [Company B] and to [Company B] satisfaction, in the manner and time frame set forth on any Product Schedule (the “Services”).

2.3 Marketing

The Management Committee will develop a marketing plan and a budget for each Product (the “Marketing Plan”) which shall be set forth on the Product Schedule applicable to such Product. [Company B] acknowledges that [Company] shall be the primary marketer of record of the Products or copies thereof and, as such, [Company], except as provided in the Marketing Plan or as otherwise authorized by the Management Committee, will have the exclusive right to establish channels of distribution outside of [Company B]’s website, procedures for order fulfillment and the like in accordance with the Marketing Plan. Unless otherwise stated in the Marketing Plan, [Company] shall have the right to assign or sublicense to any third party the right to assist [Company] in any aspect of the Marketing Plan, including, without limitation, activities associated with advertising and sales of Products.

2.4 The [Company B] License

Subject to the terms and conditions herein [Company B] hereby grants to [Company] an exclusive, non-transferable, limited license for the duration of the Term to:

- (a) duplicate and use the [Company B] Trademarks in connection with the development of the Products and,
- (b) in any manner now known or hereinafter to become known, to duplicate, market, sell, exhibit, perform, transmit, broadcast, distribute, sublicense, redistribute and otherwise exploit in the Territory copies of [Company B] Works in connection with the development of and as embodiments in Products (the “[Company B] License”).

2.5 The [Company] License

Subject to the terms and conditions of this Agreement, [Company] hereby grants to [Company B] for the duration of the Term a non-exclusive license, in any manner now known or hereinafter to become known, to market, sell, exhibit, perform, transmit, broadcast, and otherwise exploit in the Territory copies of the [Company] Works, or any portions thereof embodied in any Product on [Company B]’s primary website. Nothing herein shall be interpreted to mean and [Company] does not grant to [Company B] any right or license to enter into sublicenses or redistribution agreements with respect to any portion of [Company] Works.

3. Trademarks

3.1 Ownership

The [Company] acknowledges that the [Company B] Trademarks are trademarks owned by [Company B]. [Company] shall not use or authorize any third party to use the Producer’s trademarks except as approved in advance by [Company B].

3.2 Trademark Notices

All items or materials using the [Company B] Trademarks shall bear the trademark notices set forth on Exhibit B. Notices will appear on any and all Products, advertising, and promotional materials, cartons, containers, cases, wrapping material, display material, or other materials which utilize the [Company B] Trademarks and such notice will be placed in juxtaposition with such [Company B] Works and/or on the [Company B] Property (as defined herein).

3.3 Quality Standards

[Company] shall use the [Company B] Trademarks only in the same logo-type as used on Exhibit B or as otherwise specified by [Company B]. [Company] agrees to maintain such quality standards as shall be prescribed by [Company B] in the conduct of the business operations with which the trademarks are used.

3.4 Good Will

[Company] agrees that all use by [Company B] of [Company B] Trademarks shall inure to [Company]'s benefit. In those countries where [Company B], in its sole opinion, deems it necessary, [Company] will be recorded as a registered user of the Trademark at Producer's control and expense and [Company] will cooperate with [Company B] to effect such a recording. [Company] shall not use the [Company B] Trademarks or any part thereof as its corporate name nor use any name, mark or other designation similar to the [Company B] Trademarks.

4. Verification

Prior to the marketing or release of any Product, [Company] shall have the affirmative responsibility and obligation to use best efforts to verify that the Product incorporates complete and accurate representations of the [Company B] Works and [Company] Works.



5. Reservation of Rights

5.1 [Company B] Reservation

The [Company B] reserves all other rights with respect to the [Company B] Trademarks and the [Company B] Works (and any derivative works thereof, including digitized forms), whether now existing or which may hereafter come into existence which are not expressly licensed to [Company], including but not limited to the exclusive rights of print publication, electronic publication in all media and formats other than those addressed herein, transmission, downloading, broadcast, performance, exhibit or display through electronic, telephonic, optical or any other means now known or hereafter to become known.

5.2 [Company] Reservation

The [Company] reserves all other rights with respect to the [Company] Trademark and the [Company] Work (and any derivative works thereof, including digitized forms), whether now existing or which may hereafter come into existence which are not expressly licensed to Producer, including but not limited to the exclusive rights of print publication, electronic publication in all media and formats other than those addressed herein, transmission, downloading, broadcast, performance, exhibit or display through electronic, telephonic, optical or any other means now known or hereafter to become known.

6. Additional Products; Non-Compete; Renewal

6.1 Additional Products – [Company] Rights

During the term of the Agreement, [Company] shall have the right of first negotiation in the manner set forth in this paragraph with respect to exploiting additional [Company B] Works in Products. Should [Company B] wish to contract with a third party to incorporate the [Company B] Works or elements thereof in Products to be developed by said third party, [Company B] shall negotiate with [Company] with respect to such rights for a thirty (30) day negotiation period. In the event [Company] offers to develop such Product(s) pursuant to the terms of this Agreement, including substantially similar revenue sharing terms, [Company B] shall make a reasonable, good faith effort to negotiate and execute applicable Product Schedule(s) with [Company] in connection therewith. Upon the expiration of such good faith negotiation period, if an agreement has not been reached through execution of Product Schedule(s) by the Parties, or if the period is not extended by mutual written agreement, [Company B] shall be entitled to

negotiate with other third parties with respect to such rights.

6.2 Integrating Third-Party Resources with Product

[Company B] understands [Company] may in its sole discretion integrate Products with third party products, services, databases, content, and media in order to enhance the utility or appeal of Product to potential Product customers and distributors.

6.3 Mutual Covenant Not to Compete

In recognition of the promises and covenants set forth in this Agreement and considering that this Agreement is a condition to the development and sale of Products from both parties and that both parties will derive substantial benefits, parties covenants and agree that without prior express written approval of both parties, for the Term of this Agreement, they shall not and shall cause their employees, officers and shareholders not to, directly or indirectly:

(a) engage in, or be employed by, hold any interest in, or provide advice, act as a consultant or render any services to, any person, corporation, partnership or other business entity which is currently engaged in or currently has plans to engage in (including without limitation any promotional or marketing activities) the business of developing, marketing, promoting or otherwise exploiting products which are directly competitive with any Products produced hereunder; or;

(b) solicit a business relationship with any person, corporation, partnership or other business entity which is, at the time of such solicitation, currently engaged in or currently has plans to engage in (including without limitation, any promotional or marketing activities), the business of developing, promoting or otherwise exploiting products which are directly competitive with any Products produced hereunder.

6.4 Exceptions to Covenant Not to Compete

Parties recognize that they have committed to or have begun to substantially develop relationships with third parties who may offer or build applications that may compete with a party's Works, whether now existing or which may hereafter come into existence. Parties agree that although the following third party relationships and third party products and services may fall within the definition of "competitive" as set forth in Section 6.3 but are hereby recognized as permitted under the terms of this Agreement and as falling outside the scope of Section 6.3.

(a) [Company]'s relationship with [Partner] to develop [internet-based, self-help legal applications including legal forms, guides and templates] which [Partner] now publishes or which may hereafter come into existence.

7. Development Fees, Marketing Costs, Royalties & Losses

7.1 Development Fees

In the event [Company B] agrees to pay [Company] any Development Fees in connection with a Product, such Development Fees, if any, shall be identified on the Product Schedule applicable to that Product. Such Development Fees shall be fixed and shall be paid in accordance with the milestone payments set forth on the applicable Product Schedule. [Company] acknowledges that development fees will typically be waived in lieu of a Revenue Split, as defined herein, and [Company B]'s general assistance and contribution in promoting, selling and marketing the Products.

7.2 Marketing Investments

The Management Committee shall develop a Marketing Plan which sets forth, without limitation, a budget itemizing anticipated costs associated with the initial start-up, introduction phase of bringing a Product to market, together with the anticipated ongoing costs of marketing, promoting, advertising, distributing and such Product (collectively, the "Marketing Costs"). [Company B] and [Company] agree

to use best efforts in leveraging their respective marketing channels, relationships and networks in furtherance of this Agreement.

7.3 Revenue Sharing

During the Term of this Agreement, for each Product developed by [Company] in consultation with [Company B] hereunder that passes the Acceptance Test (as defined herein), [Company] agrees to provide [Company B]:

- (a) [Fifty percent (50%)] of the Product Net Revenue generated from [Company]'s website and [Company]'s co-branded websites (“[Company] Sites”), or,
- (b) [Sixty-five (65%)] of the Product Net Revenue if generated from [Company B]'s website.

For the purposes of this Agreement, Net Revenue is defined as Gross Product Revenue generated less any Product promotions, Cost of Goods Sold, if any, including any credit card processing fees. For the purposes of this Agreement, Cost of Goods Sold shall mean any tangible expense [Company] or [Company B] must pay in order to process or fulfill a Product sale, such as third-party licenses, royalties, processing or delivery fees. [Company]'s revenue share fee to [Company]'s co-branded websites shall not qualify as Cost of Good Sold for the purposes of this Agreement. Parties further agree that any Product promotions will be exercised in accordance with The Marketing Plan or otherwise ratified by The Management Committee.

7.4 Revenue Share Accounting

[Company] will compute [Company B]'s Revenue Share, Twelve (12) times per year, at the end of each calendar month. Within forty-five (45) days after the last day of a calendar month, [Company] will send [Company B] a statement (each, a “Revenue Share Report”) covering such Revenue Share indicating the calculation of Revenue Share due [Company B].

7.5 Recordings & Inspection

Parties agree to maintain and keep for a period of at least two (2) years from the termination or expiration of this Agreement, books and records, in a form in accordance with generally accepted accounting principles, which pertain to marketing plans, sales and revenue shares generated under this Agreement. Either party, at its sole cost and expense, shall have the right, upon reasonable written notice, to inspect those books and records that pertain to the Joint Effort, at a party's premises during normal business hours. The parties may only exercise this right one (1) time each calendar year during the Term of this Agreement and one (1) time within the year following termination or expiration of his Agreement. All information to which parties are provided access during such examination is confidential information of parties which is subject to the confidentiality restrictions contained in Section 10 hereof.

8. Management Committee; Project Managers

8.1 Composition

As of the date hereof, the Management Committee shall consist of at least the following named employees of [Company B] and [Company], respectively: from [Company B], [Name]; from [Company], [Name]. Either of the Parties may, at any time during the Term, designate employees to replace their respective representatives on the Management Committee upon prior written notice to the other; provided, however, that any individual named to the Management Committee by either of the Parties shall have the authority to make binding decisions on behalf of their respective employers with respect to the Joint Effort. Members of the Management Committee shall not receive any compensation from the Joint Effort in consideration for serving as a representative on the Management Committee. No representative to the Management Committee shall be liable to the Parties by reason of his or her acts as a representative, except in the case of his or her gross negligence or actual fraudulent conduct.

8.2 Management Committee Powers

In addition to the powers of the Management Committee expressly enumerated elsewhere in this Agreement, the Management Committee shall decide any policy and make any decision with respect to the Joint Effort that it deems appropriate. Decisions of the Management Committee shall be binding on each of the Parties.

8.3 Management Committee Meetings

The Management Committee shall meet at least one time per calendar quarter, with the first meeting within thirty (30) days of the date hereof, to act on necessary matters pertaining to the Joint Effort. Such meetings will take place at a time and site designated by the chairperson of the Management Committee and mutually agreed upon by the Parties in their reasonable discretion. A good faith, reasonable attempt will be made by both Parties to rotate the location of these meetings. [Company B] and [Company] shall each bear their own expenses associated with attendance of Management Committee meetings by their respective representatives. Members of the Management Committee shall use reasonable efforts to attend the meetings of the Management Committee in person, but if personal attendance is not possible, a member may attend meetings by telephone conference or delegate his or her authority to attend meetings to other employees of either Producer or [Company], as the case may be. A representative from [Company] shall function as ~~the~~ chairperson of the Management Committee and shall call and chair meetings of the Management ~~Committee~~. A representative from [Company B] shall take minutes of the meetings and distribute them to members of the Management Committee to be approved at subsequent Management Committee meetings.

8.4 Project Managers

The general day-to-day supervision and management of the Joint Effort and any and all matters relating to it shall be under the general charge and control of two project managers (the "Project Managers"), subject to the powers vested in the Management Committee. Each of the Parties shall appoint one of the Project Managers, who shall serve at that party's pleasure. The Project Managers shall be given such specific powers as the Management Committee may from time to time delegate. As of the date hereof, [Company B] appoints **[Product Manager]** as a Project Manager. As of the date hereof, [Company] hereby appoints **[Product Manager]** as a Project Manager. Either Project Manager may at his or her reasonable discretion, from time to time and upon notice to the other Project Manager, delegate specific aspects of their day-to-day duties with respect to the Joint Effort to another employee of [Company B] or [Company], respectively.

9. Delivery & Acceptance

9.1 Delivery

Each Product specified on a Product Schedule will be delivered to market on or before the milestone date set forth therein. [Company] represents that each milestone submission of the Product will be delivered after such submission has been thoroughly tested by [Company] and is certified to by [Company] to be free of known errors (commonly know as "bugs"). In the event [Company] fails to timely deliver milestone submissions identifies on a Product Schedule, and in the event such failure to meet a milestone on the part of the [Company] continues for a period of ninety (90) days or more, then [Company B], at its sole discretion, may terminate the Product Schedule associated with such Product upon written notice to [Company] and may consider such delay a material breach of this agreement. Notwithstanding the foregoing, [Company] may request [Company B] to extend a milestone date in writing, specifying the reason(s) for such request, at least three (3) business before such milestone date. Any milestone date extension granted by Producer hereunder shall be in Producer's sole discretion, but shall not be unreasonably denied in the even that the failure to meet the milestone has been caused, through no fault of [Company], by a delay in the release of any operating environment, software utility or extension of which

such Product is dependent (and the dependency thereon is set forth in the appropriate Product Schedule), or unanticipated technical failures or deficiencies of any software utility or extension on which such Product is dependent (and the dependency thereon is set forth in the appropriate Product Schedule), or unanticipated technical problems encountered by [Company] in the development of the Product, which technical problems shall be communicated to Producer in detail and in writing. In the event of any such delay, the milestone date extension shall be granted in an amount of time reasonably sufficient for the cause of such delay to be corrected provided that [Company] works diligently and to the Management Committee's reasonable satisfaction to find acceptable alternatives to any problems caused by failures associated with third party products or to correct any such unanticipated technical problems.

9.2 Acceptance Test

Within five (5) business days after receipt of interim milestone submissions of any Product and within ten (10) business days after receipt of the final milestone submission of any Product, the Parties, shall test and evaluate [Company]'s milestone submission of the Product (the "Acceptance Test"). The Acceptance Test shall be jointly developed by [Company B] and [Company] and shall be set forth in the applicable Product Schedule. The Acceptance Test shall be designed to demonstrate the successful implementation of the design of the Product as set for in the applicable Product Schedule (the "Product Requirements"). A milestone submission of the Product will be deemed as having passed the Acceptance Test upon written confirmation of such signed by both parties. If the milestone submission shall fail the Acceptance Test, the parties shall work together to identify instances of failure of the milestone submission to meet the Product Requirements (the "Punch List") and [Company] shall have a technologically and commercially reasonable period of time, as determined by the Management Committee in its reasonable discretion, to correct, at no cost to [Company B], the items identified on the Punch List and deliver a corrected milestone submission.

10. Ownership, Copyrights & Credits, Derivative Works

10.1 Ownership

Basically you own your Works (templates) and we own our Works (including all the stuff/enhancements we build around your tools to make them web enabled).

10.2 Copyrights

10.3 [Company B]'s Copyright Notice

10.4 [Company]'s Copyright Notice

10.5 Notification – Infringement

11. New Initiatives; Confidentiality

11.1 New Initiatives

The Parties anticipate that during the Term of the Agreement, they will, from time to time, discuss and exchange with each other ideas, concepts or information to be used in connection with the creation or development of possible future Products or other new initiative, ventures or products not contemplated by this Agreement. The Parties agree that this Agreement is in no way intended to limit such discussions or exchanges and that such ideas, concepts or information referred to in the previous sentence shall, without limitation, except as set forth in Section 11.2, constitute Confidential Information (as defined herein).

11.2 Confidentiality

The Parties will each regard and preserve as strictly confidential all information and material, including but not limited to, the Producer Works and the [Company] Works and all other material or information,

including without limitation, customer or client information, provided to one another in connection with the Joint Effort (hereinafter, “Confidential Information”). The Parties agree that, except as provided in this Agreement or as otherwise agreed between them in writing, they shall not use the Confidential Information for their own benefit or for the benefit of any third party. The Parties further acknowledge and agree that, in the event of a breach or threatened breach of the Section 11.2, the non-breaching party may have no adequate remedy in money damages, and accordingly, may be entitled to appropriate injunctive relief against such breach.

The Parties agree that they each will have no obligation in connection with specific Confidential Information of the other to the extent, but only to the extent that: such Confidential Information is already known to them, free from any obligation to keep such Confidential Information confidential at the time it is obtained from the other party; such Confidential Information is or becomes publicly known in the trade or otherwise through no wrongful act of the receiving party; or such Confidential Information is rightfully received by the receiving party from a third party without restriction and without breach of this Agreement. Upon the request of either of the Parties following the completion of the Joint Effort, or upon termination or expiration of this Agreement as otherwise provided herein, all tangible copies of any Confidential Information of the Parties will be returned to one another.

12. Warranties & Representations

Parties warrant and represent to each other that:

- (a) They have the right, power and authority to enter into this Agreement and to fully perform all of its obligations hereunder;
- (b) Their respective Works do not contain any pre-programmed devices such as “viruses” or other such devices that will cause any Product to become inoperable or incapable of processing or to otherwise damage or negatively affect the performance of any Product in any manner;
- (c) They will not, during the Term of this Agreement or at any time thereafter, attack, dispute, or contest, directly or indirectly other party’s Works or the validity of such Works copyrights, nor will they assist or aid others to do so.
- (d) no aspect of the Products contains any libelous material or any material which constitutes an invasion of any right of privacy or publicity or infringes upon any trademark, copyright, trade secret or other intellectual property right;
- (e) upon execution of this Agreement and for as long as this Agreement is in effect, at no charge to [Company B], [Company] will promptly correct any defects in any Products released for sale; and,
- (f) upon execution of this Agreement and for as long as this Agreement is in effect, at no charge to [Company], [Company B] will promptly correct any defects in any [Company B] Works.

13. Indemnification

13.1 Indemnification by [Company B]

[Company B] shall indemnify, defend and hold [Company] harmless from any claims, demands, liabilities, losses, damages, judgments or settlements, including all reasonable costs and expenses related thereto including attorneys’ fees, directly or indirectly resulting from any claimed breach of warranty, [Company B] Works malfunction or defect, or infringement or violation of any copyright, patent or other intellectual property right or right of publicity or privacy with respect to the [Company B] Works, so long as the [Company B] Works are used in accordance with the documentation and specifications provided by [Company B] and [Company] has adhered to its obligations under this Agreement. Following notice of a claim or a threat of actual suit, [Company B] shall, at its option: (i) procure for [Company] the right to

continue to use and distribute the [Company B] Works at no additional expense to [Company]; or (ii) provide [Company] with a non-infringing version of the [Company B] Works.

13.2 Indemnification by [Company]

[Company] shall indemnify, defend and hold [Company B] harmless from any claims, demands, liabilities, losses, damages, judgments or settlements, including all reasonable costs and expenses related thereto including attorneys' fees, directly or indirectly resulting from any claimed breach of warranty, [Company] Works malfunction or defect, or infringement or violation of any copyright, patent or other intellectual property right or right of publicity or privacy with respect to the [Company] Works, so long as the [Company] Works are used in accordance with the documentation and specifications provided by [Company] and [Company B] has adhered to its obligations under this Agreement. Following notice of a claim or a threat of actual suit, [Company] shall, at its option: (i) procure for [Company B] the right to continue to use and distribute the [Company] Works at no additional expense to [Company B]; or (ii) provide [Company B] with a non-infringing version of the [Company] Works.

13.3 Conditions for Indemnification

Notwithstanding paragraphs 13.1 and 13.2 of this Agreement, the indemnifying party is under no obligation to indemnify and hold the other party harmless unless: (i) the indemnifying party shall have been promptly notified of the claim by the indemnified party and furnished by the indemnified party with a copy of each communication, notice or other action relating to said claim; (ii) the indemnifying party shall have the right to assume sole authority to conduct the trial or settlement of such claim or any negotiations related thereto at the party's own expense; and (iii) the indemnified party shall provide reasonable information and assistance requested by the indemnifying party in connection with such claim or suit.

14. Limitation of Liability

WITH THE EXCEPTION OF INDEMNIFICATION OBLIGATIONS, NEITHER OF THE PARTIES SHALL IN ANY CIRCUMSTANCES BE LIABLE FOR ANY LOSS OF BUSINESS OR PROFITS, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SIMILAR DAMAGES, OR, OTHER THAN AS SET FORTH HEREIN, FOR CLAIMS OF DAMAGES MADE BY ANY THIRD PARTY FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITH THE EXCEPTION OF INDEMNIFICATION OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY'S LIABILITY HEREUNDER EXCEED \$500 OR, IF A CLAIM BY [Company B] FOR REVENUE SHARE SUCH CLAIM SHALL NOT EXCEED THE AMOUNT OF REVENUE SHARE THEN DUE AND PAYABLE.

15. Termination

15.1 Termination in the Event of Material Breach

In the event of a material breach of this Agreement, the non-breaching party may terminate this Agreement by giving thirty (30) days prior written notice to the other. Notwithstanding the foregoing, this Agreement will not terminate thirty (30) days after the breaching party receives such notice if the breaching party has cured the breach before the end of such thirty (30) day cure period.

15.2 Additional Termination Rights

In addition to other termination rights set forth herein, either party may terminate this Agreement:

- (a) if the other party is declared insolvent or bankrupt;
- (b) if a petition is filed in any court and not dismissed in ninety (90) days to declare the other party

bankrupt or for a reorganization under the Bankruptcy Law or any similar statute; or
(c) if a trustee in bankruptcy or a receiver or similar entity is appointed for the other party.

16. 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.

16.1 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 b [redacted] n and you can avoid further legal proceedings.

16.2 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.

16.3 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.

16.4 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, 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.

16.5 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.

16.6 **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.

16.7 **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.

16.8 **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.

16.9. **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.

16.10 **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.

16.11 **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.

16.12 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.

16.12 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.

16.13 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.

16.14 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.

16.15 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.

16.16 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.

16.17 **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 first written above.

[Company]

[Company B]

[Owner/Founder]
[Title]



[Name]
[Founder & CEO]

Date

Date

Exhibit A

Product Schedule

This Exhibit A is issued pursuant to and incorporates the Master Joint Development Agreement between [Company B] (“[Company B]”) and [Company] (“[Company]”) (the “Agreement”). Any word or phrase not otherwise defined herein will have the same meaning ascribed to them in the Agreement.

Platform:

[Company B] Project Manager (000) 000-0000; name@[Company.com]

[Company] Project Manager (000) 000-0000; name@[Company.com]

[Company B] Works:



[Company] Works:

Product:

- Xxx
- Xxx
- xxx

Milestones & Development Schedule:

- xxx
- xxx
- xxx

[Company B]

- [Name] [Title]

[Company]

- [Name] [Title]