


# Professional Services Agreement

- 🔊 You offer a professional service... you want sanity in the relationship and you want to be paid
- 🔊 The first part of the Memorandum should be completed and distributed to the other party along with a copy of the Product Licensing Agreement.

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

To: **[Name of Client]**

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

Subject: **Professional Services Agreement**

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Attached is a “Professional Services Agreement” in order to engage us to work for you..

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 Attorney 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.

# Professional Services Agreement

This Professional Services Agreement (“Agreement”) is entered into as of

Effective Date                      **[Date]**

by and between                      **[Client]** (“Client”).

Located at                              [client address]

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

located at                              [address]  
[City], [State] [Zip Code]

## Summary

[Company] provides, through its employees and third party contractors, certain [software/architectural/financial management] consulting and professional services related to the [integration of certain "back office" on-line commerce functions, including without limitation, order and payment processing, database management, fraud and validation screening, rights clearance, high volume OLTP, EDI linkage to fulfillment centers, and other Internet commerce functions] (more fully described in Exhibit A attached);

Client desires to engage the services of [Company];

[Company] and Client agree as follows:

### 1. Services to be Performed

[Company] will provide employees or consultants (“[Company] Staff”) to perform services at Client's discretion on projects as mutually agreed to in writing by [Company] and Client.

The Project Coordinator for Client shall be [Name].

All activities of [Company] Staff shall be coordinated with the Project Coordinator.

Client is responsible for making the necessary internal arrangements and providing the necessary information to facilitate the performance of the professional services to be rendered by [Company].

Client and [Company] will jointly agree on the scope, duration, and estimated cost of the project prior to the commencement of services. Unless otherwise agreed to in writing, all services to be rendered under this Agreement are defined in the [Company] Professional Services Project Proposal (the “Project Proposal”), attached to this Agreement as Exhibit A.

Client acknowledges that the dates provided in the Project Proposal are (at best) estimates which are in turn based on the timely submission by Client of all specifications and other information necessary for the completion of tasks described in the Project Proposal.

## 2. Review & Acceptance Procedure

- 🔊 You want to establish that your client is satisfied with your work and not let that confirmation drag on too long – therefore you deserve to be paid (client has no wiggle room to say later that you didn't do a good job!)

[Company] shall provide written notice to Client to review and examine the Project at the completion of each scheduled milestone prior to the Final Milestone. Such milestones excluding the Final Milestone shall hereinafter be called “Interim Milestones.” Client shall have three (3) days within which to provide written notice to [Company] concerning any deficiencies with respect to each of these Interim Milestones. Bona fide deficiencies identified with respect to such Interim Milestones shall be addressed and corrected by [Company] on or before the completion of the Final Milestone.

- 🔊 Remember to be disciplined to follow through on these notifications. They are the precursors to getting paid.

Upon completion of the Final Milestone, [Company] shall so notify in writing to Client that the Project has been completed (“Notice of Completion”) and Client shall have ten (10) days within which to review and identify any final and specific deficiencies which appeared after the completion of the immediately previous milestone. [Company] shall exercise commercially reasonable efforts to correct such final list of deficiencies within ten (10 days) of such notice from Client. Upon completion of the correction work, [Company] will repeat the delivery of the written Notice of Completion to Client under the same procedure. The Project shall be deemed to be accepted by Client if no notice of deficiency is delivered to [Company] within ten (10) days of any such Notice of Completion.

## 3. Satisfaction with Performance

If at any time Client is dissatisfied with the performance of an [Company] Staff working on a Client project, Client shall immediately report its dissatisfaction to [Company] in writing and may ask [Company] to replace the individual.

## 4. Fees Amount & Dates

Client shall pay [Company] the fees as set forth in The Project Proposal. All services not specifically itemized in The Project Proposal shall be presumed to be provided by [Company] on a time and materials basis based on [Company]'s then list price provided the services were requested as specified in section 6, “Change of Scope”.

Billing for [Company]'s professional services will be on a monthly basis.

All invoices will be due and payable in full within thirty (30) days after receipt of invoice. Account balances over 15 days past due will be charged a service charge of the lesser of 1-1/2% per month of the outstanding balance or the maximum permitted by law. All duties, taxes and levies (excluding taxes based on [Company]'s net income), if any, shall be borne by Client. [Company]'s professional service rates are subject to change upon thirty (30) day prior written notice.

Client shall be liable for payment to [Company] for all services rendered or products delivered prior to the effective date of any termination.

## 5. Term

The term of this Agreement shall commence on the Effective Date, and continue until completion of the services provided for in this Agreement, unless terminated pursuant to Section 0, below.

## 6. Termination

- 🔊 Sometimes you really need to get out of these deals – Graciously would be best, yet you must be paid for work that you have already performed.

This Agreement may be terminated by either party upon Thirty (30) days written notice if the other party breaches any material term or condition of the Agreement and such breach remains uncorrected for fifteen (15) days following written notice from the non-breaching party specifying the breach; the business of the other party terminates; enters into voluntary or involuntary bankruptcy proceedings or similar proceedings under state law; or becomes insolvent or makes any assignment for the benefit of creditors.

Upon termination of this Agreement for any reason, the parties shall have no further obligations pursuant to the terms of the Agreement except as set forth in Sections 4, 8, 9, 10 and 11.

## 7. Change of Scope

- 🔊 This will happen. It's just a matter of time. Clients often want changes for free. You cannot do this. Better to establish some ground rules for dealing with them changing their minds along the way.
- 🔊 It is very important to be specific in Exhibit A – on one hand the client will want to perhaps limit the scope of your work in order to save money, then again, you'll offer some great things and of course the client will want them...

At any time during the term of this Agreement, should Client desire [Company] to provide any additional services in the form of a modification of or a change to the Services, [Company] and Client shall comply with the following:



*Submission of Request.* Client shall submit to [Company] in writing all requests by Client for any such additional services which alter, amend, enhance, add to, or delete from the Services and/or time and/or place of performance (hereinafter referred to as “Modification/Change Request” or “Request”).

*Acknowledgment Procedure.* [Company] will evaluate such Modification/Change Request at no additional charge to Client as soon as possible but not later than three (3) working days following [Company]'s receipt of the Request. [Company]'s written response shall include the impact, if any, on the completion date and the change in costs, if any. [Company] in its sole discretion may refuse to accept the Modification/Change Request. Should Client elect to authorize such Request, Client will, as soon as possible but not later than three (3) working days, authorize [Company] to perform the requested Modification/Change Request by returning a duly authorized copy of the Request to [Company].

*Performance.* Upon such authorization by Client of the Modification/Change Request, [Company] will commence performance in accordance with such Request immediately. [Company] shall not be obligated to perform any additional services in advance of written authorization from Client.

*Binding Agreement.* For the purposes of this Agreement, each Modification/Change Request duly authorized in writing by Client and agreed to by [Company] shall be deemed incorporated into and part of this Agreement and each such Request shall constitute a formal amendment to this Agreement adjusting fees and completion date as finally agreed upon for each authorized Modification/Change Request. In no event shall the Services be deemed altered, amended, enhanced, or otherwise modified except through written authorization by Client of a Modification/Change Request and acceptance by [Company], all in accordance with this Section 7.

## 8. Non-Exclusive Agreement; Confidentiality

- 🔊 Normal stuff here.

*8.1 Non-Exclusivity.* [Company] shall retain the right to perform work of any kind for others during the term of this Agreement.

*8.2 Confidentiality.* Each party agrees to afford the other party's Proprietary Information the same degree of protection against unauthorized use or disclosure as each party normally provides for its own proprietary information (which protection shall not in any case be less than reasonable), provided that each party's obligations hereunder shall not apply to information which (i) is known to the receiving party

at the time of disclosure by the disclosing party; (ii) is now or hereafter in the public domain through no fault of the receiving party; (iii) is developed independently by the receiving party; (iv) is generally known or available through third parties without restriction; and (v) is inadvertently disclosed by the receiving party despite the same and reasonable degree of protection against unauthorized use or disclosure which the receiving party normally provides for its own proprietary information. The term "Proprietary Information" shall mean documented information which at the time of its disclosure to the receiving party is identified as Proprietary by an appropriate stamp or legend. For purposes of this Agreement, orally disclosed information shall not be considered proprietary.

## 9. Ownership of Intellectual Property

 This is common and expected in an agreement like this one.

9.1 All right, title and interest in and to any pre-existing copyrightable works and trademarks of Client shall remain the property of Client, whether or not supplied to [Company].

9.2 Client agrees that any and all ideas, concepts, or other intellectual rights and property containing in any way the techniques, knowledge or processes of the [Company] services or [Company] products provided under this Agreement and other related [Company] agreements, whether or not developed for Client, are the exclusive property of [Company]. [Company] shall have the sole and exclusive right, title and ownership in and to the said technology. This section 9 shall survive any termination of this Agreement.

9.3 Notwithstanding the foregoing Section 9.2, upon payment of all of the fees hereunder and subject to the other agreements which Client may have with [Company], Client is granted a **non-exclusive**, perpetual, royalty-free license to use the work product resulting from the professional services rendered hereunder by [Company] for Client.

9.4 Client's interest in and obligations with respect to any programming, materials or data to be obtained from third-party vendors, regardless of whether obtained with the assistance of [Company], shall be determined in accordance with the agreements and policies of such vendors.

## 10. Indemnification for Client Content

As part of the Professional Services, [Company] may be requested by Client to include in the Project certain materials or content, including copyrights and trademarks, furnished and provided by Client.

Client agrees to indemnify and hold harmless [Company] for any claims, losses or damages (including reasonable attorney's fees and costs) for any third party claims that said Client materials (whether or not incorporated into the Project or used by [Company]) infringed upon the copyrights, trademarks, trade dress, publicity rights, privacy rights and other rights of others or are in violation of law.

### Disclaimer of Warranties


THE PRODUCTS AND SERVICES HEREUNDER ARE PROVIDED "AS IS" WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES. THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH THE CLIENT. THIS DISCLAIMER OF WARRANTY EXTENDS TO CLIENT AND TO CLIENT'S CLIENTS OR USERS OF ITS PRODUCTS AND SERVICES AND IS IN LIEU OF ALL WARRANTIES AND CONDITIONS WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT WITH RESPECT TO THE PRODUCTS AND SERVICES.

## Limitation of Liability

EXCEPT FOR CLIENT'S INDEMNITY OBLIGATIONS IN SECTION 11 AND EXCEPT FOR LIABILITY FOR PERSONAL INJURY AND PHYSICAL PROPERTY DAMAGE, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO SUCH DAMAGES ARISING FROM BREACH OF CONTRACT OR WARRANTY OR FROM NEGLIGENCE OR STRICT LIABILITY), OR FOR INTERRUPTED COMMUNICATIONS, LOST DATA, LOST PROFITS, LOST SAVINGS, OR ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE LIABILITY OF [COMPANY] (INCLUDING ALL PERSONS EMPLOYED BY [COMPANY] IN PERFORMING ANY OBLIGATIONS OF THIS AGREEMENT) FOR ANY CLAIMS ARISING FROM THIS AGREEMENT SHALL BE LIMITED IN THE AGGREGATE TO THE AMOUNT OF SERVICE FEES PAID TO [COMPANY] FOR THE SERVICES TO WHICH THE LIABILITY IS ATTRIBUTABLE.

## 11. General Provisions

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

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

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

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

**11.3 Entire Agreement.** This Agreement, including the attached exhibits, constitutes the entire Agreement between both parties concerning this transaction, and replaces all previous communications, representations, understandings, and Agreements, whether verbal or written between the parties to this Agreement or their representatives. No representations or statements of any kind made by either party, 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.

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

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

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

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

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

☞ Legal remedies, i.e., monetary 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.

**11.7 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.

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

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


**11.8 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.

**11.9 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.

**11.10 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.

**11.10 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.

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

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

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

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

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

**Understood, Agreed & Approved**

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

**[Company]:**

**Client:**

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

\_\_\_\_\_  
[Client name]

\_\_\_\_\_  
Title



\_\_\_\_\_  
Title

# EXHIBIT A

## [Company] Professional Services Project Proposal

- Xxx
- Xxx
- xxx

