


Service Agreement

- 🔊 Add this Service Agreement as a stand-alone contract to provide on-going maintenance services and/or as an add-on to a Purchase contract.
- 🔊 The first part of the memo should be completed and distributed to the Servicing Company customer along with a copy of the Service Agreement.

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

To: **[Customer Company]**

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

Subject: **Service Agreement**

Attached is our “Service Agreement” in order to establish the terms of our engagement.
I believe that it embodies everything we discussed.

Please read the agreement carefully.

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

Time is of the essence.

Please sign and return it to me asap.

Thank you very much!

From JIAN

NOTICE:

We wish we could provide an agreement that was tailored *exactly* to your business. While this is not always possible, we feel that we've come very close and that this document provides you with the head-start that you need to get your deal moving. Nevertheless, we must make this disclaimer:

- 🔊 **Do Not Use This Agreement 'As-Is.'**
- 🔊 **This Agreement Is Not Legal Advice.**
- 🔊 **Read it Thoroughly and Make All Appropriate Changes to Fit Your Requirements.**
- 🔊 **You Should Have this Agreement Reviewed and Approved by a Qualified Attorney at Law Before Using It.**
- 🔊 **JIAN Accepts No Liability for the Effectiveness of This Document For Your Purposes.**

Free Access to Attorneys, Accountants & Consultants in Your Area

We're building a network of business experts who are eager to help you when you need it. They can review your work, make suggestions, handle unique situations and introduce you to influential people. On our website you can search by expertise and location, then e-mail or jump straight to their website. Although they are professionals and charge for their services, most offer an initial consultation free of charge. They're in your area and you can contact them directly.


- Please visit our website under [Expert Referral Network](#).

Ongoing Update Service Keeps You Current


Things change, laws change, the world changes... new ideas come along all the time. When you register, you can access our website to get updates and changes... like new and improved spreadsheets and documents. They can be downloaded directly to your computer.

- Please visit our website under [Updates](#).
- Remember to bookmark our website: www.JIAN.com

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.

Service Agreement


☞ This is a standard introductory paragraph that lists the date and the parties to the Agreement.

Effective Date [Date]

by and between [Company Legal Name], (“[Company]”)

with offices located in [Address]
[City] [State] [Zip Code]

and [Customer Name], (“Customer”)

with offices located in  Address, City and State] (herein after referred to as.

☞ The following paragraph sets forth the basic obligations of the serving Company to maintain the Customer’s equipment. You will note that the Service Company will only be required to Service equipment you specify on “Attachment A”. Make sure that the list of equipment is complete before you sign the Agreement.

[Company] agrees to Service and provide all labor and furnish all parts necessary to maintain Customer’s equipment (hereinafter referred to as “Equipment”) listed on Attachment A, in proper operating order according to the following terms and conditions:

1. Term of the Agreement

☞ This first section establishes the duration of the Agreement. Many times Service agreements are used in conjunction with equipment lease arrangements. In that case the duration of the Service Agreement may correspond to the term of the lease.

This Agreement shall commence on the Effective Date and shall remain in full force and effect for a Term of [xx months/years] [and automatically renew for an additional xx months/years unless notice of termination is provide in writing by either party prior to 30 days from the end of the Term], or until terminated according to the provisions of this Agreement.

☞ Section 1.2 gives either party the right to terminate this Agreement if the other fails to perform its obligations.

1.2 If either party shall neglect or fail to perform any of its obligations under this Agreement, and such failure continue for a period of ten (10) calendar days after written notice of complaint, the other party shall have the right to immediately terminate this Agreement.

☞ Section 1.3 allows the Service Company to terminate its obligations thirty days after the Customer fails to make any required payments.

1.3 [Company] may, at its option, immediately terminate this Agreement, or temporarily suspend all of its responsibilities stated in this Agreement, for payment delinquency in any amount in excess of thirty (30) calendar days.

- 🔊 Section 2 establishes what equipment will be covered by this Agreement. Remember, make sure to double check the list of equipment and attach the list as Attachment A.

2. Equipment Eligible for Service


All Equipment to be included under this Agreement, along with the charge for this Agreement, is listed on Attachment A.

3. Service Location

- 🔊 Section 3 establishes the location where the servicing will be performed.
- 🔊 The following two sections require that servicing be performed at the Servicing Company's facility. You may want servicing performed at your location. If so, add the appropriate language in this section.

3.1 The Equipment to be Serviced must be delivered by the Customer to [Company] repair facility during Company's normal business hours.

- 🔊 If you are required to bring the equipment to the Servicing Company's facilities, you will have to bring all interconnecting cords and cables.

3.2 All interconnecting cord d cables must accompany the Equipment to be Serviced.

4. Charges / Payment

- 🔊 This paragraph sets forth a monthly payment plan with the first payment due one month after you enter into this Agreement. You can establish any type of payment plan you desire, so don't feel obligated to use a monthly payment schedule. You should negotiate acceptable payment terms and servicing charges with the Servicing Company and include those terms in this section.

Monthly Service Charges for this Agreement shall be reflected on the monthly lease invoice. Payment shall be made by Customer to [Company]. Monthly Maintenance Charges for the first month of the term of this Agreement (plus any pro rata portion) shall be due on the first day of the month following the date of delivery of the listed Equipment, with all subsequent payments due in advance on the first day of each subsequent month during the term of this Agreement.

5. Exclusions

- 🔊 Often a Servicing Company will not service equipment under all circumstances. The following section delineates some conditions which must be fulfilled before [Company] will be obligated to perform services.

[Company] shall not be obligated to provide the Services required by this Agreement:

- 🔊 Section 5.1 is included to protect the Servicing Company from problems created by some other maintenance or Servicing Company.

5.1 If the Equipment has been modified or repaired by anyone other than an authorized [Company] Service Center, or if the Equipment contains non-[Company] parts.

- 🔊 Section 5.2 protects the Servicing Company from problems caused by things such as power surges. Basically, it protects the Servicing Company from things beyond its control.

5.2 If the Equipment requires repair of damages caused by external factors, including, but not limited to: loss or damage resulting from the elements, misuse, abuse, or the operation of the Equipment in improper environments, such as, but not limited to, locations having defective or inadequate power source, static electricity, or excessive interference caused by external sources.

- 🔊 Sometimes government bodies establish regulations that set standards for equipment. An example would be fire code regulations that require a certain type of sprinkler system. The following section

protects the Servicing Company from being forced to provide service if a government body establishes regulations that necessitate changes to equipment.

5.3 If extra Service is required to comply with changes in the regulations of any governmental body or agency.

☞ Section 5.4 protects the Servicing Company from being forced to service equipment that may not have been covered by this Agreement. If the serial numbers have been removed, how is the Servicing Company to know if the equipment was part of the original Agreement?


5.4 If the serial numbers of the Equipment have been tampered with or are missing.

6. Services Not Provided

☞ Section 6 sets further limits on the servicing companies obligations.

This Agreement shall not require [Company] to provide:

☞ Section 6.1 excludes routine maintenance from the Servicing Company's obligations. You may want to negotiate some form of maintenance requirement with the Servicing Company that is different from that imposed by this provision. For example, you may want to have your computer hard disks checked periodically to insure that you will not lose important data.

6.1 Routine maintenance,  as, but not limited to, periodic cleaning of printer heads, ribbon replacement, blotter replacement or blotter roller replacement.

☞ In the next two sections, the Servicing Company declines to be obligated to replace everyday products or to be responsible for servicing the external casing of the equipment.

6.2 Consumable items such as, but not limited to, paper, ribbons, diskettes, oil, fuel, water, tapes, toner, lamps, tires, etc..

6.3 Refinishing or replacement of any external cosmetic plastic or plated parts including the cabinet and cabinet parts.

7. Limited Warranty & Limitation of Liability

☞ Section 7 is an important one. It establishes the limits of liability for the Servicing Company.

☞ Section 7.1 includes a "best efforts" term. Basically, it protects the Servicing Company from responsibility for things outside its control. For example, the Servicing Company would not breach this agreement if it failed to supply replacement parts that are unavailable.

7.1 [Company] agrees to use its "best efforts" to provide the maintenance required under this Agreement in a prompt manner, but in no event shall [Company] be liable for any damages or liabilities, directly or indirectly caused by the Equipment not being repaired properly, by length of down time, temporary shortages or unavailability of the replacement parts, or temporary unavailability of qualified Service personnel at [Company]'s Service Center.

☞ These next two sections set forth the sole warranty of the Company for defective replacement parts. The first section establishes the warranty while the second section disclaims or excludes other possible warranties the Customer could exercise. You should refer to the section on Sale of Goods in the manual included with AgreementBuilder 3.0 for more information on product warranties. Remember to try and negotiate better warranty terms for yourself.


7.2 All replacement parts, components, modules, or units (hereinafter collectively referred to as "part[s]") supplied under this Agreement are warranted against defects in workmanship and material. If this Agreement is still in effect, [Company]'s sole responsibility under this warranty shall be to repair or replace any part(s), discovered to be defective. If within thirty (30) calendar days from the date of installation of parts(s), this Agreement is not in effect and a defect is discovered, [Company]'s sole responsibility will be to provide replacement part(s) at no cost, but labor provided will be charged to

Customer at [Company]'s Service rates and terms in effect.

☞ Section 7.3 contains the Uniform Commercial Code (adopted in all states except Louisiana), and requires that a disclaimer of warranties be conspicuous.

7.3 Except for the limited warranties stated above, [Company] disclaims all warranties of any kind with regard to the subject matter hereof, the Service to be provided by [Company], and parts and other material to be supplied by [Company], including without limitation, any implied warranty of merchantability or fitness for a particular purpose.

☞ Section 7.4 limits the Servicing Company's liability for breach of this Agreement. For example, if your business shuts down because of an equipment failure and the Servicing Company is in some way responsible for that failure, the Servicing Company would not be liable for any business lost as a consequence.

7.4 [Company] shall have no liability or responsibility to the Customer or any other person or entity with respect to any liability, loss or damage caused or alleged to be caused directly or indirectly by [Company] computer equipment or software sold or Service provided by [Company], including, but not limited to, any interruption of Service, loss of business or anticipatory profits or consequential damages resulting from the use of operation of the equipment. In no event shall [Company] be liable for loss of profits, or any indirect, special  consequential damages arising out of any breach of this Agreement or any warranty provided herein.

☞ The next two sections are included to account for different laws in some states.

7.5 Some states do not allow the limitation or exclusion of incidental or consequential damages, so the above limitation(s) or exclusion(s) may not apply to the Customer.

7.6 The warranties granted herein give the Original Customer specific legal rights, and the Original Customer may have other rights which vary from state to state.

8. General Provisions

☞ The General Provisions that 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.

8.1 **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.

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

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

8.3 **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.

8.4 **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.

8.5 **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.

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

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

8.7 **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.

8.8. **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.

8.9 **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.

8.10 **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.

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

8.10 **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.

8.11 **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.

8.13 **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.

8.14 **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]

Customer

[Owner/Founder]

[Customer Officer]

Date

Date

Attachment A

Equipment

- | | | |
|-----------------|---------|-----------|
| ▪ [Equipment A] | [\$100] | per month |
| ▪ [Equipment B] | [\$100] | per month |
| ▪ [Equipment C] | [\$100] | per month |
| ▪ [Equipment D] | [\$100] | per month |

