

# Employment/Association Agreement

- 🔊 It is important to establish, in no uncertain terms, that fact that anything your employees develop while working for you belongs to you / your company. What they did before is theirs, but what they do for you stays with you.
- 🔊 This agreement is designed to establish harmonious relationships between you and your employees and associates, and to protect your company, its assets and its competitive position from inappropriate employee or associate actions.
- 🔊 This document consists of three parts:
  - A cover memo introducing the Agreement
  - The Proprietary Information & Invention Assignment Agreement
  - The Termination Certification.
- 🔊 All three parts should be provided to the potential associate. The first two parts should be signed when the association begins, with each party retaining a complete copy. When the association completes, the Termination Certification (still attached to the first two parts), should be completed.



# From JIAN

## NOTICE:

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

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

## Free Access to Attorneys, Accountants & Consultants in Your Area

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



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

## Ongoing Update Service Keeps You Current


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

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

## Editing Your Sample Contract

Since this entire agreement is atted 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.

 Cover memo

Date: **[Date]**

To: **[Name of Employee]**

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

Subject: **Proprietary Information Agreement & Invention Assignment**

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Attached to this statement is your Proprietary Information Agreement & Invention Assignment (Agreement) with [Company] and its affiliated companies (collectively, (“Company”)).


Please take your time and review the Agreement carefully.

The Agreement contains material restrictions on your right to disclose or use, during or subsequent to your association, information learned or developed by you during your association with [Company]. I believe that it embodies everything we discussed.

[Company] considers this Agreement to be vitally important to the protection of its business.

[Company] intends to enforce the terms of the Agreement and to seek appropriate injunctions or restraining orders, as well as monetary damages, should you violate the Agreement.

If you have any questions concerning the Agreement, you may wish to consult an attorney.

The employees and agents of [Company] are not authorized to, and will not, give you legal advice concerning the Agreement. 

If you have read and understood the Agreement, and if you agree to its terms and conditions, please return a fully executed copy of the Agreement to me and keep a copy for yourself.

Please feel free to contact me directly with any questions or concerns that you may have.

Time is of the essence.

Thank you very much!



**“Intellectual Property”** means any and all Inventions, Work Product, Works of Authorship, Patents, Trademarks, Trade Secrets and Copyrights which (i) relate directly to the business of [Company] or to the actual or demonstratively anticipated research or development of [Company], or (ii) result from any work performed by me for [Company], or (iii) any [Company] equipment, supply, facility or trade secret information is used to develop or improve, or (iv) are not developed entirely on my own time;

**“Inventions”** means any and all discoveries, improvements, ideas, concepts, creative works, and designs, whether or not they are in writing or reduced to practice and whether or not they are patentable;

**"Work Product"** All intellectual property rights, including all trade secrets, copyrights, both national and international, patentable inventions, and other intellectual property rights in any work product that is created in connection with the Employee's Work. In addition, all rights in any pre-existing programming, documentation, technology, or other Work Product provided to [Company] in the course of the Employee's employment automatically becomes part of the Work Product, whether or not the specific result of the Employee's Work (defined below).

🔊 Even if the Employee is signing this Agreement after starting work, the definition below makes it clear that any work performed is still within the scope of this Agreement.

**"Trade Secret"** A type of intangible property that generally consists of valuable, secret information or ideas that [Company] collects or uses in order to keep its competitive edge, including confidential information supplied to it by its customers, clients, vendors, or agents. This information includes, but is not limited to proprietary technology and technical information such as manufacturing or operating processes, equipment design, product specifications, source code, and business information such as selling and pricing information and procedures, customer lists, business and marketing plans, and financial statements.

**“Work”** (1) any direct assignments or required performance by or for [Company], and (2) any other output relating to [Company]'s business that is produced during the course of the Employee's employment. Work conducted or completed after normal working hours, away from [Company]'s premises, on an unsupervised basis, alone or with others is considered present. Unless otherwise provided in a subsequent writing signed by [Company], this Agreement applies to all the Work Product created in connection with work conducted before or after the date of this Agreement.

**“Works of Authorship”** mean those works fixed in any tangible medium of expression from which they can be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device, whether or not they are copyrightable; and



## 2. Confidentiality

I agree at all times during the term of my association with or employment by [Company] and from then on to hold in strictest confidence, and not to use, except for the benefit of [Company], or to disclose, transfer or reveal, directly or indirectly to any person or entity any Confidential Information without the prior written authorization of [Company].

## 3. Third Party Information

I recognize that [Company] has received, and in the future will receive confidential or proprietary information from third parties, subject to a duty on [Company]'s part to maintain the confidentiality of such information and to use it only for certain limited purposes. I agree that I owe [Company] and such third parties, during the term of my association and from then on, a duty to hold all such confidential or proprietary information in the strictest of confidence and not to disclose it to any person, firm or corporation (except as necessary in carrying out my work for [Company] consistent with [Company]'s agreement with such third party) or to use it for the benefit of anyone other than for [Company] or such third party (consistent with [Company]'s agreement with such third party) without the express written authorization of [Company]. Any such information shall be considered Confidential Information for the purposes of this agreement.


#### 4. Assignment of Intellectual Property

I understand that [Company] is engaged in a continuous program of research, development, production and marketing in connection with its business and that, as an essential part of my employment with [Company], I am expected to make new contributions to and create Inventions or Works of Authorship of value for [Company]. I agree that any and all Intellectual Property and or Work Product made, conceived or authorized by me, either solely or jointly with others in the past, present or future that (a) are developed using equipment, supplies, facilities or trade secrets of [Company], (b) results from work performed by me for [Company] or (c) relates to the business or the actual or anticipated research or development of [Company], is the sole and exclusive property of [Company]. I transfer and assign to [Company] all right, title and interest in and to such Intellectual Property, including without limitation, any "moral" rights which I may have in any Intellectual Property under any copyright or other similar law, either U.S. or foreign. In addition, I waive and agree never to assert any such "moral" rights, even after the termination of my association with or employment by [Company]. I further agree to execute, acknowledge and deliver to [Company], all documents, including patents, applications for patents, copyrights and assignments of Intellectual Property as [Company] may determine necessary or desirable to protect [Company]'s interest in the Intellectual Property, to vest title to the Intellectual Property or to confirm [Company]'s ownership of the Intellectual Property.


Upon the [Company]'s request, the Employee agrees to assist in any manner and by whatever means necessary to transfer, perfect, and defend the [Company]'s Ownership of the Work Product, including, but not limited to the following: (1) executing, acknowledging, and delivering any requested affidavits and documents of assignment and conveyance; (2) obtaining and aiding in the enforcement of copyrights, trade secrets, and patents worldwide; and (3) giving testimony in any proceeding affecting the [Company]'s rights to the Work Product.

If by operation of law or other Agreement, any of the Work Product is not considered such Work for hire or if ownership of all rights to that Work Product do not belong exclusively to [Company], the Employee agrees to assign, without further consideration, [Company]ship of that Work Product to [Company]. The Employee irrevocably relinquishes any moral rights in the Work Product for the benefit of [Company]. [Company] has the right to obtain copyrights, registrations, and any other protection available in the Work Product.

 For California application:

I have been notified and understand the provisions of this paragraph do not apply to any Intellectual Property that qualifies fully under  the provisions of Section 2870 of the California Labor Code, which states as follows:

#### 5. Prior Works

 If your state has specific regulations regarding the following topic, you'll want to reference the Section number and reprint the regulation here. Direct your attorney to make all necessary changes appropriate to your state.

In connection with section 4 above, I understand and agree that all Intellectual Property which I made prior to my association with or employment by [Company] are excluded from the scope of this Agreement. I have attached a complete list of all Prior Works, including patent numbers and brief descriptions of all Intellectual Property in which I claim an interest. I will assist [Company] in obtaining and protecting patents and copyrights in the Intellectual Property in all countries. Upon rendering assistance to [Company] after my association, [Company] will pay me a reasonable sum as determined by [Company] for my time and expenses.

The Employee is warranting that its work for [Company] will not be in conflict with work it has done or Agreements it has with former Employers or contractors.

I warrant that my work for [Company] does not and will not in any way conflict with any obligations I may have with any prior Employer or contractor. In developing Work Product, I will exercise my best efforts to avoid infringing on any third party's intellectual property rights.

## 6. Return of Materials

At the request of [Company] or on the termination of association or employment by [Company], I will immediately deliver to my immediate supervisor at [Company] all papers, notes, data, reference materials, sketches, drawings, memoranda, documentation, software, tools, apparatus and any other materials furnished to me by [Company] or which were prepared or made, in whole or in part, by me at any time during my association with or employment by [Company], together with the attached Termination Certification, which I agree to sign and deliver.

## 7. Non-Solicitation

I agree that at all times during, and for a period of two (2) years after termination of my association with or employment by [Company], I will not directly or indirectly, by myself or in conjunction with any person or firm, (i) divert or take away any [Company] customer, dealer or distributor, or (ii) solicit or employ, or attempt to employ on behalf of myself or any third party, any of [Company]'s employees in any competitive business.

## 8. Conflicting Employment

I agree that during my association with or employment by [Company], I will not engage in any other employment, occupation, consulting or other activity relating to the business in which [Company] is now or at such time engaged, or which would otherwise conflict with my obligations to [Company].

## 9. Non-Competitive Employment

🔊 Paragraph 9 may be unenforceable; check with qualified attorney.

At all times during, and for a period of two (2) years after termination of my association with or employment by [Company], I will not, directly or indirectly, render services within any geographic territory for which I was responsible in any sales, advisory, consulting, development or promotional capacity, to any competitor of [Company], in connection with the development, manufacture, marketing, sale, leasing, servicing or promotion of any product in existence or under development which is the same as or similar to or competes with any [Company] product, process, system, or service with which I worked during my association with [Company], or about which I have acquired Confidential Information, nor will I engage in any other activities that conflict with my obligations to [Company].

## 10. Trade Secrets of Others

I understand that it is the firm policy of [Company] to maintain the rights of any party with whom I have a confidentiality or proprietary rights agreement. I will not disclose to [Company] or induce [Company] to use the proprietary information of others. I do not have any existing obligation to others which might be inconsistent with any of the provisions in this Agreement, except for those obligations identified on a separate page and attached to this Agreement.

## 11. At-Will Employment, Surviving Terms

My association with or employment by [Company] is "at will" and may be terminated by me or [Company] at any time; however, my obligations in this agreement will survive the termination of my association with or employment by [Company].

🔊 If, for any reason, the Employee leaves [Company]'s employ or upon [Company]'s request at any time, he / she agrees to give all evidence of its Work Product (papers, disks, and other items) to [Company].

Upon [Company]'s request or in the event of termination, the Employee will provide [Company] with all memoranda, notes, records, drawings, manuals, disks, or other forms of media relating to [Company]'s business or the Employee's work or containing any Work Product, including all copies of the work or Work Product. Upon [Company]'s request, the Employee agrees to certify in writing that it has fully complied with this requirement.

## 12. Waiver, Amendment, Modification

- ☞ The next paragraph requires all changes to this Agreement, including any waivers, be in writing and signed by the party against whom compliance is sought. Also, if one party waives a promise or condition such as a deadline, that doesn't mean that the promise or condition is automatically waived again.

No waiver, amendment or modification, including those by custom, usage of trade, or course of dealing, of any provision of this Agreement will be effective unless in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced. No waiver by any party of any default in performance by the other party under this Agreement or of any breach or series of breaches by the other party of any of the terms or conditions of this Agreement shall constitute a waiver of any subsequent default in performance under this Agreement or any subsequent breach of any terms or conditions of that Agreement. Performance of any obligation required of a party under this Agreement may be waived only by a written waiver signed by a duly authorized officer of the other party, that waiver shall be effective only with respect to the specific obligation described in that waiver.

## 13. Notice

I authorize [Company] to notify others, including customers of [Company] and my future employers, of the terms of this agreement and my responsibilities.

## 14. Injunctive Relief

I understand that in the event of a breach or threatened breach of this agreement by me [Company] may suffer irreparable harm and consequently will be entitled to injunctive relief to enforce this agreement.

## 15. Attorney's fees

I agree that if any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, [Company] shall be entitled to recover reasonable attorney's fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

## 16. General

My obligations under this Agreement are binding upon my heirs, assigns and legal representatives. This Agreement is governed by the laws of [State]. If any provision of this Agreement is more restrictive than permitted by law in any jurisdiction in which enforcement is sought, this Agreement will be limited only to the extent necessary to bring this Agreement within the law of such jurisdiction and other provisions of the Agreement will remain in full force.

## Understood, Agreed & Approved

I have carefully reviewed this contract and agree to and accept its terms and conditions. I am executing this Agreement as of the Effective Date first written above.

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[Employee Name]

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Date



# Termination Certification

This is to certify that I do not have in my possession, nor have I failed to return, any devices, records, data, notebooks, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, other documents or property, or reproductions of any aforementioned items belonging to [Company], its subsidiaries, affiliates, successors or assigns (together, ("Company")).


I further certify that I have complied with all the terms of [Company]'s Proprietary Information Agreement signed by me, including the reporting of any inventions and original works of authorship (as defined in that agreement), conceived or made by me (solely or jointly with others) covered by that agreement.

I further agree that, in compliance with the Proprietary Information Agreement, I will preserve as confidential all trade secrets, confidential knowledge, data or other proprietary information relating to products, processes, know-how, designs, formulas, developmental or experimental work, computer programs, data bases, other original works of authorship, customer lists, business plans, financial information or other subject matter pertaining to any business of [Company] or any of its clients, consultants or licensees.

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Date

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[Employee Name]