


Finder Agreement for Sale of Business

- ☞ Usually, you would enlist the services of an Investment Banker or Business Broker to assist you in selling your business; however, you may also want to compensate a friend or associate for 'finding' you a buyer as well.
- ☞ The first part of the Memorandum should be completed and distributed to the other party along with a copy of the Finder for Sale of Business Agreement.

Date: **[Date]**

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

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

Subject: **Finder for Sale of Business Agreement**

Attached is a Finder Agreement for the sale of our business, the purpose of which is to set the terms of our finder's arrangement.

I believe that it embodies everything we discussed.

Please read the agreement carefully.

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

Time is of the essence.

Please sign and return it to me ASAP.

Thank you very much!

From JIAN

NOTICE:

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

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

Free Access to Attorneys, Accountants & Consultants in Your Area

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


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

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

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

Editing Your Sample Contract

Since this entire agreement is formatted in Word, you can edit it like any other Word document. You can jump from variable to variable by clicking the above  green arrows (JIAN Menu) which will take you forward / backward and highlight the entire sample text identified within the “[]” brackets – simply edit / type-over with your information.

To make sure you have filled in all the variables, use Word's 'FIND' function to locate any “[]” which may contain an unedited variable.

- Click the  icon in the JIAN menu above to turn the expert comments on/off.
- Upon completion, delete any unnecessary blank lines that remain.
- You may format this document any way you like.
- Delete this page.

1.4 If, after reviewing the Request, [Company] desires the Finder to contact that person or entity regarding a Sale, [Company] will instruct the Finder by dating and executing the Request in the appropriate place and returning a copy to the Finder.

1.5 The Finder may then contact that Prospect regarding a Sale and divulge [Company]'s name.

1.6 The Finder may only provide the Prospect with written or other information regarding [Company] that has been approved in writing by [Company]. Furthermore, the Finder must disclose to the Prospect any material fact regarding [Company] that [Company] supplies to the Finder (collectively the "Information").

2. Fee

☞ When the Finder receives its Fee the form the Fee takes will vary depending on the nature of the consideration paid to [Company] (i.e., cash, stocks or other property) and when that consideration is paid.

☞ Enter the time period commencing with the date of the request during which the Finder is entitled to a fee if the Sale is consummated.

2.1 If a Sale is made to a Prospect within [x] (Enter number) years from the date a Request relating to that Prospect is submitted to [Company], the Finder shall receive a fee ("Fee").

☞ Enter the fee percentage to be paid to the Finder.

2.2 The Fee will be equal to [x]% of the cash or other property actually paid for and allocated specifically to [Company]'s assets or outstanding capital stock ("Consideration") received in connection with a Sale.

2.3 Unless otherwise agreed to by the parties in writing, the Fee is the only compensation or reimbursement payable to the Finder by [Company] or any of its stockholders, affiliates, or successors; any expenses incurred by the Finder in connection with this Agreement will be the Finder's responsibility.

☞ If payment, whether it be in cash, securities or other property, is made at the closing, then Section 2.4 applies, otherwise Section 2.5 applies.

2.4 Consideration at Settlement

☞ In the event of a cash Sale, with all of the cash paid at the closing, the Finder gets its Fee at closing.

2.4.1 If the Consideration for a Sale consists entirely of cash paid at the settlement, the Fee will be paid to the Finder at the settlement.

☞ If the payment is made at the closing but consists of property other than or in addition to cash, the payment of the Fee is a little more complicated. The parties agree to pay the Finder its Fee based on the bracketed percentage of the "Fair Value" of the consideration (stocks and other property). However, if they cannot reach an Agreement as to this Fair Value, then the Finder will get the bracketed percentage of that consideration (stocks and other property).

2.4.2 If the Consideration is paid at the time of the settlement but consists of stock, other securities, or property other than and / or in addition to cash, then [Company] will use its best efforts to make a cash payment to the Finder equivalent to [x]% of the Fair Value of the consideration, such Fair Value to be determined by Agreement between the Finder and [Company]. However, if there is no Agreement as to Fair Value, or if in [Company]'s discretion, the valuation is not feasible or practicable, [Company] may pay the Finder its Fee in the same form (stock or other property) and in the same proportions in which the Consideration is received by [Company].

☞ If payment, whether it be in cash, securities or other property, is made at the closing, then Section 2.4 applies. Section 2.5 applies when all or part of the consideration is received after the closing.

2.5 Deferred Consideration

☞ In the event of a cash Sale, with all or part of the cash paid after closing, the Finder gets its Fee on the same basis and at the same time(s) that [Company] receives payment.

2.5.1 If the Consideration for a Sale consists entirely of cash but all or part of that cash is paid sometime after settlement, the Fee will be paid to the Finder on the same pro rata basis and at the same time or times as that cash is received by [Company].

☞ If all or part of the payment is made after closing but consists of property other than or in addition to cash, payment of the Fee is a little more complicated. The parties agree to pay the Finder its Fee based on the bracketed percentage of the "Fair Value" of the consideration (stocks and other property). However, if they cannot reach an Agreement as to this Fair Value, then the Finder will get the bracketed percentage of that consideration (stocks and other property).

2.5.2 If the Consideration is paid at settlement but consists of stock, other securities, or property other than and / or in addition to cash, then [Company] will use its best efforts to make a cash payment to the Finder equivalent to [x]% of the Fair Value of the consideration, such fair value to be determined by Agreement between the Finder and [Company]. However, if there is no Agreement as to the Fair Value, or if in [Company]'s discretion, the valuation is not feasible or practicable, [Company] may pay the Finder its Fee in the same form (stock and other property), in the same proportions, and at the same time that the Consideration is received by [Company].

☞ [Company] may, at its option, pay the Finder its entire Fee at closing discounted to take into account interest and inflation.

2.5.3 At its option despite Section 2.5.1 and Section 2.5.2, [Company] may, in lieu of paying the Fee to the Finder in portions as it receives the Consideration, pay to the Finder the entire Fee in cash at settlement, discounted, as determined by the Finder and [Company], to take into account the rate of inflation, the then-generally-prevailing interest rate charged corporate borrowers of the highest credit standing, and, if applicable, the factors set forth above regarding Consideration in the form of stock or other property.

3. Finder's Covenants

☞ Section 3 sets forth a number of routine promises by the Finder to [Company] regarding the information received by it and statements made by it regarding [Company].

☞ Basically, the Finder, its employees, agents, and so on, cannot use or communicate any information concerning or relating to [Company] to third parties without [Company]'s prior written consent.

3.1 The Finder covenants and agrees that neither it nor any of its principals, officers, directors, employees, or agents will, without [Company]'s prior written consent, communicate, divulge, or otherwise use any of the Information or other confidential matters regarding [Company] regardless of how that Information or those matters become known to them.

☞ Enter the number of days (deadline) the Finder has to return [Company] Information.

3.2 The Finder shall take or cause to be taken any physical forms of the Information (nor make copies of same) without [Company]'s written permission. Within [xx] days after the termination of this Agreement (or any other time at [Company]'s request), the Finder shall return to [Company] the Information, including, but not limited to, all records, files, financial statements, client and customer lists, brochures, documents, and the like relating to [Company] or the business of [Company] that come into the Finder's possession.

3.3 The Finder shall not directly or indirectly, do or omit to do anything that would diminish or impair the present or future business prospects of [Company] or do or say anything that is not in the best interest of [Company].

4. Indemnity

Both [Company] and the Finder, depending on the facts, agree to reimburse or compensate the other for certain losses.

If the Finder is sued based on Information that [Company] supplied the Finder (that was then provided to the Prospect) or based on information that was not supplied to the Prospect that should have been but wasn't because it wasn't supplied to the Finder, or if [Company] makes any misrepresentations to the Finder, [Company] will compensate the Finder for its losses; however, reimbursement is made only after a final adjudication.

4.1 [Company] agrees to indemnify and hold the Finder harmless from and against (1) all losses or damages resulting from the Finder's supplying a Prospect with information that was approved by [Company] and not supplying the Prospect with material information not supplied by [Company] necessary to make the Information supplied not misleading;

(2) all losses or damages resulting from any misrepresentation or breach of warranty, covenant, or Agreement made by [Company] and

(3) any and all actions, suits, proceedings, claims, demands, judgments, costs, and expenses, including reasonable legal fees, incident to the above; [Company] will not be liable, however, unless and until its liability on the Prospect's claim has been fully adjudicated in Prospect's favor.

If the Finder breaches this Agreement or otherwise makes misrepresentations and this leads to a judgment against [Company], the Finder agrees to indemnify [Company].

4.2 The Finder agrees to defend, indemnify, and hold harmless [Company] against (1) all losses or damages resulting from any misrepresentation or breach of warranty, covenant, or Agreement made by the Finder; (2) all losses, claims, damages, expenses, costs, or liabilities, to which [Company] may become subject at common law, under the Securities Act of 1933, the Securities Exchange Act of 1934, any state securities or "Blue Sky" laws, or any other federal or state statute, insofar as the losses, claims, damages, expenses, costs, or liabilities arise out of, relate to, or are based upon the obligations or services to [Company] or its stockholders set forth in this letter Agreement; and (3) any and all actions, suits, proceedings, claims, demands, judgments, costs, and expenses, including reasonable legal fees, incident to the foregoing.

5. Independent Contractor

An independent contractor cannot bind its client.

Nothing in this Agreement will be deemed to place the parties in the relationship of employer / employee, partners, or joint venturers. Neither party shall have any right to obligate or bind the other in any manner. Each party agrees and acknowledges that it shall not hold itself out as an authorized agent with the power to bind the other party in any manner. Each party will be responsible for any withholding taxes, payroll taxes, disability insurance payments, unemployment taxes, and other similar taxes or charges with respect to its activities in relation to performance of its obligations under this Agreement.

6. Term & Termination

This Agreement can be terminated by [Company] if the Finder breaches or otherwise fails to perform. [Company] gives the Finder notice of this breach or failure, and the breach or failure continues for the bracketed period following notice. Alternatively, either party can terminate this Agreement upon the second bracketed notice period.

6.1 This Agreement shall commence on the date stated in the first paragraph (the Start Date) and shall terminate upon the occurrence of any of the following: (1) the Finder's failure to observe or perform any of its obligations, covenants, or Agreements and the continuation of such failure for a period of [30] days after [Company] gives written notice to the Finder; or (2) upon [30] days' written notice from either party


to the other. Despite any such termination, the Finder's covenants and Agreements specified in Sections 3,4, and 5 shall continue in full force and effect.

☞ if [Company] sells to a Prospect within the bracketed period following [Company]'s execution of the Request, [Company] agrees to pay the Finder its Fee, even if this Agreement has been terminated.

6.2 If a Request relating to a Prospect has been executed by [Company] and a Sale to that Prospect is effected within [3] years after the date of that Request, [Company] is required to pay the Finder the Fee specified in Section 2.

7. Notices

☞ All notices between the parties must be in writing and delivered or mailed certified, return receipt requested.

All notices, demands or consents required or permitted under this Agreement shall be in writing and shall be delivered or mailed certified return receipt requested to the respective parties at the addresses listed above or at such other address as that party shall specify to the other party in writing. Any notice required or permitted to be given by the provisions of this Agreement shall be conclusively deemed to have been received on the day it is delivered to that party by U.S. Mail with Acknowledgment of Receipt or by any commercial courier providing  valent acknowledgment of receipt.

8. Settlement of Disputes

☞ In those situations where legal remedies, that is, money damages, may not be sufficient, we have provided for injunctive relief, where the breaching party would be required to do or refrain from doing something.

8.1 Each party acknowledges and agrees that, if there is any breach of this Agreement, including, without limitation, unauthorized use or disclosure of Confidential Information or other information of the other party, the non-breaching party will suffer irreparable injury that cannot be compensated by money damages and therefore will not have an adequate remedy at law. Accordingly, if either party institutes an action or proceeding to enforce the provisions of this Agreement, such party will be entitled to obtain such injunctive relief, specific performance, or other equitable remedy from a court of competent jurisdiction as may be necessary or appropriate to prevent or curtail any such breach, threatened or actual. These will be in addition to and without prejudice to such other rights as such party may have in law or in equity.

☞ Section 8.2 sets forth the specific rules for mediation. We have given you 30 days to agree on a mediator and 45 days to resolve the matter altogether. After that, the matter goes to arbitration subject to Section 8.3.

☞ Where indicated, you also need to fill in the city and state where the mediation will take place.

8.2 Any dispute, controversy, or claim arising out of or related to this Agreement, or the creation, validity, interpretation, breach, or termination of this Agreement will be referred to mediation before, and as a condition precedent to, the initiation of any adjudicative action or proceeding, including arbitration. The mediation will be held in [City], [State]. Either party may demand mediation in writing, serving on the other party a statement of the dispute, controversy, or claim, and the facts relating to it, in reasonable detail. Furthermore, if within thirty (30) days after such demand, the parties have not agreed upon a mediator and commenced mediation, the matter will be referred to arbitration under Section 8.3. Furthermore, if, within forty-five (45) days after such demand the matter has not been resolved to the satisfaction of both parties, then the matter will be referred to arbitration under Section 8.3.

☞ The following section sets forth the specific rules for arbitration. Once one of the parties requests an arbitration and appoints the first arbitrator, the other party has 30 days to name the second arbitrator. Within 10 days of that, the two arbitrators then name a third arbitrator.

8.3 Any dispute, controversy, or claim arising out of or related to this Agreement, or the creation, validity, interpretation, breach, or termination of this Agreement that has not been resolved amicably among the parties by mediation under Section 8.2 will be submitted to binding arbitration using the following procedure:

☞ Indicate the city and state where the arbitration will take place.

8.3.1 The arbitration will be held in [City] and [State], before a panel of three arbitrators. Either party may demand arbitration in writing, serving on the other party a statement of the dispute, controversy, or claim, and the facts relating to it, in reasonable detail, and the arbitrator nominated by that party.

8.3.2 Within thirty (30) days after such demand, the other party will name its arbitrator, and the two arbitrators named by the parties will, within ten (10) days, select a third arbitrator.

8.3.3 The arbitration will be governed by the Commercial Arbitration Rules of the American Arbitration Association (the "AAA"), except as expressly provided in this Article. However, the arbitration will be administered by any organization mutually agreed upon by the parties. If the parties are unable to agree upon the organization to administer the arbitration, it will be administered by the AAA. The arbitrators may not amend or disregard any provision of this section.

8.3.4 The expenses of arbitration shall be borne by the party against whom the decision is rendered, or apportioned in accordance with the decision of the arbitrators if there is a compromise decision. Judgment upon any award may be entered in any court of competent jurisdiction. All notices from one party to the other relating to any arbitration under this Agreement shall be in writing and shall be effective if given in accordance with Section 7.

☞ In Section 9, you must decide which state's laws govern this Agreement. Generally, it is your (Company's) state of residence. Insert that state in all three inserts.

9. Governing Law

This Agreement shall be governed by the laws of the State of [State] applicable to Agreements made and fully performed in [State] by [State] residents.

☞ Section 10 states that this Agreement is intended to be the only Agreement between these parties regarding this particular matter, and that no other documents or communications, whether oral or written, are binding. Therefore, It is very important to make sure that everything the parties have agreed to and want to include is accounted for in the body of this Agreement.

10. Entire Agreement

The parties acknowledge that this Agreement expresses their entire understanding and Agreement, and that there have been no warranties, representations, covenants or understandings made by either party to the other except such as are expressly set forth in this section. The parties further acknowledge that this Agreement supersedes, terminates and otherwise renders null and void any and all prior Agreements or contracts, whether written or oral, entered into between the Finder and [Company] with respect to the matters expressly set forth in this Agreement.

☞ Section 11 requires all changes to this Agreement, including any waivers, to be in writing and signed by the party against whom compliance is sought. Also, if one party waives a promise or condition (i.e., a deadline on one occasion) that doesn't mean that the promise or condition is automatically waived again.

11. Waiver, Amendment, Modification

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.

 Section 12 is merely a formality.

12. Captions and section headings used in this Agreement are for convenience only and are not a part of this Agreement and shall not be used in construing it.

Understood, Agreed & Accepted

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

Finder



[Company]

[Owner/Founder]

Printed Name

Title

Exhibit A

🔊 We suggest that you provide this page as a Word template for your Finder to use.

Request for Authorization

In accordance with the Agreement between the Finder and [Company], dated [Month, Day, Year], this will serve as the Finder's request to contact, in accordance with the procedures specified in Section 1 of the Agreement, the following Prospect in regard to a Sale:

Name and Address of Prospect:

- [Prospect Name]
- [Prospect Address]
- [Prospect telephone]
- xxx

🔊 Identify the names and positions of the individual employees or others at the Prospect Company whom [Company] should contact regarding the Sale.

Person or Persons Affiliated with Prospect to Contact:

- [Name]
- Xxx
- xxx

🔊 You should identify the type of business the Prospect is engaged in.

The nature of this prospect's business is such that they...

- Xxx
- Xxx
- Xxx

Other relevant information:

- [Just received an investment infusion of \$000]
- [Were favorably reviewed in xxx]
- Xxx

[Finder]

Date of Request

Approved

[Owner/Founder]

Date of Authorization

