

# Offer Letter & Employment Agreement

- 🔊 You will want a formal offer letter and employment agreement with every high level employee.
- 🔊 If your company plans to offer a potential employee stock options, perks (company car, athletic club membership and so on.), or bonus terms, then describe the details of additional offerings in the section of this letter titled "Compensation."
- 🔊 This Offer Letter should be completed and distributed to the Employee along with a copy of the Employment Agreement.

# [Company Legal Name]

[Address] \* [City], [State] [Zip Code]  
[Telephone] \* [WebSite Address]

[Date]

[Candidate Name]

[Candidate Address]

Dear [Candidate Name],

**Re: Employment Offer**

[Company] is pleased to confirm the offer extended to you to join [Company] in the position of [Position Title], reporting directly to [Manager's Name], the [Manager's Title], beginning [start date]. The purpose of this letter is to set forth our understanding of the terms of your employment with [Company], including your job description and compensation. It is important to us that your involvement make a tangible, measurable and profitable contribution. It is also important that you are inspired to remain with [Company] over time, and to focus your energies on successfully and efficiently contributing to our company goals. Your responsibilities will be those outlined in the enclosed job description.

## **Compensation**

You will be compensated with a [weekly / biweekly / monthly] salary in the amount of \$[amount] subject to normal withholdings. Your first [thirty (30) / sixty (60) / ninety (90)] days of employment with [Company] are considered an Introductory Period, and during that time you will be eligible for the benefits as described in the [Company] Employee Manual. Completion of the Introductory Period does not guarantee continued employment for any specified period of time, nor does it require that a dismissal be based on cause.

## **Policies & Benefits**

As an employee of [Company], you will be provided with a copy of the [Company] Employee Manual, and insurance booklets which outline our personnel policies and benefits programs. Any questions regarding [Company] policy, benefits administration or eligibility, should be directed to [name and department).

## **At-Will Employment**

If you choose to accept this offer, please understand your employment is "at-will," voluntarily entered into and is for no specific period. As a result, you are free to resign at any time, for any reason or for no reason. Similarly, [Company] is free to conclude its at-will employment relationship with you at any time, with or without cause.

## **Confidentiality & Authorization to Work**

As a condition of employment, you will be requested to sign an Employee Confidentiality Agreement. You should also note that you will be required to show proof of citizenship, permanent residency in the U.S., or authorization to work in the U.S. within three business days of your date of hire.

## **Acceptance**

To indicate your acceptance of this offer, please sign below. This offer shall remain open until [add ten

(10) days to date of hire]. This letter, along with the [Company] Employee Manual which you will receive at the start of employment, set forth the terms of your employment with [Company] and supersede any prior representations or agreements, whether written or oral. This letter may only be modified by a written agreement signed by you and the President of [Company].

Welcome to [Company], [candidate name]. We hope you agree that you have a great contribution to make to the industry by way of [Company], and that you will find working here a rewarding experience. We look forward to the opportunity of working with you to create a successful company, and we are confident that your employment with [Company] will prove mutually beneficial.

Regards,

[Owner/Founder]

[Title]

[Company]

**Agreed to and Accepted by:**

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[Candidate Name]

---

Date

Enclosure: Job Description

# 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 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.

# Employment Agreement

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

The Effective Date of this Agreement: **[Date]**

This Agreement is by and between **[Company Legal Name]** ([Company] / Employer)

a [State] Corporation

located at [Address]

[City], [State] [Zip Code]

AND **[Employee]**, (Executive)

an individual residing at [Address]

[City], [State] [Zip Code]

🔊 The first few paragraphs are the recitals in which the parties describe the basic reasons for their Agreement.

## Summary

- The Executive has acquired outstanding and special skills and abilities and an extensive background in and knowledge of the Employer's industry.
- The Employer desires the services of the Executive, and is therefore willing to engage his / her services on the terms and conditions stated below.
- The Executive desires to be employed by the Employer and is willing to do so on those terms and conditions.

Now, therefore, in consideration of the above recitals and of the mutual promises and conditions in this Agreement, it is agreed as follows:

## 1. Employee's Duties & Authority

🔊 The following section states that the Employer will prescribe the duties to be performed by the Employee. If the Employee's duties are known at the time this Agreement is drafted, it is a good idea to spell out in detail what those duties will be to avoid any confusion or conflict in the future. If you know the duties to be performed, you can modify this section accordingly.

The Employer shall employ the Executive as [Describe position] or in such other capacity or capacities as the Employer may from time to time prescribe, and per the policies and procedures described in the [Company] Employee Policy Manual.

## 2. Other Business Activities

🔊 Obviously, the Employer wants an Executive to devote himself or herself to the Employer's business. This next section states that the Employee will do just that. However, the Employer will allow the Employee to serve on the board of directors of other companies.

During employment, the Executive shall devote his / her work efforts to the performance of this

Agreement and shall not, without the Employer's prior written consent, render to others services of any kind for compensation, or engage in any other business activity that would materially interfere with the performance of his / her duties under this Agreement, provided, however, that the Executive may continue to serve as Director of [Enter company name] Corporation, and to receive compensation for that service from [Enter company name] Corporation.

🔊 The Employer should devote a fair and reasonable amount of time and effort.

**2.1 Reasonable Time and Effort Required.** During his / her employment, the Executive shall devote such time, interest, and effort to the performance of this Agreement as may be fair and reasonable.

### 3. Non-Competition During Employment

🔊 In this Section 3, the Employer prohibits the Employee from participating in or planning to participate in a competitive business while employed by the Employer.

During the employment term, the Executive shall not, in any fashion participate or engage in any activity or other business competitive with the Employer's business. In addition, the Executive, while employed, shall not take any action without the Employer's prior written consent to establish, form, or become employed by a competing business on termination of employment by the Employer. The Executive's failure to comply with the provisions of the preceding sentence shall give the Employer the right (in addition to all other remedies the Employer may have) to terminate any benefits or compensation that the Executive may be otherwise entitled to following termination of this Agreement.

### 4. Term of Employment

🔊 This next section sets the period of employment.

The Executive shall be employed from [Month, Day, Year] to [Month, Day, Year] unless the Executive is terminated as provided in this Agreement or this Agreement is extended by mutual written consent of the parties.

### 5. Place of Employment

🔊 The Employee will work at the Employer's offices, but some travel will be required. Insert the address of the offices or other location where the Employee will work.

During the employment term the Executive shall perform the services required at the Employer's offices, located at [Address]. The Executive acknowledges that the Employer may from time to time require the Executive to travel temporarily to other locations on the Employer's business.

🔊 The Employee will be paid every other week. Insert the annual salary where indicated.

### 6. Salary

The Employer shall pay a basic salary to the Executive at the rate of \$[x] per year, payable in equal biweekly installments.

🔊 This Agreement can last for several years. The following section allows the Employee to receive an annual cost of living increase to account for inflation.

6.1 The basic salary payable to the Executive shall be increased annually by an inflation adjustment, based on the Consumer Price Index as reported in [The Wall Street Journal / a nationally recognized newspaper]. If the index for the month when this Agreement is dated of any year following (the initial calendar year of the term of this Agreement), the current index exceeds the index for the month in which this Agreement is dated (the base index), the Employer shall pay to the Executive as an inflation adjustment the amount that the product of the basic salary for the given year and the fraction whose numerator is the current index for that year and whose denominator is the base index, exceeds the basic

salary, in accordance with the following formula:

- $(\text{Basic Salary} \times \text{Current Index}) = (\text{Basic Salary})$
- Base Index

The computation required under this section shall be made at the end of the month that this Agreement is dated for each year during the term of this Agreement, and any inflation adjustment shall be immediately payable.

## 7. Incentive Compensation

☞ Oftentimes, Employers may tie a portion of the Employee's compensation to the performance of the company or a division within the company. This provides incentive for the Executive to accomplish the Employer's goals. In the following section the Employee is given a certain percentage of the annual profits of the company or a division of the company. You should insert the appropriate percentage and name the applicable profit center. (e.g., the Company, Product X Division, Product Y Division.)

**7.1 Bonus.** In addition to the basic salary provided for above, the Employer shall pay to the Executive a sum equal to [x]% percent of the net profits of the [Company / Product X Division] as shown in the Employer's year-end statement of income as determined in the sole judgment of the Employer's chief financial officer. The incentive compensation payable to the Executive under this section shall be prorated for any partial fiscal year that occurs during the employment term. The incentive compensation shall be prorated and paid to the Executive at the end of the fiscal year.

**7.2 Stock Options.** Executive will be granted options to purchase shares of Company stock according to the provisions of the [Company] Stock Option Plan.

## 8. Additional Benefits

☞ The Employer will be entitled to other Employer sponsored benefits such as vacation. It may be desirable to list all of those benefits here to clarify what benefits are included.

☞ If you need to establish either an incentive/Qualified or a non-Qualified Stock Option Plan, please visit [www.jian.com](http://www.jian.com) and consider "Stock Options Builder"

The Executive shall receive all other benefits of employment generally available to the Employer's other Executive and managerial Employees including the following:

- Xxx
- Xxx
- Xxx

## 9. Expenses

The Employer shall reimburse the Executive for reasonable expenses incurred in connection with the Executive's performance of his / her duties including travel expenses, food, and lodging while away from home, pursuant to the Employer's reimbursement policies.

## 10. Employee's Right of Ownership

☞ It is always important to address who will own what inventions conceived and / or developed by the Employee during his / her employment. This is especially true in high technology companies where key Employees are hired to conceive and invent. In the following section, the Employer will own any inventions conceived by the Employee arising out of the scope of the employment. All other inventions shall be the property of the Employee.

All inventions conceived or developed by the Executive during the term of this Agreement shall remain the property of the Executive, provided, however, that as to all such inventions with respect that the



equipment, supplies, facilities, or trade secret information of the Employer was used, or that relate to the business of the Employer or to the Employer's actual or demonstrably anticipated research and development, or that result from any work performed by the Executive for the Employer shall remain the property of the Employer.

## 11. Indemnification by Employer

- ☞ The Executive may be in a position of making key decisions on behalf of the Employee that could expose the Employee to personal liability. In the following section, the Employer agrees to indemnify and purchase indemnity insurance to protect the Employee from such liability.

The Employer shall, to the maximum extent permitted by law, indemnify and hold the Executive harmless against, and shall purchase indemnity insurance, if available, on behalf of the Executive in the amount of \$[x] for expenses, including reasonable attorney fees, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the Executive's employment by the Employer. The Employer shall advance to the Executive any expense incurred in defending any such proceeding to the maximum extent permitted by law.

- ☞ If you enter a formal employment contract you should know beforehand how the employment relationship can end. Wrongful termination litigation can be very expensive and / or time consuming, so it is a good idea to spell out the grounds for termination in the employment Agreement.

## 12. Employer Termination

- ☞ The Employer can terminate the Employee without cause provided paper notice is given.

**12.1 Involuntary Termination of Agreement.** The Employer may terminate this Agreement without cause, either on the last day of any fiscal year of the Employer on six months' prior written notice to the Executive.

- ☞ The Employer can terminate the Employee without notice for cause. You should pay careful attention to what language is used to define "cause." This is often the subject of lawsuits, so be very clear in defining "cause."

**12.2 Termination for Cause.** The Employer may terminate this Agreement at any time without notice if the Executive commits any material act of dishonesty, discloses confidential information, is guilty of gross carelessness or misconduct, or unjustifiably neglects his / her duties under this Agreement, or acts in any way that has a direct, substantial, and adverse effect on the Employer's reputation.

## 13. Employee Termination

- ☞ The Employee may resign upon proper notice.

**13.1 Termination on Resignation.** The Executive may terminate this Agreement by giving the Employer six months' prior written notice of resignation.

- ☞ The Employee may retire after age 60 and upon proper notice.

**13.2 Termination on Retirement.** This Agreement shall be terminated by the Executive's voluntary retirement, that retirement shall be effective on the last day of any fiscal year, provided that the effective date of retirement occurs after the Executive's 60th birthday, and that the Executive gives the Employer six months' prior written notice.

- ☞ The employment Agreement will automatically terminate if the Employee becomes permanently disabled. The Employer may maintain disability insurance for the benefit at the Employee.

**13.3 Termination on Disability.** (1) If, during the period of employment, the Executive becomes unable due to mental or physical illness or injury to perform his / her duties under this Agreement in his / her normal and regular manner, this Agreement shall be then terminated; and (2) the Employer has



advised the Executive that it currently maintains disability insurance for its Employees, including the Executive. During the term of this Agreement, the Employer shall maintain disability insurance covering the Executive on terms and conditions no less favorable than the terms and conditions in effect at the date of this Agreement.

☞ This may seem morbid, but if your employee croaks, you don't want anything to be left dangling into the future.

**13.4 Termination upon Death.** If the Executive dies during the period of employment this Agreement shall then be terminated.

☞ The employment Agreement may terminate upon proper notice after a merger or sale of assets by the Employer.

**13.5 Termination or Assignment on Merger.** In the event of a merger where the Employer is not the surviving entity, or of a sale of all or substantially all of the Employer's assets, the Employer may, at its sole option (1) assign this Agreement and all rights and obligations under it to any business entity that succeeds to all or substantially all of the Employer's business through that merger or sale of assets, or (2) on at least 30 days' prior written notice to the Executive, terminate this Agreement effective on the date of the merger or sale of assets.

## 14. Non-Disclosure After Termination

☞ After termination of employment, the Employee will still be prohibited for a period of five years from disclosing the Employer's trade secrets and any confidential information.

Because of his / her employment by the Employer, the Executive will have access to trade secrets and confidential information about the Employer, its products, its customers, and its methods of doing business. In consideration of his / her access to this information, the Executive agrees that for a period of five years after termination of his / her employment, he / she will not disclose such trade secrets or confidential information.

## 15. Arbitration

☞ Many employment-related lawsuits can be very expensive for both the Employer and the Employee. Both parties can agree to arbitration beforehand in the employment Agreement.

Any controversy or claim arising out of or relating to this Agreement, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction. There shall be three arbitrators, one to be chosen directly by each party at will, and the third arbitrator to be selected by the two arbitrators so chosen. Each party shall pay the fees of the arbitrator he / she selects and of his / her own attorneys, and the expenses of his / her witnesses and all other expenses connected with presenting his / her case. Other costs of the arbitration, including the cost of any record or transcripts of the arbitration, administrative fees, the fee of the third arbitrator, and all other fees and costs, shall be borne equally by the parties. Despite the forgoing, the arbitrators may assign to one party or the other any and all fees and costs as part of any arbitration award.

## 16. Liquidated Damages (for Employee)

☞ In the following section, the Employer agrees to pay liquidated damages in the amount of two years' salary and incentive compensation if the Employer commits a material breach of this Agreement.

In the event of any material breach of this Agreement on the part of the Employer, the Executive at his / her sole option, may terminate his / her employment under this Agreement and, at his / her sole option, shall be entitled to receive as liquidated damages, the full amount of the basic salary and incentive compensation provided two years following the Executive's exercise of his / her option to terminate his /

her employment under this Agreement. The amounts payable to the Executive under this subsection shall be payable in annual installments on the first day of [Month] of each year.

## 17. Entire Agreement

- ☞ The following section states that this Agreement is intended to be the only Agreement between the parties regarding this particular matter, and that no other documents or communications, whether oral or written, are binding. Accordingly, make sure this Agreement is complete before signing.

This Agreement including the [Company] Employee Policy Manual (which may be amended unilaterally from time to time by the Company) contain the entire Agreement between the parties and supersedes all prior oral and written Agreements, understandings, commitments, and practices between the parties. No amendments to this Agreement may be made except by a writing signed by both parties.

## 19. Notices

Any notice to the Employer required or permitted under this Agreement shall be given in writing to the Employer, either by personal service or by registered or certified mail, postage prepaid, addressed to [Name (e.g., the president of Employer)] at its then principal place of business. Any such notice to the Executive shall be given in a like manner and, if mailed, shall be addressed to the Executive at his / her home address then shown in the Employer's files. For the purpose of determining compliance with any time limit in this Agreement, a notice shall be deemed to have been duly given (1) on the date of service, if served personally on the party to whom notice is to be given, or (2) on the second business day after mailing, if mailed to the party to whom the notice is to be given in the manner provided in this section.

## 20. Severability

- ☞ If any part of this Agreement is unenforceable or invalid, the balance of the Agreement should be enforced. Basically, ignore any sections that are invalid.

If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

## 21. General Provisions

- ☞ 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.

**21.1 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.

- ☞ 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.

**21.2 Costs of Litigation.** 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.

**21.3 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.

- ☞ 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.

**21.4 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.

**21.5 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.

- ☞ 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.)
- ☞ 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 3<sup>rd</sup> party.
- ☞ CHOOSE one of the two paragraphs below:
- ☞ Allows the other party to transfer its rights to a successor company without prior approval.

**21.6 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.

- ☞ Requires consent in the event of any change in ownership.

**21.6** 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.

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

**21.7 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.

**21.8 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]**

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**Executive**

\_\_\_\_\_  
Executive

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name