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## Feature Article

### How Boilerplate Contracts Can Sabotage Business

We recently redeveloped a channel sales agreement for a fast track Software-as-a-Service (SaaS) company headquartered in Santa Clara, CA. Called a "Reciprocal Partnership Program," the program amounted to an Internet cross linking and referral arrangement: The partner puts the SaaS company's logo on its site which is linked back to a designated URLs; the partner can also submit leads to the company by email.

Channel sales programs like these don't produce much revenue per partner. It takes dozens or even hundreds of partners to get any meaningful results. The partners are sole proprietorships and small, undercapitalized companies. It stands to reason, then, that signing up partners needs to be quick and painless, and that the program can't appear to be more trouble than it's worth.

The company's partnership contract was anything but. It was 4 pages long, printed in small type, written in legalese boilerplate. Issues covered in the contract ranged from remote legal doctrines like trademark goodwill, to a long disclaimer of warranties even though neither party was actually getting services from the other. Ironically, although the company's business was Internet based, the contract had to be printed out and signed by both parties.

Following our guidance, in its place the SaaS company created a Web portal where partners register, log in, and fill out an online referral form. Customers linking from the partner site fill out the same form. Each completed form constitutes a separate commission agreement (for legal reasons). Instead of the boilerplate, the agreements are governed by online terms of use in the portal. The portal also incorporates the company's description of the program, which the boilerplate completely missed.

In the newly designed program, partners agree to the company's trademark usage guidelines while downloading the company's logo, thereby replacing several boilerplate paragraphs on trademark law. The guidelines direct partners to post a message next to the link making clear that they are not legal representatives, replacing several boilerplate provisions on agency law.

The bottom line is the partners will no longer be expected to review and agree to a long, complicated contract without any immediate incentive to do so, i.e., a prospect. The online system also makes it easy for the SaaS company to change individual commissions and program-wide policies.

Contracts that have little to do with the business transactions they were written for, and contracts that go on and on about legal contingencies that won't *(Continued on other side)*



### About James River

James River Consulting is a New England-based company specializing in the development, negotiation, and management of IT and services contracts. James River's service offerings range from short-term staffing of contracts personnel, to sales contract process and policy implementation, to competitive bid announcement and management, to SaaS and BPO management consulting. James River's president, Eric Esperne, has over 15 years experience as an in-house legal counsel and director of contracts for both large and small IT companies.

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## Feature Article continued

happen, are everywhere in business.

James River calls them “disembodied contracts.” These contracts usually were pulled out of a forms library, or copied off of a competitor’s contract, or recycled by a law firm from another client matter. They can have the doubly bad effect of turning away business while not addressing the critical features of the business deal.

But the contents of contracts are only half of the problem. How contracts are presented, whether they allow for negotiation or changes, how they are signed and how they can be changed over the course of time are as much or more important. Here, many businesses do themselves yet another disservice. Designing and managing contracting activities from beginning to end is a form of business process

engineering (BPE). Fixing them requires expertise that lawyers and sales consultants don’t possess.

James River Consulting is a staff augmentation company for customers who have existing contract personnel and contracting systems. We are also a project-based, contracts process engineering and improvement company. We can make dramatic improvements in your business, like we did in the story above.

James River would like to meet with you at your offices, introduce ourselves, sign an NDA, and review one of your boilerplate contracts or talk about your contracting concerns, at no charge and with no sales pitches. Contact Eric Esperne, President, at [eesperne@jamesriverllc.com](mailto:eesperne@jamesriverllc.com) or 703-850-7061.

## Company News

James River is pleased to announce a publication distribution agreement with InfoEdge ([www.infoedge.com](http://www.infoedge.com)) of Cambridge, MA, under which InfoEdge will market and sell James River’s Executive Reports.

InfoEdge is an online publisher of research and analysis covering information technology and business management best practices. Formerly the company was the publication arm of Gartner Group.

“SaaS as a Disaggregation (SaaS<sup>TM</sup>) at the Enterprise Level: An Analysis of 7 Prominent SaaS Companies and How Contracts Can Solve the Problem” is now available for purchase. You can go to [www.jamesriverllc.com/papers](http://www.jamesriverllc.com/papers) and link to the InfoEdge storefront. This 51 page executive report covers 7 of the most prominent Software-as-a-Service platforms that enable ISVs to bring new SaaS offerings to market.



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