



# Merchant Services Partnership Proposal

**Prepared for:**

**Potential Affiliate Partner**

*This proposal and the terms and conditions that it contains are not binding on either party. This proposal does not constitute an offer capable of acceptance. Any commitment contemplated by this proposal is subject in all respects to the approval of senior management and the negotiation and execution of a definitive agreement satisfactory to each of the parties.*

**INDEPENDENT CONTRACTOR AGREEMENT**

This Independent Contractor Agreement (“Agreement”) is made effective as of the date set forth below by and between Valued Merchant Services, 3544 East 17<sup>th</sup> Street, Idaho Falls, Idaho 83401 (“VMS”) and the entity and/or individual whose name and address are set forth below on the signature page for this Agreement (hereinafter referred to as “Independent Contractor”).

**RECITALS**

WHEREAS, Independent Contractor engages in the business of marketing services to business entities that accept credit cards as payment for goods and services; and

WHEREAS, VMS wishes to expand its market share by retaining Independent Contractor to assist in marketing its credit card, debit card, gift card, loyalty card, leasing, ACH, POS equipment, software and related good and services (the “VMS Services”) and Independent Contractor wishes to undertake certain duties and responsibilities for marketing the VMS Services.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**AGREEMENT**

**SECTION ONE – MARKETING THE VMS SERVICES**

1.01. Appointment. Subject to the terms and conditions of this Agreement, VMS hereby appoints Independent Contractor as a reseller of the VMS Services. In connection with such appointment, VMS grants Independent Contractor a non-transferable right to promote, market and solicit orders for the VMS Services from businesses wishing to utilize the VMS Services (“Merchants”). Independent Contractor shall identify prospective Merchants that meet VMS’s criteria as set forth in this Agreement and its general policies and procedures. Independent Contractor will obtain all information and documentation reasonably required by VMS. Independent Contractor shall promptly provide VMS with the current address of each of its offices and the offices of its agents.

1.02. Approval of Merchants. Independent Contractor acknowledges that all Merchants are to be approved by VMS and its vendors in their sole discretion and Merchants will be able to utilize the VMS Services effective only upon such approval. Therefore, Independent Contractor will not make any promise to or create any impression with a prospective Merchant that it will be approved prior to review and approval. Further, Independent Contractor acknowledges that all aspects of the VMS Services are subject to the management and approval of VMS and its vendors and Independent Contractor shall make no representations to the contrary.

1.03. VMS Services Agreement. Merchants will be presented by VMS or Independent Contractor with an online or written application and/or agreement that will govern the relationship between the Merchants, VMS and its vendors in regard to the VMS Services (“Merchant Agreement”). Independent Contractor shall use only that form of Merchant Agreement that has been approved and supplied by VMS. Independent Contractor shall not make any changes or modifications to any Merchant Agreement without the prior written consent of VMS. VMS reserves the right to amend or change in any manner the agreements between Merchants, VMS, and its vendors to be used by Independent Contractor, including changes to any and all fees due from Merchants.

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1.04. Acceptable Merchants. Independent Contractor shall market the VMS Services only to bona fide and lawful businesses and in accordance with VMS's and its vendors' policies, procedures and standards and this Agreement. Further, Independent Contractor shall promptly notify VMS in writing of any adverse information that Independent Contractor receives relating to a Merchant, including information regarding a Merchant's financial condition or any other information relating to Merchant that would have a material effect on Merchant's ability to conform to the terms of its agreements.

1.05. Independent Contractors. The relationship of VMS and Independent Contractor is that of independent contractors. Neither Independent Contractor nor Independent Contractor's employees, consultants, contractors or agents are agents, employees, partners or joint ventures of VMS, nor do they have any authority to bind VMS by contract or otherwise to any obligation. They will not represent to the contrary, either expressly, implicitly, by appearance or otherwise.

1.06. Compliance With Laws/Marketing Materials. Independent Contractor agrees to comply with the rules and regulations of Visa, MasterCard, Discover, American Express and all other such associations, as they may exist from time to time, and the rules and regulations of any debit network or federal or state department or agency having jurisdiction over the activities of VMS or Independent Contractor ("Rules"). In the event of any inconsistency between any provision of this Agreement and the Rules, the Rules shall govern. Independent Contractor hereby agrees to accept and abide by any amendments and revisions to the Rules. Independent Contractor will comply with all applicable international, national, state, regional and local laws and regulations in performing its duties hereunder and in any of its dealings with respect to the VMS Services. Independent Contractor shall use only those marketing and promotional materials that comply with the Rules and all United States, state, local and any other applicable laws or regulations.

1.07. Independent Contractor Covenants. Independent Contractor will: (i) conduct business in a manner that reflects favorably at all times on the VMS Services and the good name, good will and reputation of VMS; (ii) avoid deceptive, misleading or unethical practices that are or might be detrimental to VMS, the VMS Services or the public; (iii) make no false or misleading representations with regard to VMS or the VMS Services; (iv) not publish or employ, or cooperate in the publication or employment of, any misleading or deceptive advertising material with regard to VMS or the VMS Services; (v) promote proper use of VMS Services, and (v) make no representation, warranties or guarantees to potential Merchants with respect to the specifications, features or capabilities of the VMS Services that are inconsistent with the literature distributed by VMS.

1.08. Registration. (a) In the event that Independent Contractor chooses to market the VMS Services under Independent Contractor's own company name or brand, Independent Contractor will request that VMS provide access to registration. Independent Contractor acknowledges that authorization for registration as an ISO (Visa) or MSP (MasterCard) is at the discretion of VMS's vendors. Independent Contractor agrees that VMS is not responsible for Independent Contractor's acceptability as an ISO or MSP and that VMS will only act as a conduit to assist Independent Contractor in the registration process. In the event that Independent Contractor's application for ISO or MSP status is denied, Independent Contractor acknowledges that this Agreement shall remain valid.

(b) Independent Contractor agrees and understands that in the event Independent Contractor does not become a registered ISO/MSP, Independent Contractor **MUST** market all VMS Services under one of VMS's brand names. In such case, Independent Contractor shall answer all phones and present business cards, letterhead, brochures, marketing materials and especially its website with one of the names owned by VMS.

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(c) Independent Contractor shall not alter any Merchant Agreement or merchant application, including, but not limited to, by removing any logos or identifying information.

(d) Independent Contractor shall ensure that any entity hired by Independent Contractor to perform sales for Independent Contractor shall execute documents and become registered representatives of VMS prior to marketing VMS Services.

1.09. Use of the Marks. Independent Contractor may use the trademarks and service marks of VMS, Visa, MasterCard, Discover, American Express and all other such associations (“the “Marks”) only in promoting the VMS Services in conformance with the Rules subject to the sole discretion and approval of VMS. Upon termination of this Agreement, Independent Contractor agrees that it shall no longer use the Marks or anything similar thereto. Notwithstanding anything to the contrary contained herein, nothing stated herein shall be construed as granting Independent Contractor any right, title and interest in and to the Marks or the goodwill associated therewith, and Independent Contractor acknowledges that it will not, at any time, during or subsequent to the term of this Agreement, do or cause to be done, any act or thing contesting or in any way impairing or intending to impair any part of the right, title and interest and the goodwill represented by the Marks or impugn in any fashion the reputation of VMS or attack the validity of the Marks.

## **SECTION TWO – THE SERVICES**

2.01. Non-Exclusive Services. During the term of this Agreement, Independent Contractor, its principals and its affiliates shall have the right to enter into any agreement to solicit Merchants for the merchant-acquiring program of any bank, company, ISO or financial institution other than VMS, excluding a direct relationship with any of VMS’s vendors unless VMS’s prior written consent is provided.

2.02. Ownership of Merchant Agreements and the Merchant Program. Independent Contractor acknowledges and agrees that it will have no equity interest, ownership, or other rights in any Merchant Agreement or in the VMS Services provided. Further, Independent Contractor acknowledges and agrees that all Merchant Agreements, Merchant records, documentation, and the information contained therein are the property of and are owned by the VMS and/or its vendors.

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**SECTION THREE – PAYMENT OF FEES**

3.01. Fees. During any period of time in which this Agreement remains in full force and effect, compensation to Independent Contractor will be paid as set forth in the attached Schedule A which is made a part of this Agreement. The compensation plan set forth in Schedule A shall be held in strict confidence by Independent Contractor. VMS may only amend Schedule A to reflect any increases or decreases in the direct costs that it is charged by its vendors, Visa, MasterCard and other similar entities. It is further understood and agreed that Independent Contractor shall bear no liability to VMS for the value of any merchant chargebacks, except to the extent that any such merchant chargebacks are charged by VMS’s vendors or are either directly or indirectly related or attributable to the fraudulent or grossly negligent conduct of Independent Contractor or any of its employees, agents, representatives, or nominees. Independent Contractor authorizes VMS to deposit funds directly into Independent Contractor’s authorized VMS deposit account, and VMS will automatically deduct all amounts for Independent Contractor’s obligations under this Agreement. VMS shall only have to pay Independent Contractor the amounts due to it under this Agreement if VMS is paid by its vendors. If VMS is not paid any amounts dues by its vendors, it has no duty or obligation to pay any corresponding monies to Independent Contractor. Independent Contractor shall have sixty (60) days from the receipt of any compensation or residuals to notify VMS of any errors in payment of compensation or residuals. If Independent Contract does not notify VMS within the sixty (60) day time period, Independent Contractor shall be deemed to have accepted without question such residual or compensation payment and may not in the future contest the amount it was paid or seek reimbursement for any discrepancies. Upon receipt of notice, VMS shall have thirty (30) days to correct any errors.

**SECTION FOUR – TERM AND TERMINATION**

4.01. Term. The initial term of this Agreement shall be for a period of one (1) year, commencing on the date first set forth below. This Agreement shall thereafter be automatically renewed for additional terms of one (1) year each unless either party notifies the other no later than thirty (30) days prior to the end of the current term that it does not wish to renew this Agreement.

4.02. Default. Either party shall have the right to terminate this Agreement at any time if:

- (a) the other party breaches any of the provisions of this Agreement and fails to cure such breach within thirty (30) days of its receipt of written notice thereof from the non-breaching party; or
- (b) the other party (i) fails to pay its debts or perform its obligations in the ordinary course of business as they mature; (ii) becomes the subject of any voluntary or involuntary proceeding in bankruptcy, liquidation, dissolution, receivership, attachment or assignment or composition for the benefit of creditors.

4.03. Failure to Comply with Rules. VMS may immediately terminate this Agreement for any material default knowingly or intentionally caused by Independent Contractor with respect to its obligations to comply with VMS policies or rules if VMS reasonably determines that the default is of such a serious nature that an opportunity to cure such default is not practical or warranted. VMS may, at its sole discretion, effect such termination upon delivery of written notice to Independent Contractor without regard to any provisions for cure of default.

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4.04. Regulatory Demand. If Visa, MasterCard, NACHA or any federal, state or other type of regulatory agency having jurisdiction over the subject matter of this Agreement makes a demand that either VMS or any of its vendors discontinue or substantially modify any of the VMS Services, either party in its sole discretion may terminate this Agreement upon written notice to the other, in which case neither party shall be deemed to be in default by reason of such termination.

4.05. Termination by VMS. VMS may terminate this Agreement for any reason, or no reason at all, by providing Independent Contractor with seven (7) days notice.

4.06. Compensation to Independent Contractor Following Termination. Unless this Agreement is terminated for the reasons as set forth in sections 4.02, 4.03, 4.04 or 4.06 or after any termination Independent Contractor commits a material breach of the terms of this Agreement that survive the termination of this Agreement, VMS agrees to make payments to Independent Contractor as set forth in this Agreement for any Merchant obtained by VMS through Independent Contractor's performance of this Agreement for any period of time during which such Merchant continues to generate revenue to VMS.

4.07. Termination of Compensation. If this Agreement is terminated by VMS under sections 4.02, 4.03 or 4.04 or Independent Contractor commits a material breach of the terms of this Agreement that survive the termination of this Agreement, VMS shall have no further obligations for payment of any compensation to Independent Contractor under this Agreement.

## **SECTION FIVE - OBLIGATIONS.**

5.01. Confidential Information. The parties acknowledge that in their performance of their duties hereunder either party may communicate to the other (or its designees) certain confidential and proprietary information, including without limitation information concerning the VMS Services and the know-how, technology, techniques, or business or marketing plans related thereto (collectively, the "Confidential Information") all of which are confidential and proprietary to, and trade secrets of, the disclosing party. Confidential Information does not include information that: (i) is public knowledge at the time of disclosure by the disclosing party; (ii) becomes public knowledge or known to the receiving party after disclosure by the disclosing party other than by breach of the receiving party's obligations under this section or by breach of a third party's confidentiality obligations; (iii) was known by the receiving party prior to disclosure by the disclosing party other than by breach of a third party's confidentiality obligations; or (iv) is independently developed by the receiving party. As a condition to the receipt of the Confidential Information from the disclosing party, the receiving party shall: (i) not disclose in any manner, directly or indirectly, to any third party any portion of the disclosing party's Confidential Information; (ii) not use the disclosing party's Confidential Information in any fashion except to perform its duties hereunder or with the disclosing party's express prior written consent; (iii) disclose the disclosing party's Confidential Information, in whole or in part, only to employees and agents who need to have access thereto for the receiving party's internal business purposes; (iv) take all necessary steps to ensure that its employees and agents are informed of and comply with the confidentiality restrictions contained in this Agreement; and (v) take all necessary precautions to protect the confidentiality of the Confidential Information received hereunder and exercise at least the same degree of care in safeguarding the Confidential Information as it would with its own confidential information, and in no event shall apply less than a reasonable standard of care to prevent disclosure. The receiving party shall promptly notify the disclosing party of any unauthorized disclosure or use of the Confidential Information. The receiving party shall cooperate and assist the disclosing party in preventing or remedying any such unauthorized use or disclosure.

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5.02. Indemnification. Each party agrees to indemnify, defend, and hold harmless the other party, its employees, members, directors, managers, officers or agents from and against any loss, liability, damage, penalty or expense (including attorneys' fees, expert witness fees and cost of defense) they may suffer or incur as a result of (i) any failure by the party or any employee, agent or affiliate of the party to comply with the terms of this Agreement; (ii) any warranty or representation made by the party being false or misleading; (iii) any representation or warranty made by the party or any employee or agent of the party to any third person other than as specifically authorized by this Agreement, (iv) the manner or method in which the party performs its services pursuant to this Agreement, (v) negligence of the party or its subcontractors, agents or employees, or (vi) any alleged or actual violations by the party or its subcontractors, employees or agents of any governmental laws, regulations or rules.

5.03. Disclaimer of All Warranties. THE VMS SERVICES ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER. VMS DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, TO INDEPENDENT CONTRACTOR AS TO ANY MATTER WHATSOEVER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY VMS OR ITS EMPLOYEES OR REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF VMS'S OBLIGATIONS.

5.04. Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE VMS SERVICES, WHETHER FORESEEABLE OR UNFORESEEABLE, AND WHETHER BASED ON BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT, OR OTHER CAUSE OF ACTION (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF DATA, GOODWILL, PROFITS, INVESTMENTS, USE OF MONEY, OR USE OF FACILITIES; INTERRUPTION IN USE OR AVAILABILITY OF DATA; STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS; OR LABOR CLAIMS), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCES SHALL VMS'S TOTAL LIABILITY TO INDEPENDENT CONTRACTOR OR ANY THIRD PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED TEN THOUSAND DOLLARS (\$10,000.00) REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE.

5.05. Taxes. Independent Contractor shall pay, indemnify and hold VMS harmless from (i) any sales, use, excise, import or export, value-added, or similar tax or duty, and any other tax or duty not based on VMS's income, and (ii) all government permit fees, customs fees and similar fees which VMS may incur with respect to this Agreement. Such taxes, fees and duties paid by Independent Contractor shall not be considered a part of, a deduction from, or an offset against, payments due to VMS hereunder.

5.06. Independent Contractor represents and warrants to VMS as follows:

(a) Independent Contractor has the full power and authority to execute, deliver and perform this Agreement. This Agreement is valid, binding and enforceable against Independent Contractor in accordance with its terms and no provision requiring Independent Contractor's performance is in conflict with Independent Contractor's obligations under any charter or any other agreement (of whatever form or subject) to which Independent Contractor is a party or by which it is bound.

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(b) If other than a sole proprietorship, Independent Contractor is duly organized, authorized and in good standing under the laws of the state of its organization and is duly authorized to do business in all other states in which Independent Contractor's business make such authorization necessary or required.

(c) Except as otherwise disclosed in writing by Independent Contractor to VMS on or before the effectiveness of this Agreement, neither Independent Contractor nor any principal has been subject to any (i) criminal conviction (excluding traffic misdemeanors or other petty offenses); (ii) bankruptcy filings; (iii) Internal Revenue Service liens; (iv) federal or state regulatory administrative or enforcement proceedings; or (v) restraining order, decree, injunction or judgment in any proceeding or lawsuit alleging fraud or deceptive practices.

5.07. Data Security Compliance. Independent Contractor agrees to comply with privacy and security requirements under the Payment Card Industry Data Security Standard ("Association Requirements") with regards to Independent Contractor's use, access, and storage of certain credit card non-public personal information ("Cardholder Information") on behalf of VMS. Visa, MasterCard, Discover, American Express, any ATM or Debit Networks, and the other financial service card organizations shall be collectively known herein as "Associations." Independent Contractor shall comply with its obligations under any applicable state or federal law or regulations as may be in effect or as may be enacted, adopted or determined regarding the confidentiality, use, and disclosure of Cardholder Information. Independent Contractor agrees that it shall protect the privacy of Cardholder Information to at least the same extent that VMS must maintain that confidentiality under the Association Requirements or applicable law. Independent Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Cardholder Information received from, or created or received by Independent Contractor on behalf of VMS, agrees to the same restrictions and conditions that apply through this Agreement to Independent Contractor with respect to such information. Upon five (5) business notice or immediately upon any unauthorized access to, use or disclosure of any Cardholder Information, VMS may at its discretion, conduct an on-site audit and review of Independent Contractor's procedures and systems.

5.08. Non-Solicitation of Merchants. Without VMS's prior written consent (which consent may be withheld in VMS sole and absolute discretion), Independent Contractor shall not knowingly cause or permit any of their employees, agents, principals, affiliates, subsidiaries or any other person or entity (i) to solicit or provide services that compete with the VMS Services to any Merchant that has been accepted by VMS; (ii) to solicit or otherwise cause any Merchant that has been accepted by VMS or its vendors to terminate its participation in any of the VMS Services; or (iii) to solicit or market services to any Merchant that is already directly or indirectly provided any of the VMS Services by VMS, whether or not such are provided under the terms of this Agreement. This section shall apply during the term of this Agreement and for five (5) years after any termination, cancellation or expiration of this Agreement. Independent Contractor will remain responsible for resulting damages from such prohibited solicitation.

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5.09. Non-Solicitation. (a) During the period that this Agreement is in effect and for the three (3) year period immediately following termination of this Agreement, Independent Contractor shall not directly or indirectly through another entity (i) induce or attempt to induce any employee of, or consultant to, VMS or its subsidiaries to leave the employ of, or consultancy to, VMS or its subsidiaries, or in any way interfere with the relationship between VMS or its subsidiaries and any employee or consultant thereof, (ii) hire any person who was an employee of, or consultant to, VMS or its subsidiaries at any time during the twelve-month period immediately prior to the date on which such hiring would take place without the written consent of VMS (it being conclusively presumed by the parties so as to avoid any disputes under this section that any such hiring within such twelve-month period is in violation of clause (i) above); (iii) call on, solicit or service any customer, referral partner, affiliate, agent, supplier, licensee, licensor, consultant, contractor or other business relation of VMS or its respective subsidiaries in order to induce or attempt to induce such person to cease doing business with VMS or its subsidiaries, or in any way interfere with the relationship between any such customer, referral partner, affiliate, agent, supplier, licensee, licensor, consultant, contractor or other business relation and VMS or its subsidiaries (including, without limitation, making any negative statements or communications about VMS or its subsidiaries); or (iv) call on, solicit, or take away or attempt to call on, solicit, or take away any of VMS's customers, referral partners, affiliates, agents and vendors on whom Independent Contractor called or with whom Independent Contractor became acquainted during its contractual relationship with VMS, either on its behalf or that of other person, firm, or corporation.

(b) If, at the time of enforcement of the covenants contained in this section above (the "Protective Covenants"), a court shall hold that the duration, scope or area restrictions stated herein are unreasonable under circumstances then existing, the parties hereto agree that the maximum duration, scope or area reasonable under such circumstances shall be substituted for the stated duration, scope or area and that the court shall be allowed to revise the Protective Covenants to cover the maximum duration, scope and area permitted by law. Independent Contractor agrees that the Protective Covenants are reasonable in terms of duration, scope and area restrictions and are necessary to protect the goodwill of VMS's businesses and agrees not to challenge the validity or enforceability of the Protective Covenants.

5.10. Intellectual Property. "Intellectual Property" means all of the following owned by a party: (i) trademarks and service marks (registered and unregistered) and trade names, and goodwill associated therewith; (ii) patents, patentable inventions, computer programs, and software; (iii) databases; (iv) trade secrets and the right to limit the use or disclosure thereof; (v) copyrights in all works, including software programs; and (vi) domain names. The rights owned by a party in its Intellectual Property shall be defined, collectively, as "Intellectual Property Rights." Other than the express licenses granted by this Agreement, VMS grants no right or license to Independent Contractor by implication, estoppel or otherwise to the VMS Services or any Intellectual Property Rights of VMS. Each party shall retain all ownership rights, title, and interest in and to its own products and services (including in the case of VMS, in the VMS Services) and all intellectual property rights therein, subject only to the rights and licenses specifically granted herein. VMS (and not Independent Contractor) shall have the sole right, but not the obligation, to pursue copyright and patent protection, in its sole discretion, for the VMS Services and any Intellectual Property Rights incorporated therein. Independent Contractor will cooperate with VMS in pursuing such protection, including without limitation executing and delivering to VMS such instruments as may be required to register or perfect VMS's interests in any Intellectual Property Rights and any assignments thereof. Independent Contractor shall not remove or destroy any proprietary, confidentiality, trademark, service mark, or copyright markings or notices placed upon or contained in any materials or documentation received from VMS in connection with this Agreement.

## **SECTION SIX - GENERAL PROVISIONS**

6.01. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable for any reason, the remaining provisions not so declared shall nevertheless continue in full force and effect, but shall be construed in a manner so as to effectuate the intent of this Agreement as a whole, notwithstanding such stricken provision or provisions.

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6.02. Drafting. No provision of this Agreement shall be construed against any party merely because that party or counsel drafted or revised the provision in question. All parties have been advised and have had an opportunity to consult with legal counsel of their choosing regarding the force and effect of the terms set forth herein. This Agreement shall be deemed to be jointly prepared by the parties and therefore any ambiguity or uncertainty shall be interpreted accordingly.

6.03. Waiver. No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other party, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any different or subsequent breach.

6.04. Assignment. Neither party shall assign, delegate, subcontract, license, franchise, or in any manner attempt to extend to any third party any right or obligation under this Agreement except as otherwise permitted herein without the prior written consent of the other party; provided, however, VMS may assign this Agreement and its rights hereunder to a purchaser of all or substantially all of its assets or equity. Notwithstanding any other provisions in this Agreement, Independent Contractor, if an individual, upon the occurrence of his/her death may pass on his/her rights to residuals under this Agreement by will, trust or any other method to anyone she/he chooses in his/her sole and absolute discretion. Notwithstanding any other provisions in this Agreement, Independent Contractor may assign or sell its rights to its compensation under this Agreement to a third party; provided however, VMS shall first have the right to purchase such compensation rights from Independent Contractor. In the event

Independent Contractor seeks to sell its right to compensation to a third party, it shall provide VMS with written notice of the material terms of the third party offer, and VMS shall have thirty (30) days within which to notify Independent Contractor if it will match said third party offer. If VMS elects to match the third party offer, Independent Contractor shall sell its rights to compensation to VMS. In the event VMS does not elect to exercise this right of first refusal, Independent Contractor may sell Independent Contractor's compensation to the third party offeror on the same terms and conditions as set forth in the written notice to VMS.

6.05. Amendments. Except as otherwise provided in this Agreement, no provision of this Agreement may be amended, modified or waived except by a written agreement signed by both parties.

6.06. Notices. All notices and other communications required or permitted under this Agreement shall be in writing and given by personal delivery, telecopy (confirmed by a mailed copy), or first class mail, postage prepaid, sent to the addresses set forth herein.

6.07. Section Headings. The section headings contained in this Agreement are for convenient reference only, and shall not in any way affect the meaning or interpretation of this Agreement.

6.08. Counterparts/Facsimile Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument. The signatures to this Agreement may be evidenced by facsimile copies reflecting the party's signature hereto, and any such facsimile copy shall be sufficient to evidence the signature of such party as if it were an original signature.

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6.09. Entire Agreement; Binding Effect. This Agreement, including all schedules, exhibits and attachments thereto, sets forth the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein, and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, partner, employee or representative of any party hereto. This Agreement shall be binding upon and shall inure only to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended to confer or shall be deemed to confer upon any persons or entities not parties to this Agreement, any rights or remedies under or by reason of this Agreement.

6.10. Dispute Resolution. All disputes arising under or in connection with the Agreement will initially be referred to the senior executives of each party. The senior executives will use their best efforts to resolve the dispute informally and amicably. If, after negotiating for thirty (30) days (or for some longer period if the parties agree), no resolution of the dispute is reached by the senior executives, the parties will submit the dispute to binding arbitration in Idaho pursuant to the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) and the procedures set forth in paragraph 6.11.

6.11. Arbitration. All disputes that cannot be resolved pursuant to the internal issue resolution process identified above will be submitted to and settled by final and binding arbitration. The arbitration will take place in Idaho, and will apply the governing law of this Agreement. The final and binding arbitration will be performed by a panel of three arbitrators in accordance with and subject to the Commercial Arbitration Rules of the AAA then in effect. Following notice of a party’s election to require arbitration, each party will, within thirty (30) days, select one arbitrator; and those two arbitrators will, within thirty (30) days thereafter, select a third arbitrator. If the two arbitrators are unable to agree on a third arbitrator within thirty (30) days, the AAA will, within thirty (30) days thereafter, select the third arbitrator. The decision of the arbitrators will be final and binding, and judgment on the award may be entered in any court of competent jurisdiction. The arbitrators will be bound by the warranties, limitations of liability, and other provisions of this Agreement. Notwithstanding the foregoing, each party may seek injunctive relief in a court of competent jurisdiction, where appropriate, to protect its rights pending the outcome of the arbitration.

6.12. Jurisdiction; Venue; Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho (irrespective of its choice of law principles). The parties hereby agree that any suit to enforce any provision of this Agreement or arising out of or based upon this Agreement or the business relationship between the parties hereto shall be brought in federal or state court in Idaho. Each party hereby agrees that such courts shall have exclusive personal jurisdiction and venue with respect to such party, and each party hereby submits to the exclusive personal jurisdiction and venue of such courts.

6.13. Attorney’s Fees. Should suit or arbitration be brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, including expert witness fees and fees on any appeal.

Initials \_\_\_\_\_

6.14. Guaranty. Independent Contractor and the principal(s) of Independent Contractor (collectively, “Guarantors”) hereby jointly and severally guarantee indefeasible payment and performance of all obligations (the “Obligations”) of Independent Contractor and principals under this Agreement, as hereafter amended. Guarantors’ obligations under this section are independent of Independent Contractor’s and principals’ obligations, and a separate action may be brought against Guarantors, whether or not Independent Contractor or principals be joined in such action. Guarantors authorize VMS, without notice, from time to time and without affecting Guarantors’ liability, to modify the Obligations. Guarantors waive: any right to require VMS to proceed against a Guarantors or pursue any other remedy; any defense arising by reason of any disability or other defense of Independent Contractor or any principal, or cessation from any cause of Independent Contractor’s or any principal’s liability; any claim that Guarantors’ obligations exceed Independent Contractor’s or any principal’s; until the Obligations have been paid and performed in full, all rights of subrogation and contribution; and any right to enforce any remedy of VMS against Independent Contractor or any principal. Guarantors acknowledge that Guarantors shall have sole responsibility for obtaining from Independent Contractor and principals information concerning their financial condition. Guarantors agree to pay all attorneys’ fees and other costs incurred in enforcing this section or the Obligations.

6.15. Survival. All representations, covenants and warranties shall survive the execution of this Agreement, and sections 1.09, 2.01, 2.02, 3.02, 4.06, 4.07, 5.01, 5.02, 5.03, 5.04, 5.05, 5.06, 5.07, 5.08, 5.09, 5.10, 6.01, 6.02., 6.03, 6.04, 6.05, 6.06, 6.07, 6.08, 6.09, 6.10, 6.11, 6.12, 6.13 and 6.14 shall survive termination of this Agreement.

IN WITNESS THEREOF, this Agreement has been duly executed by the parties hereto, effective as of the date and year first below written.

Date: \_\_\_\_\_

**Valued Merchant Services**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**Independent Contractor**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

**Initials** \_\_\_\_\_

## Pricing Schedule A

Ongoing residual income / profit sharing will be paid on all billed and collected amounts from each referred and active merchant and will be paid on or about the twenty-sixth day of the month following the month of collection. Independent Contractor shall be paid the following amounts each month for the services it renders under this Agreement:

***Net Income\* multiplied by 10% + \$50 One Time Account Activation Bonus\*\****

\* "Net Income" equals revenue received by VMS attributable to each referred and active merchant submitted by Independent Contractor to VMS minus all VMS costs and any amounts owed to VMS under this Agreement. All increases to VMS's costs will be passed through to Independent Contractor in this calculation.

\*\* To qualify for the \$50 bonus payment, all merchant accounts must be approved, installed, and have processed at least \$250 in customer transactions.

Initials \_\_\_\_\_

# **VMS DIRECT DEPOSIT AUTHORIZATION FORM**

Contractor Name: \_\_\_\_\_

Bank Name: \_\_\_\_\_

Transit Routing Number: \_\_\_\_\_

Account Number: \_\_\_\_\_

Type of Account: Checking: \_\_\_\_\_ Savings: \_\_\_\_\_

Contractor Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Attach a voided check for the above listed account**

**Initials** \_\_\_\_\_

# Request for Taxpayer Identification Number and Certification

**Give Form to the  
requester. Do not  
send to the IRS.**

<b>Print or type See Specific Instructions on page 2.</b>	<b>1</b> Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	<b>2</b> Business name/disregarded entity name, if different from above	
	<b>3</b> Check appropriate box for federal tax classification; check only <b>one</b> of the following seven boxes: <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ <b>Note.</b> For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input type="checkbox"/> Other (see instructions) ▶ _____	<b>4</b> Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>
	<b>5</b> Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	<b>6</b> City, state, and ZIP code	
	<b>7</b> List account number(s) here (optional)	

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

<b>Social security number</b>									
				-			-		
<b>or</b>									
<b>Employer identification number</b>									
				-					

**Note.** If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

## Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
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## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at [www.irs.gov/fw9](http://www.irs.gov/fw9).

### Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.*

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

**Note.** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States:

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

## Backup Withholding

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),

3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code* on page 3 and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships* above.

## What is FATCA reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code* on page 3 and the Instructions for the Requester of Form W-9 for more information.

## Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account, list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

**Note. ITIN applicant:** Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C Corporation, or S Corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.



**Line 2**

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

**Line 3**

Check the appropriate box in line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box in line 3.

**Limited Liability Company (LLC).** If the name on line 1 is an LLC treated as a partnership for U.S. federal tax purposes, check the "Limited Liability Company" box and enter "P" in the space provided. If the LLC has filed Form 8832 or 2553 to be taxed as a corporation, check the "Limited Liability Company" box and in the space provided enter "C" for C corporation or "S" for S corporation. If it is a single-member LLC that is a disregarded entity, do not check the "Limited Liability Company" box; instead check the first box in line 3 "Individual/sole proprietor or single-member LLC."

**Line 4, Exemptions**

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space in line 4 any code(s) that may apply to you.

**Exempt payee code.**

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 5 <sup>2</sup>
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

**Exemption from FATCA reporting code.** The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

**Note.** You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

**Line 5**

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns.

**Line 6**

Enter your city, state, and ZIP code.

**Part I. Taxpayer Identification Number (TIN)**

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited Liability Company (LLC)* on this page), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [IRS.gov](http://IRS.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

**Part II. Certification**

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, or 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code* earlier.

**Signature requirements.** Complete the certification as indicated in items 1 through 5 below.

- 1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.
- 2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.
- 3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.
- 4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).
- 5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

**What Name and Number To Give the Requester**

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee <sup>1</sup> The actual owner <sup>1</sup>
5. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	Give name and EIN of:
7. Disregarded entity not owned by an individual	The owner
8. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
9. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
10. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
11. Partnership or multi-member LLC	The partnership
12. A broker or registered nominee	The broker or nominee
13. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
14. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 2.

\*Note. Grantor also must provide a Form W-9 to trustee of trust.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

**Secure Your Tax Records from Identity Theft**

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Publication 4535, Identity Theft Prevention and Victim Assistance.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

**Protect yourself from suspicious emails or phishing schemes.** Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: [spam@uce.gov](mailto:spam@uce.gov) or contact them at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 1-877-IDTHEFT (1-877-438-4338).

Visit [IRS.gov](http://IRS.gov) to learn more about identity theft and how to reduce your risk.

**Privacy Act Notice**

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.