



110 N. Marine Drive, Portland, OR 97217

503 283-2405

Master Drayage Services Agreement

This Master Drayage Services Agreement, is made effective this _____, day of _____, 20____ (Effective Date) between **Market Transport, Ltd. dba DSV Road Transport** an Oregon corporation, MC-140827 hereafter designated as “**DSV**” and _____, hereafter designated as “**DRAYMAN**”.

Witnessed:

WHEREAS, DSV is a licensed property broker and as here relevant, intermodal marketing company, which arranges for door-to-door shipments of cargo having a prior or subsequent movement by rail or water for its customers (“Customer”); and

WHEREAS, Drayman is a common and/or contract motor carrier authorized to operate in inter-provincial, interstate and/or intrastate transportation as described and defined by Drayman’s Authority(s), Certificate(s), Permit(s), and License(s) attached hereto as Attachment 1 to Appendix A; and

WHEREAS, Drayman possesses the expertise, quality personnel, facilities, equipment, underlying authority and necessary through container and/or chassis exchange agreement to properly and lawfully transport multimodal freight by motor vehicle for hire; and

WHEREAS, DSV desires to engage the services of Drayman for transportation of freight as hereinafter set forth:

NOW THEREFORE, in consideration of the premises and mutual benefits to be derived by the Parties from this Agreement and the mutual promises made and exchanged between the Parties, the Parties do hereby covenant and agree as follows:

1. **TRANSPORTATION AND RELATED SERVICES**

1.1 **PERFORMANCE OF SERVICES:** Drayman agrees to meet the distinct needs of DSV and its Customer by providing, as a Drayage carrier, the transportation and related services set forth in this Agreement. Drayman shall transport Customer's freight without delay caused by anything in Drayman's control, and all occurrences which would be probable or certain to cause delay shall be immediately communicated to DSV by Drayman.

1.2 **NON-EXCLUSIVE DEALING:** This Agreement does not grant Drayman an exclusive right to perform the transportation and related services for DSV or its Customer. DSV does not guarantee, any specific amount of shipment, tonnage, or revenue to Drayman, and DSV's anticipated requirements are projections only and are not firm commitments by DSV.

1.3 **SERVICE AGREEMENT:** DSV shall tender shipments to draymen using the shipment confirmation format attached as Appendix A. Each shipment confirmation will be reduced to writing, transmitted via fax or electronically and will contain pre-notification pickup or delivery information. Drayman agrees to notify DSV and get signed approval prior to any rate adjustments or additional charges including but not limited to detention, accessorial charges or any charges outside the scope of the original shipment confirmation.

2. **TERM** The term of this Agreement shall commence on the Effective Date and shall continue thereafter for a term of one (1) year, and shall thereafter automatically be extended for additional, consecutive one (1) year terms until terminated upon sixty (60) days prior written notice. DSV may immediately terminate this agreement if Draymen fails to perform its obligations under this agreement in the absence of a force majeure condition as defined in this Agreement, and Drayman is so notified of such failure to perform and fails to cure such failure promptly.

3. **COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS**

3.1 **AUTHORITY:** Drayman agrees to comply with the applicable provisions of any provincial, federal, state and/or local laws or ordinance and all lawful orders, rules and regulations issued thereunder and any provision, representation or agreement, or contractual clause required thereby to be included or incorporated by reference or by operation of law in this Agreement. Without limiting the foregoing, Drayman shall, at Drayman's expense, comply with all statues, rules and regulations (including, obtaining all permits and licenses) applicable to intra-provincial, interstate and/or intrastate transportation by motor vehicles which are necessary for Drayman to provide the transportation and related services to DSV under this Agreement.

3.2 **NON-DISCRIMINATION:** Drayman agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or disability, and shall comply with all laws, regulations and executive orders pertaining to equal employment opportunities and affirmative action to which Drayman may directly or indirectly be subject.

3.3 **SAFE TRANSPORTATION:** Drayman agrees not to accept a shipment from DSV or Customer if that shipment would require Drayman or any of its agents, employees or subcontractors to exceed or violate any speed or safety law or related regulations.

4. **RELATIONSHIP**

4.1 **INDEPENDENT CONTRACTOR:** Drayman understands and agrees that Drayman is an independent contractor and that Drayman has exclusive control and direction of the work Drayman performs pursuant to this Agreement. Drayman agrees to assume full responsibility for the payment of all local, state, federal, and provincial payroll taxes, and contributions or taxes for unemployment insurance, workers' compensation insurance, pensions, and other social security or related protection with respect to the persons engaged in the performance of such transportation and related services for Drayman, and Drayman shall indemnify, defend and hold DSV and its Customer harmless therefrom. Drayman shall provide DSV with Drayman's Federal Tax ID number and attach a copy of Drayman's IRS Form W-9 to this Agreement as Attachment 2 to Appendix A.

4.2 **DRIVERS:** Drayman agrees to provide properly qualified, trained and licensed drivers and other personnel to perform the transportation and related services under this Agreement in a safe, efficient and economical manner. Drayman personnel (whether agents, employees or independent contractors of Drayman) are expected to conduct themselves in a professional manner at all times, and shall comply with all of Customer's plant rules and regulations while on Customer's premises. Any Drayman personnel who do not comply with all of Customer's plant rules and regulations may be summarily rejected and directed to immediately leave the Customer's premises at the exclusive risk and expense of Drayman.

4.3 **INTERCHANGE AGREEMENTS:** Drayman warrants that it agrees to enter into and maintain all equipment interchanges necessary to perform services under this agreement and will notify DSV immediately should any such interchange agreements be canceled. Drayman warrants that its use of non-owned equipment (including but not limited to its use of chassis and containers) is subject to bilateral agreements with the owners of such equipment and that DSV is not a party to any such agreements and hence is not responsible for the maintenance or operation of such equipment. Drayman and only drayman is responsible for usage charges, including per diem, unless otherwise agreed in a signed written agreement.

4.4 **EQUIPMENT:** Drayman agrees to provide, operate and maintain in good working condition, motor vehicles and all allied equipment necessary to perform in a safe, efficient and economical manner. Drayman will assure that inter-modal equipment utilized shall meet all State and Federal Department of Transportation Safety Regulations and shall be clean, dry and free of any defects or contaminating odor, and have not been used to transport solid waste or other noxious products, and shall in all other respects be suitable and legal for the transportation of Customer's commodities tendered to Drayman.

5.INSURANCE Drayman, at Drayman's expense, shall maintain the following minimum insurance requirements during the term of this Agreement:

5.1 Comprehensive general liability insurance, including completed products and completed operations contractual liability coverage for all liability assumed by Drayman under this Agreement, with minimum limits of liability of not less than one million dollars (\$1,000,000) per occurrence, combined single limit, for personal injury and property damage.

5.2 Automobile liability insurance (including owned, non-owned and hired vehicles) with minimum limits of not less than one million dollars (\$1,000,000) per occurrence combined single limit for personal injury and property damage.

5.3 Broad form Cargo liability insurance, with minimum limits of not less than one hundred thousand dollars (\$100,000) per shipment combined single limit for all liability assumed by Drayman in Section 7 of this Agreement. A copy of all exclusions from the policy must be provided by the insurance carrier.

5.4 Trailer Interchange Bailee insurance must be provided, with minimum limits of not less than forty thousand (\$40,000) (or appropriate amounts required by Rail Road(s)) naming the lessor of such equipment as a loss payee.

5.5 Drayman warrants that it is in compliance with applicable state workman's compensation laws governing its employees and expressly indemnifies DSV and its customer against any claim by its employees or agents for job related injuries in the absence of DSV's proven sole negligence.

5.6 Any insurance coverages required by any government body for the types of transportation and related services specified in this agreement. All insurance required and provided by Drayman shall be primary. Drayman agrees and understands that the types of coverage and coverage minimums in no way limits or waives the Drayman's liability hereunder.

All insurance required by this Agreement must be written by an insurance company having a Best's rating of "A-" or better and must be authorized to do business under the laws of the state(s) or province(s) in which Drayman provides the transportation and related services. Drayman's insurance shall be primary and respond and pay prior to any other available coverage. Drayman agrees that Drayman, Drayman's insurer(s), and anyone claiming by, through or under Drayman shall have no claim, right of action, or right of subrogation against DSV or its Customer based on any loss or liability insured under the foregoing insurance. Drayman shall, prior to providing transportation and related services pursuant to this Agreement, **name DSV Road Transport as an additional insured** on each of the foregoing insurance policies and attach a copy thereof to this agreement as Attachment 3 to Appendix A.

Drayman represents and warrants that it will continuously fulfill the requirements of this Section throughout the duration of this Agreement. DSV shall be notified in writing by Drayman's insurance company at least thirty (30) days prior to the cancellation, change or non-renewal of the submitted insurance policies.

6 **DRAYMAN'S RATES AND CHARGES**

6.1 RATES AND CHARGES: The supplemental rates between specified point, and charges, including detention and/or accessorial charges, shall set forth in each shipment confirmation executed from time to time pursuant to this Agreement by Drayman and DSV. Drayman represents and warrants that there are no other applicable rates or charges except those established in each shipment confirmation. Rates may be amended by agreement between DSV and Drayman by fax transmittal in order to meet specific time requirements and such agreed upon rates will be deemed "in writing" and supplement this Agreement if DSV faxes a signed copy of the applicable rates and charges to Drayman and Drayman returns a signed fax copy of same to DSV. Any change in rates or charges agreed to by Drayman and DSV must be provided in writing thirty (30) days prior to effective date.

6.2 PAYMENT: Drayman shall bill DSV the rates and charges set forth in a shipment confirmation for Drayman's transportation. DSV shall pay Drayman's freight bill within thirty (30) days following DSV's receipt of Drayman's freight bill, providing Drayman provides DSV signed delivery receipts and other required shipping documents. Drayman agrees to look solely to DSV for payment of its freight charges and waives any right it may have under federal or state law for any action against DSV's customers for services performed by Drayman under this agreement. All billings containing additional charges, including but not limited to detention, accessorial or any services which were not included in the original fax confirmation, must be accompanied by an approval, signed by DSV. Any billings received without a signed approval will not be considered valid. Drayman will provide bills of lading, delivery receipts (proof of delivery), railroad interchange (J-1's) and any other required documentation to DSV without charge.

6.3 UNDERCHARGE CLAIMS: Drayman agrees to bill DSV for all of Drayman's transportation and related services in a timely, accurate and complete fashion. Drayman acknowledges and agrees that in order for DSV to provide its customer with the best, most efficient and economical transportation and related services, and complete fashion so as to prevent DSV's and its Customer's involvement in the burdensome investigation, calculation and processing of undercharge claims. Drayman, on behalf of itself, its successors, assigns, representatives and agents, hereby waives releases and agrees to indemnify and defend DSV and its Customers from and against any and all claims, causes of action, suits and expenses related to, or arising out of any undercharge based upon a tariff, classification or schedule or other related liability for Drayman's transportation and related services not included in Drayman's original invoice or freight bill, or a corrected invoice or freight bill issued by Drayman within 180 days after the date of the original shipment. Drayman shall indemnify DSV and its customer against any claim for demurrage, per diem or detention which results from its delay in providing service or returning empty agreement unless otherwise agreed in writing.

7. CARGO LOSS, DAMAGE OR DESTRUCTION

7.1 DRAYMAN'S CARGO LIABILITY: Drayman agrees to promptly contact the Claims Department at DSV regarding any exceptions (over, short, damaged, or refused) on any loads transported by Drayman. Drayman agrees to maintain a continuous seal record during the time the trailer is in the custody and control of Drayman. Drayman agrees to have the seal verified and the seal number and condition of the seal noted on the bills of lading and/or delivery receipt. Drayman also agrees to notify DSV immediately if the seal integrity is broken. Drayman assumes full liability for loss, damage to, or destruction of any and all of Customer's goods or property while under Drayman's care, custody or control. Customer's full actual loss shall be determined in accordance with the requirements of the Carmack Amendment, 49 U.S.C. 14706. Drayman shall resolve the documented claim in accordance with 49 CFR 370. Upon agreement Drayman shall either pay DSV (or the customer as DSV may direct) or instruct DSV to deduct the agreed amount from freight charges owed Drayman. Cargo which has been tendered to Drayman intact and released by Drayman in a damaged condition, lost or destroyed subsequent to such tender to Drayman, shall be conclusively presumed to have been lost, damaged or destroyed by Drayman unless Drayman can establish otherwise by clear and convincing evidence. Failure to respond to claim within ninety (90) days shall cause claim to be deducted by DSV. Contested cargo claims, at DSV's election, will be subject to binding arbitration at Portland, Oregon under procedures established by the Transportation Lawyers Association Arbitration Panel.

7.2 SALVAGE CLAIMS: Drayman shall waive any and all right of salvage or resale of any of Customer's damaged goods and shall, at DSV's reasonable request and direction, promptly return or dispose of, at Drayman's cost, any and all of Customer's damaged goods shipped by Drayman, providing the loss or damage was due to Drayman's negligence or mishandling. Drayman shall not under any circumstance without DSV's prior written consent allow Customer's goods to be sold or made available for sale or otherwise disposed of in any salvage markets, employee store, or any other secondary outlets. In the event that damaged goods are returned to Customer and salvaged by Customer, Drayman shall receive a credit for the actual salvage value of such goods. Drayman agrees that all products refused back to Drayman, for any reason, or any loss of product, shall be reported to DSV immediately. Drayman further agrees to work with DSV to resolve all claims issues, to the satisfaction of all parties concerned, regardless of whether Drayman being found responsible or not.

7.3 DRAYMAN'S LIENS: Drayman specifically waives any and all liens it might assert under federal or state law against cargo tendered for transportation.

8. INDEMNIFICATION Drayman agrees to indemnify, defend and hold DSV and its Customers (including their officers, directors, employees, subcontractors and agents) harmless from and against any and all liabilities, damage, fines, penalties, costs, claims, demands and expenses (including costs of defense, settlement, and reasonable attorney's fees) of whatever type or nature, including damage or destruction of any property, or injury (including death) to any person arising out of or related to, directly or indirectly, any action or omission by Drayman, its agents, employees or subcontractors, any claims or actions by Drayman's agents, employees or subcontractors, the failure of Drayman, its agents, employees or subcontractors to comply with this Agreement, or any applicable United States or Canadian federal,

provincial, state or local law, statute, regulation, rule, ordinance, or government directive which may directly or indirectly regulate or affect the obligations of Drayman under this Agreement, or Drayman's or Drayman's agents, employees or subcontractors, performance of this agreement. The obligations of Drayman under this Section shall survive the termination of this Agreement.

9. **HAZARDOUS MATERIALS:** Drayman agrees to provide DSV with MCS 90 Hazardous Material Endorsement and agrees to the following when moving hazardous materials on behalf of DSV:

9.1 Notify DSV immediately if any portion of a shipment picked upon behalf of DSV contains hazardous materials.

9.2 Forward a copy of the shipper's bill of lading to DSV for any shipment containing hazardous materials. DSV will not issue movement billing to the railroad(s) until this document is received. Bills of lading for shipments containing hazardous materials must comply with all marking and description requirements of 49 CFR and a copy must accompany the shipment during transit.

10. **EQUIPMENT** DSV reserves the right to reload any empty equipment in which it has tendered a load to Drayman for delivery. It shall be DSV's responsibility to notify Drayman of its intent to reload such equipment twenty-four (24) hours prior to equipment becoming empty. If no such notice is provided to Drayman, equipment shall be considered "released" by DSV when empty.

11. **REQUIREMENTS FOR CONTAINER MANAGEMENT:**

11.1 **EQUIPMENT RESERVATIONS:** When in receipt of a DSV notification for pickup of a load using rail controlled equipment, Drayman should contact the DSV office if a reservation is needed to secure equipment. If reserved equipment will not be used, we ask that the Drayman notify the appropriate DSV office within ninety (90) minutes of receipt of an equipment reservation. Failure to timely contact the DSV office requesting cancellation of an equipment reservation may result in an unused reservation charge of thirty-five dollars (\$35). When an attempt is made to secure equipment reserved by DSV and no good order units are available, Drayman should notify the DSV office at the earliest practical opportunity. This notification should include date/time and location from which driver attempted to secure equipment. The unused reservation charge will not apply when good order equipment was not available.

11.2 **RAILROAD RAMP STORAGE:** The railroad ramps allow twenty-four (24) or forty-eight (48) hours from date/time of railroad notification to pull from the ramp. The actual hour limitation will depend on the current storage policies of the ramp where the equipment is notified. If the drayman is given sufficient notification and fails to meet these guidelines, they may be subject to the actual storage charges received from the railroad.

11.3 **DELIVERY OF LOADED EQUIPMENT:** Every effort will be made to get delivery appointments, either by the carrier or by DSV, to allow Drayman to pull from railroad ramp and

deliver within forty-eight (48) hours of railroad notification of availability. If delivery is not accomplished within forty-eight (48) hours when sufficient notice is given to the Drayman, the Drayman will be charged a rate of thirty-five (\$35) dollars per day for the first seven (7) days and then eighty-five (\$85) dollars per day thereafter. Drayman will not be charged when a prescheduled or consignee scheduled delivery appointment prevents delivery. We ask that the Drayman notify DSV immediately when consignee will not accept delivery or schedule an appointment to meet this forty-eight (48) hour requirement.

11.4 TERMINATION OF EMPTY EQUIPMENT: After a “live” unload or a notification is received from the customer or DSV that the rail equipment is empty and ready to pick up, Drayman will be allowed twenty-four (24) hours (within 125 miles from terminating rail hub) or forty-eight (48) hours (over 125 miles from terminating rail hub) to terminate rail equipment or execute a “street interchange”. Rail equipment detained beyond the terms allowed will be charged at a rate of thirty-five (\$35) dollars per day for the first seven (7) days and then eight-five (\$85) dollars per day thereafter. Drayman will not be assessed for chargeable days when denied a reasonable time frame to execute or if one-way drayage rates/time has been negotiated with DSV. It is critical that all delays be communicated to DSV as quickly as possible to avoid additional charges.

12. MISCELLANEOUS

12.1 SUCCESSORS AND ASSIGNS: This Agreement shall be binding upon Drayman and Drayman’s successors and assigns. Drayman shall not assign this Agreement or Pre-notification without prior written consent of DSV. Any assignment of this Agreement, in whole or in part, by Drayman without the prior written consent of DSV shall be void and of no effect.

12.2 MODIFICATION: No waiver, alteration or modification of any of the provisions of this Agreement, or any of the Appendices or Attachments referred to herein, shall be binding upon either party, unless in writing signed by the duly authorized representative of the party against whom such modification is sought to be enforced. Any printed provisions on the reverse side of Drayman’s forms shall be deemed deleted. This Agreement cannot be changed, modified, limited or supplemented by reference to any Drayman’s rates, rules, classification, practice, schedule, or tariff.

12.3 WAIVER: No provision of this Agreement shall be waived by any party hereto, unless such waiver is written and signed by the authorized representative of the party against whom such waiver is sought to be enforced. Waiver by either party of any breach or failure to comply with any provision of this Agreement by the other party shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach of or failure to comply with any other provisions of this Agreement.

12.4 SAVINGS CLAUSE: If any provision of this Agreement is held to be invalid, the remainder of the Agreement shall remain in full force and effect with the offensive term or condition being stricken to the extent necessary to comply with any conflicting law.

12.5 **APPLICABLE LAW:** The terms and conditions of this Agreement shall be governed by and enforced in accordance with the laws of the State of Oregon, and any suit or action enforcing the terms and conditions of this Agreement shall be brought and adjudicated in the court of general jurisdiction for Multnomah County, Oregon.

12.6 **MUTUAL COOPERATION AND RESOLUTION OF DISPUTES:** Both parties understand and agree that they must cooperate in order to ensure the best, most efficient and economical transportation and related services. If any dispute arises in connection with this Agreement or any Pre-notification, the dispute shall, after the representatives of DSV and Drayman primarily responsible for the negotiation and performance of the applicable Pre-notification are unable, after reasonably diligent effort, to resolve the dispute, be referred to an Executive of DSV and of Drayman to resolve the dispute in question. If the Executive Panel is unable to resolve any dispute after reasonably diligent effort, the matter may, by mutual agreement, be referred to binding arbitration, or either party may resort to litigation. In the event the matter is referred to arbitration or litigated, the non-prevailing party shall bear all related costs, including the prevailing party's reasonable attorney fees.

12.7 **FORCE MAJEURE:** This agreement shall be temporarily suspended during any period(s) where Drayman or DSV is unable to carry out its obligations under this Agreement and the affected Pre-notification by reason of an Act of God or the public enemy, fire, flood, labor disorder, civil commotion, closing of the public highways, government, interference, government regulations, or any similar event or occurrence beyond the reasonable control of the affected party, and neither party shall have any liability to the other party for delay in performance or failure to perform while this Agreement and the affected Pre-notification is temporarily suspended. Should Drayman invoke this clause, DSV shall have the right to use other means to fulfill DSV's transportation requirements, and shipments arranged by DSV by such other means during such period of forced majeure and until ten (10) days following receipt of Drayman's notice of resumption, shall be credited against any minimum volume commitments made by DSV to Drayman

12.8 **ENTIRE AGREEMENT:** This Agreement including the Appendices attached to this Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. The provisions of this Agreement shall supersede all contemporaneous oral agreements and all prior oral and written quotations, communications, agreements and understandings between Drayman and DSV with respect to the subject matter of this Agreement.

12.9 **MODIFICATIONS:** The Parties do not agree to oral modifications of this agreement without mutual consent and additional consideration being given. No bill of lading, manifest, invoice or similar document issued by Drayman may alter or add to the provisions This agreement and any such document may function, if at all, solely as receipt for freight.

12.10 **NOTICES:** All notices required by or related to this Agreement shall be in writing and sent to the parties at the addresses set forth in this agreement by any means that will require an acknowledgment of receipt by the receiving party. Proof of sending any notice shall be the responsibility of the sender.

IN WITNESS WHEREOF, the undersigned individuals have executed this Agreement as of the dates indicated and by doing so represent and warrant that they have been or are specifically authorized to do so on behalf of the corporations or organizations they represent.

DSV

DRAYAGE COMPANY

DSV ROAD TRANSPORT

(Company)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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 ¹	Generally, exempt payees 1 through 5 ²
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

¹ See Form 1099-MISC, Miscellaneous Income, and its Instructions.

² 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. 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 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 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 ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
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 ¹ The actual owner ¹
5. Sole proprietorship or disregarded entity owned by an individual	The owner ¹
6. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i) (A))	The grantor ¹
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 ¹
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

¹ 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.

² Circle the minor's name and furnish the minor's SSN.

³ 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.

⁴ 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. 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 or contact them at www.ftc.gov/idtheft or 1-877-IDTHEFT (1-877-438-4338).

Visit 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.