

STATE OF SOUTH DAKOTA
CONSULTANT CONTRACT
BETWEEN

Rapid City Fire Department
10 Main Street
Rapid City, SD 57701

Referred to as "Consultant"

South Dakota Department of Health
Division of Healthcare Access & Quality and Health
Protection
Office of Rural Health
600 East Capitol Avenue
Pierre, SD 57501-2536
(605) 773-3361

Referred to as "State"

State and Consultant hereby enter into a contract for Professional Services.

I. CONSULTANT

- A. The term of this Contract shall begin June 1, 2022 and end May 31, 2023.
- B. Consultant is not a full or part-time employee of State or any agency of the state of South Dakota.
- C. Consultant, as an independent contractor, is solely responsible for the withholding and payment of applicable income and Social Security taxes due and owing from money received under this contract.
- D. Consultant may use the following equipment, supplies or facilities owned by the state of South Dakota.
- E. Consultant will not purchase capital assets or equipment using State funds.
- F. Consultant agrees to:
 - 1. Continue efforts to implement a Community Health Worker (CHW) program within the EMS organization.
 - a. Train at least one individual within the organization to be a certified CHW through a program approved by the DOH.
 - b. Promote and raise awareness about the CHW program within the EMS organizations service area.
 - c. Participate in partner calls and other CHW related communications.
 - 2. Submit quarterly reports to the DOH.
 - a. Quarter 1 and 2—June 1 through November 31—Due December 15, 2022.
 - b. Quarter 3—December 1 through February 28—Due March 15, 2023
 - c. Quarter 4—March 1 through May 31—Due June 15, 2023

3. Submit monthly invoices to the DOH on official company letterhead to include:
 - a. Dates(s) and description of services(s).
 - b. Contract number
 - c. Number of hours and per hour rate
 - d. Signature of authorized signer

G. **INSURANCE:** Consultant agrees, at its sole cost and expense, to maintain the following insurance:

1. Commercial General Liability Insurance:
Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this contract or be no less than two times the occurrence limit.
2. Professional Liability Insurance:
Consultant shall procure and maintain professional liability insurance with a limit of not less than one million dollars.
3. Business Automobile Liability Insurance:
Consultant shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.
4. Worker's Compensation Insurance:
Consultant shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.
5. Certificates of Insurance:
Before beginning work under this Contract, Consultant shall furnish State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Contract. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, Consultant agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Consultant shall furnish copies of insurance policies if requested by State.

H. Consultant agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as a result of performing services hereunder. This section does not require Consultant to be responsible for or defend against claims or damages arising solely from acts or omissions of the State, its officers, agents or employees.

- I. Consultant is a Business Associate of the Department of Health pursuant to requirements of the Health Insurance Portability and Accountability Act, 45 CFR Parts 160 and 164 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act §§ 13400-13424, 42 U.S.C. §§ 17921-17954 (2009). State's Administrative Policies and Procedures Statement No. 24, as modified from time to time during the term of this agreement, is incorporated by reference and made a part of this agreement as if fully set forth herein.

Privacy and Security Requirements

1. As a Business Associate, Consultant agrees:
 - a. to be subject to and follow all HIPAA provisions found in 45 CFR 160 and 45 CFR 164, including any potential penalties and/or other consequences relating to a failure to comply with such requirements.
 - b. to use or disclose any Protected Health Information (PHI) solely:
 - i. to meet its obligations in this and any other agreements with State;
 - ii. as required by applicable law, rule or regulation; and
 - iii. as permitted by HIPAA, and any amendments to HIPAA, and subject in particular to limits set forth in 45 CFR § 164.514 (e) (2) (limited data sets) and 45 CFR § 164.502(b) (minimum necessary disclosure requirements);
 - c. to return or destroy all PHI received from, created, or received on behalf of State, at termination of this agreement, or upon request of the DOH, whichever occurs first, or, if such return or destruction is not feasible, to extend the protections of this agreement to the information and limit further uses and disclosures of such PHI;
 - d. to ensure that its agents, including a subcontractor for which Consultant has received prior written consent from State pursuant to "Other Provisions" section G to whom it provides PHI received from or created by Consultant on behalf of State, agrees to the same restrictions and conditions applicable to Consultant, and agrees to implement reasonable and appropriate safeguards to protect all Electronic Protected Health Information (E PHI). Consultant also agrees to create and enforce business associate agreements (BAAs) with any and all subcontractors and to monitor such subcontractors for compliance with HIPAA provisions and to take reasonable steps to ensure that its employees' actions or omissions do not cause a breach of the terms of this agreement;
 - e. to notify State of any discovery or a breach of unsecured PHI as defined in the HITECH Act or accompanying regulations pursuant to the terms of 45 CFR § 164.410 and cooperate in State's breach analysis procedures, if requested. A breach shall be treated as discovered by Consultant as of the first day on which such breach is known, or, by exercising reasonable diligence, would have been known, and requires notification to State without unreasonable delay and in no

event later than thirty (30) calendar days after discovery of the breach. Such notification will contain the elements required in 45 CFR § 164.410; and

- f. to comply with all requirements pursuant to the HITECH Act and its implementing regulations, and all additional applicable requirements of the Privacy Rule, including those contained in 45 CFR §§ 164.502(e) and 164.504(e)(1)(ii). Consultant will not directly or indirectly receive remuneration in exchange for any PHI, subject to the exceptions contained in the HITECH Act and without a valid authorization from the applicable individual. Consultant will not engage in any communication which might be deemed to be “marketing” under the HITECH Act, and will comply with all applicable security requirements in 45 CFR §§ 164.308, 164.310, 164.312, and 164.316.
2. Notwithstanding the prohibitions set forth in this agreement, Consultant may use and disclose PHI if necessary for its proper management and administration or to carry out its legal responsibilities, provided the following requirements are met:
- a. the disclosure is required by law; or
 - b. reasonable assurances are obtained from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed. Such person shall notify Consultant of any instances of which it is aware in which the confidentiality of the information has been breached.

3. Availability of PHI

Consultant further agrees:

- a. to comply with any request for restrictions on certain disclosures of PHI pursuant to 45 CFR § 164.522, as agreed by State and with notice to Consultant;
- b. to make PHI available for purposes of accounting of disclosures, as required by 45 CFR § 164.528 and Section 13405(c)(3) of the HITECH Act; and
- c. to cooperate in providing any accounting required on a timely basis.

II. STATE

- A. State will pay, upon the State’s satisfaction that the payments are in accordance with all items of the contract, up to \$50,000.00. Expenditure claims are required prior to the initiation of any and all payments. Expenditure claim documentation may include: invoices for reimbursement; receipts of any goods or services purchased; purchase orders for supplies, equipment, etc.; and/or itemized budget details indicating how and the timeframe in which the funds will be used.

- B. State will not pay Consultant expenses as a separate item.
- C. TOTAL CONTRACT AMOUNT (Not to Exceed) \$50,000.00. Payment will be made consistent with SDCL Ch. 5-26.
- D. State will not be held liable for reimbursement of amounts shown on an itemized billing if not received within 30 calendar days from the close of the month being reported. However, the final invoice of the State of South Dakota fiscal year, ending every year on June 30th, shall be submitted no later than June 9th so payment may be made in the same Fiscal Year as the services are provided.
- E. State agrees to:
 - 1. Pay for services based on approved budget template submitted by the grant application.

III. OTHER PROVISIONS

- A. CHOICE OF LAW AND FORUM. The terms and conditions of this contract are subject to and will be construed under the laws of the State of South Dakota. The parties further agree that any dispute arising from the terms and conditions of this contract, which cannot be resolved by mutual agreement, will be tried in the Sixth Judicial Circuit Court, Hughes County, South Dakota.
- B. INTEGRATION. This contract is a complete version of the entire agreement between the parties with respect to the subject matter within this contract and supersedes all prior or contemporaneous written or oral understandings, agreements and communications between them with respect to such subject matter. This contract may be modified or amended only by a writing signed by both parties.
- C. TERMINATION: This contract may be terminated by either party hereto upon thirty (30) days written notice, and may be terminated by State for cause at any time, with or without notice.
- D. NOTICE: Any notice or other communication required under this contract shall be in writing and sent to the address set forth above. Notices shall be given by and to the State Contact Person on behalf of State, and by and to the Consultant Contact Person on behalf of Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.
- E. ASSURANCES: The Consultant agrees to abide by all applicable provisions of the following assurances: Lobbying Activity, Byrd Anti Lobbying Amendment (31 USC 1352), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 Code of Federal Regulations Part 38, the Violence Against Women Reauthorization Act of 2013, American Recovery and Reinvestment Act of 2009, and Section 106 (g) of the Trafficking Victims Protection Act of 2002, as amended (22 U.S.C. 7104) as applicable.
- F. RESTRICTION OF BOYCOTT OF ISRAEL: Pursuant Executive Order 2022-01, for contractors, vendors, supplies, or subcontracts with five (5) or more employees who enter into a contract with the State of South Dakota that involves the expenditure of one hundred thousand dollars (\$100,000) or more, by signing this contract Consultant certifies and agrees that it has not refused to transact business activities, have not terminated business activities, and have not taken other similar actions intended to limit its commercial relations, related to the subject matter of the contract, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for State to terminate this contract. Consultant further agrees to provide immediate written notice to State if during the term of the contract it no longer complies with this certification, and agrees such noncompliance may be grounds for contract termination.

- G. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:** Consultant agrees that neither Consultant, nor any of Consultant's principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by any Federal department or agency. Consultant will provide immediate written notice to the Department of Health, Division of Administration (600 East Capitol Avenue, Pierre, SD 57501 (605) 773-3361), if Consultant, or any of Consultant's principals, becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions involving Federal funding. Consultant further agrees that if this contract involves federal funds or federally mandated compliance, then Consultant is in compliance with all applicable regulations pursuant to Executive Order 12549, including Debarment and Suspension and Participants' Responsibilities, 29 C.F.R. § 98.510 (1990).
- H. **FUNDING TERMINATION:** This contract depends upon the continued availability of appropriated funds and expenditure authority from Congress, the Legislature or the Executive Branch for this purpose. This contract will be terminated for cause by State if Congress, the Legislature or Executive Branch fails to appropriate funds, terminates funding or does not grant expenditure authority. Funding termination is not a default by State nor does it give rise to a claim against State.
- I. **NONASSIGNMENT/SUBCONTRACTING:** Consultant shall not assign this contract, or any portion thereof, without the prior written consent of State. Consultant's assignment or attempted assignment of this contract, or any portion thereof, without State's prior written consent constitutes a material breach of contract. The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of State. Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage in a manner consistent with this Agreement. Consultant will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.
- J. **FEDERAL AND STATE LAWS:** Consultant agrees that it will comply with all federal and state laws, rules and regulations as they may apply to the provision of services pursuant to this contract, including the Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. §§ 12101-12213, and any amendment thereto, Section 306 of the Clean Air Act, and Section 508 of the Clean Water Act. Both parties further agree to provide services covered by this contract without regard to race, color, national origin, sex, age or disability as prohibited by state or federal law.
- K. **OWNERSHIP:** All reports, recommendations, documents, drawings, plans, specifications, technical data and information, copyrights, patents, licenses, or other products produced as a result of the services rendered under this contract, excluding medical records kept in the normal course of Consultant's business, will become the sole property of State. State hereby grants Consultant the unrestricted right to retain copies of and use these materials and the information contained therein in the normal course of Consultant's business for any lawful purpose. Either the originals, or reproducible copies satisfactory to State, of all technical data, evaluations, reports and other work product of Consultant shall be delivered to State upon completion or termination of services under this contract.
- L. **REPORTING OF PERSONAL INJURIES AND/OR PROPERTY DAMAGE:** Consultant agrees to report promptly to State any event encountered in the course of performance of this contract which results in injury to the person or property of third parties, or which may otherwise subject Consultant or State to liability. Reporting to State under this section does not satisfy Consultant's obligation to report any event to law enforcement or other entities as required by law.
- M. **SEVERABILITY:** In the event that any term or provision of this contract shall violate any applicable law, such provision does not invalidate any other provision hereof.
- N. **AUDIT REQUIREMENTS:**
(EXPENDING \$750,000 OR MORE)
A nonprofit subrecipient, (as well as profit hospitals) (Consultant), expending \$750,000 or more in one year in Federal awards, must have an annual audit made in accordance with 2 CFR Chapter I, Chapter II, Part 200, et al. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- All audits must be conducted by an auditor approved by the Auditor General to perform the audit. Approval may be obtained by forwarding a copy of the audit engagement letter to the Department of Legislative Audit, 427 South Chapelle, c/o 500 East Capitol, Pierre, SD 57501-5070. On continuing engagements, the Auditor General's approval should be obtained annually. The auditor must follow the Auditor General's guidelines when conducting the audit. The draft audit report must be submitted to the Auditor General for approval prior to issuing the final report. The auditor must file the requested copies of the final audit report with the Auditor General. Audits shall be completed and filed with granting agencies by the end of the ninth month following the end of the fiscal year being audited or 30 days after receipt of the auditor's report, whichever is earlier. If it appears that a required audit cannot be completed by the end of the ninth month following your fiscal year, you must request an extension from the federal agency for which the majority of federal expenditures relates.
- Failure to complete audit(s) as required will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completed satisfactorily.
- O. **FORCE MAJEURE:** Neither Consultant nor State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure". As used in this contract, "force majeure" means acts of God, acts of the public enemy, acts of the State and any governmental entity in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, or unusually severe weather.

- P. **CONTRACT ORIGINAL AND COPIES:** An original of this contract will be retained by the State Auditor's Office. A photocopy will be on file with the South Dakota Department of Health and a second original will be sent to Consultant.
- Q. **RECORD RETENTION/EXAMINATION:** Consultant agrees to maintain all records that are pertinent to this contract and retain them for a period of three years following final payment against the contract. State agrees to assume responsibility for these items after that time period. These records shall be subject at all reasonable times for inspection, review or audit by State, other personnel duly authorized by State, and federal officials so authorized by law.
- R. **LICENSING AND COMPLIANCE:** The Consultant agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this agreement. The Consultant will maintain effective internal controls in managing the federal award. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Consultant's failure to ensure the safety of all individuals served is assumed entirely by the Consultant.
- S. **CONFIDENTIALITY OF INFORMATION:** For the purpose of the sub-paragraph, "State Proprietary Information" shall include all information disclosed to the Consultant by the State. Consultant acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Consultant shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this contract; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this contract; (iii) make State Proprietary Information available to any of its employees, officers, agents or consultants except those who have agreed to obligations of confidentiality at least as strict as those set out in this contract and who have a need to know such information. Consultant is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Consultant shall protect confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to Consultant; (ii) was known to Consultant without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Consultant without the benefit or influence of the State's information; (v) becomes known to Consultant without restriction from a source not connected to the State of South Dakota. State's Proprietary Information shall include names, social security numbers, employer numbers, addresses and all other data about applicants, employers or other clients to whom the State provides services of any kind. Consultant understands that this information is confidential and protected under applicable State law at SDCL 1-27-1.5, modified by SDCL 1-27-1.6, SDCL 28-1-29, SDCL 28-1-32, and SDCL 28-1-68 as applicable federal regulation and agrees to immediately notify the State if the information is disclosure, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the contract except as required by applicable law or as necessary to carry out the terms of the contract or to enforce that party's rights under this contract. Consultant acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this contract for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meetings laws. If work assignments performed in the course of this Agreement require additional security requirements or clearance, the Consultant will be required to undergo investigation.
- T. **CONFLICT OF INTEREST:** Provider agrees to establish safeguards to prohibit employees or other persons from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain as contemplated by SDCL 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing. In the event of a conflict of interest, the Provider expressly agrees to be bound by the conflict resolution process set forth in SDCL 5-18A-17 through 5-18A-17.6.
- U. **RECYCLING.** State strongly encourages Consultant to establish a recycling program to help preserve our natural resources and reduce the need for additional landfill space.

The parties signify their agreement by signing below.

Lynne Valenti, Deputy Secretary Division of Healthcare Access & Quality and Health Protection Department of Health	Date	Consultant Signature	Date
		Print or Type Consultant Name	

Darcy McGuigan, Director Division of Finance Department of Health	Date	Consultant e-mail address
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State Contact Person: Marty Link Phone: 605-367-5372

Consultant Contact Person: Jason Culberson Phone: 605-394-4180

The following shall be completed by the Consultant:

Nonprofit Profit
 Consultant fiscal year beginning _____ and ending _____

The following shall be completed by the State:

MSA Account code 5 2 0 4 _____

Fund Source Name:	Fund Source Name:	Fund Source Name:
CFDA No: 93.391	CFDA No:	CFDA No:
Program: 0903006-R20RC	Program: 0901001-	Program: 0901001-
CO: 2018-Federal \$50,000.00	CO: 2018-Federal	CO: 2018-Federal
3047-Other	3047-Other	3047-Other
1000-General	1000-General	1000-General
2000 – Federal COVID	2000 – Federal COVID	2000 – Federal COVID

SDCL 1-24A-1 states that a copy of all consulting contracts shall be filed by the agency with the State Auditor within five days after such contract is entered into and finally approved by the contracting parties. For further information about consulting contracts, see the State Auditor's policy handbook.

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*, later, 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 Pub. 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 24% 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 instructions for Part II 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*, later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships*, earlier.

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*, later, 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 (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a 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 on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation
• Individual • Sole proprietorship, or • Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.	Individual/sole proprietor or single-member LLC
• LLC treated as a partnership for U.S. federal tax purposes, • LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or • LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.	Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)
• Partnership	Partnership
• Trust/estate	Trust/estate

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on 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. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

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.

If you are a single-member LLC that is disregarded as an entity separate from its owner, 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 *What Name and Number To Give the Requester*, later, 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. Go to www.irs.gov/Forms to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to www.irs.gov/OrderForms to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

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 item 1, 4, or 5 below indicates 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), ABLE accounts (under section 529A), 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) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor ²
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
6. Sole proprietorship or disregarded entity owned by an individual	The owner ³
7. 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:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity ⁴
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee

For this type of account:	Give name and EIN of:
14. 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
15. 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*, earlier.

*Note: The 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 Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic 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 report them at www.ftc.gov/complaint. You can contact the FTC at www.ftc.gov/idtheft or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see www.IdentityTheft.gov and Pub. 5027.

Visit www.irs.gov/IdentityTheft 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.