

CPEhr Independent Broker Agreement

This Broker Agreement (Non-exclusive) is made effective this ____ day of _____, 2009 by and between CPE HR, Inc., whose mailing address is, 9000 Sunset Blvd, Suite 900, West Hollywood, CA 90069 (hereinafter referred to as the "Company") and (broker name) (hereinafter referred to as the "Broker"), whose address is _____.

WITNESSETH

WHEREAS, the Company is engaged in the business of selling professional employer services;

WHEREAS, the Company and Broker desire to enter into a non-exclusive agreement under which Broker shall act as a broker for selling professional employer organization services on behalf of the Company;

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Broker Duties and Fees. With respect to the duties and compensation of the Broker, the Company and the Broker agree as follows:

1.1 The Broker hereby agrees to act under this non-exclusive agreement for the Company as a Broker to refer sales to the Company.

1.2 The Company hereby agrees to pay fees to the Broker in connection with sales of the services referred by the Broker in accordance with the terms which are attached hereto and incorporated herein as Exhibit A, as such terms and schedules may be amended or supplemented from time to time.

1.3 Broker shall be providing services on behalf of the Company in the capacity of an Independent Contractor. Inasmuch as the Broker will not be the Company's employee, the Company and its affiliates will not be required and shall not withhold taxes or other payments from the Broker's fees. Broker shall be required to make all required tax payments and withholdings for any fees received pursuant to this Agreement. Brokers agrees to defend indemnity and hold harmless Company in the event any taxing authority seeks taxes, interest, penalties or other assessment from Company in connection with any amounts paid pursuant to this Agreement.

Section 2. The Broker's Authority to Contract. The Broker shall have no authority to enter into and execute contracts binding upon the Company. Broker may not sell customer voluntary employee paid benefits, with the exception of 401K, Deferred Compensation Plans and Executive Benefits. All sales generated from referrals by the Broker shall be consummated solely between the customer and COMPANY, and the Broker shall not be a legal party thereto.

Section 3. The Broker's Agreement to Indemnify the Company for Unauthorized Acts. It is expressly understood and agreed by the parties hereto that the Broker is not an employee or agent of the Company and its affiliates. The Broker hereby agrees to indemnify and hold the Company and its Officers, Directors, Shareholders, Affiliates, Subsidiaries, Employees and Agents harmless from any and all claims,

obligations and/or exposures, including, by way of illustration and not limitation, any claims for personal injury, breach of contract, or fraud, that might arise out of the Broker's, errors, acts or omissions.

Section 4. The Company's Agreement to Indemnify the Broker. The Company agrees to indemnify and hold Broker harmless from any and all claims against the Broker that may arise out of any errors, omissions, or breaches by Company.

Section 5. Other Representations, Warranties and Covenants.

- A. The Broker covenants and agrees that he/she will not, whether directly or indirectly, make any misrepresentations or omissions of any acts with respect to the nature, price, or terms of sale of any of the services.
- B. Broker agrees that COMPANY retains all rights to the programs marketed by Company and agrees that all such programs, services, trademarks, methods, advertising materials, and products are the proprietary interest of and belong to COMPANY and shall be safeguarded through the exercise of due diligence and care, in the same manner in which Broker would safeguard his/her own proprietary interest. Broker further agrees that it shall never disclose, use or allow any other person or business to use any of the aforementioned items for any purpose other than for the benefit of the Company.
- C. Broker recognizes and acknowledges that: (a) in the course of this agreement it will be necessary for Broker to acquire information which could include, in whole or part, information concerning the Company's sales, sales volumes, sales methods, marketing methods, sales proposals, customers and prospective customers, identity of customers and prospective customers, including their names, addresses, contact information, financial information, preferences, demographic data, and information that reflects use of or interactions with the Company's products and services, identity of key personnel in the employ of customers and prospective customers, amount or kind of customer's contracts from the Company, the Company's and /or CPE's sources of supply, the Company's computer programs, system documentation, special hardware, products hardware, related software development, the Company's manuals, formulae, processes, methods, machines, compositions, ideas, improvements, inventions, pricing or pricing strategies, operational techniques, strategic plans, unpublished financial information, including information concerning revenues, profits and profit margins, or other confidential or proprietary information belonging to the Company or relating to the Company's affairs or belonging to a client or the client's affairs (collectively referred to herein as the "Confidential Information"); (b) the Confidential Information is proprietary and is not the property of the Broker; (c) the use, misappropriation, or disclosure of the Confidential Information would constitute a breach of trust and cause irreparable injury to the Company (d) it is essential to the protection of the Company's good will and to the maintenance of the Company's competitive position that the Confidential Information be kept secret and that Broker not disclose the Confidential Information to others or use the Confidential Information to Broker's own advantage or the advantage of others, (e) upon termination of this Agreement, the Broker returns all Confidential Information and Company property to the Company immediately.
- D. Company specifically reserves the right to:
 - (1) Discontinue or withdraw from the sale of any service or product being marketed;

- (2) Modify, amend or terminate any client contract or service fee rate;
 - (3) Cease doing business in any state or geographic location;
 - (4) Refuse to contract with any party;
 - (5) Change fee rates, policies or procedures, except that said changes shall not in any way reduce the Broker's fees on sales made prior to the effective date of said change, unless required by law.
- E. During the term of this Agreement or any extension thereof, and for a period of thirty-six (36) months after the termination of this Agreement, Broker shall not divert or attempt to divert any business of, or any customer, agent, Contractor, or employee of Company and/or CPE to any establishment, by direct inducement or otherwise. Broker may continue to represent their client by providing advice, guidance and placement of insurance products.
- F. In the event that suit is brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover as an element of its costs of suits and not as a cost of damages, a reasonable attorney fee to be fixed by the Court. The prevailing party shall be the party who is entitled to recover its costs of suit, whether or not the suit proceeds to final judgment.
- G. The term of this Agreement shall be for twelve (12) calendar months, and shall automatically renew for successive 12 month terms unless written notice is given to the other party 30 days in advance of the contract renewal date. The nondisclosure provisions of Section 5, B and C will survive the term of this agreement and into perpetuity.

Section 6. Right to Relief in the Event of Breach. The parties hereto expressly understand and agree that in the event of any breach or threatened breach of this Agreement by the Broker that is likely to cause the Company immediate and irreparable harm or injury, the Company shall have the right to have an injunction issued against the Broker in the event of such breach or threatened breach. In the event of any dispute concerning the rights or obligations under this Agreement, such right shall be enforceable in a court of equity by a decree of specific performance. The aforementioned remedies, however, shall be cumulative and not exclusive, and shall be in addition to any other remedy to which the parties may be entitled. If the Company should decide to proceed against the Broker in the Circuit or Chancery Court or the United States District Court of jurisdiction of the Company's home office, the Broker further agrees that such Court shall have jurisdiction over her, regardless where he may be at the time of commencement of such proceedings. All parties agree Company may bring suit as a third party beneficiary and may avail itself of all rights and remedies under this Agreement.

Section 7. Termination. This Agreement may be terminated before the expiration of the Term as follows: (i) by either party upon giving written notice to the other party of a material breach of this Agreement, which breach is not cured, if curable, within 14 days following the receipt of said notice; or (ii) automatically on the occurrence of a material breach by either party which is not curable; or (iii) death or disability exceeding sixty (60) days of Broker, or (iv) by either party upon 30 days' written notice to the other party; or (v) in the event either party becomes or is declared insolvent or bankrupt, is the subject of any proceedings relating to its liquidation, insolvency, or the appointment of a receiver or similar officer, makes an assignment for the benefit of all or substantially all of its creditors or enters into an agreement for the

composition, extension or readjustment of all or substantially all of its obligations, the other party may immediately terminate this Agreement.

Notwithstanding any relief available for breach under Section 6 above, it is agreed that \$25,000.00 is a reasonable liquidated damages provision for any breach of the nondisclosure provisions of Section 5, B and C.

Section 8. Notices. Each written notice provided for herein shall be given in writing and shall be mailed, in the case of a Company, to its principal offices and in the case of the individual, to his or her personal residence or to such other address as may be designated in writing by him or her. Such notice shall be considered given upon receipt when mailed by certified mail, return receipt requested, by telegram, or by personal delivery.

Section 9. Entire Agreement, Amendment. This Agreement together with the Exhibits attached hereto constitutes the entire understanding and agreement between the parties hereto with respect to the terms and conditions of the Broker's representation. This Agreement may be modified or amended only by a written modification or amendment signed by both the Broker and the Company.

Section 10. Assignability: Binding Effect. The Company may assign this Agreement to any successor to all or a part of its business or to any parent, subsidiary or affiliated company. Due to the nature of the services contemplated herein, the Broker shall have no right to assign his rights and/or obligations under this Agreement unless Broker first obtains the consent of Company, which consent shall not be unreasonably withheld.

Section 11. Governing Law: Partial Invalidity. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. If any provision of this Agreement shall be declared invalid under such laws, the validity of the other provisions shall remain in effect just as if the invalid portions had been omitted.

Section 12. Rule of Construction. Since both parties hereto have had the opportunity to have this Agreement reviewed by counsel, the rule of construction regarding ambiguities to be construed against the drafter will not be applicable and is hereby voided.

Section 13. Supremacy of the Agreement. This Agreement supersedes all previous agreements or understandings between the parties hereto, and all other such agreements or understandings, whether oral or written, shall become null and void as of the date of the execution hereof.

Section 14. Broker Compensation. The Broker shall be paid fees from the Company for referring qualified prospects which result in a fully executed, standard, without modification Client Agreement approved by Company. Fees on employer paid benefits shall be computed pursuant to the Schedule attached hereto as "Exhibit A". Broker compensation will be paid on the 20th of the month on revenues generated and received from prospects referred pursuant to this Agreement.

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed by its duly authorized officer, and the Broker has hereunto set his hand and seal, all as of the date(s) and year written below.

ACCEPTED AND APPROVED BY:

BY: _____
President, CPE HR, Inc.

Date

BY: _____
Broker

Date

Attachments:

CPE Word and Brown Agreement Addendum

EXHIBIT A

CPEhr Word & Brown Broker Agreement Addendum

Licenses: You represent and warrant that you hold a current license as an insurance agent specifically to transact Life and Disability insurance from the California Department of Insurance and will provide proof of such license to CPEhr upon request. You agree to notify us promptly if the California Department of Insurance, or any other governmental entity, institutes any disciplinary proceedings against you or your license. You acknowledge and agree to be appointed with Aetna, Kaiser, Reliance Standard and VSP, in accordance with the requirements of the California Insurance Code.

Law: You agree to comply with all applicable provisions of the California Insurance Code, the Knox-Keene Health Care Service Plan Act of 1975 (California Health and Safety Code section 1340, et seq.), the federal Health Insurance Portability and Accountability Act of 1996 (HIPPA), regulations promulgated by the Centers for Medicare and Medicaid, and the rules and regulations adopted there under, and all other applicable state, federal, and local laws and regulations each as may be amended from time to time, in carrying out this Agreement. You agree to file the reports required by law and pay any taxes or fees that may be charged on compensation paid to you by CPEhr. This Section shall survive termination of this Agreement for any reason.

Fees and Premium Checks: You agree that you and your associates are prohibited from receiving funds on our behalf, with the exception that you may receive funds in the form of checks payable to us if you forward the check to us no later than the close of business of the next business day. Commingling of funds is absolutely prohibited. If you receive funds on our behalf, you agree to (1) deposit such funds, within one business day of your receipt of the funds, in a trust account in a state or federal bank authorized to do business in California and insured by an appropriate federal insuring agency; (2) at all times segregate such funds from your and your associates' assets; and (3) transmit such funds to us within five (5) business days of your receipt of the funds. Should you or your associates maintain an account with a financial institution for funds of yours, your clients or ours; that account must be in your or our name and under your or our control.

E&O Liability Insurance: While this Agreement is in effect, you agree to maintain errors and omissions ("E&O") liability insurance, with a liability insurance carrier admitted in California, of at least \$1,000,000 per claim and \$1,000,000 aggregate coverage. This insurance must specifically cover your activities under this Agreement. You agree to submit proof of your E&O liability insurance coverage to CPEhr upon execution of this Agreement, and upon our request thereafter. You agree to make all reasonable efforts, consistent with the advice of your counsel and the requirements of your E&O liability insurance carrier, to coordinate the defense of all claims in which we are named as a defendant or could possibly be named. This Section shall survive termination of this Agreement for any reason.

Change in Broker of Record: For all Clients, CPEhr will honor the Clients written request on the first day of the month following CPEhr's receipt of the request, unless another future date is specified in the letter. The new Broker will be the Clients designated Broker of Record.

Loss of Compensation: You acknowledge and agree that our payment of any compensation to you will terminate immediately if any of the following events occur:

- a. You fail to immediately remit to CPEhr any funds received on our behalf;
- b. You shall at any time (after termination of this Agreement) be indebted to CPEhr for more than

- sixty (60) calendar days;
- c. You purport to act, or represent that you are entitled to act in any way on behalf of CPEhr;
 - d. Your license expires, lapses, or is terminated, or the California Department of Insurance takes any disciplinary action against your license;
 - e. You commit an act of fraud, dishonesty, or moral turpitude, or breach any fiduciary duty; or
 - f. You do anything that would have been a breach of the Agreement during the term of the Agreement.
- In addition, you acknowledge and agree that in the event of any of the foregoing, we may immediately terminate this Agreement.

BUSINESS ASSOCIATE OBLIGATIONS

In accordance with CPEhr obligations as a Covered Entity under HIPAA and its implementing privacy and security regulations ("HIPAA Privacy and Security Regulations"); the Cal. Civil Code § 56 *et seq.*, Cal. Civil Code § 1798.80 *et seq.* and Cal. Ins. Code § 791 *et seq.*, and other applicable federal and state laws related to privacy and security of Personal and Health Information, as each may be amended from time to time, you and your associates, as a Business Associate (as defined in HIPAA) of CPEhr shall be subject to and comply with the following terms:

Privacy of Personal and Health Information: "Personal and Health Information" or "PHI" means, in electronic or physical form, either medical information or individually identifiable information. "Medical information" is any information in possession of, obtained, or derived from a physician or other provider of health care, a healthcare service plan, or insurer regarding an individual's medical history, mental or physical condition, or treatment. Individually identifiable information is that which contains any element of personal identifying information sufficient to allow identification of the individual, such as the individual's name, address, electronic mail address, telephone number, or Social Security number, or other information, alone or in combination with other publicly available information, which reveals the Individual's identity.

Permitted Uses and Disclosures: You are permitted or required to use or disclose the minimum necessary PHI you create, receive, maintain, or transmit on behalf of CPEhr only (i) in order to provide those services set forth in this Agreement; or (ii), as necessary in order to perform your obligations under the Agreement, for your proper management and administration, or to carry out your legal responsibilities. If you disclose such PHI to an associate, agent, a subcontractor, or other third party, then you shall obtain reasonable written assurances from the associate, agent, subcontractor or other third party to which you disclose such PHI that the associate, agent, subcontractor or other third party agrees to implement reasonable and appropriate safeguards and shall: (i) hold such PHI in confidence and use or further disclose it only for the purpose for which you disclosed it to the associate, agent, subcontractor, or other third party or as required by law; and (ii) notify you (and you shall in turn promptly notify CPEhr) of any instance in which the associate, agent, subcontractor or other third party becomes aware that the confidentiality of such PHI was breached.

Prohibition on Unauthorized Use or Disclosure: You will neither use nor disclose PHI you create, receive, maintain, or transmit on behalf of CPEhr, except as permitted or required by this Agreement, as required by law, or as otherwise permitted in writing by CPEhr.

Regulatory Amendments: You shall comply with all applicable state laws and federal laws not preempted by the HIPAA Privacy and Security Regulations. Any amendments to HIPAA and other federal and state privacy or security laws shall be automatically included in this Agreement such that this Agreement remains in compliance with such amendments.

Information Safeguards: You shall develop, implement, maintain and use appropriate administrative, technical, and physical safeguards, in compliance with applicable state and federal laws, to preserve the integrity, confidentiality, and availability of, and to prevent unauthorized use or disclosure of, PHI created, received, maintained, or transmitted on behalf of CPEhr. You shall document and keep such safeguards current and, upon CPEhr's reasonable request, shall provide CPEhr with a copy of policies and procedures related to such safeguards.

PHI Access, Amendment, and Disclosures: You shall, upon CPEhr's reasonable request, permit within ten (10) business days of receipt of request by an individual (or the individual's personal representative) to inspect and obtain copies of any PHI about the individual which you created, received, maintained, or transmitted on behalf of CPEhr and that is in your custody or control. You shall, upon receipt of notice from CPEhr, promptly amend or permit CPEhr access to amend any portion of an individual's PHI which you created, received, maintained, or transmitted on behalf of CPEhr and that is in your custody or control. You shall also document each disclosure you make of an individual's PHI to a third party. For purposes of this Section, "disclosure" includes: (i) any legal disclosure; (ii) any illegal, inadvertent, wrongful, or negligent disclosure; and (iii) any instance in which access to an individual's PHI was provided to a third party.

Disclosure Reporting: You shall report any illegal, inadvertent, or wrongful disclosure of PHI, including any Security Incidents as defined herein, not permitted by this Agreement, or made in violation of the HIPAA Privacy and Security Regulations or applicable state law, to the CPEhr Privacy Official within twenty-four (24) hours after you or your associates learn of such non-permitted use, disclosure or Security Incident. A "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations of an information system. Upon termination of this Agreement, you shall provide to CPEhr one final report of any and all disclosures made of all individuals' PHI. Additionally, upon request, you shall forward to CPEhr a report of all disclosures you have made of PHI. All disclosure reports shall be in writing and shall include the affected individual's name, the person to whom the PHI was disclosed, what was disclosed, why the information was disclosed, and the date of such disclosure.

Designated Record Set Maintained For Covered Entity: For purposes of this Agreement, "Designated Record Set" means a group of records maintained by or for CPEhr comprising the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for CPEhr, or used, in whole or in part, by or for CPEhr to make decisions about individuals. For purposes of this Section, the term "record" includes any item, collection, or grouping of information that contains PHI, and is maintained, collected, used, or disseminated by or for CPEhr. Broker agrees that all PHI created, received, maintained, or transmitted on behalf of CPEhr shall be included in an individual's Designated Record Set. You shall maintain such Designated Record Set with respect to services provided to an individual under this Agreement, and shall allow such individual to access the Designated Record Set as provided in the HIPAA Privacy and Security Regulations.

Breach of Privacy Obligations: In furtherance of your obligation under Section above, you shall report to CPEhr any Security Incident, or other use, access or disclosure of PHI not permitted by this Agreement. Your report shall contain, at a minimum, (i) the nature of the non-permitted or violating use, access, disclosure or Security Incident; (ii) the PHI used or disclosed, or subject to the Security Incident; (iii) the name of the person who made the non-permitted or violating use, disclosure

or Security Incident, or received the non-permitted or violating disclosure; (iv) the corrective actions you took or shall take to prevent further non-permitted or violating uses, access, disclosures or Security Incidents; (v) the actions you took or shall take to mitigate any deleterious effect of the non-permitted or violating use, disclosure, access or Security Incident; and (vi), any such other information, including a written report, as CPEhr may reasonably request.

Minimum Necessary: You, in your performance of the functions, activities, services, and operations specified in this Agreement, shall make reasonable efforts to use, to disclose, and to request only the minimum amount of CPEhr PHI reasonably necessary to accomplish the intended purpose of the use, disclosure or request, except that you will not be obligated to comply with this minimum necessary limitations with respect to those exceptions specified in 45 C.F.R. § 164.502 (b)(2).

Continuing Privacy Obligation: Your obligation to protect the privacy of the PHI, including all copies of, and any data or compilations derived from, and allowing identification of any individual who is a subject of the PHI, you create, receive, maintain, or transmit on behalf of CPEhr shall be continuous and survive termination for any reason of this Agreement.

**Request for Taxpayer
 Identification Number and Certification**

Give form to the
 requester. Do not
 send to the IRS.

Print or type
 See Specific Instructions on page 2.

Name (as shown on your income tax return)	
Business name, if different from above	
Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code	
List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

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

Social security number
or
Employer identification number

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

Part II Certification

Under penalties of perjury, I certify that:

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

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

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

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

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.

Note. If 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 on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the 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 withholding on your share of partnership income.

The person who gives 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 is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (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 not subject to backup withholding, give the requester the appropriate completed Form W-8.

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, 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 the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

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

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

Limited liability company (LLC). Check the "Limited liability company" box only and enter the appropriate code for the tax classification ("D" for disregarded entity, "C" for corporation, "P" for partnership) in the space provided.

For a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line.

For an LLC classified as a partnership or a corporation, enter the LLC's name on the "Name" line and any business, trade, or DBA name on the "Business name" line.

Other entities. Enter your business name as shown on required federal tax documents on the "Name" line. 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 the "Business name" line.

Note. You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the business name, sign and date the form.