

Discount Merchant Application and Agreement



Organizational Structure: *SELECT ONE: ☐ Corp. ☐ LLC ☐ S- Corp. ☐ Partnership ☐ Sole Proprietor				
Firm's Legal Name (or Individual's Name if Sole Proprietorship)			D.B.A. (Business Trade Name)	
Name of President or CEO		Ownership %	Title	
Mailing Address		City	State	Zip
Business Operating Location		City	State	Zip
Business Phone #	Mobile Phone #	Email		
Date Established	State of Incorporation	Federal Tax Number		
Years in Business	Annual Sales	Business Web Site		

This Agreement is made by and between the company named above, the individual named above, located at the address listed above, being jointly and severally bound by the terms of this Agreement (collectively referred to as "Merchant"), and United Consumer Financial Services Company, 865 Bassett Road, Westlake, Ohio 44145 ("Company"). By signing below, Merchant hereby represents, acknowledges, agrees, authorizes and confirms the following:

1. Merchant is in the business of selling products and/or services ("Products") to consumers. Merchant permits consumer ("Buyer") to make a purchase of Products or Services ("Purchase") under the terms of a retail installment sales contract ("Contract"). Merchant enters into Contracts with individual Buyers and desires to offer to sell these Contracts to Company, and Company desires to purchase these Contracts as set forth in the Merchant Financing Agreement Terms and Conditions ("Agreement").
2. This Application and Agreement are subject to approval by the Company.
3. Upon approval of a Merchant's admittance into the Company's merchant program and acceptance of a contract by the Company, Merchant will be bound to the Terms and Condition of the Agreement with the Company without additional action.
4. Merchant Financing Agreement Terms and Conditions are attached to this document or available upon request from the Company.
5. Merchant's bank and any other provided references may release and/or verify information to the Company at any time.
6. If Merchant is a legal entity, the execution of this Application and the consummation of transactions contemplated hereby have been authorized by all necessary corporate action of the Merchant and do not and will not conflict with the organizational structure of Merchant.
7. The Company may email or phone the Merchant at email addresses and phone numbers collected herein or in the future regarding merchant program details or other matters, may use automatic systems, automatic telephone dialing systems or prerecorded voice when contacting Merchant even if Merchant is charged for the email or call under an email or phone plan.
8. I, the undersigned, certify that all information in this Application and Agreement is true and correct.

As referenced in Section 11 of the Merchant Financing Agreement Terms and Conditions, so your business can be paid via ACH, complete the required bank information below:

_____	_____	_____
(Bank Name)	(ABA Routing Number)	(Checking Account Number)

I, if signing in my individual capacity or if a legal entity, signed and executing as an officer of the business, submit this Application and Agreement to participate in Company's merchant program. I authorize Company to conduct any commercial and/or personal inquiries and obtain commercial and/or consumer credit reports (if not a legal entity) concerning this submission as Company deems necessary to verify the accuracy of information provided to Company. I understand the Company will use the information collected to confirm eligibility for entrance into the Company's merchant program.

Printed Name	Title
Date	Signature (Owner / Officer)

Discount Merchant: Supplemental Agreement

**Individual
Information****Must be completed by ALL BUSINESS OWNERS**

if an LLC, S-Corp., Partnership or Sole Proprietor.

Supplement: PRINCIPAL/PARTNER INFORMATION – LLC, S-Corp., Partnership or Sole Proprietor			
Name		Title	Ownership %
Residential Address		City	State
Date of Birth	Mobile Phone #	Email	
Additional Name		Title	Ownership %
Residential Address		City	State
Date of Birth	Mobile Phone #	Email	

NOTE: For additional business owners, submit their personal information on a separate sheet.

Supplement: FINANCIAL INFORMATION		
1. Have you filed bankruptcy in the last ten (10) years?	Yes ☐ No ☐	If yes, list county, state and status:
2. Do you have any outstanding Federal, State or Local Tax Liens?	Yes ☐ No ☐	If yes, explain details:
3. Have you been convicted of, or pled guilty or no contest to any crime in the last ten (10) years?	Yes ☐ No ☐	If yes, explain details:
4. Do you currently offer consumer financing with another finance company?	Yes ☐ No ☐	If yes, company name:

I am signing below in my individual capacity and submitting this Application and Agreement to participate in Company's merchant program. I authorize Company to conduct any commercial and/or personal inquiries and obtain commercial and/or consumer credit reports concerning this new Merchant Application and Agreement as Company deems necessary to verify the accuracy of information provided to Company. I understand the Company will use the information collected to confirm eligibility for entrance into the Company merchant program.

Date	Printed Name	Title	Signature Individually
Date	Printed Name	Title	Signature Individually

MERCHANT APPLICATION CHECKLIST**BEFORE APPLYING:**

- Ensure your credit file is accessible/not locked, so UCFS' credit check can be completed.
- Ensure your company registration is current and in good standing with your Secretary of State.

APPLYING:

- Initial the Exhibit page (fee structure) prior to returning by email or fax.
- ☐ Sign pages 1 and 2; initial all Terms & Conditions pages where indicated.
- ☐ Submit a photocopy of ALL business owners' driver's licenses (back and front)
- ☐ Ensure Federal Tax ID/Social Security # is entered. UCFS performs a credit check on new business partners.
- ☐ Ensure Annual Sales field is complete.
- ☐ Ensure bank account information is entered. UCFS funds businesses through ACH payment after a contract is complete so funds are received almost immediately – as opposed to a check by U.S. mail in 7-10 days.

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Merchant is in the business of selling products and/or services ("Products") to consumers, and Merchant offers financing to consumers ("Buyer") to make a purchase of Products ("Purchase") under the terms of a retail installment sales contract ("Contract"). Merchant enters into Contracts with an individual Buyer and desires to offer to sell these Contracts to United Consumer Finance Services Co., (hereinafter "Company") (hereinafter together Merchant and Company shall be known as "Parties"), and Company desires to purchase Contracts on the terms and conditions set forth herein.

Merchant acknowledges that he/she can do business with Company on either a Discount (Limited Recourse) or Reserve (Full Recourse) basis and has chosen a Discount basis for the Contracts under this Agreement.

In consideration of the above and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **OFFER TO SELL:** Merchant shall have the right, but not the obligation, to offer to sell to Company any or all Contracts which it enters into in the ordinary course of its business, as long as this Agreement is in effect. Merchant shall make an offer to sell the Contract by providing information regarding the Contract and Credit Application to Company ("date of offer to sell") over the telephone, through Company's Instant Credit facility or by providing by facsimile or such other secure electronic method as Company may designate (communication shall be referred to as electronic or electronically) to Company copies of the Contract and the credit application signed by the individual Buyer(s). Merchant shall provide Company with the right of first refusal on all Contracts submitted to Company by Merchant. If Company has not notified Merchant electronically by means of its Daily New Contract Report ("DNCR") of Company's acceptance of a particular Contract within four business days of the date of the offer to sell, Merchant may offer the Contract to other parties.

2. **PURCHASE OF CONTRACTS:** When Company notifies Merchant of its decision to purchase a Contract, Merchant shall promptly provide electronically to Company, if not already provided through Company's web portal, the executed Contract and credit application containing the original signatures of each Buyer and Merchant's salesperson or representative. Company and Merchant acknowledge and agree that the sale, assignment, transfer and/or negotiation of any Contract shall be effective on the later of the communication of the decision to purchase provided by Company electronically or the expiration of any time period during which such assignment, sale or transfer is prohibited by the Federal Trade Commission Trade Regulation Rule on Door-to-Door Sales or other applicable state or federal statute or regulation. Company agrees to pay to Merchant the purchase price, as defined in Section 5 below, less any deductions permitted by this Agreement, for each Contract it purchases. Company shall calculate the amount due to Merchant for Contracts purchased but not yet paid and shall pay such amount due to Merchant within two working days following finalization of required funding or program conditions. Payments of amounts due Merchant shall be made at least once each week, as determined by Merchant. Payments will not occur until any and all verification(s) and/or collection of data/information required prior to payment has been received.

3. **CREDIT AND FINANCING STANDARDS:** Company agrees to examine and consider each Contract offered to it, to conduct such investigation of the credit of the Buyer(s) as it deems appropriate and to notify Merchant of its decision to accept or reject the Contract. Notwithstanding Merchant's recourse liability, Company's decision to accept or reject each Contract shall be at Company's sole discretion.

4. **BLANKET ASSIGNMENT:** Merchant assigns to Company all Contracts that Company agrees to purchase and for which Company pays Merchant the Purchase Price. Merchant agrees not to engage another party in the purchase or assignment of any Contract for which Company has made an offer to buy as an A-Contract, as defined by Company from time to time, unless Company has withdrawn its offer to buy. Should Merchant sell a Contract to another party on which they have been paid by Company, Merchant shall unwind the transaction with the other party and Company's rights will be primary. For Contracts that Merchant assigns to Company and for which Merchant provides Company an electronic copy, Merchant agrees to maintain the original signed Contract for 25 months after the final entry on the account associated with the Contract except for contracts entered into in Colorado, Merchant agrees to maintain the Contract for four years after the final entry on the account and for contracts entered into in Kansas, Merchant agrees to maintain the original Contract for 36 months after closing if a later date than 25 months after final entry on the account.

5. **PURCHASE PRICE:** Company shall pay Merchant a purchase price for each Contract equal to the Amount Financed on the Contract less discount fees, deductions, other fees or charges, offsets, deferrals and other terms set forth in the Exhibits attached hereto and incorporated by reference herein. When, in Company's sole discretion, a Contract offered by Merchant has either an Amount Financed which exceeds Company's financing standards or entails a higher than acceptable level of risk, Company may purchase the Contract with a Deferred Payable and retain this portion of the purchase price in a Deferred Payable Account, as more fully described on the attached Exhibits.

6. **REPRESENTATIONS AND WARRANTIES:** As to each of the Contracts offered or sold to Company, Merchant represents and warrants all of the following:
- That it has full and perfect title to and right to convey the Contract free of any encumbrance, lien, or any interest of third parties, of any nature whatsoever;
 - That the Contract is the result of the sale of its own products or services or products and services it has a contractual right to sell;
 - That the products or services listed and described in the Contract have been unconditionally accepted by the Buyer;
 - That the Contract represents a purchase money security interest in the products sold;
 - That the Contract has been offered to Company within 5 days after the Contract was executed by the Buyer;
 - That the down payment is correctly stated in the Contract and has been received by Merchant in cash or its proper equivalent;
 - That all dates, dollar amounts, percentages and descriptions were completed on the Contract before it was executed by the Buyer;
 - That the Contract accurately and correctly reflects a genuine, bona fide sale and the price and terms thereof;
 - That all parties to the Contract were competent at the time it was executed;
 - That all signatures on the Contract are genuine;
 - That the Contract is the entire and sole contract between the Buyer and Merchant as to the sale evidenced thereby, excepting any warranty or service contract Merchant may have entered into in writing;
 - That there is no undisclosed agreement, concession or litigation of any nature affecting the Contract;
 - That the amount due from the Buyer under the Contract is not disputed or subject to any claim, set-off, deduction, credit, counterclaim, or defense in law or equity;
 - That the Contract is valid and enforceable according to its terms against all parties thereto;
 - That the Contract complies with any applicable installment sales law or other applicable state or Federal law or administrative regulation;
 - That there has been obtained in connection with the Contract a validly executed credit application; and
 - That the Buyer's information contained in the credit application and ACH authorizations are the Buyer and are accurate; and
 - If Merchant is in the funeral business, Merchant has complied with the Funeral Industry Practices Rule 16 C.F.R. 453 and provided all required oral and written disclosures thereto.

The representations and warranties contained in this Agreement shall apply to each Contract.

7. **COVENANTS OF MERCHANT:** As to each of the Contracts sold to Company, Merchant covenants and agrees that it will not:
- Make any agreement with the Buyer affecting Company's ability to collect and enforce the Contract, without the knowledge and written consent of Company;
 - Alter or attempt to alter the terms of any Contract which has been sold to Company and which Company still holds/owns or to which it has rights;
 - Exchange or substitute other products for those described in or relating to the Contract without Company's consent; nor
 - Offer or assign the Contract to any other person or entity.
 - Not make any agreement with the Buyer affecting Company without the knowledge and prior written consent of Company;
 - Immediately advise Company of its receipt of any amounts due and owing Company and immediately forward any such amounts to Company; and
 - Not sell, assign, or otherwise transfer any Contract which Company has communicated its intent to purchase, or any other contract or agreement relating to the same sale on which the Contract is based, to any other person or entity including, but not limited to, a financing entity other than Company.

As to each of the Contracts sold to Company, Merchant covenants and agrees that it will notify as soon as possible, but, no later than 5 business days, Company of:

- Sales Cancellation;
- Products returned to Merchant by Buyer;
- Products picked up by Merchant (or Merchant's representative) from Buyer;
- Disputes, regulatory or BBB complaints, claims and lawsuits;
- Communications and inquiries concerning the Contract; and
- Report and forward payments received from Buyer.

8. **REPURCHASE OBLIGATION:** Merchant agrees to repurchase from Company any Contract by posting to Company's DNCR report and the respective Merchant's DNCR, upon notice provided electronically or by mail, when any of the following conditions exist:

- Buyer has not made the first payment due under the Contract terms, as scheduled (excluding less than "A" quality contracts as defined by Company, from time to time);
- A representation, warranty, or covenant contained in this Agreement has been breached as to such Contract;
- A representation or warranty contained in the individual assignment of such Contract has been breached;

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d) Non-Credit Losses for which Merchant is fully and immediately liable including but not limited to: (1) contracts involving improper sales or solicitation practices or violation of any rules, regulations and laws; (2) product or services not delivered picked up or provided; (3) invalid or unenforceable Contracts; (4) sales involving any irregularities such as fraud, unfulfilled sales or service promises, misrepresentations, repossessed Product(s), Buyer payments received and not forwarded to Company, etc. and/or (5) late buyer's remorse.

The repurchase price shall be equal to the sum of: (a) the net balance due on such Contract on (i) the date on which the last installment was paid or (ii) the date of the Contract if no installment has been paid, and (b) the Finance Charge thereafter accrued to the date of repurchase, not to exceed three (3) months, plus the repurchase setup fee. Upon posting of the repurchase to the DNCR, and payment being made the repurchase will be effective. However, if the DNCR is negative, payment is deemed to not have been made to Company and repurchase is not effective.

For First Payment Defaults where a Merchant wants to avoid finance charges and setup fees (excluding Sales Cancellations), if Merchant pays Company in full from the DNCR on or before such Contract is 60 days past due (the Buyer's first two (2) payments are past due), then Company shall waive setup fee and any accrued finance charges and the repurchase price shall equal the amount originally paid by Company to Merchant for such Contract.

Company shall not be required to repossess or arrange for delivery to Merchant, or be liable for any costs thereof, of any products which are security for a Contract which is repurchased.

Upon repayment by Merchant and payment to Company, Company agrees to reassign, without recourse, the Contract to Merchant.

9. **SALE CANCELLATIONS:** Payment for sales cancellations are immediately payable to Company by Merchant. Cancellations for which Merchant is fully and immediately liable include, but are not limited to: (1) sales cancellations by either Buyer or Merchant; (2) product or services not delivered, picked up or provided; (3) pursuant to Merchant's or product manufacturer's return or cancellation policy, or otherwise. Merchant shall notify Company, in writing, by fax, secure message or email, as soon as possible but no later than five (5) calendar days from the earlier of Merchant's receipt of the cancellation notice from Buyer(s), the expiration date of the right to cancel on the cancellation notice or receipt of the product back from the Buyer.

For a cancellation settled within five (5) calendar days after Merchant was funded, Company may waive setup fee and any accrued finance charges and the repurchase price shall equal the amount originally paid by Company to Merchant for such Contract. This would be considered a "Flat Cancel".

If such notice is not provided and cancellation is not settled within the five (5) calendar days' notice period, payment to Company for the cancellation will follow normal processing and incur fees (setup fees and interest).

Company, for administrative efficiency, may post the amount due to Merchant's DNCR to be taken from Merchant's next pay.

Company is not required to repossess the Product or arrange for its delivery to Merchant, or assume liability for any costs thereof, of any Products that are security for a Contract that is a cancellation. Upon repayment by Merchant to Company, Company agrees to reassign without recourse the Contract to Merchant.

10. **COLLECTION OF CONTRACTS:** Company, itself or through its designees, shall have the sole right to make collections on all Contracts purchased and to notify each Buyer of Company's purchase of such Contract. Merchant shall promptly forward to Company all communications, inquiries, and remittances, which it may receive with reference to the Contracts purchased by Company.

In the event Merchant takes a payment via cash, check, credit card, debit card or otherwise, Merchant shall immediately notify Company and Company will reduce Merchant's DNCR by such amount. Should Merchant not have funds available to pay Company, Merchant shall remain fully liable for payment.

Additionally, Merchant hereby consents to and authorizes Company to endorse the name of Merchant upon any check or other form of payment which comes into the possession of Company in connection with such Contract, and Merchant hereby grants an irrevocable Power of Attorney to Company or its designee in connection with any such endorsements.

The obligations of Merchant under this Agreement shall not be affected by any collection action taken or attempted on such Contracts by Company, nor by any settlement, extension, forbearance, or variation in terms of a Contract, nor by the discharge or release of obligations of a Buyer under a Contract by operation of law or otherwise.

11. **AUTHORIZATION FOR ACH DEBITS OR CREDITS:** Merchant hereby requests and authorizes Company to initiate entries to debit or credit Merchant's checking or savings account, or any other such account Merchant has provided to Company in order for Company to make payments to Merchant or for Company to collect any amounts owed to it by Merchant, and as necessary, to initiate adjustments for any transaction credited or debited in error. This authority will remain in full force and effect until Company is paid in full for any and all outstanding obligations, or Company and Bank/Financial Institution have received written notification from Merchant of its termination at such time and such manner as to afford Company and Bank/Financial Institution a reasonable opportunity to act on it.

12. **ASSIGNMENT OF RIGHTS TO PROCEEDS:** Where Merchant has outstanding amounts owed to Company, Merchant hereby assigns its rights to any third party proceeds that could be used to reduce the amount owed by Merchant to Company.

13. **SECURITY INTEREST:** Merchant hereby grants Company a security interest in its current and future inventory as well as other assets or rights up to the amount owed by Merchant to Company. Merchant further agrees to execute any documents required to perfect Company's security interest.

14. **CONFIDENTIALITY:** Merchant shall hold in strict confidence all documents and information concerning this Agreement and any and all information shared by Company regarding its programs and services directly related to Merchant. No public disclosure, either written or oral, of the existence or terms of this Agreement shall be made by Merchant without the consent of Company. The foregoing provision shall not, however, be construed to prohibit Merchant from making any disclosures to any governmental authority that it is required to make by law or to prohibit Merchant from disclosing to its investor(s), lender(s), accountant(s), consultant, attorney and other parties involved with this Agreement such terms of this transaction which are customarily disclosed to them in connections with similar transactions. The obligation of Merchant under this Section shall survive termination of this Agreement.

15. **INDEMNIFICATION AND JOINT AND SEVERAL LIABILITY:** Merchant hereby agrees to indemnify and save Company harmless against any and all loss, liability, damage, cost, penalties, and expenses including, but not limited to, all attorneys' fees resulting directly or indirectly from Merchant's offer and sale of Contracts to Company under this Agreement, including, but not limited to, claims relating to any actions or omissions by Merchant, its agents, employees or representatives, warranty claims, products liability claims, taxes and assessments of any nature and kind levied on or based on the value, use, operation, transfer or sale of products and/or services which are the subject of the Contracts, and claims that Merchant, and/or its agents, employees or representatives, have violated any applicable local, state or federal laws, regulations or rules.

All parties to this Agreement expressly acknowledge and agree that the responsibilities, obligations, liabilities and indemnification of Merchant under this Agreement applies jointly and severally to all parties referred to as Merchant under this Agreement. Merchant shall notify Company in writing at least ten (10) days prior to the effective date if Merchant changes or modifies its form, its name or name under which it is doing business, or its ownership, as provided in this Agreement, and shall provide any documents or information Company may require as a result.

16. **IDENTITY THEFT PREVENTION:** Merchant confirms it has developed and implemented an Identity Theft Prevention Program that complies with the federal Fair and Accurate Credit Transactions Act ("FACTA") for combating identity theft in connection with Buyers entering into Contracts sold to Company. This program includes reasonable policies and procedures for detecting, preventing and mitigating identity theft. Merchant agrees to defend and indemnify Company, its affiliates, their officers, employees agents and directors against any loss, damage, expense or liability (including reasonable attorneys' fees and costs) resulting from Merchant's failure to comply with the final rules on identity theft red flags adopted under FACTA and any amendments or modifications to those rules.

17. **PRIVACY:** "Nonpublic personal information" has the meaning set forth in Section 509 of the Federal Gramm-Leach-Bliley Act ("GLB Act"). The fact that any person is a Buyer on a Contract sold to Company hereunder, and any information relating to such credit relationship or credit application, and any list of such Buyers, shall be considered nonpublic personal information ("NPI").

- (a) Merchant shall use NPI that relates to Company's customers (Buyers) and consumers, as defined in the GLB Act, solely for the purpose of performing its duties and obligations specified in this Agreement and only in accordance with the GLB Act and applicable law;
- (b) Merchant shall maintain the confidentiality of all NPI by establishing and utilizing physical, electronic and administrative procedures to protect the security and confidentiality of the information, including the implementation of an information security program;
- (c) Merchant shall limit access to NPI to only those authorized employees with a reasonable need to access said information;

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- (d) Merchant shall not permit any disclosure, use, dissemination or duplication of the NPI to or by any other person or entity unless authorized in writing by Company, however, this restriction shall not apply to information that Merchant obtains from a Buyer as part of Merchant's sale and/or credit transaction with a Buyer and that does not indicate whether any Contract that Buyer entered into was sold to Company;
- (e) Merchant shall not use any list of Buyers entering into Contracts sold to Company for marketing or cross-selling, however, this restriction shall not apply to a list of Buyers that made Purchases from Merchant and entered into Contracts with Merchant that does not indicate whether such Contracts were sold to Company.

18. ELECTRONIC SIGNATURES AND DOCUMENTS: This Agreement and any modifications, assignments or amendments to this Agreement may be signed electronically by either party and such electronic signature will have the same force and effect as a physical signature. All references in this Agreement to an original signed contract or a signed document may be satisfied by a secure unalterable electronic copy of the contract or document electronically or physically signed and such copy shall have the same force and effect as if it were the signed original. All signed Contracts, in the possession of Company, shall be considered originals.

19. REASSIGNMENT: When a Contract is reassigned by Company to Merchant under the terms of this Agreement or otherwise, the parties agree that such reassignment shall be without recourse and without any warranty or representation of any nature whatsoever. The parties intend that the legal effect of a reassignment is to return the parties to the same position as if there had never been an assignment of such Contract to Company; provided that such reassignment shall not act as a waiver of any additional or other rights Company may have hereunder or at law or in equity. The reassignment will be effective upon the posting of the repurchase to the Daily New Contract Report, which shall serve as notice.

20. AMENDMENTS: The parties agree and acknowledge that Company, at its sole discretion, may revise these Terms and Conditions along with the accompanying Exhibit(s), (together Revisions) from time to time. Company will deliver Revisions to Merchant by regular mail or electronically in advance of the effective date of the amendment. If Merchant continues to offer to sell Contracts to Company pursuant to this Agreement on and after the effective date of a revision, Merchant will be deemed to have accepted Company's offer to amend and this Agreement will be amended accordingly. Merchant may terminate this Agreement on the effective date of a revision by notifying Company in writing within three business days after the effective date, provided Merchant has not offered to sell Contracts to Company on or after the effective date. Except as set forth above, this Agreement may not be modified, altered or amended in any manner whatsoever except by a further agreement in writing signed by all of the parties hereto.

21. TERMINATION: Except as otherwise expressly set forth, either party may terminate this Agreement at any time upon written notice to the other party. Termination of this Agreement for any reason shall not affect any right, obligation, or interest of either party relating to any Contract purchased pursuant to this Agreement by Company prior to the termination. Merchant will remain liable for any obligations following termination until such obligations are fully satisfied.

22. ADDITIONAL PROVISIONS:

- (a) It is understood and agreed, any law, custom or usage to the contrary notwithstanding, that Company shall have the right at all times to enforce the covenants and provisions of this Agreement in strict accordance with the terms hereof, notwithstanding any conduct or custom on the part of Company in refraining from so doing at any time or times; and further that the failure of Company at any time or times to enforce its rights under said covenants and provisions strictly in accordance with the same, shall not be construed as having in any way or manner modified, altered or waived the same.
- (b) The rights and remedies given to Company herein shall be cumulative and in addition to the other rights and remedies it may have by contract, statute or rule of law, and the exercise of any such right or remedy shall not exhaust the same or be deemed a waiver of any other right or remedy.
- (c) If Merchant is in Default of any Contractual obligation, Company may offset any amounts owed to Company, as a result of Merchant's Contractual obligations, against any amounts otherwise due and owing to Merchant under this Agreement and any other agreement or transaction between the Parties until all such amounts owed to Company have been satisfied.
- (d) This Agreement shall be binding upon and inure to the benefits of the heirs, executors, administrators, successors and permitted assigns of the parties hereto.
- (e) This Agreement contains all of the understandings, promises and undertakings of the parties to this Agreement. The terms and conditions of this Agreement shall govern the purchase of any Contracts by Company from Merchant from the date of this Agreement signed by each party. Any and all prior written Merchant Agreements between Company and Merchant shall terminate on the date of this Agreement, provided that any such Merchant Agreements shall

- continue to govern the parties' obligations with respect to any Contracts purchased by Company from Merchant while such Agreement was in effect.
- (f) If any part of this Agreement is declared invalid, illegal and/or unenforceable, it shall be deemed separable and the remainder of the Agreement shall continue in full force and effect, and in lieu of such invalid, illegal and/or unenforceable provision, there shall be added automatically a provision as similar in terms to such invalid, illegal and/or unenforceable provision as may be possible which is valid, legal and enforceable. All words used shall be understood and construed to be of such gender or number as the circumstances may require. Paragraph headings are for convenient reference only and are not to be interpreted as a complete summary of each Paragraph.
- (g) Merchant hereby expressly authorizes Company to communicate at any time and from time to time with any of Merchant's business references, credit information sources, finance companies, banking institutions, suppliers, associates, contacts, representatives, Buyer(s) and/or employees concerning Merchant's activities which relate to matters relevant to this Agreement and Merchant hereby expressly authorizes such persons or entities to release any information concerning such activities.
- (h) The relationship established by this Agreement is that of assignor and assignee, and all obligations to be performed by Merchant under this Agreement shall be performed by it as an independent contractor. Nothing in this Agreement or otherwise shall be construed as constituting Merchant as an agent, employee or legal representative of Company for any purpose whatsoever. Except to the extent otherwise required by law, other than income to Company and taxes as pertain thereto, Merchant accepts full responsibility for all applicable tax reporting, obligations, payments and remittances arising out of or occurring as consequence or result of this Agreement or any Contracts relating to or subject to this Agreement.
- (i) The parties agree and acknowledge that each will accept a legible standard-sized facsimile or photocopy of an executed version of this Agreement and/or any Amendment to this Agreement for any purpose for which the original is otherwise required.
- (j) The parties hereto acknowledge that this Agreement is entered into in and under, and the transactions contemplated herein will be undertaken in reliance on, the laws of the State of Ohio and that such transactions including but not limited to the sale of Contracts to Company and reassignment of Contracts to Merchant will occur in the State of Ohio. This Agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by and construed and interpreted in accordance with the laws of the State of Ohio.

23. ARBITRATION READ THIS SECTION CAREFULLY BECAUSE IT REQUIRES THE PARTIES TO ARBITRATE THEIR DISPUTES AND LIMITS THE MANNER IN WHICH MERCHANT CAN SEEK RELIEF FROM Company. For any dispute with Company, Merchant agrees to first contact Company at info@ucfs.net and attempt to resolve the dispute informally. In the event that the Parties have not been able to resolve said dispute within sixty (60) days, the Parties agree to resolve any claim, dispute, or controversy (excluding any claims for injunctive or other equitable relief as provided below) arising out of or in connection with or relating to this Agreement, or the breach or alleged breach thereof (collectively, "Claims"), by binding arbitration by JAMS, Inc. ("JAMS"), under the Optional Expedited Arbitration Procedures then in effect for JAMS, except as provided herein. The arbitration will be conducted in Cuyahoga County, Ohio, unless the Parties agree otherwise. The Parties will be responsible for paying any JAMS filing, administrative and arbitrator fees in accordance with JAMS rules, and the award rendered by the arbitrator shall include costs of arbitration, reasonable attorneys' fees and reasonable costs for expert and other witnesses. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Nothing in this Section shall be deemed as preventing Company from seeking injunctive or other equitable relief from the courts as necessary to prevent the actual or threatened infringement, misappropriation, or violation of data security, Intellectual Property Rights or other proprietary rights.

24. CLASS ACTION/JURY TRIAL WAIVER

WITH RESPECT TO ALL PERSONS AND ENTITIES, REGARDLESS OF WHETHER THEY HAVE OBTAINED OR USED THE SERVICE FOR PERSONAL, COMMERCIAL OR OTHER PURPOSES, ALL CLAIMS MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION OR OTHER REPRESENTATIVE PROCEEDING. THIS WAIVER APPLIES TO CLASS ARBITRATION, AND, UNLESS COMPANY AGREES OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS. MERCHANT AGREES THAT, BY ENTERING INTO THIS AGREEMENT, MERCHANT HEREBY WAIVES THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION, OR OTHER REPRESENTATIVE PROCEEDING OF ANY KIND.

**Request for Taxpayer
Identification Number and Certification**

Go to www.irs.gov/FormW9 for instructions and the latest information.

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

Before you begin. For guidance related to the purpose of Form W-9, see *Purpose of Form*, below.

Print or type. See Specific Instructions on page 3.	1 Name of entity/individual. An entry is required. (For a sole proprietor or disregarded entity, enter the owner's name on line 1, and enter the business/disregarded entity's name on line 2.)	
	2 Business name/disregarded entity name, if different from above.	
	3a Check the appropriate box for federal tax classification of the entity/individual whose name is entered on line 1. Check only one of the following seven boxes. ☐ Individual/sole proprietor ☐ C corporation ☐ S corporation ☐ Partnership ☐ Trust/estate ☐ LLC. Enter the tax classification (C = C corporation, S = S corporation, P = Partnership) Note: Check the "LLC" box above and, in the entry space, enter the appropriate code (C, S, or P) for the tax classification of the LLC, unless it is a disregarded entity. A disregarded entity should instead check the appropriate box for the tax classification of its owner. ☐ Other (see instructions) _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from Foreign Account Tax Compliance Act (FATCA) reporting code (if any) _____ (Applies to accounts maintained outside the United States.)
	3b If on line 3a you checked "Partnership" or "Trust/estate," or checked "LLC" and entered "P" as its tax classification, and you are providing this form to a partnership, trust, or estate in which you have an ownership interest, check this box if you have any foreign partners, owners, or beneficiaries. See instructions ☐	
	5 Address (number, street, and apt. or suite no.). See instructions.	Requester's name and address (optional)
	6 City, state, and ZIP code	
	7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

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

Note: If the account is in more than one name, see the instructions for line 1. See also *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number											
				-				-			
or											
Employer identification number											
					-						

Part II Certification

Under penalties of perjury, I certify that:

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

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

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.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

What's New

Line 3a has been modified to clarify how a disregarded entity completes this line. An LLC that is a disregarded entity should check the appropriate box for the tax classification of its owner. Otherwise, it should check the "LLC" box and enter its appropriate tax classification.

New line 3b has been added to this form. A flow-through entity is required to complete this line to indicate that it has direct or indirect foreign partners, owners, or beneficiaries when it provides the Form W-9 to another flow-through entity in which it has an ownership interest. This change is intended to provide a flow-through entity with information regarding the status of its indirect foreign partners, owners, or beneficiaries, so that it can satisfy any applicable reporting requirements. For example, a partnership that has any indirect foreign partners may be required to complete Schedules K-2 and K-3. See the Partnership Instructions for Schedules K-2 and K-3 (Form 1065).

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS is giving you this form because they