

INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT (“Agreement”) is made and entered into as of the __ day of _____, 20__, by and between _____, an _____ limited liability company (“We,” “Us,” or “Company”) and _____ (“You” or “Contractor”) (Collectively, the “Parties”) with a business address of _____ (the “Location”).

WITNESSETH, that:

WHEREAS, the Company has entered into a franchise agreement (“Franchise Agreement”) with VBS Franchising, LLC, an Ohio limited liability company (“VBS”); and

WHEREAS, the Company desires to hire Contractor for its tax preparation services at the Location upon the terms and conditions hereinafter set forth in this Agreement; and

WHEREAS, Contractor agrees to accept role as an independent contractor with the Company upon the terms and conditions hereinafter set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises set forth herein above and the mutual promises herein contained, the parties agree as follows:

1. **Engagement.** We shall engage you as an independent contractor at the Location with such duties and responsibilities as are set forth herein and as are from time to time prescribed by us, and you hereby accept and agree to such engagement, on the terms and conditions hereinafter set forth.

2. **Purpose.** The purpose of this Agreement is for Contractor to offer income tax preparation, income tax filing, and refund fulfillment services (the “Services”) to its existing customers with Company’s assistance using financial products and services offered through VBS. Notwithstanding the foregoing, it is expressly understood that Contractor is offering the Services on behalf of the Company and utilizing its Location as a customer data entry site. Contractor is not permitted to prepare or file tax returns on behalf of customers.

3. **Authority and Relationship of the Parties.** The Parties to this Agreement recognize that this Agreement does not create any actual or apparent agency, partnership, franchise, or relationship of employer and employee between the parties. The relationship created by this Agreement is that of an independent contractor, and no fiduciary or other special relationship is created or intended. You are not authorized to enter into or commit the Company to any agreements, and you shall not represent yourself as the agent or legal representative of the Company. You must indicate clearly the independent ownership of your business in all public records and in all of your dealings with third parties.

4. **Term.** The term of this Agreement shall commence on __, _____ 20__ (the “Commencement Date”) and will expire on April 30, 20__; provided however, that you are only authorized to offer the Products and Services during the months of December through April during the term. The Parties will have the mutual option to renew the Agreement for successive one (1) year periods on the same terms and conditions set forth herein.

5. **Duties.**

a. **Company Duties.** We shall provide the necessary software, support, access to proprietary materials and training required to successfully offer the Services. In addition, we will provide an

IRS Electronic Filer Identification Number (“EFIN”) for use by you. The EFIN will be in the name of the Company to be used solely at the Location.

b. **Contractor Duties.** You agree to target your existing customers/clients for the Services and shall provide the necessary hardware (i.e. computer, printer, etc.) and utilities (i.e. electricity, telephone, internet connection, etc.) to properly run software to support the Services. Either the Company or an independent tax preparer will sign the tax returns as the paid tax preparer using their own Personal Tax Identification Number (“PTIN”) or social security number as identification. We will be responsible for obtaining PTINs from the IRS.

6. **Open Territory System.** Except as described below, there are no restrictions or limitations as to the customers you may market or service. You may face competition from other contractors, VBS company-owned outlets, VBS franchisees, or from other channels of distribution or competitive brands that VBS controls or that are otherwise affiliated with VBS.

7. **Compensation.** You will receive commission payments based on a percentage of the gross revenues from the sale of Services, according to the schedule below. Commissions will be made on a bi-weekly basis, beginning February 1, 20___. We will provide access to an online database for accurate accounting purposes.

<u>Number of Returns Filed By Contractor</u>	<u>Percentage of Gross Revenues to be Paid</u>
1 to 25	30%
26 to 50	35%
51 to 75	40%
76 to 100	45%
101 to 125	50%
126 +	60%

This sliding scale is not retroactive to return #1 so that you receive 30% of gross revenues for the first tier of returns, 35% for the second tier, etc. You acknowledge that, except as provided in this Section 7, you shall not be entitled to, and we shall not be obligated to pay, any monies or other compensation for the Services provided and rights granted under this Agreement.

8. **Costs and Expenses.** We will be financially responsible for all costs associated with software, franchise fees, corporate support, and tax preparation and software training. You will be financially responsible for all costs associated with labor, marketing materials, equipment, and communication expenses (i.e. phone, internet, etc.).

9. **Right of Publicity.** We and VBS will have the right to photograph you and your personnel to use the photographs in any of our publicity or advertising programs. You will cooperate in securing the photographs and the consents of any individuals pictured.

10. **Contractor Restrictions.**

a. **Approved Products, Services and Suppliers.** You will follow the standards and specifications that we or VBS establishes from time to time with regard to products and services used in the operation of the VBS franchised system. We or VBS will have the right to require you to utilize any product or service used in the operation of the VBS franchised system. We or VBS may designate a single supplier for any product, service, supply or material. You will use only the products and the approved suppliers of those products as we or VBS may designate.

b. Laws, IRS Rules and Regulations.

i. E-Filing. You are not permitted to prepare or file tax returns on behalf of customers. Notwithstanding the foregoing, you must adhere to all Internal Revenue Service (IRS) Code, Rules and Regulations, including, without limitation, the requirements described in IRS Publication 1345 (Handbook for Authorized IRS e-file providers).

ii. Customer Data. You acknowledge and agree that you will comply with all applicable use and disclosure laws regarding the protection of customer information, including Internal Revenue Service (IRS) Regulation 7216, which regulates the use and disclosure of a tax customer's information for non-related financial products. You hereby agree to have your customers sign all necessary documentation, as we or VBS may set forth in written or electronic communications from time to time in order to comply with all applicable use and disclosure laws.

iii. Federal, State, and Local Laws. You must comply with all applicable Federal, state and local laws, regulations, and ordinances. This includes all Federal, state and local laws and regulations governing the provision of tax preparation services and/or refund anticipation loans ("RALs"). You also are required to comply with all Federal, state and local laws and regulations which apply generally to all businesses, which include, without limitation, zoning laws, consumer protection laws, false advertising and deceptive trade practice laws, state wage and hour laws, the Americans with Disabilities Act, employment laws, the Patriot Act, Gramm-Leach-Bliley Act, and the Occupational Safety and Health Act.

11. Confidential Information.

a. VBS possesses (and will continue to develop and acquire) certain confidential information, some of which constitutes trade secrets under applicable law (the "Confidential Information"), relating to tax preparation, tax filing, and refund fulfillment services, including (without limitation): (i) training and operations materials and manuals; (ii) methods, formats, specifications, standards, systems, procedures, sales and marketing techniques, knowledge, and experience used in the operating a business which offers tax preparation, tax filing, and refund fulfillment services; (iii) methods of operations for providing products and services and for preparing and processing income tax returns; (iv) marketing and advertising programs; (v) knowledge of specifications for and suppliers of refund fulfillment products, such as refund anticipation loans, and other products and supplies; (vi) any computer software or similar technology which is proprietary to the VBS franchised system, including, without limitation, digital passwords and identifications and any source code of, and data, reports, and other printed materials generated by, the software or similar technology; (vii) customer lists and other data and information regarding customers; and (viii) graphic designs and related intellectual property. If we include any matter in Confidential Information, anyone who claims that it is not Confidential Information must prove that one of the exclusions provided in this paragraph is fulfilled.

b. You acknowledge and agree that you will not acquire any interest in Confidential Information, other than the right to use it as we specify during this Agreement's term, and that Confidential Information is proprietary and is disclosed to you only on the condition that you agree, and you in fact do agree, that you: (i) will not use Confidential Information in any other business or capacity; (ii) will keep each item deemed to be part of Confidential Information absolutely confidential, both during this Agreement's term and then thereafter for as long as the item is not generally known in the tax preparation industry; (iii) will not make unauthorized copies of any Confidential Information disclosed via electronic medium or in written or other tangible form; and (iv) will adopt and implement reasonable procedures to prevent unauthorized use or disclosure of Confidential Information, including, without limitation, restricting its disclosure to personnel and using non-disclosure and non-competition agreements with those having access to Confidential Information.

c. All data, customer information, Confidential Information, and other information you provide to us or that is generated pursuant to your role as a Contractor is and will be owned exclusively by VBS, and they will have the right to use such data and information in any manner that they deem appropriate without compensation to you. Copies and/or originals of such data and information must be provided to us or VBS upon our request. We have been granted the right by VBS to license the use of such data back to you, at no additional cost, solely for the term of this Agreement and solely for your use in connection with your role as a Contractor under this Agreement.

12. **Covenants Not to Compete.**

a. You acknowledge that we have engaged you in your role as Contractor in consideration of and reliance upon your agreement to deal exclusively with us. You further acknowledge that it would not be possible for us to protect the goodwill, unique qualities, trade secrets and Confidential Information against unauthorized use or disclosure if you hold an interest in a Competitive Business. The term "Competitive Business" means (i) any business, other than business originating from this Agreement, offering income tax preparation, income tax filing, and refund fulfillment services, or (ii) any business granting franchises or licenses to others to operate the type of business or businesses specified in subparagraphs (i).

b. You therefore agree that, during this Agreement's term and for a period of two (2) years after the termination or expiration of this Agreement, you, any of your owners, and any of your or your owners' immediate family members ("immediate family members" will include spouses, domestic partners, children, parents, and siblings) for yourself (or themselves), or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, limited liability company, or other entity, will not: (i) be, or perform services as, a director, officer, manager, employee, consultant, representative, or agent for a Competitive Business within the United States wherever located or operating; (ii) own, maintain, operate, engage in, franchise or license, or have any direct or indirect controlling or non-controlling interest as an owner (whether of record, beneficially, or otherwise) in a Competitive Business within the United States wherever located or operating; (iii) divert or attempt to divert any business, business opportunity, or customer to a Competitive Business; or (iv) engage in any other activity which might injure the goodwill of the VBS franchised system. You agree to obtain similar covenants from your personnel, including but not limited to officers, directors, managers and other employees having access to Confidential Information or immediate family members. In addition, during the two (2) year period referred to above, you or your owners may not solicit any of our employees or employees of any other then-operating VBS Franchise on behalf of any Competitive Business within the United States wherever located or operating.

c. These restrictions also apply after transfers and assignments, as provided in Section 13. If any person restricted by this Section 12 refuses voluntarily to comply with these obligations, the two (2) year period for that person will commence with the entry of a court order enforcing this provision. You and your owners expressly acknowledge that you possess skills and abilities of a general nature and have other opportunities for exploiting these skills. Consequently, our enforcing the covenants made in this Section 12 will not deprive you of your personal goodwill or ability to earn a living.

13. **Successors and Assigns.** The rights, benefits, duties and obligations under this Agreement shall inure to and be binding upon us, our successors and assigns and upon you and your legal representatives and heirs. It is specifically understood that this Agreement constitutes a personal service contract which may not be transferred or assigned by you. We may assign any of our rights and obligations hereunder to any subsidiary or affiliate of the Company or to a successor or surviving company resulting from a merger, consolidation, sale of assets or stock, or other corporate reorganization, on condition that the assignee shall assume all of our obligations hereunder; and it is agreed that such successor or surviving company shall

continue to be obligated to perform the provisions of this Agreement. Furthermore, we may assign any of our rights and obligations hereunder to VBS or any other franchisee of VBS on condition that the assignee shall assume all of our obligations hereunder; and it is agreed that such assignee shall continue to be obligated to perform the provisions of this Agreement.

14. **Termination.** Either party may terminate this Agreement without or without cause upon seven (7) days written notice to the other party.

15. **Obligations Upon Termination or Expiration.** Upon the termination or expiration of this Agreement for any reason, all of your rights under this Agreement will terminate and you will (i) continue to comply with the non-competition and confidentiality provisions of Sections 11 and 12 of this Agreement and all other provisions of this Agreement that by their nature survive the term of this Agreement; (ii) cease to hold yourself out in any way as a Contractor for the Company or to do anything which would indicate any relationship between you and us exists; and (iii) remove all signs, emblems and displays identifying you as a Contractor for Company or as being associated with us or VBS. You will complete all these modifications within seven (7) days after the termination or expiration of this Agreement.

16. **Notices.** All notices or other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand delivery, overnight delivery service, charges prepaid, or by certified mail, return receipt requested (mailed notices shall be deemed to have been given one (1) day after the date sent) as follows:

To the Company:	_____ [Entity Name]
	_____ [Business Address]
	_____ [City, State, and Zip]
	_____ [Manager or Attention To]
To Contractor:	_____ [Entity Name]
	_____ [Location Address]
	_____ [City, State, and Zip]
	_____ [Manager or Attention To]

or in any case to such other address or addresses as hereafter shall be furnished as provided in this Section 16 by any of the Parties hereto to the other.

17. **Non-Waiver.** The failure of either party to insist in any one or more instances upon performance of any of the terms or conditions of this Agreement shall not be construed as a waiver or a relinquishment of any right granted hereunder, or the future performance of any such term, covenant or condition, but the obligations of either party with respect thereto shall continue in full force and effect.

18. **Survival.** The provisions of this Agreement which, by their terms, survive the termination or expiration of this Agreement will survive the termination or expiration of this Agreement for any reason.

19. **Governing Law.** Except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 et seq.), or other Federal law, this Agreement and all claims arising from the relationship between us and you will be governed by the laws of the state of _____, without regard to its conflict of laws rules.

20. **Consent to Jurisdiction; Venue.** You agree that all actions arising under this Agreement or otherwise as a result of the relationship between you and us must be commenced in a state

or Federal court of competent jurisdiction within such state or judicial district in which we have our principal place of business at the time the action is commenced, and you (and each owner) irrevocably submit to the jurisdiction of those courts and waive any objection you (or the owner) might have to either the jurisdiction of or venue in those courts. Nonetheless, you and your owners agree that we may enforce this Agreement in the courts of the state or states in which you are domiciled or where you have your principal place of business.

21. **Authority.** Each individual executing this Agreement in a representative capacity represents and warrants that he or she has the authority to execute this Agreement in the capacity indicated.

22. **Entire Agreement.** This constitutes our and your entire agreement, and there are no other oral or written understandings or agreements reached, or any representations made, before this Agreement are superseded by this Agreement. Any policies that we adopt and implement from time to time to guide us in our decision-making are subject to change, are not a part of this Agreement, and are not binding on us.

23. **Severability.** Except as expressly provided to the contrary in this Agreement, each section, paragraph, term, and provision of this Agreement is severable, and if, for any reason, any part is held to be invalid or contrary to or in conflict with any applicable present or future law or regulation in a final, unappealable ruling issued by any court, agency, or tribunal with competent jurisdiction, that ruling will not impair the operation of, or otherwise affect, any other portions of this Agreement, which will continue to have full force and effect and bind the parties. If any covenant which restricts competitive activity is deemed unenforceable by virtue of its scope in terms of area, business activity prohibited, and/or length of time, but would be enforceable if modified, you and we agree that the covenant will be enforced to the fullest extent permissible under the laws and public policies applied in the jurisdiction whose law determines the covenant's validity.

28. **Counterparts.** The parties may execute this Agreement in counterparts, each of which will constitute an original and all of which, when taken together, will constitute one and the same instrument.

29. **Amendment.** No amendment to this Agreement will become effective or binding on the Parties, unless agreed to in writing by the Parties, provided, however, that changes to the VBS franchised system shall become effective and binding upon you upon their issuance by us.

(Signature Page Follows)

INTENDING TO BE LEGALLY BOUND, the parties have executed this Agreement as of the date first written above.

“COMPANY”

By: _____
Print: _____
Title: _____
Date: _____

“CONTRACTOR”

By: _____
Print: _____
Title: _____
Date: _____

By: _____
Print: _____
Title: _____
Date: _____