

# **MEMORANDUM OF UNDERSTANDING ON SERVICE STANDARDS AND DISPUTES**

## **Between the Internal Revenue Service and Free File Alliance, LLC**

This Memorandum of Understanding (“MOU”) is entered into as of December 20, 2005 by and between the Free File Free File Alliance, LLC (“Alliance”) and the Internal Revenue Service (“IRS”).

### **Preamble**

**WHEREAS**, the Free File Alliance LLC (“Alliance”) and the Internal Revenue Service (“IRS”) entered into a three-year agreement which was published in the Federal Register (Vol. 67, No. 153, page 51621) on August 8, 2002 and executed on October 30, 2002 (the “IRS Agreement”) that set forth parameters to which industry members of the Alliance would offer online tax preparation and filing services to taxpayers least able to afford efile tax returns at no cost to such taxpayers (“Services”), and pursuant to which it was agreed that the Alliance will offer the Services and the IRS will provide taxpayers with links to the Services offered by the Alliance participants through a web page, which is hosted at irs.gov with links from firstgov.gov;

**WHEREAS**, on October 29, 2005, the Alliance and the IRS agreed to amend and extend the IRS Agreement for an additional four (4) years (the “2005 IRS Agreement”);

**WHEREAS**, the IRS has hosted and maintained its website in accordance with the IRS Agreement;

**WHEREAS**, during the term of the IRS Agreement the Alliance and the IRS have adopted processes similar to those described in this MOU whereby if the IRS and/or the Alliance determined a Member temporarily did not meet a standard or standards of practice and/or applicable IRS regulations, then such Member would be denied permission to list their company on the IRS website and/or required to remove Member’s listings from the IRS website;

**WHEREAS**, the parties agree that it would be in the best interests of the IRS and the Alliance to formalize the process whereby a Member may be denied permission to list its company on the IRS website and/or a Member’s listing may be removed from the IRS website; and

**WHEREAS**, the parties further agree that Members should be permitted a mechanism to appeal the IRS’s individual, or joint decision with the Alliance, to refuse to permit a Member to list its company on the IRS website and/or the IRS’s individual, or joint decision with the Alliance, to remove a company’s listing from the IRS website;

**NOW THEREFORE**, for good and valuable considerations, the parties, intending to be legally bound by this MOU, hereby agree as follows:

## ARTICLE I

### DEFINITIONS

- 1.1 “Affiliate” of the Member, Executive Director, or other entity shall mean any Person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the Member, Executive Director, or other entity, as applicable. The term “control,” as used in the immediately preceding sentence, shall mean with respect to a corporation or limited liability company the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity, or association, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled entity.
- 1.2 “Alliance” shall mean the Free File Alliance, LLC, a Virginia Limited Liability Corporation.
- 1.3 “Alliance Filers” shall mean those taxpayers with an AGI equal to or less than 70% of all US taxpayers or below for the prior year, including those least able to afford e-filing tax returns, based upon verifiable characteristics in their tax return and, as a result, who for free, online tax return preparation and filing services offered by an individual Member.
- 1.4 “Bankruptcy” shall mean: (a) the filing of an application by the Member for, or its consent to, the appointment of a trustee, receiver, or custodian of its assets; (b) the entry of an order for relief with respect to the Member in proceedings under the United States Bankruptcy Code, as amended or superseded from time to time; (c) the making by the Member of a general assignment for the benefit of creditors; (d) the entry of an order, judgment, or decree by any court of competent jurisdiction appointing a trustee, receiver, or custodian of the assets of the Member unless the proceedings and the Person appointed are dismissed within ninety (90) days; or (e) the failure by the Member generally to pay its debts as the debts become due within the meaning of Section 303(h)(1) of the United States Bankruptcy Code, as determined by the Bankruptcy Court, or the admission in writing of its inability to pay its debts as they become due.
- 1.5 “Code” shall mean the Internal Revenue Code of 1986, as amended from time to time, and the provisions of succeeding law.
- 1.6 “Coverage” shall mean the lowest seventy percent (70%) of taxpayer population calculated using AGI. For filing season 2006, seventy percent of AGI is equivalent to approximately ninety-three (93) million taxpayers. The number of taxpayers covered each year will be adjusted for each filing season thereafter.

based on taxpayer population and income changes, but the agreed upon percentage of coverage will not change.

- 1.7 “IRS” shall mean the Internal Revenue Service.
- 1.8 “Executive Director” shall mean the Executive Director of the Alliance.
- 1.9 “Member’s Free File Website” shall mean Members’ websites that offer free, online tax return preparation and filing services to Alliance Filers.
- 1.10 “Member” shall mean each company in the electronic tax preparation and filing industry who is a member in good standing with the Alliance.
- 1.11 “Member Free File Landing Page” shall mean the splash screen or landing site on the Member’s website which taxpayers see upon linking from the IRS free file site.
- 1.12 “New Market Entrant” shall mean a Person who is not yet a Member that intends to offer Services in the upcoming tax season but has not done so for past seasons.
- 1.13 “Person” shall mean an individual, partnership, limited partnership, limited liability company, corporation, association, or any other entity.
- 1.14 “Services” shall mean free, online tax return preparation and filing of federal individual income tax returns.
- 1.15 “Software Programs” shall mean the software program a Member uses to provide online tax return preparation and filing services to taxpayers.
- 1.16 “Treasury Regulations” shall, unless the context clearly indicates otherwise, mean the regulations in force as final or temporary that have been issued by the U.S. Department of Treasury pursuant to its authority under the Code, and any successor regulations.
- 1.17 “IRS Website” refers to [www.irs.gov](http://www.irs.gov) (or [IRS.gov](http://IRS.gov)).
- 1.18 “IRS Free File Website” shall mean the website hosted and maintained by the IRS through which the Services are offered to taxpayers.
- 1.19 “IRS Free File Landing Page” shall mean the introductory IRS Free File splash screen or landing site within the IRS Website.

## **ARTICLE II**

### **ALLIANCE AND IRS OBJECTIVES**

Members shall work in concert with the IRS to increase electronic filing of tax returns, which includes extending the benefits of on-line federal tax preparation and electronic filing to economically disadvantaged and underserved populations at no cost to the individual or the government. Further, the IRS and Alliance agree that to serve the greater good and ensure the long-term stability of the Alliance, the scope of this program is focused on covering the taxpayers least able to afford e-filing their returns on their own. In recognition of this commitment, the federal government has pledged to not enter the tax preparation software and e-filing services marketplace. Members shall also (i) make tax return preparation and filing easier and reduce the burden on individual taxpayers, particularly the economically disadvantaged and underserved populations; (ii) support the IRS's statutory goals of increased electronic filing, pursuant to the IRS Restructuring and Reform Act of 1998; (iii) provide greater service and access to the Services to taxpayers; and (iv) implement one of the proposals in the President's Fiscal Year 2003 budget, specifically to encourage further growth in electronic filing by providing taxpayers the option to file their tax return on-line without charge using cooperation with, and encouraging competition within, the private sector.

## **ARTICLE III**

### **TRANSPARENCY IN MANAGEMENT**

To manage the program in a transparent manner, the IRS will utilize the then current adjusted gross income ("AGI") number which equates to the lowest seventy percent (70%) of the taxpayers to manage the program, and will not accept or post any offer by a Member which exceed this AGI amount. The IRS will describe this limitation on the IRS Free File website. The Alliance will not have a role in this IRS management process.

## **ARTICLE IV**

### **STANDARDS OF PRACTICE**

#### **4.1 Level of Service.**

##### **4.1.1 Each Member and New Market Entrant shall:**

- (i) be engaged in the electronic tax preparation and filing industry;
- (ii) have processed a cumulative total of 2,500 online returns during previous years, or has processed 25,000 e-file returns before becoming a Member;

- (iii) meet a sixty percent (60%) acceptance rate for electronic returns as of February 28, 2006; and
  - (iv) meet a increasing graduating standard for subsequent years as set by the IRS and the Alliance.
- 4.1.2 Any Member who does not meet the minimum acceptance rate set out in 4.1.1 (iii) and (iv) above may be removed from the IRS Free File Website.
- 4.1.3 Each Member and New Market Entrant shall:
- (i) make its Services available to not less than ten percent (10%) and not more than 50% of the individual taxpayer population, or approximately sixty-six million five hundred thousand (66,500,000) taxpayers, within the Coverage;
  - (ii) offer its Services on a non-discriminatory basis;
  - (iii) be an authorized IRS e-File Provider in accordance with IRS Rev. Proc. 2005-60;
  - (iv) be in compliance with applicable Department of Treasury/IRS rules, including, but not limited to, 31 C.F.R. Part 10, IRS Rev. Proc. 2005-60, current versions of IRS Publications 1345, 1345-A and 3112, and IRC Section 7216;
  - (v) possess and provide appropriate documentation to the IRS and the Executive Director demonstrating they have acquired third party security and privacy certifications which are applicable for the period the company is actively listed on the IRS Free File Website; and
  - (vi) have appropriate logos or seals (for both privacy and security) from acceptable and recognized third party privacy and security certification providers placed in clearly visible locations on the Member's Free File Landing Page; and
  - (vii) New Market Entrants shall self-certify in writing to the Executive Director, and available upon request to IRS, that the New Market Entrant has sufficient technical capacity to meet the Level of Service requirements as set forth in this MOU and then current Alliance Operating Agreement and are commercial tax preparation software providers aside from their Alliance offering.

- 4.2 Refund Anticipation Loans. Those members that offer Refund Anticipation Loans (“RALs”) must do so with the following added features reflecting enhanced standards of consumer protection. Members who offer RALs agree that their offers shall be consistent with the following:
- 4.2.1 No offer of free return preparation and filing of an electronic return in the Free File program shall be conditioned on the purchase of a RAL;
  - 4.2.2 RALs may only be offered in a manner consistent with all statutes and regulations, as well as any written guidance issued by the Department of Treasury or the IRS, applicable at the time of the offering.
  - 4.2.3 RALs will be offered with clear language indicating that: (a) they are loans, not a faster way of receiving an IRS refund; (b) they must be repaid even if the IRS does not issue a full refund; (c) that because RALs are short-term loans, interest rates may be higher than some other forms of credit and consumers may wish to consider using other forms of credit; and, (d) the time frame in which tax refunds are typically paid is based upon the different filing options available to the taxpayer including the different options that taxpayers have to receive a refund directly from the government (paper check versus direct deposit);
  - 4.2.4 No RALs will be made unless consumers affirmatively consent in advance to receiving a RAL. The refund loan facilitator must disclose the expected time within which the loan will be paid to the taxpayer if such loan is approved. No RALs will be made unless consumers affirmatively consent to sharing any personal data in accordance with 26 U.S.C. §7216 with financial institutions making a refund loan;
  - 4.2.5 RALs may be offered only as one option among options including a no-added-fee refund from the IRS. The IRS refund option shall be presented first;
  - 4.2.6 RALs may be offered but not promoted: RALs may be offered only in one place in the online tax preparation;
  - 4.2.7 Some Members will not offer RAL products, thus ensuring that consumers have RAL free options;
  - 4.2.8 The refund loan facilitator shall disclose all refund anticipation loan fees with respect to the refund anticipation loan. Such disclosure shall include:
    - (i) a copy of the fee schedule of the refund loan facilitator;

- (ii) the typical fees and interest rates (using annual percentage rates as defined by section 107 of the Truth in Lending Act (15U.S.C. 1606)) for several typical amounts of such loans;
- (iii) typical fees and interest charges if a loan is not paid or delayed; and
- (iv) the amount of a fee (if any) that will be charged if the loan is not approved.

4.3 Only One Version Of Each Software Program Permitted.

4.3.1 Only one version of a Software Program is permitted per Member. A Member may own the copyright in a Software Program or have a valid license to use a Software Program, but a Software Program may not be used by more than one Person to obtain Alliance membership.

4.3.2 Members and/or any New Market Entrant applying for membership with the Alliance will provide the Executive Director with information as requested by the Executive Director to permit a determination as to whether Software Programs are duplicative and/or substantially similar based upon features, functions and/or general characteristics and would violate Section 4.3.1. The IRS or the Executive Director shall review the following list of characteristics (i) through (vii), and request any facts needed from the Member or possible New Market Entrant that will assist in this evaluation. No single characteristic below is dispositive of any determination as to whether software is identical or similar. The IRS or the Executive Director may weigh items (i), (ii) and (iii) most heavily, but can take into account any fact or factor:

- (i) the degree to which the underlying software programs are substantially identical or similar;
- (ii) changes in the logo, color, and presentation do not transform similar software programs into different versions;
- (iii) the degree to which two Software Programs have a look or feel that is identical or similar;
- (iv) the relationship, if any, of the respective owners of companies; for example, the degree to which corporate officers are the same or dissimilar; whether locations of incorporation are the same or similar, whether the same URL is being used by more than one entity etc.;

- (v) the degree to which the company's revenue is related to the Alliance or principally through commercial sales of software, tax preparation services and electronic filing to the general public;
- (vi) the degree to which each company has adequate financial resources;
- (vii) the degree to which each company has the necessary organization, experience, operational controls and technical skills to participate in the tax software preparation industry;
- (viii) the degree to which each company has the necessary technical equipment and facilities; provided that companies are permitted to sell, license or otherwise transfer software programs for services utilized in Alliance offerings, but such sale, license or other arrangement may be reviewed for its underlying purpose and must be consistent with this entire section; or
- (ix) the degree to which the company has offered and sold tax preparation software and e-filing services competitively in substantial quantities to the general public in the commercial marketplace based on established catalog prices. For these purposes catalog prices shall be interpreted consistent with the current definition as described in FAR Part 2.101, or if repealed in entirety, the last version of such definition.

4.3.3 Members and/or New Market Entrants applying for membership in the Alliance will make the following disclosures with respect to any licensed Software Programs:

- (i) Disclose whether another Person owns more than 25% of the code of the licensed Software Program. In the event another Person owns more than 25% of the code of the proposed Software Program, the Member and/or New Market Entrants applying for membership must additionally disclose the Person from whom the license has been obtained, as well as the business address and contact point to verify the scope of the license and the relationship between the parties.
- (ii) Disclose whether another Person is providing the Member and/or New Market Entrant with servers or other back-end support other than telecommunications, and provide the business address and contact information for such Person.

4.3.4 All Members shall adhere to industry best practices to ensure the taxpayer return information entrusted to them is secure and the privacy

of such information is maintained. In any instance where a Member company contracts with a Service Provider to obtain technology services, the Service Provider must adhere to the established industry best practices standard. To the extent multiple Members rely on a single service provider for front or back office services (not ISP services), such Members agree that it is even more critical that such taxpayer security and privacy be maintained with respect to others who share these services.

4.4 Commitment to Avoid Early Season Problems. Members and/or New Market Entrants will provide the Executive Director and the IRS with a link to the Member's and/or New Market Entrant's proposed Member's Free File Website no less than eight (8) business days before the Website is expected to go live. Members' Free File Websites will be functionally adequate in permitting a taxpayer to complete taxpayer's return if the return is consistent with the Member's free offer. Prior to launch, the IRS and the Executive Director will review each Member's Free File Website usability. If the IRS and/or the Executive Director determine that a Member's and/or New Entrant's Software Program is difficult to use, and has or will result in a significant and measurable reduction in the ability of taxpayers to complete their return, the Member will not be listed on the IRS Free File Website or may be delisted until both the IRS and the Executive Director are satisfied that the issue(s) which led to the concern regarding Members' and/or New Market Entrants' Free File Website usability have been addressed.

4.5 Disclosure of Forms and Schedules and Limitations.

4.5.1 4.5.1 Members will disclose Members' schedules and forms on Members' Free File Landing Pages; and

4.5.2 4.5.2 Each Member and/or New Market Entrant will disclose any limitations in the forms and schedules that are likely to be needed to support Members and/or New Market Entrant's free offerings. This disclosure shall take place on Members' and/or New Market Entrants' Free File Landing Pages (or such page must have a clear link to such disclosures directly from this page). Representative examples of limitations required to be disclosed include, but are not limited to, the inability to support more than one W-2, and/or the lack of a form necessary to prepare a return that is likely to be based on the offer. Limitations in forms and schedules do not include any form that is not routinely required, e.g., the separate forms required for taxpayers with foreign income, unless a Member's offering is particularly orientated around such forms.

4.6 Security.

- 4.6.1 Members will possess and provide appropriate documentation to the IRS and the Executive Director demonstrating they have acquired third party security and privacy certifications;
  - 4.6.2 Beginning annually after April 25, 2006, the Alliance, or its Members, will annually conduct penetration and vulnerability assessment of individual Members prior to the start of the filing season. The annual assessments will be conducted prior to, or concurrent with, the annual PATS testing. Services relating to this assessment must be obtained from a list of approved vendors jointly created by IRS and the Alliance.
  - 4.6.3 If a Member is not listed, or is delisted by agreement of the IRS and Executive Director due to perceived security or privacy vulnerabilities, IRS and the Alliance have the independent authority to require a penetration test be conducted by an approved third party vendor chosen by the Member if the Member is delisted for concerns which include, but are not limited to, such penetration.
  - 4.6.4 Only the Executive Director, IRS, and affected individual company will be apprised of a Member's deficiencies identified as a result of any assessment by the IRS or Alliance management
- 4.7 Immediate Disclosure of Hacker Attacks, Attempts at Intrusion, and Intentional or Unintentional Disclosures of Taxpayer Data.
- 4.7.1 Any Member that learns of an inappropriate disclosure of a taxpayer's return information to an unauthorized Person, in the course Member's provision of Services, must immediately:
    - (i) report the unauthorized disclosure to the Executive Director and the IRS immediately but no later than five (5) hours after detection; and
    - (ii) immediately shut down Member's Free File Website at the time of detection.
  - 4.7.2 The Executive Director and/or the IRS have complete emergency authority to shut down and/or remove the link to any Member's Free File Website if the Executive Director and/or the IRS believe, based upon objective information, that unauthorized disclosure of taxpayer information has occurred and/or a threat of disclosure of taxpayer return information exists. Objective information includes, but is not limited to, copies of screens containing unauthorized taxpayer information. Objective information is not merely a complaint or allegation by a taxpayer or third party that an unauthorized disclosure has taken place. However, such a complaint or allegation, when supported by additional

facts, can become the necessary objective information. Once a Member's Free File Website has been voluntarily or involuntarily shut down, the Executive Director, the IRS and the Member will conduct a prompt review to ensure that the decision to shut down a Member's Free File Website was well founded. Such a review should be completed by the second business day after a Member is delisted. Inability to substantively complete the review based on a failure by the Member company to cooperate shall extend this review. A Member's Free File Website may be relisted once the issues which caused concerns are remedied, but the Executive Director and/or IRS may request or require a broader evaluation of a Member's Free File Website before any relisting is permitted.

- 4.8 One Time No Cost Refiling Taxpayer Return. When the IRS has rejected a taxpayer's return, Members will permit the IRS rejected return to be refiled at least one time without cost to the taxpayer regardless of whether the IRS rejected the taxpayer's return solely as a result of the taxpayer's mistake, e.g., the taxpayer's entry of an incorrect Social Security Number causes the IRS rejection of the taxpayer's return.
- 4.9 Self-Select PINs. Members must permit self-select Personal Identification Numbers ("PINs") as an option for taxpayers who qualify for electronic filing of free services.
- 4.10 Time Out Feature. All Members must include a feature in their tax preparation software that will "time out" the session after no changes are made for a period of time consistent with best practices approved by privacy seal certification programs.
- 4.11 Guarantee of Calculations. Each Member shall guarantee the calculations performed by its federal free file offering. State returns are not included in this guarantee. For the purposes of this section, the term "Calculations" is defined to mean the numerical addition, subtraction or multiplication of numbers, and related automatic features that select numbers from tax tables. Calculations does not include any instance where a taxpayer can make a decision to substitute a number for the one automatically computed by the program, and Members are not responsible for changes in tax law made by the Congress during the tax season. All Members will pay any IRS penalties and/or interest resulting from an error in the Member's Software Program's Calculations, notwithstanding the lack of revenue from Alliance Filers. The amount of this guarantee shall be limited to the amount accrued when the IRS provides notice to the taxpayer of an improper calculation.
- 4.12 7216 Compliance. Members are permitted to offer commercial products and services consistent with obtaining the positive consents of the user as described in § 7216 before offering fee-based products and services not related to tax

preparation. Members shall only use or disclose the tax return data Members collect in provision of Services to taxpayers in accordance with the provisions of Section 7216 of the Code.

- 4.13 Use of Social Security Number. Whenever taxpayers are requested or required to provide their SSN, it must be part of a secure session.
- 4.14 Link Back to IRS.gov Site. Members must provide a hyperlink for users to return to the IRS Free File Website at the time the taxpayer is informed they do not qualify for the Member's free offer, and if they choose to do so, a second link back on the Member's Free File Landing Page.
- 4.15 Disclosure of Customer Service Options. Members must clearly list their customer service options and the associated fees, if any. This disclosure must be available on the Member's Free File Landing Page (or such page must have a clear link to such disclosures directly from this page). Members must provide taxpayers with a business contact point by on-line form, email, mail, facsimile or telephone number which the Member maintains and reviews. Members must provide taxpayers a method to obtain the status of their tax return.
- 4.16 Printing Returns.
  - 4.16.1 Members must permit a taxpayer who qualifies for a free return to print their return for free on their personal computer system. This capacity must be provided for the same period of time (e.g., three days, three weeks, or three months) that such services are provided for free to commercial customers.
  - 4.16.2 Members must permit a taxpayer who does not qualify for a free return to print their return after paying the applicable fee, if any, charged to Members' commercial customers.
  - 4.16.3 Members must permit taxpayers who have begun to complete a tax return to complete the return notwithstanding any change in their offer that would not permit the taxpayer access to Services, so long as the return is completed and submitted for e-filing no later than April 14 of the year following the close of the tax year.
- 4.17 Availability of Free Services. If a Member's services have not been made available on or before March 15 of any tax season, the Member will not be listed after that date. If a Member's free services will not be available for the remainder of the tax season based on any unplanned outage, their listing will be removed. Each Member shall promptly notify the Alliance and the IRS of any planned or unplanned unavailability or scheduled maintenance (i.e., down time) of an offering that is anticipated to exceed five (5) hours in duration. Members whose services are delisted will be restored to the IRS Free File Website

consistent with IRS service capabilities, but not more than five (5) business days after the IRS and the Executive Director agree the services can be relisted.

- 4.18 Blackouts. Maintaining a consistent level of service is important.
- 4.18.1 No planned blackouts of service are permitted from January 15 through April 15.
- 4.18.2 Unplanned blackouts or scheduled maintenance in excess of five (5) hours requires electronic notice of unavailability to the IRS, Alliance, and, whenever possible, via Member's Free File Landing Page. Failure to provide this notice on more than one occasion is grounds for delisting.
- 4.18.3 During any unplanned blackout or scheduled maintenance, customers seeking to access the Free File option should not be directed to or have access to the fee-based services of the Member.
- 4.19 Contact Person for Notification. Each Member, in making its offer, shall provide a contact name and number of a person(s) who may be reached twenty-four (24) hours per day/seven (7) days a week for issues regarding unavailability of the services and security breach of taxpayer data. The IRS (as well as the Executive Director) is entitled to delist any Member if contacts with such person are not successful within a twelve (12) hour period.
- 4.20 Eligible Taxpayers/No Promotional Codes or Rebates/Links To Paid Sites. In providing free services to qualified taxpayers, Member programs cannot utilize promotional codes or rebates as the methodology of providing free services.
- 4.20.1 For taxpayers who enter a Member Free File Website from the IRS Free File Website and save any portion of their return, that return should be "tagged" so as to remain eligible for the Member's free offer. This paragraph does not apply to those services offered by Members in permitting extensions (4868) to be filed.
- 4.20.2 Free File programs must unequivocally inform taxpayers who are ineligible for the free offer if they do not qualify prior to, or on the same screen as, being shown any proposed billing arrangement (e.g., credit card screen).
- 4.20.3 Providing an automatic link from the IRS Free File Website to a Member's paid website will result in delisting.
- 4.20.4 Members shall not post a billing screen requesting or collecting bank/financial information (e.g. debit/credit card information) from customers who qualify for a free return where no ancillary products have been purchased.

- 4.21 Date Changes. The IRS has the authority to change any date utilized in this MOU to conform to changes made in regulatory or statutory requirements, or to update the MOU each calendar year. Notice of such change will be tied to such specific regulatory or statutory requirements.
- 4.22 Disclosure Of State Preparation And Filing Options. State service offerings of Members must be disclosed on each individual Member's Free File Landing Page and make clear whether such returns are free or paid, and if paid, the cost of such returns to the taxpayer. IRS further agrees it will not provide links to any state free file site.
- 4.23 Unilateral Changes By U.S. Government. Any unilateral changes imposed by the U.S. government on the Alliance, whether by statute, regulation or administrative action will be carefully reviewed by the Executive Director, and forwarded with discussion to the Members for their review. Some unilateral actions are likely to result in an immediate reevaluation of the decision to continue the Alliance, and could result in an immediate suspension of free services upon the decision of each Member. Any inclusion of links from the IRS web page to competing state tax software programs is grounds for immediate dissolution of the MOU.
- 4.24 Compliance with Federal, State and Local Laws. Each Member shall provide all Services in accordance with all applicable federal, state and local laws, rules and regulations. Each Member shall immediately notify the Executive Director upon its receipt of any notification, oral or written, alleging that such Member is not providing the Services as set forth herein.
- 4.25 No Transfer or Assignment of Membership Permitted. No Member may transfer its membership interest in the Alliance to any Person, unless as a result of a merger or acquisition to a successor corporation to the Member reported in a timely fashion to the Alliance.
- 4.26 Free File Indicator. Members will provide an electronic Free File indicator.
- 4.26.1 IRS agrees it will not use the indicator to build a marketing database;
- 4.26.2 IRS agrees it will not use the indicator to compile company-specific data or proprietary data;
- 4.26.3 IRS agrees it will only use the database to create aggregate data profiles of all users;
- 4.26.4 IRS will ensure its Freedom of Information Act ("FOIA") office is aware of Alliance concerns about disclosure of company specific data, and actively afford notice and opportunity to intervene by the Alliance and impacted company as is required by statute and regulation;

4.26.5 The IRS will promptly notify the Executive Director in writing if a governmental agency or entity, including, but not limited to the Congress, any Inspector General, or Taxpayer Advocate, or a private party is requesting aggregate data concerning individual Members; and IRS has concluded it cannot refuse to provide such data:

- (i) The Executive Director upon receipt of the IRS's written notification may immediately advise Members that they can cease providing the indicator;
- (ii) The Alliance cannot unilaterally suspend the indicator absent proof which it supplies the IRS that the aggregate data concerning an individual Member described above has been compiled or released;
- (iii) In the event any domestic law enforcement agency formally subpoenas or provides the IRS with appropriate process for data resulting from the indicator that is not aggregated, notification to the Executive Director can be delayed for a period not to exceed 90 days; and
- (iv) Any Member(s) which suspends the indicator in accordance with the terms described above shall be expected to provide the total number of accepted e-filed tax returns originating from their Free File service under procedures mutually agreed to by the IRS and the Executive Director.

4.26.6 Members will disclose on the individual Members' landing page if State tax return preparation/filing services is free or paid and, if paid, the cost of such returns to the taxpayer. The Executive Director will ensure that Members are in compliance within twenty-four (24) hours of notification by IRS or the Member's web site will be removed from irs.gov;

4.26.7 IRS will work with the Alliance to develop further agreed upon guidance for Members to ensure that their web sites/Free File pages are in compliance with IRC §7216 with respect to pop-ups, pop-unders, adware, spyware, etc.; and

4.26.8 The Members will provide the necessary support to accomplish a customer satisfaction survey.

4.27 Modifications to Standards of Practice. The Executive Director and the IRS may unilaterally propose additional standards necessary for the Standards of Practice during the tax season. Any additional standards shall be provided to the Members by email. The Executive Director and/or the IRS shall determine whether the standards need to become effective immediately or can await a

Member meeting. In any instance where the Executive Director and/or the IRS believe the standards need to be immediately effective, the immediacy of the effect of the new standard shall be noted in the email transmittal, and the additional standards will become effective five (5) days later, or the first business day if the fifth day falls on a weekend or holiday.

## **ARTICLE V**

### **FORM 4868**

Members who offer free preparation and electronic filing of Form 4868 from April 1st to the normal due date of the return (currently April 15) will be permitted to extend the number of allowable characters up to a maximum of fifty (50) characters in their free offer description posted on the IRS Free File Website in accordance with the provisions developed by the Alliance and the IRS.

## **ARTICLE VI**

### **TERM**

The term of this MOU is four (4) years from the effective date of the 2005 IRS Agreement, and may be terminated consistent with that agreement.

## **ARTICLE VII**

### **BREACH AND REMOVAL FROM THE IRS FREE FILE WEBSITE**

- 7.1 Removal from IRS Free File Website. A Member's listing may be removed from the IRS Free File Website, or a New Market Entrant may be refused permission to list its offering upon the IRS Free File Website, based upon the occurrence of any of the following:
- 7.1.1 the IRS and/or the Executive Director's determination that a New Market Entrant does not meet the Level of Service and/or Standards of Practice of this MOU;
  - 7.1.2 the IRS and/or the Executive Director's determination that a Member does not meet the Level of Service set forth in this MOU;
  - 7.1.3 the IRS and/or the Executive Director's determination that a Member has failed to provide Services in accordance with the Standards of Practice set forth in this MOU, and the Member has not taken necessary corrective actions, if any may be taken, in the timeframe allotted by the IRS's and/or Executive Director's written notice to the Member;

- 7.1.4 the IRS and/or the Executive Director's receipt of notice that a Member has undergone an event of Bankruptcy; or
  - 7.1.5 the IRS and/or the Executive Director's receipt of written notice from a Member that the Member does not wish to be listed on the IRS Free File Website and/or continue in the Alliance.
- 7.2 Determination Process. The Executive Director and/or the IRS may make the determinations described in 7.1.1 through 7.1.5 above (i) in coordination with each other; (ii) upon each party's own volition with written notice to the other party; or (iii) upon the reasonable request of a Member and/or third party as determined by the IRS in coordination with the Executive Director.

## **ARTICLE VIII**

### **DISPUTES**

- 8.1 Administrative Review. After a determination process pursuant to Article VII of this MOU, a Member advised by IRS of the denial or removal of its free offer from posting on the IRS Free File Website has the right to an administrative review. The Member may submit a detailed written explanation with supporting documentation requesting a final determination as to why the decision to deny or remove their offer from the IRS Free File Website should be withdrawn. Within three (3) business days of receipt of the Member's written response, the IRS will reconsider and may either withdraw or affirm its action. During this administrative review process, the decision remains in effect.
- 8.2 Temporary Administrative Remedy. IRS will work with the Alliance to develop and obtain requisite approval of the previously agreed upon dispute resolution procedures which could be invoked by Members denied a listing on the IRS Free File Website and/or removed from the IRS Free File Website by the IRS or by the IRS and the Alliance.
- 8.2 Administrative Remedy. [Not Yet Approved] After a determination process pursuant to Article VII of this MOU, any Member who has been refused the ability to list on the IRS Free File Website and/or has been removed from the IRS Free File Website by the IRS, or mutually by the IRS and the Alliance, may challenge the determination to the General Services Board of Contract Appeals ("GSBCA") in accordance with the GSBCA's Rule of Procedure 204. The GSBCA's review is authorized by the Alternative Dispute Resolution laws and regulations issued by the United States Government and is in lieu of any litigation in any court.

- 8.2.1 The GSBCA will be the exclusive venue for resolving disputes concerning any action taken by the IRS or the IRS and the Alliance under the terms of this MOU as described in 8.2.
- 8.2.2 The Alliance shall be responsible for paying the GSBCA for all costs incurred by the GSBCA in any proceeding related to this provision. Each party to the adjudication shall initially pay its own costs and fees. For the purposes of this section, a party to an adjudication may include any Member, the Alliance and/or the IRS.
- 8.2.3 If the IRS, or mutually by the IRS and the Alliance, had determined not to permit a New Market Entrant to list its offering on the IRS Free File Website, the IRS may permit the New Market Entrant to use this provision to review the decision not to permit the New Market Entrant's listing on the IRS Free File Website. For the purposes of this Section, the payment provisions of Section 5.1.2 apply to any adjudication brought by a New Market Entrant.
- 8.2.4 A Member, or New Market Entrant who does not prevail in its appeal before the GSBCA is required to pay one hundred percent (100%) of the costs, fees and expenses incurred by the GSBCA and the Alliance. The Alliance will invoice the Member and/or New Market Entrant for such costs, fees and expenses and the Member and/or New Market Entrant shall pay the Alliance within ten (10) days of presentation of an invoice for such amount. If the Member does not pay these costs, they are no longer in good standing and cannot participate in Alliance meetings or be posted on the IRS website.
- 8.3 The following rules apply to all GSBCA proceedings: the Member and/or New Market Entrant who challenges an IRS determination or a joint determination of the IRS and the Alliance under Section VII or VIII of this MOU shall not be entitled to any monetary remedies and the Member's and/or New Market Entrant's sole and only remedy shall be an order directing the IRS to act in accordance with the GSBCA's decision. The GSBCA's decision with respect to the termination or reinstatement of the Member on the IRS Free File Website or any other order shall be final and binding and shall not be subject to review. The GSBCA shall have the authority to grant motions, including motions to dismiss and motions for summary judgment, in appropriate circumstances. The GSBCA shall have no authority to add to or to modify this MOU.

## ARTICLE IX

### NO RELATIONSHIP TO ALLIANCE OPERATING AGREEMENT

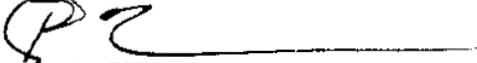
The Alliance can continue to change and amend the Alliance Operating Agreement without regard to this MOU. Notwithstanding the prior sentence, the terms of the Alliance Operating Agreement and/or any change in the Alliance Operating Agreement have no impact on this MOU unless and until the MOU is amended in writing by agreement between the IRS and the Alliance, which agreement can be withheld by the IRS.

## ARTICLE X

### INTEGRATED AGREEMENTS

The terms of this MOU are final and binding unless and until it is superseded by a signed agreement between the parties. The IRS and the Alliance agree that this document and all prior original and supplemental signed agreements between the IRS and the Alliance remain in full force and effect unless the language of this MOU is inconsistent with such prior written terms, in which case the terms and language of this MOU shall control.

**Internal Revenue Service**



Bert W. DuMars, Director of Electronic Tax Administration

01/24/06

Date

**Free File Alliance, LLC**



Timothy Hugo, Executive Director

12-20-05

Date