



MEMBER SERVICE AGREEMENT

WHEREAS you ("Member") agree to subscribe to the service provided by ProfitKeeper, Inc. ("Provider"), a Delaware corporation with offices in Arizona, pursuant to the terms of this Agreement; and

WHEREAS Provider agrees to provide this service to Member on the terms and conditions hereinafter appearing;

NOW, THEREFORE, for and in consideration of the mutual promises made herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Member and Provider agree as follows:

1. Effective Date of Agreement. This Agreement is effective as of the date Member first logs in to its ProfitKeeper website ("Effective Date"), which login constitutes Member's acceptance of this Agreement.

2. Service. The service consists of access to Member's ProfitKeeper website which is located on the internet at (<https://members.myprofitkeeper.com/>) ("Site") and any additional services provided by ProfitKeeper, if any ("Service"). Member shall be responsible for any fees assessed for the Service.

3. Member Services. Member acknowledges that the Service consists of web-based technology; that Provider is not responsible for or in the practice of providing accounting, payroll or tax services; compiling, reviewing or auditing all or any part of the accounting and financial records of Member; and that the Service does not include any other form of consulting or planning services. Provider has business relationships with third-party providers who may, upon Member's request, provide third-party services such as bookkeeping, payroll or tax services ("Third-Party Services"), and Provider may promote these Third-Party Services and act as a billing and collection agent for fees related to the Third-Party Services, but Member acknowledges that Provider has no liability resulting from any Third-Party Services to which Member subscribes. Provider's responsibility to maintain accurate accounting records is limited in scope and liability to Provider's description of the Service and the terms and conditions of this Agreement. Provider assumes no liability for its inability to provide the Service due to incomplete or inaccurate information received from Member or Member's failure to provide requisite information under the terms of this Agreement. Any claims, obligations or disputes Member shall have upon Provider resulting from the Service shall be subject to the terms and conditions of this Agreement and more specifically to any limitations under Section 16 hereof; while any claims, obligations or disputes Member shall have resulting from the Optional Services shall be subject to the terms and conditions of Member's Agreement with the third-party provider and not with Provider. Provider shall provide email and toll-free telephone support to Member during Provider's normal business hours. Support shall be limited to "how to" directions and guidance, and Provider shall not be responsible for entering transactions for Member or for inaccuracies due to Member's entries.

4. Third-Party Services.

A. For certain Third-Party Services to which Member subscribes, Provider may enroll or activate the selected service for Member and shall provide the third-party contact information for support for that service.

B. All warranties, obligations and commitments expressed or implied by the Third-Party Services Providers ("Third-Party Services Providers") are obligations of such Third-Party Services Providers and are not part of the Service and are not obligations of Provider. Should any dispute or discrepancy arise between Member and Third-Party Services Providers, Provider shall have no obligation to assist in resolving such dispute.

C. Member shall be responsible for all fees for Third-Party Services selected. Any and all services will be offered at Provider's then-current published price for such service(s).

D. Your use of automated bank account feeds enabled by the Yoodle data gathering service (Yodlee Service) from within the Service is subject to the [Yodlee Terms of Use](#).

5. Technical Support. Provider shall provide technical support for its Site via telephone and email during its normal business hours. Technical support is defined as support to resolve errors or issues with the Site; or the inability to connect to the Site due to technical problems with the Site that prevent Member from entering data or transactions or from performing tasks, operations or functions normal to the operation of the

Site; and excludes any technical issues Member may have with its connection, computer, printer, software or the components thereof. Support may be contacted by emailing support@profitkeeper.com or by calling toll-free at 1-866-301-8050.

6. Account Debiting.

A. **Authorization.** Member authorizes Provider to initiate debit entries to Member's account specified upon acceptance of this Service Agreement ("Authorization") at the depository financial institution, the Routing Number and Account Number of which is given in such Authorization, and to debit Member's account in such amounts as are necessary to (a) pay any fees or charges associated with the Service, including, without limitation, finance charges, and (b) pay any other amount that becomes owed under this Agreement. This Authorization is to remain in full force and effect until Provider has received written notice from Member of its termination in such time and such manner as to afford Provider and Depository a reasonable opportunity to act upon it. Member shall maintain in Member's Account as of the applicable due date and time immediately available funds sufficient to cover all fees incurred by Member under this Agreement. Member's obligation to pay Provider for each debit entry charged to such Member's account matures at the time Provider transmits or otherwise delivers the transaction to the Automated Clearing House ("ACH") or gateway operator and is unaffected by termination of the Service, but is limited to amounts incurred by Member under the terms of this Agreement. Provider may set off against any amount it owes to Member in order to obtain payment of Member's obligation as set forth in this Agreement. Member acknowledges that the origination of ACH transactions to its account must comply with the provisions of U.S. law.

B. **Nonsufficient Funds.** If Member does not have sufficient funds in Member's Account to pay fees or any other amounts due under this Agreement at the time required, or if Member refuses to pay, Provider may, at Provider's sole discretion, do one or more of the following: (a) make an additional attempt to deliver a debit charge entry to the ACH or gateway operator, (b) assess a Nonsufficient Funds ("NSF") fee to Member for each failed ACH transaction, (c) assess collection or such other fees needed to cover the costs of accepting a different method of payment, such as credit card or certified check, (d) refuse to perform further services and deny Member and its authorized users access to the Site and any reports or information contained therein until Member has paid in full all fees due, including any amounts that might become due under this Section, and/or (e) immediately terminate this Agreement. Provider may assess finance charges on any amounts owing and unpaid ten (10) days after the original ACH transaction date. Finance charges are assessed at a rate of 1.5% per month (18% per annum), or the highest amount permitted by law, whichever is less. Provider may recover from Member any costs including, without limitation, reasonable attorneys' fees and expert witnesses' fees Provider may incur in connection with any termination of this Agreement or collection of amounts due hereunder.

7. Member's Data and System Requirements. Final audit responsibility rests with Member. Provider shall not have any responsibility for verifying the accuracy of any data Member provides or directly inputs via the internet or any other electronic method. Member shall, at its own cost and expense, obtain, install and, at all times during its utilization of the Service, maintain in good working order all software, hardware and other equipment necessary for it to access the Service in accordance with this Agreement.

8. Fees and Charges. Member agrees to pay Provider for the following:

A. **Service Period Fees.** Provider shall charge Member or its Location for each calendar month in which the Service is provided ("Service Period"), including any portion of a period for which the Service is active prior to notice of termination, and Member shall pay a fixed Service Fee ("Service Fee") for services provided as listed under the **Setup** tab of its ProfitKeeper website, beginning with the first Service Period (the period or

month during which the service is provided) for such Member or its Location and ending with the last Service Period for which the service is active.

- B. **Other Fees.** In addition to the Service Period Fees defined in Section 8.A., Member or its Location will be charged for any miscellaneous costs incurred by Provider on behalf of Member, as well as for any other charge for additional ProfitKeeper services, Third-Party Services, or other charges such as, but not limited to, NSF fees, and 1099 fees whether directly or indirectly related to the Service ("Other Fees"). Member shall be liable to pay, and shall pay Provider for all such Other Fees at the then-current rate, whether listed under the **Setup** tab of Member's ProfitKeeper website or not.
- C. **Taxes.** Member shall reimburse Provider for all sales, use and similar taxes arising from this Agreement that federal, state or local government may impose.
- D. **Invoice Date.** Provider shall invoice Member for each Service Period ending on or before the end of the month ("Billing Month") on the first day of the Billing Month ("Billing Date") (i.e., if Member's accounting Service Period ends January 31, the Service Fee will be billed on January 1). Any and all Other Fees incurred prior to the Billing Date by Member, but not previously invoiced to the Member, shall be included. The invoice shall be posted to Member's secure area of Provider's website upon completion of the invoicing process and notification of such shall be electronically mailed to Member.
- E. **Payment.** Provider shall debit Member's Account for the total invoice amount using an ACH transfer on or after the fifth (5th) day of the Billing Month.

9. Release of Information.

- A. Member hereby authorizes Provider to disclose to Member's Franchisor, if applicable, financial statements and detail that supports the financial statements. Member also authorizes Provider to use the data Member submits or the Member's Franchisor or affiliate has submitted about Member to generate and disclose aggregate data including system and industry averages, comparative analyses, service sources and ratings and such other analyses or reports for the exclusive use of Provider, its members and its members' Franchisor.
- B. Member hereby authorizes, Member's Franchisor, if applicable, and any affiliates of Franchisor, to release information to Provider and the Service, and Provider and/or the Service may obtain and utilize same, to the extent necessary to allow Provider to reflect to Member and Member's Franchisor the status and activity with respect to any financial transactions, loans, leases or other arrangements engaged in by Member with Member's Franchisor, or any affiliated entity.

10. Provider's Confidentiality Requirements. Financial information provided to the Service or provided to the Service about Member by Member's Franchisor or any affiliate of Franchisor by Member is confidential to Member ("Member's Confidential Information"). Member acknowledges that Provider, its employees and its contractors will have access to Member's Confidential Information. Provider agrees to use reasonable efforts to protect Member's Confidential Information and, except for releases of information permitted herein, shall not, directly or indirectly, make known, divulge, publish or communicate it or any part thereof to anyone except Provider's employees and contractors and Member's Franchisor, without the express written consent of Member. Provider shall not allow any person or persons to have access to or to inspect the confidential information, except under court order. Member acknowledges and agrees that its information and data may be aggregated with the information and data of other Franchisees of Franchisor and that the aggregated data may be shared with Member's Franchisor and with other Franchisees of Franchisor.

11. Member's Confidentiality Requirements. The reports generated by the Service and any information derived from them ("Reports"), as well as Provider's pricing, are confidential to Provider and are to be used only by Member, its employees, agents and Member's

Franchisor in the management of its financial affairs. Except for disclosures permitted herein, Member shall not disclose to or permit use of by any other party, the Reports and Provider's pricing without the written consent of Provider. Member agrees to mark as "Confidential" any such Reports or information made available to its agents and to enforce to the fullest extent possible by law any violations of this Confidentiality Requirement by its employees or agents.

12. Intellectual Property Ownership. Provider is the exclusive owner of the Service, including its features, design, functionality and Reports, and retains all right, title and interest therein. Member agrees to not develop a Service for use by others that is substantially similar to or that competes directly with Provider's Service. Member retains the rights to the data it submits to Provider and is licensed to use the aggregate data for the sole purpose of managing its business and improving the profitability thereof.

13. Security Procedures.

- A. **Users.** Each user of the Service authorized by Member will access the Service by entering a confidential user name and password, which such user shall create on the Site by following the instructions provided. Provider shall not assist or provide toll-free support to any individual other than authorized users.
- B. **Secure Passwords.** Member shall, and shall cause its employees to, take reasonable steps to maintain the confidentiality of the security procedure and the user names and passwords and related instructions provided by Provider. If Member believes or suspects that any such information or instructions have been known or accessed by unauthorized persons, Member shall immediately notify Provider in a manner affording Provider a reasonable opportunity to act on the information.
- C. **User Changes.** Member shall promptly notify Provider in writing of any change in access options for a previously authorized user or in termination of access for a previously authorized user. Provider shall have a reasonable time after receipt of a notice to act on it.
- D. **User Verification.** Member acknowledges that Provider offers the security procedure described above for the purpose of verifying the authenticity of its users and Member has reviewed various security procedures including the foregoing and has determined that the security procedure designated herein best meets its requirements, given the nature of the Service being offered by Provider.

14. Terms & Termination.

- A. **Service Period Term.** The minimum service term is one (1) Service Period (which is an accounting period for accounting services and a calendar month for other services). The service begins on the first day of the first Service Period as selected by Member for the Effective Date of the Service. The Term of service shall continue for each Service Period, or part thereof, thereafter at the then-current fee schedule published online at (<https://members.myprofitkeeper.com/>) until such time as Member gives written notice to Provider at least ten (10) days' prior to the ending date of the then-current Service Period, unless termination is for cause. Any changes in a service, including termination of the service, are not final until Member has approved such change at the provided Site.
- B. **Customer Satisfaction.** Member's satisfaction is of the utmost importance to Provider. Provider believes this is achieved by treating Member with respect and providing the highest quality customer service. If Service fails to meet expectations, please contact customer support at 1-866-301-8050 during normal business hours 8 am-5 pm Arizona Time Monday - Friday, or via e-mail 24 hours a day 7 days a week, and every attempt will be made to remedy the situation.
- C. **Termination for Cause.** Provider may immediately terminate this Agreement for cause upon notice to Member if Member is in violation of a material provision of this Agreement, including but not limited to, the payment when due of any fees or charges; if

Member misrepresents any data or information required by Provider in connection with the Service; or at any other time. Provider may immediately terminate this Agreement for cause without notice to Member if Member files, or has filed against it, a petition under the U.S. Bankruptcy Code or a similar state or federal law. The termination of the Service or this Agreement will not affect Member's or Provider's rights with respect to transactions that occurred before termination.

15. Disputes

- A. **Alternative Dispute Resolution.** In the event of a dispute between Provider and Member arising from this Agreement either party may elect to have the dispute determined pursuant to Title 9 of the U.S. Code and the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon any award rendered by the arbitrator(s) may be entered in any court having jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines, which would otherwise be applicable in an action brought by Provider or Member shall be applicable in any arbitration proceeding and the commencement of any arbitration proceeding shall be deemed the commencement of an action for these purposes.
- B. **Attorneys' Fees.** In the event of a dispute between Provider and Member arising from this Agreement the non-prevailing party in such dispute agrees to pay reasonable attorneys' fees, all expert witnesses' fees, all costs actually incurred by the prevailing party in connection with such dispute, and all such fees and costs actually incurred by the prevailing party in collecting or enforcing any settlement agreement, judgment, or arbitration award relating to such dispute.
- C. **Injunction.** Each party acknowledges that the unauthorized disclosure or use of confidential information will cause irreparable harm and significant injury. The parties agree that each party shall have the right to seek immediate injunctive relief from breach of this Agreement for any reason, in addition to any other rights and remedies it may have. The parties further agree that the bond required, if any, for an injunction shall be no greater than the total charge for Accounting Fees assessed for services provided for the six (6) month period immediately preceding the request for injunction.

16. Warranty, Indemnity, and Liability Limitation.

A. PROVIDER OFFERS TOOLS AND AIDS TO ASSIST MEMBER WITH MANAGING BUSINESS ACTIVITIES; HOWEVER, IT IS THE RESPONSIBILITY OF MEMBER TO REVIEW AND MONITOR ALL INFORMATION AND RECORDS FOR ACCURACY AND INTERPRET SUCH INFORMATION AS IT APPLIES TO MEMBER'S BUSINESS PRACTICES. PROVIDER ACCEPTS NO RESPONSIBILITY TO NOTIFY MEMBER OF DISCREPANCIES OR DEFICIENCIES IN BUSINESS ACTIVITIES. ALL BUSINESS PRACTICES ARE THE ULTIMATE RESPONSIBILITY OF MEMBER.

B. MEMBER UNDERSTANDS AND AGREES THAT PROVIDER'S SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE." PROVIDER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE.

C. MEMBER SHALL DEFEND, INDEMNIFY AND HOLD PROVIDER HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, JUDGMENTS AND EXPENSES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PERFORMANCE OF THE SERVICE INCLUDING, BUT NOT LIMITED TO, CLAIMS RESULTING FROM RELIANCE ON INFORMATION AND REPORTS FURNISHED BY PROVIDER BASED IN WHOLE OR IN PART ON DATA PROVIDED BY MEMBER.

D. IN NO EVENT WILL PROVIDER HAVE LIABILITY FOR ANY CONSEQUENTIAL, SPECIAL, PUNITIVE OR INDIRECT LOSS OR DAMAGES, INCLUDING LOSS OF PROFIT, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON CONTRACT,

TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER THEORY OR FORM OF ACTION OR WHETHER PROVIDER KNEW OR SHOULD HAVE KNOWN OF THE LIKELIHOOD OF SUCH DAMAGES IN ANY CIRCUMSTANCES. IN NO EVENT WILL PROVIDER'S LIABILITY FOR ANY ACT OR OMISSION RELATING TO THE SERVICE EXCEED THE TOTAL CHARGES FOR SUCH SERVICES PROVIDED FOR THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING SUCH ACT OR OMISSION BY THE PROVIDER.

E. Contractors. Provider may at any time use agents or independent contractors (collectively "Contractors") to provide any portion of the Service. Except as to Third-Party Services Providers, Provider will be responsible for the acts and omissions of its Contractors in the same manner as if Provider had performed the portion of the Service itself and **ANY CLAIMS AGAINST ITS CONTRACTORS OR PROVIDER (WITH RESPECT TO THE ACTS OR OMISSIONS OF ITS CONTRACTORS) SHALL BE SUBJECT TO THE LIMITATIONS OF LIABILITY SET FORTH HEREIN TO THE SAME EXTENT AS IF PROVIDER HAD PERFORMED THE PORTION OF THE SERVICE ITSELF.** Provider, however, will not be deemed to be the agent of, nor responsible for, the acts or omissions of any other person, including, without limitation, Third-Party Services Providers, any Federal Reserve Bank, ACH, Internet service provider or transmission or communications facility, any receiver or receiving depository financial institution (including, without limitation, the return of an Entry by such receiver or receiving depository financial institution), and no such person shall be deemed Provider's agent.

17. General Terms and Conditions.

- A. **Communications.** To assure that Member's inquiries are handled promptly, courteously and accurately, Provider's supervisory or management personnel may monitor and/or record telephone conversations and emails between Member and Provider without additional prior notification to Member or Member's employees, and Member will so advise Member's employees who communicate with Provider by telephone or electronic means.
- B. **Records.** This Agreement does not relieve Member of Member's obligations under federal or state laws or regulations to retain records relating to the data contained in Provider's tape or disk files.
- C. **Authorized Representative.** Member shall designate in writing those who may receive information, communications and notices regarding the Service, and who are authorized to transact all business, make all agreements and sign and deliver all documents in connection with the Services. Member shall promptly notify Provider in writing if the identity of such persons changes.
- D. **Entire Agreement.** This Agreement and the Product Subscriptions constitute the entire agreement between Provider and Member regarding the Service, all revisions, discussions, promises, representation, and understanding relative thereto, if any, being herein merged.
- E. **Changes in Writing.** No change, addition or amendment shall be made to this Agreement except by written document signed by the parties.
- F. **Assignment; Binding Nature.** This Agreement shall be binding upon, and inure to the benefit of the parties hereto and their respective successors and assigns.
- G. **Surviving Sections.** Sections 6, 7, 8, 9, 10, 11, 12, 14, 15 and 16 shall survive termination of the Service.
- H. **Severability.** The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of any other provisions hereof.
- I. **Headings.** Headings used herein are for informational purposes only and shall not be used to interpret the meaning or intent of the provisions herein.

- J. **Waiver.** No waiver by any party of any breach of any provision hereof shall constitute a waiver of any other breach of that or any other provision hereof.
- K. **Force Majeure.** Whenever performance of the Service is substantially prevented by reason of an act of God, strike, lockout, law, regulation or ordinance, war or terrorism or by any reason of any other matter if beyond the control of the Provider, such performance shall be excused and this Agreement deemed suspended during the continuation of such circumstance.
- L. **Governing Laws.** This Agreement shall be governed in all respects by the laws of the United States and the State of Arizona, except for conflict of laws provisions. The parties agree that for any dispute, controversy or claim arising out of or in connection with this Agreement, venue and personal jurisdiction shall be in the federal, state or local court with competent jurisdiction located in Maricopa County, Arizona.
- M. **Electronic Signature.** The electronic acceptance of this Agreement is made by selecting the **I Accept** button on the login page of the ProfitKeeper Site by Member, and is hereby accepted as a valid signature or authorization of said Agreement and is binding to both Member and Provider pursuant to the terms and conditions contained herein.