

## Member Agreement

This "Agreement" is entered into as of the date signed by you the member or the authorized officers or representatives of the professional association, here after referred to as member, and accepted by ProfessionalCharges.com. You desire to submit charges for professional services with a client's credit card or bank card (also know as ATM card, ATM debit card, check card, money card, cash-and-check card )that is validly issued by members of Visa U.S.A., Inc. ("Visa") MasterCard International, Incorporated ("MasterCard") and Discover Card, here after referred to as "Cards". ProfessionalCharges.com desires to provide card processing services to you. Therefore, you, the member and ProfessionalCharges.com agree as follows:

### Personal Guarantee.

As a primary inducement to ProfessionalCharges.com to enter into this Agreement, the Member jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance and payment by you of each of the its duties and obligations to ProfessionalCharges.com pursuant to this Agreement, as it now exists or amended from time to time, with or without notice. You further agree to pay to ProfessionalCharges.com all expenses (including attorney's fees and court costs) paid or incurred by ProfessionalCharges.com in collecting such obligations, and in enforcing this Guaranty.

This guarantee will not be discharged by bankruptcy or affected by the death of the Guarantor member, will bind all heirs, administrators, representatives and assigns. You understand that the inducement to ProfessionalCharges.com to enter into this Agreement is consideration for the guaranty, and that this guaranty remains in full force and effect even if the guarantor(s) receive no additional benefit from the guaranty.

You assume all legal, ethical and financial obligations for the charges that you submit to ProfessionalCharges.com. If the charges are disputed you are responsible for providing evidence of a signed authorization documenting the validity of the charge. You are also primarily responsible for attempting to resolve the dispute with the cardholder. You are financially responsible to reimburse ProfessionalCharges.com for all disputed claims until and unless they are resolved as originally submitted.

### Maintenance and Authorizations for Checking Account.

A. Maintained Account. You will maintain a checking account to facilitate payment for Card transactions. You irrevocably authorize ProfessionalCharges.com, or their vendors or agents, to initiate debit/credit entries to your checking account, or any other account maintained by you at any institution that is a receiving member of ACH. This allows for funds you are owed to be deposited into your checking account. Monies owed are based on charges you submit minus agreed upon processing fees and expenses. This also allows your checking account to be debited for chargebacks, fees and any other penalties or payments you owe under this "Agreement". You agree to maintain sufficient funds to cover potential charge backs that could occur.

B. Credits and Debits. ProfessionalCharges.com will deposit funds evidenced by "Transaction Drafts" into your checking account (less recoupment of any credit(s), adjustments, fines, chargebacks or fees according to the schedule of fees incorporated into this Agreement by reference) complying with the terms of this "Agreement" and the "User's Guide." Funds will normally be deposited via ACH within 10 business days after the Transaction Draft is submitted to ProfessionalCharges.com.

C. Length of Authorization. This authorization will remain in effect after termination of this "Agreement," and until ProfessionalCharges.com has received written notice terminating this authorization and all your obligations to ProfessionalCharges.com have been paid in full. If you change your checking account, you will notify ProfessionalCharges.com, and this authorization will apply to the new account.

D. Indemnification. You will indemnify and hold ProfessionalCharges.com harmless for any action taken against your checking account pursuant to this "Agreement." You will also indemnify and hold harmless the institution at which you maintain your checking account for acting in accordance with any instruction from ProfessionalCharges.com regarding your account. All indemnification sections will survive termination of this Agreement.

### Fees and Other Amounts Owed.

A. Fees Owed. You will pay ProfessionalCharges.com fees for services or situations in accordance with the attached Schedule of Fees which is incorporated into this Agreement by reference. Such fees will be calculated and debited from your bank account, or will be netted out from the funds due you under this Agreement. Annual membership fees will be either charged to the credit card of the member or debited to a bank account authorized by the ACH agreement.

B. Other Amounts Owed. You will immediately pay ProfessionalCharges.com any amount incurred by ProfessionalCharges.com attributable to this Agreement, including but not limited to charge backs, credits, fines imposed by VISA, MasterCard or Discover, non-sufficient fund fees, and ACH debits that overdraw your bank Account, or at any other financial institution for any amount you owe ProfessionalCharges.com under this Agreement or under any contract now existing or later entered into between you and ProfessionalCharges.com. In the event such ACH does not fully reimburse ProfessionalCharges.com for the amount owed, you will immediately pay ProfessionalCharges.com such amount.

### **User's Guide and Security Procedures.**

You will have a user name and a password to access the System. We will also provide you with operating procedures in a "User's Guide" which is incorporated into this Agreement by reference.

You agree to:

- (a) comply with the User Guide that is posted on the ProfessionalCharges.com web site and may be updated or changed from time to time;
- (b) take reasonable steps to safeguard the confidentiality and security of your account number and password, and any other proprietary property or information we provide to you in connection with the Services;
- (c) limit access to your account number and password to persons who have a need to know such information;
- (d) closely and regularly monitor the activities of employees who access the Services; and
- (e) notify us immediately if you have any reason to believe the security or confidentiality required by the provision has been or may be breached. Our security procedures are not designed for the detection of errors (e.g., duplicate charges, inaccurate charges, etc.). We will not be obligated to detect errors by you or others, even if we take certain actions from time to time to do so.

### **Electronic Mail/Internet.**

We will have a reasonable time to act upon any e-mail request or notice. You acknowledge that, even though e-mail may be encrypted, we cannot ensure that it will not be intercepted or affected by the actions or omissions of others, such as third party networks or persons with access to the Internet.

You agree that your use of the internet will be entirely at your own risk, and that ProfessionalCharges.com, our banking affiliates, internet service providers, and web host will not be liable for any errors, defects in, or the untimeliness or lack of authenticity of, any information provided over the Internet;

### **Indemnification.**

You will be liable for, hold harmless, and will indemnify ProfessionalCharges.com, its employees, officers, directors and agents against all claims by third parties arising out of this Agreement and for all attorneys' fees and other costs and expenses paid or incurred by ProfessionalCharges.com in the enforcement of the Agreement, including but not limited to those resulting from any transaction processed under this Agreement or any breach by you of this Agreement and those related to any bankruptcy proceeding.

### **Limitation of Liability.**

Except as otherwise stated in this Agreement, we will be liable to you only for damages arising directly from our intentional misconduct or gross negligence in the performance of the Services. We will not be responsible for any loss, delay, cost or liability which arises, directly or indirectly, in whole or in part, from:

- (a) your actions or omissions, or those of third parties which are not within our immediate and reasonable control;
- (b) your negligence or breach of any agreement with us;
- (c) any ambiguity, inaccuracy or omission in any instruction or information provided to us;
- (d) any error, failure or delay in the transmission or delivery of data, records or items due to a breakdown in any computer or communications facility;
- (e) accidents, strikes, labor disputes, civil unrest, fire, flood, water damage (e.g., from fire suppression systems), or acts of God;
- (f) causes beyond our reasonable control;
- (g) the application of any government or funds-transfer system rule, guideline, policy or regulation;

We will not be responsible for special, indirect, or consequential damages which you incur as a result of our actions or omissions. Our liability and your remedy for actual costs and losses resulting from our actions and/or omissions, will not exceed the cost of annual membership plus (one half of a percent) 1/2% of all transactions not resulting in chargebacks or credits.

Any claim, action or proceeding by you to enforce the terms of this agreement or to recover for any Service-related loss must be commenced within one year from the date that the event giving rise to the claim, action or proceeding first occurs. You agree to cooperate with us in any loss recovery efforts we undertake to reduce any loss or liability that arises in connection with your Services.

You acknowledge that our attached Schedule of Fees have been established in contemplation of:

- (a) these limitations on our liability;
- (b) your agreement to review statements, confirmations, and notices promptly and to notify us immediately of any discrepancies or problems; and
- (c) your agreement to assist us in any loss recovery effort.

#### **Information Processing and Reporting.**

ProfessionalCharges.com offers services that require us to receive, process, and report information involving your account and transactions. We will not be responsible for determining the accuracy, timeliness or completeness of any information that you or others provide to us. We will not have a duty to interpret the content of any data transmitted to us, except to the limited extent set forth in this Agreement. Unless otherwise agreed in writing, we will not be required (by means of any security procedure or otherwise) to detect errors in the transmission or content of any information we receive from you or third parties.

You acknowledge that it is not possible for the Services to be totally free from operator, programming or equipment error, and that errors in processing and compiling data may occasionally occur (e.g., due to the failure of others to provide accurate information, telecommunication failures, or a breakdown in an electronic data interchange). As such, you agree to review and verify all results and to maintain adequate controls for insuring both the accuracy of data transmissions and the detection of errors. Unless otherwise required by law, our sole responsibility for any reporting errors caused by us will be to reprocess the information for the period in question and to provide corrected reports at our own expense. You agree to maintain adequate backup files of the data you submit for a reasonable period of time in order to facilitate any needed reconstruction of your transactions (e.g., in the event of a telecommunication failure). If we are unable to provide a Service for any reason, we will promptly inform you of the problem and will take reasonable steps to resume processing.

#### **Reliance On Third Parties.**

Our ability to provide certain Services (e.g., in connection with electronic data interchange) is dependent upon our ability to obtain or provide access to third party networks. In the event any third party network is unavailable or we determine, in our discretion, that we cannot continue providing any third party network access, we may discontinue the related Service or may provide the Service through an alternate third party network. In such situations, we will have no liability for the unavailability of access. We will not be responsible for any services you receive from third party vendors.

#### **Arbitration.**

At your or our request, any claim or controversy involving more than \$25,000 that arises out of or relates to this Agreement or the Services will be submitted to arbitration before the American Arbitration Association, strictly in accordance with the terms of this Agreement. The arbitration will be heard before an arbitrator mutually agreeable to you and us. If we cannot agree upon the choice of an arbitrator within 10 days, then the arbitration will be heard by three arbitrators; one chosen by us, one chosen by you, and the third chosen by the first two arbitrators. The arbitrator(s) will convene at a place in California mutually acceptable to both parties and, if the place cannot be agreed upon, the arbitration will be in California at a place designated by the arbitrator(s). You agree that: (a) pursuant to California Code of Civil Procedure section 1283.1, each party to the arbitration will have the discovery rights described in Code of Civil Procedure section 1283.05, as amended from time to time; (b) each of us will be bound by the decision of the arbitrator(s); (c) judgment upon an arbitration award may be entered by any court of competent jurisdiction; and (d) you will submit to the jurisdiction of California. BY ENTERING INTO THIS AGREEMENT, YOU AND WE WAIVE ANY RIGHT TO TRIAL BY JUDGE OR JURY for disputes covered by this provision. This provision shall not limit or constrain our right of setoff, to exercise any security interest or lien we may hold in property, to comply with legal process involving your property, to interplead funds in the event of a dispute, or to obtain provisional or ancillary remedies such as injunctive relief. Neither party shall institute an arbitration proceeding until it has given the other party at least 30 days prior written notice of its intention to do so.

#### **Performance.**

ProfessionalCharges.com will perform all services in accordance with this Agreement. ProfessionalCharges.com makes no other warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. ProfessionalCharges.com disclaims all implied warranties. ProfessionalCharges.com will not be liable to you for any failure or delay in its performance of this Agreement if such failure or delay arises out of causes beyond the control and without the fault or negligence of ProfessionalCharges.com.

## **Representations and Warranties.**

You represent and warrant to ProfessionalCharges.com at the time of execution and during this term of this Agreement the following:

- A. You are a licensed professional in the State in which you are providing services, or are a formally organized professional association representing, or for the benefit of licensed professionals. All information contained on the Application or any other document submitted to ProfessionalCharges.com is true and complete.
- B. You have the power to execute and perform this Agreement and you represent and warrant that you will be bound by all provisions of this Agreement, and that you are authorized to execute any documents and to take any action which may be required by ProfessionalCharges.com now or in the future. Further, you, by your signature on the **Authorization and Agreement Form** or upon your first submission of a Transaction Draft, acknowledge that you have received and understand the terms of this agreement and the User's Guide. Further, you represent and warrant that this Agreement and User's Guide will not violate any law, or conflict with any other agreement to which you are subject.
- C. There is no action, suit or proceeding pending or to your knowledge threatened which if decided adversely would impair your ability to carry on your business substantially as now conducted or which would adversely affect your financial condition or operations. You have never been placed on the MasterCard MATCH system or the Combined Terminated Merchant File, unless you have disclosed this to ProfessionalCharges.com.
- D. All charges submitted and resulting transactions are bona fide and are only for legitimate professional services, which are in compliance with the legal and ethical guidelines of the member's profession. No transaction involves the use of a Card for any purpose other than the payment for professional services rendered by you and governed by the licensing laws of your state.

## **Term and Termination.**

- A. Term. The Agreement will remain in effect for a period of 1 year from the effective date and will renew for successive 1 year terms unless terminated as set forth below.
- B. Termination. You may terminate this Agreement at any time. ProfessionalCharges.com may terminate this agreement if you violate any of the terms of this agreement, lose your license to practice, or have repeated charge backs. Termination of this agreement must be by notification. Notice of termination may be given orally or in writing, but if given orally shall be confirmed in writing. Termination shall be effective on the date specified by the oral or written notice. If you decide not to renew your membership, notify ProfessionalCharges.com before your renewal date, or you will be automatically renewed and charged for the membership.
- C. Obligations upon Termination. All your obligations regarding submitted charges will survive termination. You must maintain in your bank account enough funds to cover all chargebacks, refunds and fees incurred by you for at least 12 months following your last submitted transaction, until all chargeback rights have expired. If the amount in your bank account is not adequate, you will pay ProfessionalCharges.com the amount you owe upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorneys' fees.

## **Compliance With Laws And Rules.**

You agree to comply with all rules and operating regulations issued from time to time by VISA, MasterCard and Discover and any policies and procedures provided by ProfessionalCharges.com, including those set forth in the User's Guide. The User's Guide is incorporated into this Agreement by reference as if it were fully set forth in this Agreement. You further agree to comply with all applicable state, federal and local laws, rules and regulations ("Laws"), as amended from time to time affecting acceptance of the cards, processing of card transactions, and the transactions contemplated by this Agreement. You will assist ProfessionalCharges.com in complying in a complete and timely manner with all Laws and Rules now or hereafter applicable to any Card transaction or this Agreement. You will execute and deliver to ProfessionalCharges.com all such instruments they may from time to time reasonably deem necessary.

## **HIPPA Privacy Rules Compliance**

ProfessionalCharges will handle all information received from our members in strict accordance to the [Privacy Policy](#) which is incorporated into this Agreement by reference.

## **General Provisions.**

- A. Entire Agreement. This Agreement, including the Schedule of Fees, the completed Application, the User's Guide, and The Authorization and Agreement Form any amendment or supplement to this Agreement, all of which are incorporated into this Agreement, constitutes the entire agreement between the parties, and all prior or other agreements or representations, written or oral, are superseded by this Agreement.
- B. Governing Law. This Agreement will be governed by the laws of the State of California. The parties agree that all performances and transactions under this Agreement will be deemed to have occurred in Los Angeles County and that your entry into and performance of this Agreement will be deemed to be the transaction of business within the State of California.

C. Construction. Any alteration or strikeover in the text of this pre-printed Agreement will have no binding effect, and will not be deemed to amend this Agreement. The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

D. Assignability. This Agreement may be assigned by ProfessionalCharges.com, but may not be assigned by you directly or by operation of law, without the prior written consent of ProfessionalCharges.com. If you nevertheless assign this Agreement without ProfessionalCharges.com's consent, the Agreement will be binding on the assignee. If you sell your practice, and the new professional incurs chargebacks, the original professional and all original guarantors will be held personally liable for all chargebacks and any other liabilities of the new professional.

E. Notices. Unless otherwise agreed, notices required by this Agreement must be in writing. Notices to you may be e-mailed, mailed, or delivered to you at the address or addresses provided by you in your application or updated application. Notices to us must be sent to: ProfessionalCharges.com, 3429 Ocean View Blvd. # "K", Glendale, California 91208 or e-mailed to: Administrator@ProfessionalCharges.com. Any written notice under this Agreement will be deemed given upon the earlier of: (i) actual receipt or (ii) five days after being deposited in the United States mail or (iii) 24 hours after being sent by e-mail with return request.

F. Bankruptcy. You will immediately notify ProfessionalCharges.com of any bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against you. You will include ProfessionalCharges.com on the list and matrix of creditors as filed with the Bankruptcy Court, whether or not a claim may exist at the time of filing, and failure to do so will be cause for immediate termination or any other action available to ProfessionalCharges.com under applicable Rules or Law. You acknowledge that this Agreement constitutes an executory contract to make a loan, or extend other debt financing or financial accommodations to or for the benefit of you, and, as such, cannot be assumed or assigned in the event of your bankruptcy.

G. Attorney's Fees. You will be liable for and will indemnify and reimburse ProfessionalCharges.com for all attorneys' fees and other costs and expenses paid or incurred by ProfessionalCharges.com in the enforcement of this Agreement, or in collecting any amounts due from you to ProfessionalCharges.com or resulting from any breach by you of this Agreement.

H. Amendments. ProfessionalCharges.com may propose amendments or additions to this Agreement. ProfessionalCharges.com will inform you of a proposed change in a periodic statement or other written notice. You will be deemed to have agreed to the change if you continue to present transactions to ProfessionalCharges.com after 30 days following the mailing of the notice. Notwithstanding the previous sentence, changes to fees authorized by this Agreement will be effective upon notice to you, unless a later effective date is provided. Further, ProfessionalCharges.com is entitled to pass through to you any fee increases imposed by VISA, MasterCard, Discover or telecommunication vendors.

I. Severability and Waiver. If any provision of this Agreement is illegal, the invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if the illegal provision is not contained in the Agreement. Neither the failure nor delay by ProfessionalCharges.com or Member to exercise, or partial exercise of, any right under this Agreement will operate as a waiver or estoppel of such right, nor shall it amend this Agreement. All waivers must be signed by ProfessionalCharges.com.

J. Independent Contractors. ProfessionalCharges.com and the member will be deemed independent contractors and neither will be considered agent, joint venturer or partner of the other except as provided for in the ACH transactions.

----- End of Members Agreement -----

#### **Schedule of Standard Fees**

VISA, MasterCard, and Discover Processing Fees:  
3.25% of Card Volume plus 75¢ per transaction.

American Express Processing Fees:  
4.5% of Card Volume, plus 75¢ per transaction.

Chargebacks: \$30.00 per charge back

ACH Returns: \$10.00 per item.

Annual Membership Fee \$75.00.

04-01-2003