



## OWNER POLICIES & PROCEDURES

**The Vortex is a product of SURGE365 (hereinafter referred to as “Surge365” or the “Company”).**

The following Policies and Procedures must be adhered to by all Owners (hereinafter referred to as “Owner”).

For use within the Surge365 Global Market (specific to the European market).

Version I (Effective March 25<sup>th</sup>, 2017)

**CORPORATE OFFICE**  
**6 Ginger Creek Village Drive**  
**Glen Carbon, IL 62034**  
**618-655-2431**

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## **SECTION 1 – INTRODUCTION**

### **1.1 – THE COMPANY – CODE OF ETHICS**

As an Owner of a Surge365 Vortex website, I represent, warrant, promise and agree that:

- I will be courteous, respectful, honest and fair in all my dealings while acting as an Owner, and I will perform my business activities in a manner that will enhance my reputation and the positive reputation of Surge365. I recognize that the founders of Surge365 have strong personal convictions regarding the ethical conduct of all Owners.
- I will not engage in any deceptive or illegal practice.
- I will make no claim for products, services or business positions of Surge365 except as contained in official literature of Surge365.
- I will not misrepresent, or make any representations or warranties concerning, the income potential of the Owner Compensation Plan. It is impossible to predict Owner income. The

success of an Owner depends on many variables, such as the amount of time and effort committed to his/her business and his/her organizational abilities.

- I understand and agree that I am solely responsible for all financial and/or legal obligations incurred by me in the course of my business as an Owner including self-employment taxes, income taxes, license fees, etc.
- I understand that I am an independent contractor for all legal purposes and for all federal and state employment and tax purposes. The Owner acknowledges and agrees that they are not guaranteed any income, profits or success by virtue of independent contractor status with the Company, and the Owner certifies that no such representations or warranties have been made. Owners shall not make any false or misleading statements about the business opportunity.

## **1.2 – POLICIES AND COMPENSATION PLAN INCORPORATED INTO AGREEMENT**

These Policies and Procedures, in their present form and as amended at the sole discretion of the Company are incorporated into, and form an integral part of the Company's Agreement with its Owners. Throughout these Policies, when the term "Agreement" is used, it collectively refers to the Owner Applications and Agreements, these Policies and Procedures, Company's general commission plan, and Company's Business Entity Registration Form (if applicable). These documents are all incorporated herein by reference (all in their current form and as amended by the Company from time- to-time in its sole and absolute discretion). It is the responsibility of each Owner to read, understand, adhere to, and ensure he or she is aware of and operating under the most current version of the Agreement.

## **1.3 – PURPOSE OF POLICIES**

Reference is made throughout this document to the term Vortex Owner ("Owner") of which is more fully defined in the Glossary of this document. The Company offers its products and services through Owners. It is important to understand that personal success and the success of fellow Owners depend on the integrity of the men and women who offer our products and services. To clearly define the relationship existing between Owners and the Company, and to explicitly set a standard for acceptable business conduct, the Company has established this Agreement. The Company's Owners are required to comply with the Agreement as well as all federal, provincial, state, and local laws governing their business and their conduct. Please review the information in the Agreement carefully. It explains and governs the relationship between the Owner, as an independent contractor, and the Company. If there are any questions regarding any policy or rule, do not hesitate to seek an answer from the Company.

## **1.4 – CHANGES TO THE AGREEMENT**

Because federal, provincial, state, and local laws, as well as the business environment, periodically change, the Company reserves the right to amend the Agreement and its prices at its sole and absolute discretion. By signing the Application and Agreement, the Owner agrees to abide by all amendments that the Company elects to make. Amendments shall be effective upon publication in the Companies back office. The Company shall provide or make available to all Owners a complete copy of the amended provisions by one or more of the following methods: (i) posting on Surge365's official website via the Surge365 Back Office; (ii) electronic mail (e-mail); (iii) fax-on- demand; (iv) inclusion in Surge365 periodicals; (v) inclusion in product

orders or bonus check mailings; or (vi) special mailings. The continuation of a Surge365 business or an Owner's acceptance of bonuses or commissions constitutes acceptance of any and all amendments.

### **1.5 – DELAYS**

The Company shall not be responsible for delays or failures in performance of its obligations when performance is made commercially impracticable due to circumstances beyond its reasonable control. This includes, without limitation, strikes, labor difficulties, riot, war, fire, death, telecommunication failures, curtailment of a party's source of supply, or government decrees or orders.

### **1.6 – POLICIES AND PROVISIONS SEVERABLE**

If any provision of the Agreement, in its current form or as may be amended, is found to be invalid or unenforceable for any reason, only the invalid portion of the provision shall be severed and the remaining terms and provisions shall remain in full force and effect. The severed provision, or portion thereof, shall be reformed to reflect the purpose of the provision as closely as possible.

### **1.7 – WAIVER**

The Company never gives up its rights to insist on compliance with the Agreement and with the applicable laws governing the conduct of a business. No failure of the Company to exercise any right or power under the Agreement or to insist upon strict compliance by an Owner with any obligation or provision of the Agreement, and no custom or practice of the parties at variance with the terms of the Agreement, shall constitute a waiver of the Company's right to demand exact compliance with the Agreement. Waiver by the Company can be effectuated only in writing by an authorized officer of the respective Company. The Company's waiver of any particular breach by an Owner shall not affect or impair the Company's rights with respect to any subsequent breach, nor shall it affect in any way the rights or obligations of any other Owner. No delay or omission by the Company to exercise any right arising from a breach shall affect or impair the Company's rights as to that or any subsequent breach. The existence of any claim or cause of action of an Owner against the Company shall not constitute a defense to Company's enforcement of any term or provision of the Agreement.

## **SECTION 2 – BECOMING AN OWNER**

### **2.1 – REQUIREMENTS TO BECOME AN OWNER**

To become an Owner for the Company, each applicant must:

- a) If an individual, be of the age of majority in his or her state of residence or for international residents a minimum age of 18 years.
- b) Reside in the United States, a U.S. Territory, Canada, or any country which the Company has officially announced is open for business.
- c) Have and produce a valid Social Security, Social Insurance or Federal Tax ID Number. For non U.S. Residents this should be a Drive License # or a Country Personal ID# or Passport #.
- d) Agree to abide by the Agreement.

e) Submit a properly completed (online) Application and Agreement to the Company, including any required documents in support of a business entity, if applicable. Owners are allowed to personalize their website with a site name. Owners receive Cash Rewards (hereinafter referred to as “commission”) from Vortex Hotel and Cruise Customer bookings. Vortex Owner commissions are a dollar match on their Vortex Customers savings.

f.) Supply the monthly subscription fee (plus any applicable tax and administrative fees, where applicable) for a website to book travel. Charges will appear on your credit card statement as Surge365 6186552431. Owners will not permit any other person to pay the hosting fee on their behalf. The monthly subscription fee is automatically deducted in subsequent months from the payment method used during enrollment or the payment method on file if altered after enrollment.

## **2.2 – BENEFITS**

Once an Application and Agreement has been accepted by the Company, the benefits of the Vortex Owner are available. These benefits include the right to:

- a. Sell the products and services offered on Surge365’s replicated website;
- b. Receive periodic literature from the Company;
- c. Earn cash rewards by building a network of customers who then purchase travel

## **2.3 – TALENT RELEASE**

Each Owner hereby consents to, allows and grants Surge365 a perpetual, worldwide, royalty-free and exclusive license to use, edit, modify and otherwise exploit (i) the name, photograph, testimonials, statements, likeness, biographical information, title, positions, voice, voices and biography and (ii) any film footage, video tapes, audio tapes, recordings and interviews when created in connection with any Surge365 events, promotion and/or conventions, to advertise, promote and publicize Surge365’s business, products, events and/or services, in any form, format or media, whether now known or hereafter devised.

## **2.4 – GENERAL RESPONSIBILITIES OF AN OWNER**

a) Owners shall not engage in communication between the customer and vendors and/or suppliers, including but not limited to (1) changing the Company’s information with any supplier or entity or (2) contracting with or disputing with any supplier on behalf of the Company.

b) Owners are very restricted in how they may handle payments for products and services from their customers and the following rules must be adhered to and will be strictly enforced:

i.) Owners may never accept cash from a customer for the sale of travel related goods, under any circumstance.

ii.) For travel related products; Checks, cashiers checks or money orders from the customer are acceptable only if they are made out to the Company directly from the customer. Failure to mail said payments in a timely manner may cause late fees or cancelled bookings. Any resultant costs will be the sole responsibility of the Owner.

iii.) A customer’s credit card information may never be accepted by the Owner for payment on ANY service or product. For travel related products, a customer should purchase directly online and enter their own personal payment information. An Owner may never complete a transaction on behalf of a customer. Under no circumstances may an Owner process a customer’s credit card through

their own merchant account, PayPal, or other processing account. Failure to comply will result in disciplinary action. Owners should never use their personal funds to make payments, or make up for a shortfall in costs or late deposits by a customer. Violation of payment policies may result in disciplinary action, which may include prosecution.

## **2.5 – TERM AND RENEWAL OF OWNER WEBSITE**

The term of the Owner Agreement is month-to-month from the date of its acceptance by the Company.

## **SECTION 3 – OPERATING YOUR BUSINESS**

### **3.1 – ADHERENCE TO COMPANY'S COMPENSATION PLAN**

Owners must adhere to the terms of the Company's commission plan as set forth in the Company's literature.

### **3.2 – ADVERTISING – GENERAL**

All Owners shall safeguard and promote the good reputation of the Company and its products and services. The marketing and promotion of the Company, Company's products and services shall be consistent with the public interest, and must avoid all discourteous, deceptive, misleading, unethical or immoral conduct or practices. To promote the products and services the Company offers, Owners must use only the promotional materials and sales aides produced by the Company. The rationale behind this requirement is simple: The Company has carefully designed its services, products, product labels, and promotional materials to ensure that each aspect of the Company is fair, truthful, substantiated, and complies with the vast and complex legal requirements of federal and state laws. If Surge365 Owners were allowed to develop their own sales aides and promotional materials, notwithstanding their integrity and good intentions, there is likelihood that they would unintentionally violate any number of statutes or regulations affecting the Company's business. Accordingly, Owners must not produce their own literature, advertisements, sales aides and promotional materials, or Internet Web pages. The Company will limit purchases of any sales tools or aides to comply with the exemption requirements set forth in any explicit area (where applicable). Additionally, the Company does not accept any liability for products purchased or obtained from a third-party vendor. The Company does not permit Owners to create side-businesses selling sales aides, business cards, marketing websites or similar materials to other Owners of the Company. Should an Owner have materials he or she would like the Company to review please submit sample(s) via email to [compliance@surge365.com](mailto:compliance@surge365.com). Additionally, Owners are prohibited from making direct, indirect or implied medical or other claims regarding the prevention, treatment, cure or mitigation of any disease from the use of Company products. You may not:

- 1) Make any representation (oral, written or otherwise) about Company products which violate the provisions of these Policies and Procedures.
- 2) Discuss or make warranties, representations or statements concerning Company products in a manner that violates the provisions of these Policies & Procedures.
- 3) Use or distribute, for the purpose of marketing products or in promotion of the Compensation Plan, materials which violate the provisions of these Policies & Procedures.

4) Re-label or in any manner alter the label of any Company product. Additionally, Owner must not repackage or refill Company products and must sell Company products in their original, unopened containers.

5) Use third-party individuals, business entities and/or organizations in any deceptive or misleading manner in connection with the promotion of Surge365 products.

### **3.3 – INTERNET WEBSITES AND E-MAIL COMMUNICATIONS**

If an Owner desires to utilize an Internet Web page to promote his or her business, he or she may do so through Surge365's replicated website program only. No Owner may independently design or have designed a website using the names, logos, or product descriptions of the Company or which otherwise promotes (directly or indirectly) the Company's products. An Owner may not use "blind" ads on the Internet making product or service claims, which are ultimately associated with the Company's products. Should an Owner register a Surge365 URL address or domain name linking to a Company site with a search engine or other Internet advertising website the keywords cannot include or incorporate vendor names, trademarks, individual resort property names, or misspellings of the service marks for use in any form of search engine referencing. Additionally, branded keywords must be listed as negative keywords on search campaigns. Owners will be liable for any and all fines, damages, and other actions taken against the Company for violations to this policy.

### **3.4 – E-MAIL COMMUNICATIONS – UNSOLICITED E-MAIL**

The Company may periodically send commercial emails to Vortex Owners (e.g. weekly newsletters or emails with information that applies to the conducting of business). By entering into the Agreement, the Owner agrees to receive such emails, and may opt out or unsubscribe at any time by using the contact information included in every email.

The Company does not permit Owners to send unsolicited commercial e-mails unless such e-mails strictly comply with applicable laws and regulations including, without limitation, the Federal CAN SPAM Act. Any e-mail sent by an Owner that promotes the Company, the Company's opportunity, or the Company's products and services must comply with the following:

- a) There must be a functioning return e-mail address to the sender.
- b) There must be a notice in the e-mail advising the recipient that he or she may reply to the e-mail, via the functioning return e-mail address, to request that future e-mail solicitations or correspondence not be sent to him or her (a functioning "opt-out" notice).
- c) The e-mail must include the Owner's physical mailing address, (i.e. not a P.O. Box) and may not represent that the e-mail is originating from the Company or that the e-mail is signed by any employee or officer of the Company.
- d) The e-mail must clearly and conspicuously disclose that the message is a commercial advertisement or solicitation.
- e) The use of deceptive subject lines and/or false header information is prohibited.
- f) All opt-out requests, whether received by e-mail or regular mail, must be honored.
- g) Owners shall not make offers or solicitations in the guise of research, surveys or informal communication, when the real intent is to sell products or services.

- h) Owners shall provide individual consumers the option to terminate any further communication between the Owner and the consumer and if any consumer requests Owner cease communication, the Owner shall immediately stop communicating upon such request.
- i) Owners must abide by all laws and regulations regarding electronic communications.
- j) Owners may not distribute content by use of distribution lists or to any person who has not given specific permission to be included in such a process; spamming or distribution of chain letters or junk mail is not permitted.
- k) Owners may not distribute content that (i) is unlawful, harassing, libelous, slanderous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable, (ii) could give rise to civil liability, (iii) violates any applicable local, state, federal or international law or regulation or (iv) describes the Company or and of its products and services in an inaccurate manner.

### **3.5 – TELEMARKETING TECHNIQUES**

The Federal Trade Commission and the Federal Communications Commission each have laws restricting telemarketing practices. Both federal agencies (as well as a number of states) have “do not call” regulations as part of their telemarketing laws. Although the Company does not consider Owners to be “telemarketers” in the traditional sense of the word, these government regulations broadly define the term “telemarketer” and “telemarketing” so that an inadvertent action of calling someone whose telephone number is listed on the federal “do not call” registry could cause an Owner to violate the law. Moreover, these regulations must not be taken lightly, as they carry significant penalties - up to \$11,000 per violation for violation of the FTC’s Telemarketing Sales Rule, 16 C.F.R. Part 310 – and even harsher penalties in some states. Therefore, Owners must not engage in telemarketing in the operation of their business. The term “telemarketing” means the placing of one or more telephone calls to an individual or entity to induce the purchase of the Company products or services. Cold calls made to prospective customers or Owners that promote either the Company’s products or services constitute telemarketing and are prohibited. However, a telephone call(s) placed to a prospective customer or Owner (a “prospect”) is permissible under the following situations:

- a) If an Owner has an established business relationship with the prospect. An “established business relationship” is a relationship between Owner and a prospect based on the prospect’s purchase, rental, or lease of goods or services from Owner, or a financial transaction between Owner and the prospect within the eighteen (18) months immediately preceding the date of a telephone call to induce the prospect’s purchase of a product or service.
- b) The prospect’s personal inquiry or application to the Owner regarding a product or service offered by the Company, within the three (3) months immediately preceding the date of such a call.
- c) If Owner receives written and signed permission from the prospect authorizing a call. The authorization must specify the telephone number(s) which Owner is authorized to call.
- d) Owner may call family members, personal friends, and acquaintances. An “acquaintance” is someone with whom Owner has had at least a recent first-hand relationship within the preceding three (3) months. However, if Owner makes a habit of “card collecting” with everyone he or she meets and subsequently calling them, the FTC may consider this a form of telemarketing that is not subject to this exemption. Thus, if Owner engages in calling

“acquaintances,” he or she must make such calls on an occasional basis only and not make this a routine practice.

e) In addition, Owners shall not use automatic telephone dialing systems relative to the operation of their Surge365 business. The term “automatic telephone dialing system” means equipment which has the capacity to: (i) store or produce telephone numbers to be called, using a random or sequential number generator; and (ii) to dial such numbers.

### **3.6 – UNSOLICITED FAXES**

Except as provided in this section, Owners may not use or transmit unsolicited faxes or use an automatic telephone dialing system relative to the operation of their Surge365 business. The term “automatic telephone dialing system” means equipment which has the capacity to: (i) store or produce telephone numbers to be called, using a random or sequential number generator; and (ii) to dial such numbers. The term “unsolicited faxes” means the transmission via telephone facsimile of any material or information advertising or promoting the Company, its products, the marketing and compensation plan or any other aspect of the Company which is transmitted to any person, except that these terms do not include a fax: (i) to any person with that person’s prior express invitation or permission; or (ii) to any person with whom Owner has an established business or personal relationship. The term “established business or personal relationship” means a prior or existing relationship formed by a voluntary two way communication between the Owner and a person, on the basis of: (iii) an inquiry, application, purchase or transaction by the person regarding products or services offered by Owner or (iv) a personal or family relationship, which relationship has not been previously terminated by either party.

### **3.7 - BLOGS, CHAT ROOMS, SOCIAL NETWORKS/MEDIA, ONLINE AUCTIONS AND OTHER ONLINE FORUMS**

Vortex Owners may use online forums (hereinafter referred to as Social Media) to share information about their Vortex website. Social Media is defined as any form of electronic communication through which Vortex Owners create online communities to share information, ideas, personal messages and other content. Examples of Social Media include, but are not limited to discussion forums, blogs, Facebook, Twitter, LinkedIn, Craig’s List, Monster, Pinterest and YouTube. External website must not contain disingenuous popup ads or promotions or malicious code. Decisions and corrective actions in this area are at the sole discretion of the Company. When using Social Media, all Surge365 SBAs must adhere to all policies described in the Agreement including the below guidelines:

- a) Social Media outlets must be used to contribute to the value-based goals of Surge365, to share expertise and to further awareness within our communities.
- b) Owners must use Social Media in a positive way and may never post negative comments about Surge365, its employees, other SBAs, Vortex Owners, Vortex Customers or other Direct Selling companies. Owners must respect others and their viewpoints. Personal insults, discriminatory remarks, ethnic slurs, obscenity or other negative references are not acceptable.
- c) All Owners are personally responsible for their own posts and all online activity related to Surge365.

- d) Owners may link to their replicated website within a post.
- e) Owners may only use authorized content on Social Media sites
- f) Owners must adhere to the branding, trademark and image usage policies as described in this Agreement.
- g) Owners must not post copyright photos without expressed consent from the owner. You may post, “pin” or repost photographs or videos provided through the Surge365 social media sites so long as the photo or video is not edited in any way. Descriptions of the photo or video must be in accordance with this Agreement.
- h) Owners may not post images of Vortex Customers savings nor may Owners make any price guarantee or savings claims.
- i) Owners may not represent themselves as an employee of Surge365 or as the corporate headquarters nor may an Owner use any non-compliant verbiage in the title of any Social Media page or domain address.
- j) Owners must disclose their first name and identify themselves as an Independent Marketing Representative or Independent Surge365 Owner should they be making a post with regard to Surge365 or while acting as a Surge365 Owner. Anonymous postings or the use of an alias is not permitted.
- k) The Company name may only be used when followed by Independent Surge365 Owner (for example: James Johnson, Surge365 Independent Representative).
- l) SBAs must ensure postings are truthful, accurate and professional. Misleading, deceptive or false postings are prohibited.
- m) SBAs shall not communicate with anyone who places a negative post against the SBA, another SBA or Surge365.
- n) SBAs may post approved images of Membership and/or Vortex Customer pricing only. Surge365 approved savings images are available on the corporate blog site at <http://wavebreak.surge365.com/category/surge365approved/>. The Company reserves the right to request posts be taken down which the Company deems as inappropriate and which may, in the sole discretion of the Company, compromise or damage the reputation of the Company. Online auction sites are prohibited and should not be used to market, sell, advertise, or promote the Company’s products or services. Owners must disclose their relationship with Surge365 or identify themselves as a Surge365 Owner when making comments in regards to the Company products and services on all websites, message boards, social networking sites, blogs, etc. Offending SBAs will be subject to disciplinary action and/or termination. You agree that you will immediately take down a non-compliant post and/or site at the request of the Company. Appeals should be directed to the email address set forth in the policy addressing dispute resolutions. The Federal Trade Commission (FTC) provides the following guidelines to endorsements and testimonials: “Endorsements must reflect the honest opinions, findings, beliefs, or experience of the endorser. Furthermore, an endorsement may not convey any express or implied representation that would be deceptive if made directly by the advertiser.” Although SBAs may not consider their individual stories or testimonials to be endorsements, the new FTC Guidelines would suggest otherwise. Under the new guidelines, an endorsement is defined as any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual or the name or seal of an organization) that would imply it is the opinion, experience, belief or

finding of a party other than the sponsoring advertiser. All SBAs should read and become familiar with the FTC regulations, including these new guidelines, which can be found on [www.ftc.gov](http://www.ftc.gov) (FTC 16 CFR Part 255). Please report violations of the Social Media guidelines to the Surge365 Compliance Department via email to

### **3.8 – DOMAIN NAMES AND E-MAIL ADDRESSES**

Owners may not use or attempt to register any of the Company's or third party's trade names, trademarks, service names, service marks, product names, the Company's name, or any derivative thereof, for any Internet domain name. Nor may Owners' incorporate or attempt to incorporate any of the Company's or third party's trade names, trademarks, service names, service marks, product names, the Company's name, or any derivative thereof, into any electronic mail address.

### **3.9 – TRADEMARKS AND COPYRIGHTS**

The Company will not permit the use of its trade names, trademarks, designs, or symbols by any person, including the Company's Owners, without its prior, written permission.

Owner agrees that the Company and its affiliated companies' trademarks, service marks, trade names, patents and copyrighted materials are owned exclusively by the Company and/or its affiliated companies, and that use of such intellectual property by you shall be in compliance with the Agreement. Owner will not promote his or her Surge365 business or use any of the Company's affiliated companies' or any third party's names, trade names, logos, sales materials, trademarks, service marks or other intellectual property, except in material as provided by the Company. The term "sales, advertising and training materials" includes but is not limited to; written, audio, CD, DVD, and flash materials and presentations as well as shirts, hats or other articles of clothing or accessories.

Without limiting the generality of the foregoing, Owner understands that he or she is prohibited from (i) using the Company's, its affiliated companies' and third parties' trademarks and trade names in domain names, (ii) creating his or her own sales and training materials and/or presentations that use the names, trademarks, logos or other intellectual property of the Company, its affiliated companies or third parties and (iii) creating any other materials that incorporate the Company's names, logos, trademarks or copyrighted works. Owner understands that unauthorized use or duplication of the Company's, its affiliated companies' and third parties' names, service marks, sales and training materials or copyrighted materials is a violation of federal and/or state law, the Agreement, and may result in termination of the Agreement. Each of the Company's and its affiliated companies' names, trademarks and service marks ("Proprietary Marks") and copyrighted materials are owned by the respective Company and/or their affiliated companies. The use of the Proprietary Marks and copyrighted materials must be in strict compliance with the Agreement. Owner acknowledges that any right to use the Company's Proprietary Marks and copyrighted materials is non-exclusive, and the Company has the right and sole discretion to grant others the right to use such Proprietary Marks and copyrighted materials. Owner expressly recognizes that, as between such person and the Company, any and all goodwill associated with the Proprietary Marks and copyrighted materials (including goodwill arising from each Owner's use) is directly and exclusively to the benefit of the Company and is the property of the Company, and that, on expiration or termination of

these Policies and Procedures, no monetary amount shall be attributable to any goodwill associated with Owner's use of the Proprietary Marks or copyrighted materials. This prohibition also extends to third party (e.g. travel vendors') trademarks. The Company does not allow Owners to sell any item of clothing, marketing, advertising or training material, with or without the Company logos at any Company (or affiliated companies) sponsored event, including the Company Convention or training events without prior, written permission from the Company.

### **3.10 – RECORDINGS**

Owners may not copy, produce or reproduce for sale or distribution or create derivative works of products sold by the Company or any of the Company's produced literature, audio or video material, presentations, events or speeches, including conference calls. Video and/or audio taping meetings and conferences of the Company is strictly prohibited.

### **3.11 – MEDIA AND MEDIA INQUIRIES**

Owners must not attempt to respond to media inquiries regarding the Company, its products or services, or their independent business. All inquiries by any type of media must be immediately referred to the Company's Compliance Department via email at [compliance@surge365.com](mailto:compliance@surge365.com), without comment. This policy is designed to ensure accurate and consistent information is provided to the public as well as a proper public image. Owner must not utilize radio or television media for the advertising, distribution or promotion of Surge365 products and services without the express written consent of the Company. In the event that the Company does grant permission for the use of such media, the Company has final authority on every stage of the production process with full rights to all recordings.

### **3.12 – BUSINESS ENTITIES**

A corporation, limited liability corporation (LLC), partnership or trust (collectively referred to in this section as a "Business Entity") may apply to be an Owner by submitting its Certificate of Incorporation, Certificate of Organization, Partnership Agreement, Trust Documents, FEIN or other organizational documents requested by the Company (these documents are collectively referred to as the "Entity Documents") to the Company, along with a properly completed Business Entity Registration Form and W-9. When an Owner enrolls, the Entity Documents, Business Entity Registration Form and a W-9 must be submitted to the Company within thirty (30) days of the online enrollment. (If not received within the thirty (30) day period, the Business Owner Agreement may terminate.) The Business Entity Registration Form must be signed by all of the shareholders, members, partners or trustees of the Business Entity (each a "Member"). Members of the entity are jointly and severally liable for any indebtedness or other obligation to the Company. To prevent the circumvention of any portion of this Agreement, if an additional partner, shareholder, member, or other Business Entity affiliate is added to a business entity, the original applicant must remain as a party to the original Application and Agreement. If the original Owner wants to terminate his or her relationship with the Company, he or she must transfer or assign his or her business in accordance with this Agreement. If this process is not followed, the business shall be cancelled upon the withdrawal of the original Owner. All bonus and commission checks will be sent to the address of record for the original

Owner. The Company may, at its discretion, require notarized documents before implementing any changes to an Owner business. Please allow thirty (30) days after the receipt of the request by the Company for processing. Please note: If a check is not cashed within twelve months, the funds revert back to the Company.

### **3.13 – CHANGES TO A BUSINESS ENTITY**

A Vortex Owner may change its status under the same sponsor from an individual to a partnership, LLC, corporation or trust, or from one type of entity to another. There is a \$25.00 fee for each change requested, which must be included with the written request and the completed Business Owner Application and Agreement and Entity Documents. Such changes shall be processed only once per year and must be submitted by November 30th to become effective on January 1st of the following year. In addition, Owners operating their businesses utilizing a Business Entity must notify the Company of the addition or removal of any officers, directors, shareholders, managers, members or business associates of the Business Entity.

### **3.14 – CANCELLATION AND RE-APPLICATION**

An Owner may change his or her Sponsor by voluntarily cancelling his or her business by calling Customer Support at 618-655-2431 or by email to [cancellations@surge365.com](mailto:cancellations@surge365.com). The Owner must then remain inactive for four (4) full calendar months. Following the four (4) month period, the former Owner may reapply.

### **3.15 – UNAUTHORIZED CLAIMS AND ACTIONS - INDEMNIFICATION**

Owners are fully responsible for all of his or her verbal and written statements made regarding the Company's products and services, which are not expressly contained in the official Company material. Owner agrees to indemnify the Company and Company's directors, officers, shareholders, employees, and agents, and hold them harmless from any and all liability including judgments, civil penalties, refunds, attorney fees, investigation costs, court costs, or lost business incurred by the Company as a result of unauthorized representations or actions. This provision shall survive the termination of the Agreement.

### **3.16 – COMMERCIAL OUTLETS**

Owners may not sell the Company's products or services from a commercial outlet, nor may they display or sell the Company's products, services or literature in any retail or service establishment.

### **3.17 – TRADE SHOWS, EXPOSITIONS AND OTHER SALES FORUMS**

Owners may display and/or sell the Company's products and services at most trade shows and professional expositions (such as Home and Garden or Boat Show). While at these events, marketing efforts must be confined to the registered Owner's booth. Before submitting a deposit to the event promoter, Owner must contact the Company's Marketing Department ([compliance@surge365.com](mailto:compliance@surge365.com)) in writing for conditional approval, as the Company policy is to authorize only one Surge365 exhibit per event. Final approval will be granted to those who submit an official advertisement of the event, a copy of the contract signed by both the Owner

and the event official, and a receipt indicating a deposit for the booth has been paid. Approval is given only for the event specified. Any requests to participate in future events must again be submitted to the Marketing Department. The Company further reserves the right to refuse authorization to participate at any function which it does not deem a suitable forum for the promotion of its products and services. Approval will not be given for swap meets, garage sales, flea markets or farmer's markets as these events are not conducive to the professional image the Company wishes to portray. Travel Trade Shows (Industry events, generally sponsored by Travel Vendors), however, are treated differently. Travel Trade Shows are strictly non-solicitation events. As a delegate at these events an Owner is prohibited from selling travel, or advertising any of the Company's products or services.

### **3.18 – ERRORS OR QUESTIONS**

If an Owner has questions about or believes any errors have been made regarding cash rewards, bonuses, or charges, he/she must notify the Company in writing within sixty (60) days of the date of the purported error or incident in question. The Company will not be responsible for any errors, omissions or problems not reported to the Company within sixty (60) days. The Company is not responsible for errors on the booking engine where third party suppliers are concerned, nor does the Company guarantee pricing displayed associated with technical errors.

### **3.19 – GOVERNMENTAL APPROVAL OR ENDORSEMENT**

Neither federal, provincial, nor state regulatory agencies approve or endorse any direct selling or network marketing companies or programs. Therefore, Owners shall not represent or imply the Company or its services or products marketing plan have been "approved," "endorsed" or otherwise sanctioned by any government agency.

### **3.20 – IDENTIFICATION**

Owners are required to provide a valid Social Security Number ("SSN"), or a valid Federal Employer Identification Number ("FEIN") to the Company on the Application and Agreement along with a fully executed W-9 if applicable. Upon enrollment, the Company will provide a unique Identification Number to the Owner by which he or she will be identified. This number will be used to place orders, and track cash rewards and bonuses. Owner's failure to supply a valid SSN or FEIN shall result in immediate dismissal.

### **3.21 – INCOME TAXES**

Owners are responsible for paying local, state, provincial and federal taxes on any income generated as an Independent Contractor. If a Surge365 business is tax exempt, the Federal Tax Identification Number must be provided to the Company. Every year, the Company will provide an IRS Form 1099 MISC (Non-employee Compensation) earnings statement to each U.S. resident who: (i) Had earnings of over \$600 in the previous calendar year; or (ii) Made purchases during the previous calendar year in excess of \$5,000.

### **3.22 – INDEPENDENT CONTRACTOR STATUS**

Owners are independent contractors and are not purchasers of a franchise or a business opportunity. The Agreement between the Company and its Owners does not create an employer/employee relationship, agency, partnership, or joint venture between the Company and the Owner. Owners shall not be treated as an employee for his or her services or for federal or provincial or state tax purposes. All Owners are responsible for paying local, state, and federal taxes due from all compensation earned as an Owner of the Company. Owners are not employees of the Company and are not entitled to workers' compensation, unemployment benefits or any other employee type benefit from Company or by virtue of his or her Owner status with Company. Owners have no authority (expressed or implied), to bind the Company to any obligation. Owner shall establish his or her own goals, hours, and methods of sale, so long as he or she complies with the terms of the Agreement and applicable laws. The name of the Company and other names as may be adopted by the Company are proprietary trade names, trademarks and service marks of the Company. As such, these marks are of great value to the Company and are supplied to Owners for their use only in an expressly authorized manner. Use of the Company name on any item not produced by the Company is prohibited.

### **3.23 – OWNER NAME**

All Owners may list themselves as an "Independent Vortex Website Owner" in the white or yellow pages of the telephone directory under their own name. No Owner may place telephone directory display ads using the Company's name or logo. Owners may not answer the telephone by saying the Company name, or in any other manner that leads the caller to believe he or she has reached corporate offices of the Company.

### **3.24 – INTERNATIONAL MARKETING**

Because of critical legal, monetary and tax considerations, the Company must limit the resale of the Company's products and services to prospective customers located within the territories and countries that the Company has announced are officially opened for business. Moreover, allowing a few Owners to conduct business in markets not yet opened by the Company would violate the concept of affording everyone the equal opportunity to expand internationally. Accordingly, Owners are authorized to sell the Company products and services, and engage customers only in the countries in which the Company is authorized to conduct business, as announced in official Company literature. Owner may sell, give, transfer, or distribute the Company's products or sales aides only in the marketing material's intended country. In addition, Owner may not, in any unauthorized country: (i) conduct meetings; (ii) engage potential customers; or (iii) conduct any other activity for the purpose of selling the Company's products and services.

### **3.25 – CONFIDENTIALITY**

"Confidential Information" means any and all information the Company designates as being confidential or which, under the circumstances surrounding disclosure, would reasonably be expected to be or ought to be treated as confidential. Confidential Information includes, without limitation, Owner customer lists and data, pricing, technical information, research, development, procedures, algorithms, data, designs, know-how, the marketing or promotion of any of the Company's products or services, the Company's business policies, practices or

operations, information received from others that the Company is obligated to treat as confidential and information regarding the Company's respective parents, subsidiaries and affiliated agents. Confidential Information also includes supplier commission percentages and related information, commercial secrets, trade secrets, and any internal information of the Company's. Confidential Information is proprietary and confidential to the Company. It is provided to the Owner in strictest confidence for the limited use of the Owner to support and to further their business only. Owner hereby agrees that the use of the Company's customer lists or other lists or data constitutes a non-exclusive license between Owner and the Company for individual limited use thereof, as more fully set forth below. Lists, data and information relating to Owner or customers remain, at all times, the exclusive property of the Company and must be returned to the Company upon request. Owners receiving such a list, data or information, whether from the Company or from another source, agree:

a) To limit the use of a list to the intended scope of the list and to exclusively advance Owner's Surge365 related business.

b) To hold confidential and not disclose any portion thereof to any third party, including, but not limited to, existing Owners, competitors, and the general public. Any use or disclosure of lists, outside of those authorized, constitutes misuse, misappropriation, and a violation of the Agreements, and will cause irreparable harm to the Company.

c) That, upon any violation of this section, Owner agrees that (1) the Company shall be entitled, in addition to any other rights or remedies available to the Company at law or in equity, to injunctive relief, enjoining such use under applicable national or local law, and (2) He or she will retrieve and return to the Company all existing lists previously provided.

d) That intended or unintended misuse of a list, data or information may be cause for termination of an Owner Agreement.

e) That the obligations under this section will survive the termination or expiration of the Agreement.

f) The Company reserves the right to pursue all appropriate remedies under applicable federal, state or local laws to protect its rights to the confidential information, proprietary information, and trade secrets of the Company; and any failure to pursue such remedies in one instance will not constitute a waiver of those rights by the Company in any other circumstances. Owners agree that he or she will not use such lists, data or information to compete with the Company or for any other purpose other than to promote his/her Surge365 related business activities. If Owners are found to be in violation of this section they may be subject to disciplinary action and, in addition, to all other rights and remedies available to the Company at law or in equity, the Company may seek remedies for compensatory and punitive damages, injunctive relief and for specific performance to the fullest extent the law makes available.

## **SECTION 4 – REQUIREMENTS**

### **4.1 – ADHERENCE TO LAWS AND ORDINANCES**

It is the responsibility of the Owner to research and obtain information on local laws, licensing or other requirements which may affect his or her business. Owners shall comply with all federal, provincial, state, and local laws and regulations in the conduct of their business. Many cities, counties and provinces have laws regulating certain home-based businesses. In some

cases these ordinances are not applicable to Owner because of the nature of their business. However, Owner must obey those laws that do apply to them. If a city or county official tells an Owner that an ordinance applies to him or her, Owner shall be polite and cooperative, and immediately send a copy of the ordinance to the Compliance Department of the Company for immediate review.

#### **4.2 – DIVORCE OR DISSOLUTION**

- a) If married persons or partners who share ownership in an Owner business obtain a divorce or wish to dissolve their partnership, corporation or limited liability business, the Company will continue to treat them pursuant to the controlling party being the designated primary applicant at the time of filing of a petition in a court of jurisdiction for divorce or dissolution, until such time as the Company receives written notice from both parties or an appropriate court order directing otherwise. The written notice must be signed by all parties and notarized.
- b) Divorced persons or dissolved partnerships, corporations or limited liability companies must submit to the Company a certified copy of any legal judgment or decree, or jointly specify in writing to the Company, as to ownership and/or how future commission and bonus checks should be paid.

#### **4.3 – ACTIONS OF HOUSEHOLD MEMBERS OR AFFILIATED INDIVIDUALS**

If any member of an Owner's immediate household engages in any activity which, if performed by the Owner, would violate any provision of the Agreement, such activity will be deemed a violation by the Owner, and the Company may take disciplinary action pursuant to the Agreement against the Owner. Similarly, if any individual associated in any way with a corporation, partnership, trust or other entity (collectively "affiliated individual") violates the Agreement, such action(s) will be deemed a violation by the entity, and the Company may take disciplinary action against the entity.

#### **4.4 – SALE, TRANSFER OR ASSIGNMENT OF A SURGE365 BUSINESS**

Although a Surge365 business is a privately owned, independently operated business, the sale, transfer or assignment of such a business entity is not permitted. On occasion, Surge365 may grant an exception to this policy, which must be finalized and approved and may include fees and limitations. The Compliance Department will, in its sole and absolute discretion, approve or deny the sale, transfer or assignment.

If an Owner wishes to sell his or her business, the following criteria must be met:

- a) Protection of the existing line of sponsorship must always be maintained to ensure Surge365's business continues to be operated in that line of sponsorship.
- b) The buyer or transferee must become qualified as an Owner. If the buyer is an active Owner, he or she must first terminate his or her original business and wait four (4) calendar months before acquiring any interest in the new business.
- c) Before the sale, transfer or assignment can be finalized and approved by Surge365, any debt obligations the selling Owner has with Surge365 must be satisfied.
- d) The selling Owner must be in good standing and not in violation of any of the terms of the Agreement in order to be eligible to sell, transfer or assign Surge365 business.

e) The sale, transfer or assignment must occur six (6) months after the business was obtained by the Owner.

f) Surge365's administrative fee for this type of business transfer is \$360 and must be submitted to Surge365 with the appropriate supporting documentation. Prior to selling a Surge365 business, the selling Owner must notify Surge365's Compliance Department of his or her intent to sell their business. Upon completed execution of the purchase and sale agreement, the parties must submit copies of the same to the Compliance Department for review, along with the business transfer fee. Surge365 reserves the right to request additional documentation that may be necessary to analyze the transaction between the buyer and seller. The Compliance Department will, in its sole and absolute discretion, approve or deny the sale, transfer or assignment within thirty (30) days after its receipt of all necessary documents from the parties. If the parties fail to obtain Surge365's approval for the transaction, the transfer shall be voided at Surge365's option and the business transfer fee will be returned. If the sale is allowed, the purchaser of the existing business will assume all the obligations of that position of the selling Owner. An Owner who sells his or her business shall not be eligible to re-apply as an Owner for a period of at least four (4) full calendar months after the date of the sale.

#### **4.5 – SEPERATION OF AN OWNER'S BUSINESS**

The Company's Owners sometimes operate their business(es) as husband-wife partnerships, regular partnerships, an LLC, corporation, or a trust. At such time as a marriage may end in divorce, or a corporation, LLC partnership or trust (the latter four entities are collectively referred to herein as "entities") may dissolve, arrangements must be made to ensure any separation or division of the business is accomplished so as not to adversely affect the interests of the Company. If the separating parties fail to provide for the best interests of other Owners and the Company in a timely fashion, the Company will involuntarily terminate the Agreement. During the divorce or entity dissolution process, the parties must adopt one of the following methods of operation:

a) One of the parties may, with consent of the other(s), operate their business pursuant to an assignment in writing whereby the relinquishing spouse, shareholders, partners or trustees authorize the Company to deal directly and solely with the remaining spouse or non-relinquishing shareholder, partner or trustee.

b) The parties may continue to operate their business jointly on a "business-as-usual" basis, whereupon all compensation paid by the Company will be paid according to the status quo as it existed prior to the divorce filing or dissolution proceedings. This is the default procedure if the parties do not agree on the format set forth above.

c) Under no circumstances will a Surge365 business of divorcing spouses or a dissolving business entity be divided. Similarly, under no circumstances will the Company split commission and bonus checks between divorcing spouses or members of dissolving entities. The Company will recognize only the one, original business and will issue only one commission check per the Company's business per commission cycle. Commission checks shall always be issued to the same individual or entity. In the event that parties to a divorce or dissolution proceeding are unable to resolve a dispute over the disposition of commissions and ownership of the business in a timely fashion as determined by the Company, the Agreement shall be involuntarily cancelled. If a former spouse has completely relinquished all rights in the original business

pursuant to a divorce, he or she is thereafter free to enroll under any sponsor of his or her choosing. In the case of business entity dissolutions, the former partner, shareholder, member, or other entity affiliate who retains no interest in the business must wait four (4) calendar months from the date of the final dissolution before re-enrolling as an Owner. In either case, however, the former spouse or business affiliate shall have no rights to any former retail customers. They must develop the new business in the same manner as would any other new Owner. Please note: If a check is not cashed within twelve months, the funds revert back to the Company.

#### **4.6 – SUCCESSION**

Upon the death or incapacitation of an Owner, his or her business may be passed to his or her heirs. Appropriate legal documentation must be submitted to the Company to ensure the transfer is proper. Accordingly, Owner should consult an attorney to assist in the preparation of a will or other testamentary instrument. Whenever a business is transferred by a will or other testamentary process, the beneficiary acquires the right to collect all bonuses and commissions of the deceased or incapacitated provided the following qualifications are met.

The successor(s) must:

- a) Complete and execute an Agreement;
- b) Comply with terms and provisions of the Agreement; and
- c) Meet all of the qualifications for the deceased or incapacitated Owner's status. Bonus and commission checks of a business transferred pursuant to this section will be paid in a single check jointly to the devisees. The devisees must provide the Company with an "address of record" to which all bonus and commission checks will be sent. If the business is bequeathed to joint devisees, they must form a business entity and acquire a Federal Taxpayer Identification Number. The Company will issue all bonus and commission checks and one 1099 to the business entity.

### **SECTION 5 – RESPONSIBILITIES OF OWNERS**

#### **5.1 – CHANGE OF ADDRESS OR TELEPHONE**

To ensure timely delivery of products, support materials, and commission checks, it is critically important the Company's files are current. Street addresses are required for shipping materials as UPS cannot deliver to a Post Office Box. If an Owner is planning to move he or she must update any personal information via the "Back Office" function of the replicated website or send the new address and telephone numbers to the Company's Corporate Offices to the attention of the Surge365 Support Department as applicable. To guarantee proper delivery, two weeks advance notice must be provided to the Company on all changes.

#### **5.2 – NON-DISPARAGEMENT**

The Company wants to provide Owners with the best products, commission plan, and service in the industry. The Company values constructive criticisms and comments. All such comments should be submitted in writing to the Company's Support Department. While the Company welcomes constructive input, negative comments and remarks made in the field by Owners about the Company, its products or services serve no purpose other than to dampen the

enthusiasm of the Company's other Owners. For this reason, and to set the proper example, Owners must not disparage, demean, or make negative remarks about the Company, other Owners, the Company's products and services or Company directors, officers, or employees.

### **5.3 – REPORTING POLICY VIOLATIONS**

Owners observing a policy violation by another should submit a written report of the violation directly to the attention of the Company's Compliance Department. Details of the incidents such as dates, number of occurrences, and persons involved should be included. Any supporting documentation should be included in the report. Alternatively, these reports may be e-mailed into the Compliance Department at [compliance@surge365.com](mailto:compliance@surge365.com).

### **5.4 – VENDOR CONFIDENTIALITY/COMMUNICATIONS**

The Company business relationships with its alliances, vendors, suppliers, associates or former employees within or outside the corporate workplace are confidential, proprietary, and not to be circumvented by either the Owner or the vendor. Owner may not contact any representative of any travel supplier or vendor of the Company. Owner shall not negotiate with vendors or suppliers in any industry on behalf of the Company, including, but not limited to, attempting to negotiate with any vendor or supplier for broker's fees, finder's fees, commissions or any other fees for arranging a possible transaction between the vendor and/or supplier and the Company. Notwithstanding the foregoing, in the event Owner does arrange a transaction between the Company and a third party, such Owner will not be entitled to any brokers, finders, commission or other fee from the Company or any of its affiliated entities. The Company's vendor commission levels are confidential and proprietary and cannot be expressed to the public.

## **SECTION 6 – SALES REQUIREMENTS**

### **6.1 – PRODUCT SALES**

The Company's commission structure is based on the sale of the Company's products and services to end consumers. In order to earn commissions, Owners must guide customers to their website to book travel, purchase products, or to assist their customers in limited fashion as outlined in these policies, (as well as meet other responsibilities set forth in the Agreement) to be eligible for commissions. A customer may not be abandoned under any circumstances while a transaction is pending; the Owner must make themselves available for changes, cancellations or other questions or reasonable requests from the customer. It is extremely important to utilize the services of the Support Department if Owners or customers have questions about the purchase process. Feel free to contact the Support Department at anytime for assistance or questions.

## **SECTION 7 – BONUSES AND COMMISSIONS**

### **7.1 – BONUS AND COMMISSION QUALIFICATIONS**

An Owner must be active and in compliance with the Agreement to qualify for cash rewards. So long as an Owner complies with the terms of the Agreement and these Policies and Procedures,

the Company shall pay cash rewards in accordance with the existing commission structure. Cash rewards are earned by Owners and payable only upon completion of product purchased and receipt of vendor commission by the Company. The minimum amount for which the Company will issue a check is \$10.00. If commissions do not equal or exceed \$10.00, the Company will accrue the commissions and bonuses until they total \$10.00. A check will be issued once \$10.00 has been accrued.

## **7.2 – ADJUSTMENT TO BONUSES AND COMMISSIONS**

Owners receive cash rewards based on the actual sales and completion of products and services by the end consumers. When products or services are canceled no cash reward will be paid, regardless of the reason for cancellation.

## **7.3 – REPORTS**

All information provided by the Company in online or telephonic reports, including but not limited to personal and group sales volume (or any part thereof) is believed to be accurate and reliable. Due to various factors including, but not limited to, the inherent possibility of human and mechanical error; the accuracy, completeness, and timeliness of orders; denial of credit card and electronic check payments; returned products; credit card and electronic check charge-backs; the information is not guaranteed by the Company or any persons creating or transmitting the information. To the fullest extent permissible under applicable law the Company and/or other persons creating or transmitting the information will in now way be liable to any Owner or anyone else for any punitive damages, direct or indirect, that may arise out of the use of sales volume information. To the fullest extent permitted by law, the Company or other persons creating or transmitting the information shall have no responsibility or liability to owner or anyone else under any tort, contract, negligence, strict liability, products liability or other theory with respect to any subject matter of this Agreement. Access to and use of Company's online and telephone compensation reporting services is provided to the Owner "as is". If an Owner has questions on the accuracy, they are advised to immediately bring those discrepancies to the attention of the Customer Support Department.

## **SECTION 8 – REFUNDS AND INVENTORY RETURNS**

### **8.1 – CANCELLATION GUARANTEE**

The Company offers a 100%, fourteen (14) day money-back satisfaction guarantee on license fees, marketing tools and/or sales aides to all Owners by calling Surge365 and requesting the refund within fourteen (14) days of payment; provided, however, that each is non-refundable thereafter. Contact Customer Support by calling 618-655-2431 to make the request or email [cancellations@surge365.com](mailto:cancellations@surge365.com) (please have the billing address, Owner ID number and the credit card number used for payment when calling).

### **8.2 – RETURN**

Upon cancellation of an Owner Agreement, the Owner may return his or her sales aides held in his or her inventory for a refund. Owner may only return product that he or she personally purchased from the Company (purchases from other Owners or third parties are not subject to

refund) and which are in resalable condition (see Definition of “Resalable” in Glossary below) and which have been purchased within one year prior to the date of cancellation. Upon receipt of the materials and sales aides, the Owner will be reimbursed the net cost of the original purchase price(s). Shipping charges incurred by an Owner when the sales aides were purchased will not be refunded. If the purchases were made through a credit card, the refund will be credited back to the same account. If an Owner was paid a commission based on a product that he or she purchased, and such product is subsequently returned for a refund, the commission that was paid to the Owner based on that product purchase will be deducted from the amount of the refund.

## SECTION 9 – DISPUTE RESOLUTION & DISCIPLINARY PROCEEDINGS

### 9.1 – DISCIPLINARY SANCTIONS

Violation of the Agreement, violation of any common law duty, including but not limited to, any applicable duty of loyalty, any illegal, fraudulent, deceptive or unethical business conduct, or any act or omission by an Owner that, in the sole discretion of the Company may damage its reputation or goodwill (such act or omission need not be related to a Surge365 business), may result, at the Company’s discretion, in one or more of the following corrective measures:

- a) Issuance of a written warning or admonition.
- b) Requiring the Owner to take immediate corrective measures.
- c) Imposition of a fine, which may be withheld from bonus and commission checks.
- d) Loss of rights to one or more bonus and commission checks.
- e) The Company may withhold from an Owner all or part of the Owner’s bonuses and commissions during the period that Surge365 is investigating any conduct allegedly in violation of the Agreement. If a Surge365 business is cancelled for disciplinary reasons, Owner will not be entitled to recover any commissions withheld during the investigation period.
- f) Suspension of the individual’s Owner Agreement for one or more pay periods.
- g) Probationary period during which time any further infractions of the Agreement will result in termination of a Surge365 business.
- h) Termination of the offender’s Agreement.
- i) Any other measure expressly allowed within any provision of the Agreement or which the Company deems practicable to implement and appropriate to equitably resolve injuries caused partially or exclusively by policy violation or contractual breach; or
- j) In situations deemed appropriate, the Company may institute legal, including criminal, proceedings for monetary, criminal and/or equitable relief exclusive of the procedures outlined in Sections 9.4 and 9.5 below.
- k) The Company reserves the right to accept or deny any application or terminate anyone for any reason such as past or current felony convictions, acts of moral turpitude or other actions which would harm the reputation of the Company or its current shareholders at the sole discretion of the Company.

### 9.2 – GRIEVANCES AND COMPLAINTS

When an Owner has a grievance or complaint with another Owner regarding any practice or conduct in relationship to their respective businesses, the complaining Owner should first

report the problem to the Company's Compliance Department at [compliance@surge365.com](mailto:compliance@surge365.com). If the matter involves interpretation or violation of the Company's policies, the Compliance Department will review the facts and attempt to resolve it. If it is not resolved, it will be referred to the Dispute Resolution Board for final review and determination.

### **9.3 – DISPUTE RESOLUTION BOARD**

The purpose of the Dispute Resolution Board ("DRB") is to: (1) review appeals of disciplinary sanctions; and (2) review matters between the Company's Owners. After the response or settlement instituted by the Compliance Department has been denied or otherwise remains unresolved, upon written request, the DRB reviews evidence, deliberates, and responds to current outstanding issues on a collective basis. An Owner may submit a written appeal within fifteen (15) business days from the date of: (i) the written notice by the Company of disciplinary action; or (ii) the written decision of the Compliance Department, as applicable, regarding disputes between Owners. All communication with the Company and the Owner seeking resolution of a dispute must be in writing and sent via U.S. Mail. It is within the DRB's discretion whether a claim is accepted for review. If the DRB agrees to review the matter, the DRB shall schedule a hearing within ten (10) business days of receipt of the written request. All evidence (e.g., documents, exhibits, etc.) Owner desires to have considered by the DRB must be submitted to the Company with the written request for a review with the DRB. The decision of the Dispute Resolution Board will be final and subject to no further review, except as provided in Sections 9.4 and 9.5 below. During the pendency of the claim before the DRB, Owner waives right to pursue arbitration or any other remedy. The DRB will be made up of a minimum of three mid-to-senior level management personnel of the Company and two Owners with at least one year of active status in the Company. All members will be selected by the Company.

### **9.4 – MEDIATION**

Prior to instituting any arbitration as provided in Section 9.5 below, the parties shall meet in good faith and attempt to resolve any dispute arising from or relating to the Agreement through non-binding mediation. One individual who is mutually acceptable to the parties shall be appointed as mediator. The mediator's fees and costs, as well as the costs of holding and conducting the mediation, shall be divided equally between the parties. Each party shall pay its portion of the anticipated fees and costs at least ten (10) days in advance of the mediation. Each party shall pay its own attorney fees, costs, and individual expenses associated with conducting and attending the mediation. Mediation shall be held in Edwardsville, Illinois and shall last no more than two (2) business days.

### **9.5 – ARBITRATION**

If mediation is unsuccessful, any controversy or claim arising out of or relating to the Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Owners waive all rights to trial by jury or by any court. All arbitration proceedings shall be held in Edwardsville, Illinois, unless the laws of the state in which an Owner resides expressly require the application of its laws, in which case the arbitration shall be held in the capital of that state.

All parties shall be entitled to all discovery rights pursuant to the Federal Rules of Civil Procedure. There shall be one arbitrator, an attorney at law, who shall have expertise in business law transactions with a strong preference being an attorney knowledgeable in the direct selling industry, selected from the panel which the American Arbitration Panel provides. Each party to the arbitration shall be responsible for its own costs and expenses of arbitration, including legal and filing fees. The decision of the arbitrator shall be final and binding on the parties and may, if necessary, be reduced to a judgment in any court of competent jurisdiction. This agreement to arbitration shall survive any termination or expiration of the Agreement. Nothing in the Agreement shall prevent the Company from applying to and obtaining from any court having jurisdiction a writ of attachment, a temporary injunction, preliminary injunction, permanent injunction or other relief available to safeguard and protect the Company's interest prior to, during or following the filing of any arbitration or other proceeding or pending the rendition of a decision or award in connection with any arbitration or other proceeding. Intellectual Property and/or Trademark infringements are specifically excluded from arbitration.

#### **9.6 – GOVERNING LAW, JURISDICTION AND VENUE**

Jurisdiction and venue of any matter not subject to arbitration shall reside exclusively in Madison County, State of Illinois. The Federal Arbitration Act shall govern all matters relating to arbitration. The law of the State of Illinois shall govern all matters relating to or arising from the Agreement. Notwithstanding the foregoing, and the arbitration provision in Section 9.5, residents of the State of Louisiana shall be entitled to bring an action against the Company in their home forum and pursuant to Louisiana law.

### **SECTION 10 – PAYMENT AND SHIPPING**

#### **10.1 – RETURNED CHECKS**

In an instance where the company had accepted a check for payment; checks returned by an Owner's bank for insufficient funds will be re-submitted for payment. A \$25.00 returned check fee will be charged to the account of the Owner. After receiving a returned check from a customer or Owner, all future orders must be paid by credit card, money order or cashier's check. Any outstanding balance owed to the Company by an Owner for NSF checks and returned check fees will be withheld from subsequent bonus and commission checks.

#### **10.2 – SALES TAXES**

Owners will pay sales tax based on the suggested retail price of the product in accordance with the laws and regulations in their given country.

### **SECTION 11 – INACTIVITY AND CANCELLATION**

#### **11.1 – EFFECT OF CANCELLATION**

As long as an Owner remains active until the next pay cycle and complies with the terms of the Agreement, the Company shall pay cash rewards to such Owner in accordance with the existing and current commission structure. An Owner's bonuses and commissions constitute the entire

consideration for efforts in generating sales. Following an Owner's non-renewal of his or her Agreement, written cancellation for inactivity, or voluntary or involuntary cancellation of his or her Agreement (all of these methods are collectively referred to as "cancellation"), the former Owner shall have no right, title, claim or interest to any pending commissions related to future travel booked or products purchased through their Business. An Owner whose business is cancelled will lose the following rights:

a) Active Vortex site

b) Commission generated by all rights as an Owner if they do not reactivate within ninety (90) days. This includes the right to market the Company's products and services and the right to receive future cash rewards, bonuses, or other income.

In the event of cancellation, Owner agrees to waive all rights they may have, including but not limited to property rights, to any bonuses, commissions or other remuneration derived from product sales or other activities of his or her former business. Following an Owner's cancellation of their Agreement, the former Owner shall not hold himself or herself out as an Owner of the Company and shall not have the right to sell the Company's products or services. An Owner whose Agreement is cancelled shall receive commissions and bonuses only for the last full pay period he or she was active prior to cancellation (less any amounts withheld during an investigation preceding an involuntary cancellation). Travel services booked or products purchased by an active Owner and/or customer prior to a voluntary or involuntary cancellation are the property of the Company and will not be transferred to any other travel agency, company, or vendor.

### **11.2 – INVOLUNTARY CANCELLATION**

An Owner's violation of any of the terms of the Agreement, including any amendments that may be made by the Company at its sole discretion, may result in any of the sanctions listed in previous section, including the involuntary cancellation of his or her Agreement. Cancellation shall be effective on the date on which written notice is mailed, e-mailed, faxed, or delivered to an express courier for delivery to the Owner's last known address, email address, fax number, or his or her attorney, or when Owner received actual notice of cancellation, whichever occurs first. Surge365 reserves the right to terminate all Owner Agreements upon thirty (30) days written notice in the event it elects to: (i) cease business operations; (ii) dissolve as a corporate entity; (iii) merges or sells substantially all of its assets, and the successor desires to cease existing business operations; (iv) terminate distribution of its services; or (v) change its business model.

### **11.3 – VOLUNTARY CANCELLATION**

A participant in a Surge365 business has a right to cancel at any time, regardless of reason. Cancellation must be made by calling the Customer Support Department at 618- 655-2431 ext. 1 or by emailing [cancellations@surge365.com](mailto:cancellations@surge365.com) and make the request. Please have the billing address, Owner ID number and the credit card number used to enroll when calling. An Owner may also submit a cancellation request in writing via mail to 6 Ginger Creek Village Dr, Glen Carbon, IL 62034.

## **SECTION 12 – GLOSSARY OF TERMS OWNER**

A customer who purchases the Company's Vortex Plus or Platinum subscription through a Surge Business Associate.

### **AGREEMENT**

The contract between the Company and each Owner includes the Owner Application and Agreement, the Company Policies and Procedures, the Company Compensation Plan, the Business Entity Registration Form (where appropriate), and all in their current form and as amended by the Company at its sole discretion. These documents are collectively referred to as the "Agreement."

### **CANCEL**

The termination of an Owner's business. Cancellation may be either voluntary, involuntary, or through non-renewal.

### **CASH REWARDS**

Commission paid to a qualified Owner for Cash Reward eligible travel booked by their Vortex Customers . In addition to Cash Rewards Platinum Owners have access to a Vacation Vault which accumulates Reward Credits from personal and customer bookings.

### **ID NUMBER**

The identification number assigned by the Company for all company identification purposes.

### **OFFICIAL MATERIAL**

Literature, audio or video tapes, disks, and other materials developed, printed, published and distributed by the Company to Owners.

### **SPONSOR**

The person selling the Vortex Subscription to an individual.

## **SECTION 13 – OWNER TERMS AND CONDITIONS**

### **VORTEX OWNER TERMS AND CONDITIONS**

1) The undersigned hereby represents, warrants, covenants and agrees with SURGE365/VORTEX as follows:

- a. The undersigned Owner is of legal age in the state/providence or country in which they reside
- b. Owner has no obligations to or relationships with other parties that would prevent Owner from carrying out the duties under the Agreement
- c. Owner has the power and authority to execute, deliver and perform the Agreement
- d. All information and materials submitted to Surge365 are true and correct, including but not limited to Owner's Social Security Number and/or Federal Employee Identification
- e. International Residents agree to provide valid and true information including but not limited to identity, address, etc. with valid citizens ID #, Passport #, or Drivers' License #.

f. International Residents agree to provide, upon request and where applicable, a U.S. IRS W-8 BEN form which will be kept on file to claim tax treaty status for payment of commissions, whereby not requiring U.S. tax withholding.

2) Owner's execution and performance of the Agreement does not violate the legal or contractual rights of any third party.

3) The Agreement shall be binding upon the parties and their respective heirs and permitted successors and assigns.

4) Owner hereby acknowledges and agrees that in no event will Surge365 or any of its affiliate companies be liable under these Terms or any theory of liability, for any indirect, special, consequential, incidental, punitive or similar damages, even if Surge365 has been advised of the possibility thereof.

5) The Agreement may be signed and transmitted electronically by agreeing, if so, is intended by Owner to and will be treated as an original document with original signatures and considered to have the same binding effect as an original document with original signatures.

6) Owner agrees that upon breach of the Agreement Surge365 will be immediately and irreparably harmed and cannot be made whole solely by monetary damages. Owner agrees that the remedy at law for any breach of any provision of the Agreement shall be inadequate and that, in addition to any other remedies at law or in equity that it may have, Owner shall be entitled, without the necessity of proving actual damages or posting bond, to temporary or permanent injunctive relief to prevent the breach of any provision of the Agreement, and/or to compel specific performance of the Agreement.

7) Owner agrees to indemnify and hold harmless Surge365, its parents, subsidiaries and affiliates, and their shareholders, officers, agents, employees and directors, from and against any and all claims, demands, liabilities, losses, damages, costs or expenses, including but not limited to, court costs and attorneys' fees, asserted against, or suffered or incurred by, any of them by reason of, arising out of, resulting from or in any way connected with, directly or indirectly, Owner's (1) activities as an Owner, including without limitation, any unauthorized representations made by Owner or any errors or omissions made by Owner in connection with Owner's business, (2) breach of the terms of the Agreement or (3) violation of or failure to comply with any applicable federal, state or local law or regulation, whether or not litigation is commenced. Surge365 shall have the right to offset any amounts owed to Owner hereunder against the amount of any commissions, bonuses or other amounts owed to Owner from Surge365. Owner shall be entitled to its costs and expenses, including reasonable attorneys' fees, to enforce its rights under the Agreement.

8) Refund Policy- Owner can cancel within fourteen (14) days for full refund by contacting customer support via email to [cancellations@surge365.com](mailto:cancellations@surge365.com) or by phone to 618-655-2433.

9) Renewal- Renewal- Owner agrees to pay monthly subscription fee for enrolled Travel Solution. Travel Solution renewal fees are based on tier of enrollment and are as follows: \$59.95 USD -Bronze; – and \$99.99 USD for the Silver, Gold and Founder levels. Should an Owner go inactive they will lose the right to earn cash rewards on their customer database unless they reactivate within ninety (90) days. Charges will appear on your credit card statement as Surge365 6186552431.

10) Travel Services/Reservations- All reservations are (i) satisfied on a first come, first serve, and space availability basis and (ii) must be reserved either on-line through YOUR Vortex account.

Owners are advised to be flexible in their travel plans in order to obtain desired reservations and to make condominium reservation requests at least ninety (90) days in advance of the desired travel date; provided, however, last minute reservations may be available by selecting from the available inventory listed on the Vortex website. Owner acknowledges that requests for holiday periods and/or for three (3) bedroom condominium units may be more difficult to fulfill and are often more expensive. Condominium unit rental rates are based on availability and will vary based on resort, season, and unit size. Owners must present a valid credit card number in order to pay for and confirm travel or other services. Reservations do not include and Owners are responsible for paying all applicable fees at the time of making the reservation, including the reservation fee, transportation, food, liquor, applicable taxes, tips, port charges, telephone calls, or other resort specific charges (e.g. cleaning fees, energy surcharges, foreign country exit fees, or amenities fees) and other fees and/or charges as may be imposed by the various providers of travel and other related products and services, or other items of a personal nature, all of which are the sole responsibility of Owner, unless specifically included in the reservation or as an Ownership benefit.

11) Personal Use Only- Accommodations obtained pursuant to a reservation shall be used by Owner or Vortex Customer only for vacation and leisure purposes and shall not be used as a principal residence or for the operation of any business. Only Owner or Vortex Customer, and their permitted guests and invitees shall occupy such accommodations or otherwise avail themselves of the benefits associated with the Ownership/Customer. Owners or Vortex Customer shall abide by and adhere to all rules and regulations established by the provider in connection with the occupancy of accommodations and use of related facilities, including accommodation occupancy limits. Owners or Vortex Customer shall be personally responsible for any damage to the accommodation(s) and facilities occurring during their occupancy and use.

12) Travel Reservations- All confirmed reservations are subject to the cancellation terms in effect at the time of booking. Surge365 will provide Owners or Vortex Customer with a confirmation via electronic mail showing reservation details. The person named on the confirmation must be present in order to check-in and obtain the reserved accommodations.

13) Third Party Vendors, Providers and Suppliers- Owner acknowledges and agrees that Surge365 may contract with third party vendors, providers, and suppliers to provide any or all Ownership benefits available to Owner in connection with the Ownership. In all instances, Surge365 is acting as a separate entity from those third party suppliers and no supplier is an agent or employee of Surge365 or their affiliate providers. Neither Surge365 nor their provider accepts any liability for any actions or omissions of any third party supplier providing any Ownership benefits. All coupons, receipts, and tickets are issued subject to the terms and conditions specified by each of the various suppliers. Surge365 reserves the right, in its sole discretion, to add, remove or substitute any such third party vendors, providers or suppliers. Owner acknowledges and agrees that he/she has not purchased the Ownership in reliance on the existence of any specific vendors, providers or suppliers.

14) The Agreement constitutes the entire agreement between Owner and Surge365, supersedes all prior agreements and no other promises, representations, guarantees or agreements of any kind shall be valid unless in writing and signed by both parties.

15) An individual's continued participation in the Surge365's business model constitutes acceptance of and adherence to this Agreement as published and amended.

16) Notwithstanding anything herein to the contrary, Louisiana residents may bring an action against Surge365 with jurisdiction and venue as provided by Louisiana law, and a Montana resident may cancel within 15 days from the date of enrollment and may receive a full refund of all amounts paid to Surge365.

SIGNATURE BELOW, OR ELECTRONICALLY, INDICATES THAT OWNER HAS READ, UNDERSTANDS AND AGREES TO THESE TERMS AND CONDITIONS.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

ID Number: \_\_\_\_\_