



## **Terms of Use and Service Agreement**

The Vortex Complete Management System ("Vortex") and Services ("Services") are provided by Vortex Software Inc. ("Vortex") to You ("You," "Your," or "Customer") under the terms and conditions of this Terms of Use and Service Agreement (this "Agreement").

This Agreement includes Vortex Privacy Policy, which is available at the Vortex web site located at <http://www.vortexcms.com/privacy> and is incorporated herein by reference, and governs Your use of Vortex web sites as well as Vortex and related Services.

BY ACCESSING VORTEX, USING THE SERVICES OR COMPLETING THE ORDER PROCESS, YOU REPRESENT AND WARRANT THAT YOU: (i) ARE AUTHORIZED TO SIGN FOR AND BIND THE CONTRACTING PARTY AND (ii) AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, INCLUDING THE DISCLAIMERS AND LIMITATIONS OF LIABILITY SET FORTH BELOW. IF YOU ARE NOT AUTHORIZED TO SIGN FOR AND BIND THE CONTRACTING PARTY, OR OTHERWISE DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT ACCESS AND USE VORTEX.

### I. SERVICE DESCRIPTION

Vortex provides web site applications, a content management system (CMS), including maintenance and hosting, and email services (Email) to the general public. For the purposes of this Agreement, Services will refer to all products and services, including the Tools, CMS, Email, and any other product or service that may be offered or provided from time to time or in the future by Vortex. By subscribing to Services, users (also referred to as Customers) can customize their CMS, Email or other Services for a uniquely identifiable website or email address.

### II. USE OF SERVICE

All use of Services is governed by this Agreement.

#### A. YOUR ACCOUNT

All Customer Accounts are governed by and subject to the following rules:

1. If you wish to subscribe to or use a Service, You must provide us with current, complete and accurate information as prompted. We have the right to refuse to grant You an Account at our sole discretion. Regardless of whether You register, You agree to the terms of this Agreement and are responsible for all content related to Your Services.
2. Use of Your Account is expressly limited to You. You cannot transfer or share Your Account with any other party, temporarily or permanently.

3. You are entirely responsible for all use of Your Account and for the confidentiality of Your password. You are entirely responsible for any and all statements made and activities that occur through Your account. You agree to notify us immediately of any unauthorized use of Your account. To protect Your privacy, Vortex will suspend access or change access to Your Account immediately upon notification by You that Your password has been lost, stolen or otherwise compromised.

4. Payment of accounts:

a. Vortex may perform work for You in setting up a Service. Work performed will always be on a contract basis at a rate and payment terms mutually agreed upon by both parties in advance of the work to be performed.

b. When You purchase a Service or Services from Vortex, You will be charged in Canadian Dollars or US Dollars based on a mutually agreed upon price and terms.

c. In general, Vortex Services are billed on a recurring basis. Recurring billing for the Services can be monthly, quarterly or yearly, but if You select no recurring period, the frequency of billing will be monthly by default. Charges for partial month service are prorated from the date that Services are initiated. Terms are due upon receipt. Ongoing billing is generated on the first of the month with terms due upon receipt. In general, an invoice will be generated on the first day of the month for the previous month's services with payment due upon receipt.

d. Payment formats currently accepted include check, Visa, MasterCard and INTERAC e-Transfer. A Credit Card Authorization form is available if You would like for recurring payments to be automatically charged to a credit card. Vortex reserves the right to limit your payment format at their sole discretion.

e. To terminate any or all Services, you must contact us via phone (1-888-429-2747) or email (info@vortexcms.com), even if you have relocated Services to another provider in a prior period or have not accessed any Services for any period of time. If You terminate a Service, the termination takes effect at the end of the current billing cycle. You are not entitled to a refund if you stop using the Service during a billing cycle.

f. You acknowledge that Vortex has the right to immediately delete any of Your personal data on Vortex servers associated with a Service or Services that You have terminated.

g. Vortex has the right to terminate Your Services and delete any files or content related to Services at any time in the event of non-payment or past due status of an account.

## B. SERVICES

1. Customers and website users cannot use Vortex to post or transmit any unlawful, harmful, threatening, abusive, harassing, defamatory, or otherwise objectionable material of any kind, including, but not limited to, any material that encourages conduct that would harm Vortex business interests, constitute a criminal offense, exploit children, violate rights of others, or otherwise violate any applicable local, state, national, or international law. Vortex reserves the right to shut down any Service, which, in its sole judgment, violates these guidelines.

2. You are licensed to use Vortex but cannot copyright Vortex.

3. Vortex is under no obligation to monitor or review content.

4. Vortex does not control the information available in association with Vortex. Any opinions, advice, statements, services, offers or other information or content presented or disseminated on any Service are those of the respective authors who are solely liable for their content. Vortex reserves the right, in their sole discretion, to edit or remove any material from Vortex.

5. Furthermore, Vortex reserves the right, at any time and for any or no reason, to limit, deny, modify or discontinue Services with or without notice to You. Vortex shall not be liable to You or any third party should Vortex exercise its right to modify or discontinue the Services.

### C. RULES OF ONLINE BEHAVIOR

You agree to the following terms and conditions:

1. You are prohibited from posting, publishing, distributing, uploading, downloading, disseminating, or transmitting to other Web sites that contain material that:

a. Is unlawful, defamatory, fraudulent, libelous, threatening, abusive, disruptive, sexually explicit, bigoted, harassing or obscene.

b. Would violate the privacy, publicity proprietary or other rights of any person or entity.

c. Constitutes or promotes a criminal offense, or otherwise violates any local, state, national, or international law.

d. Contains corrupted files, viruses, Trojan horses, worms, time bombs or any other harmful contaminating, or destructive features.

e. Contains contests, pyramid schemes, chain letters, junk mail, spamming or flaming.

2. You are prohibited from uploading or reproducing any information protected by copyright without obtaining permission of the copyright owner. Only public domain files, and files that the author has given You express consent to copy and redistribute online or otherwise, can be uploaded to Vortex, including any software files or libraries.

3. You are prohibited from harvesting, aggregating, mining, copying or otherwise collecting information about others, including, but not limited to, names, email addresses, passwords, and usage information, without their consent.

4. You are prohibited from stalking or harassing others. You are further prohibited from creating a user ID to creating a false identity for the purpose of misleading others of Your identity or to impersonate another person.

5. You cannot attempt to gain unauthorized access to, tamper with, modify, or hack any Services.

6. Information and materials that You find published on Vortex may be the property of Vortex or an Information Provider, and may be protected by copyright or may contain protected trademarks. You cannot copy, redistribute or commercially exploit such materials without the express written permission of

the owner(s) of such information or materials.

7. You cannot violate any applicable law or regulation of any relevant jurisdiction.

### III. CUSTOMER REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGMENT

A. You warrant that all material that You submit for publication or posting on Vortex will not violate or infringe any copyright, trademark, patent, statutory, common law or proprietary rights of others, or contain anything obscene or libelous. You grant Vortex a non-exclusive, irrevocable right to copy, display, sublicense, transmit, and create derivative works of the information or materials You have published or posted on, or distributed through the Tools. Vortex reserves the right, in its sole discretion, but is under no obligation, to refuse to post, delete or edit information that You submit or enter onto Vortex, including but not limited to news services, and databases. You agree that You will not hold, nor seek to hold, Vortex or its agents liable for the loss of data or the misappropriation or infringement of any intellectual property right (including but not limited to any copyright or moral right) to which You claim ownership.

B. You acknowledge and agree that neither Vortex nor its third party service providers endorse the content of any Member and is not responsible or liable for any content, even though it could be unlawful, harassing, libelous, privacy invading, abusive, threatening, harmful, vulgar, obscene, or otherwise objectionable, or that it infringes or may infringe the intellectual property or other rights of another. You acknowledge that Vortex and its third party service providers do not pre-screen content, but that Vortex and its designees will have the right (but not the obligation) at their sole discretion to refuse, edit, move or remove any content that is publicly available via Vortex. Vortex does not control the content posted via its Services and, as such, does not guarantee the accuracy, integrity or quality of such content. You understand that by using Vortex, You may be exposed to content that is offensive, indecent or objectionable. Under no circumstances will Vortex be liable in any way for any content, including, but not limited to, for any errors or omissions in any content, or for any loss or damage of any kind incurred as a result of the use of any content posted, emailed or otherwise transmitted via Vortex.

C. Any links included within Vortex may permit You to leave the Vortex web site. You acknowledge that these linked sites are not under the control of Vortex and Vortex shall not be responsible for the contents of any linked site or any link contained in a linked site. All such sites shall be subject to the policies and procedures of the owner of such site. Vortex is not responsible and shall have no liability for webcasting, or any other form of transmission received from any linked site.

D. If ordering merchandise and/or services from anyone other than Vortex, through any commercial service accessible via Vortex, all transaction terms including but not limited to purchase terms, payment terms, warranties, guarantees, maintenance, and delivery, are solely between You and the seller of the merchandise or services. You are solely responsible for fulfilling any contractual/e-commerce or other obligations You assume using the Services. Vortex makes no warranties or representations whatsoever with regard to any goods or services provided by the seller of the merchandise or services and shall not be liable for the costs or damages arising, either directly or indirectly, from the products or services or from the actions or inactions of the Seller.

E. You acknowledge that Vortex has the right to delete any of Your personal data on Vortex servers associated with a Service that You have terminated.

F. You acknowledge that Vortex does not represent or warrant that Services will be uninterrupted or error-

free, or that defects will be corrected.

G. You acknowledge and agree that Vortex shall retain all title, copyright and other proprietary rights in its software and all aspects of its Services. You shall not acquire any rights, express or implied, in the Services, other than those specified in this Agreement.

#### IV. PRIVACY POLICY

Vortex may collect and disclose data in accordance with the Vortex Privacy Policy located at <http://www.vortexcms.com/privacy>. You expressly consent to any use or disclosure of Your personal identification and other personal information in accordance with the Privacy Policy. Due to the existing legal and regulatory environment, Vortex cannot ensure that Your personally identifiable information or Your private communications will not be disclosed to third parties. By way of example (and without limiting the foregoing), Vortex may be forced to disclose information to the government or third parties under certain circumstances, or third parties may unlawfully intercept or access transmissions or private communications. Further, Vortex can (and You hereby authorize Vortex to) disclose Registration Data or any information about You to law enforcement or other government officials as Vortex, in its sole discretion, believes necessary or appropriate. Therefore, Vortex does not promise, and You should not expect, that personally identifiable information or private communications would always remain private.

#### V. COMMENTS AND SUGGESTIONS

We welcome and appreciate your feedback regarding Vortex products and services. Any comments, remarks, feedback, suggestions, ideas, or other submissions you disclose or transmit directly to us shall become the property of Vortex upon receipt and Vortex shall own all right, title, and interest in and to your comments.

#### VI. TERMINATION

A. Vortex may terminate Your account if it believes, in its sole discretion, that You have violated any of the Rules of Online Behavior. Vortex may also immediately terminate Your Account and right to use the Services if:

1. You breach this Agreement.
2. Vortex is unable to verify or authenticate any information You provide to Vortex.
3. Information that You have provided to Vortex is inaccurate.
4. Vortex decides, in its sole discretion, that You have abandoned Your account.
5. Vortex decides, in its sole discretion, to discontinue offering the Service or Services.

B. Vortex is not liable to You or any third party for termination of the Services. You may terminate the Services with or without cause at any time. Should You object to any terms and conditions of this Agreement or any subsequent modifications hereto, or if You become dissatisfied with Vortex in any way, Your sole recourse is to immediately:

1. Discontinue use of the Tools.

2. Notify Vortex of Your termination. Upon termination of the Services, Your right to use the Services immediately ceases.

#### VII. NO REPRESENTATION OR WARRANTIES

Your use of the Services is entirely at Your own risk. The Vortex Services are provided on an "as is, as available" basis. No warranties, express or implied, including but not limited to those of merchantability, non-infringement, or fitness for a particular purpose, are made with respect to Vortex or any information or software therein. Vortex makes no warranty that the Services and/or any graphics or other content You download from the Services will meet Your requirements, or that the Services will be uninterrupted, timely, secure, or error free; nor does Vortex, its licensors or suppliers make any warranty as to the results that may be obtained from the use of the Services or as to the accuracy or reliability of any information obtained through the Services or that defects in the Services will be corrected. Some jurisdictions do not allow the exclusion of certain warranties, so some of the above exclusions may not apply to You.

#### VIII. LIMITED LIABILITY

In no event shall Vortex, its licensors or suppliers be liable to You or any third party for any direct, indirect, incidental, special or consequential damages, resulting from the use or the inability to use the Services, and/or any graphics or other content, including but not limited to, damages for loss of profits, however caused on any theory of liability (including negligence) even if Vortex has been advised of the possibility of such damages. Further Vortex shall have no liability to You or other third parties for any third party content uploaded onto or downloaded from the Services. You specifically acknowledge and agree that Vortex will not be liable for the conduct, advice or statement of other members, advertiser or third parties. Some jurisdictions do not allow the limitation or exclusion of liability for incidental or consequential damages so some of the above limitations may not apply to You. In no event shall Vortex total liability for all damages, losses, and causes of action exceed the aggregate dollar amount paid under the agreement. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages; as a result, the above limitation or exclusion may not apply to You.

#### IX. INDEMNIFICATION

You agree to indemnify, defend, and hold Vortex, its parents, subsidiaries, officers and employees, harmless from any claims and expenses, including reasonable attorney's fees, related to (i) Your use of the Services, including any content provided under Your account; (ii) any breach of Agreement, including any abusive or unlawful behavior on the part of You or Your dependents; or (iii) breach of any warranty or representation.

#### X. MODIFICATION OF AGREEMENT

Vortex may amend this Agreement at any time by (i) posting a revised Vortex Terms of Service document on the Vortex World Wide Website, and/or (ii) sending information regarding the Agreement amendment to the email address You provide to Vortex. You are responsible for regularly reviewing the Vortex World Wide Web site to obtain timely notice of such amendments. Any continued use of the Services by You after such amended terms have been posted or information regarding such amendment has been sent to You, shall be deemed Your consent and agreement to such amended terms. Otherwise, this Agreement cannot be amended except in writing signed by both parties.

## XI. ENTIRE AGREEMENT

GENERAL TERMS. This Agreement is governed in all respects by the laws of the Province of British Columbia, Canada, without reference to its conflicts of laws principles and any dispute arising hereunder shall be submitted to provincial and federal courts in British Columbia and You consent to the exclusive jurisdiction of such courts. If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced. Vortex failure to act with respect to a breach by You does not waive Vortex right to act with respect to subsequent or similar breaches. You cannot assign or transfer this Agreement or any rights hereunder, and any attempt to the contrary is void. This Agreement shall inure to the benefit of and be binding upon each party's successors and assigns. Vortex shall not be liable for any delay or failure to perform resulting directly or indirectly from any causes beyond Vortex reasonable control. Any notice required or permitted to be given to You under this Agreement shall be delivered by electronic mail the email address provided by You during registration. This Agreement constitutes the complete and exclusive understanding and agreement of the parties relating to the subject matter hereof and supersedes all prior understandings, proposals, agreements, negotiations, and discussions between the parties, whether written or oral.

For more information please contact Vortex at: <http://www.vortexcms.com/>