

EpicSurf.com Photographer Storefront Terms of Service Agreement

This Terms of Service Agreement (the "Agreement") is made by and between Epic Surf, LLC and You, the "Photographer".

1. Engagement of Services. Subject to the terms and conditions of this Agreement, EpicSurf.com agrees to publish the Photographer's images on the EpicSurf.com website. EpicSurf.com will offer customers online services such as reprint order processing and other services that may be amended from time to time at prices that are set by the Photographer. EpicSurf.com will set prices for shipping and handling. EpicSurf.com shall be responsible for timely processing and shipping all orders directly to customers in accordance with the terms of the order. EpicSurf.com shall notify the Photographer of an order at the time the order is placed and within twenty-four (24) hours of shipment. EpicSurf.com shall notify the Photographer of any returns, refunds, or fee disputes by any customer.

2. Fees and Compensation. When ordering prints or other products from a photographer's storefront profile, customers will pay EpicSurf.com in advance, by credit card or check, for the following: (i) Prices of prints or other products (greeting cards and/or gift items) as set and offered by Photographers; (ii) Standard EpicSurf.com shipping and handling fees as set forth on EpicSurf.com site at <http://epicsurf.com/prices.php>.

Photographers' costs for using Professional Studio service are: (i) Annual Membership Fee - \$99.00. If the annual revenue on the account exceeds \$3,000, this fee is waived for the following year; (ii) Commission Fee and Credit Card Processing Fee: When receiving orders from Photographer's customers, EpicSurf.com will charge Photographer fifteen percent (15%) commission fee (charged on the gross order payment not including shipping and handling fees, and taxes), and three percent (3%) credit card processing fee (charged on the gross order payment); (iii) Photographer's Fulfillment Costs: When receiving orders from Photographer's customers, EpicSurf.com will charge Photographer the standard prices for prints, greeting cards, gift items, and/or any other products offered by Photographers for sales and fulfilled by EpicSurf.com as set forth on the EpicSurf.com site at <http://epicsurf.com/prices.php>; (iv) Additional

Storage Space (over the original THREE GB) - \$20.00 per ONE GB. The above prices, fees and/or Photographers' costs of fulfillment may be changed from time to time by EppicSurf.com with 15 days notice.

For every order by Photographers' customers, EppicSurf.com will retain the fulfillment costs of prints and/or other products (greeting cards, gift items), shipping and handling fees, minimum charge fees if any, as well as the fifteen percent (15%) commission fee (charged on the gross order payment not including shipping and handling fees, and taxes), and the three percent (3%) credit card processing fee (charged on the gross order payment). The balance of each order, minus any chargebacks that may be due to EppicSurf.com for prior orders and/or other dues by photographer to EppicSurf.com, will be forwarded to the Photographer in a monthly check no later than forty-five (45) days after the order has been shipped to the customer. Subject to change with 15 days prior notice, EppicSurf.com's current practice is to mail payment by check of all amounts due to Photographer on the 15th of the calendar month for all the transactions occurred on the previous calendar month. All applicable sales taxes shall be collected and paid by EppicSurf.com based on EppicSurf.com being the party making sale and the sale occurring in the State of California.

3. License and Ownership of Work Product. EppicSurf.com shall not gain any ownership interest in the Photographer's images except that the Photographer grants EppicSurf.com a non-exclusive, royalty-free, worldwide, perpetual license, with the right to reproduce, distribute, transmit, publicly display any materials and other information you submit to the service (the "Submitted Materials") only for the purposes of (i) display in the Photographer's Sessions on the EppicSurf.com site and (ii) production of personalized photo finished products or reprints ordered by members or their guests. EppicSurf.com disclaims ownership of "Submitted Materials" and will not resell or otherwise convey these rights to any third party and EppicSurf.com's license to such images will terminate when Photographer removes the images from Photographer's album or gallery.

4. License Grant for Purposes of Image Download. With respect to EppicSurf.com's Image Download service, Photographer hereby grants EppicSurf.com a non-exclusive license to sub-license Photographer's images to Photographer's customers in accordance with the terms of the EppicSurf.com's [Personal Use License Agreement](#), a copy of which Photographer acknowledges having reviewed and agreed to.

5. Representations and Warranties. Photographer represents and warrants that: (a) Photographer has the right and unrestricted ability to grant the license to EppicSurf.com as set forth in Sections 3 and 4, and (b) the Work Product will not infringe upon any copyright, right of publicity or privacy, or any other proprietary right of any person, whether contractual, statutory or common law. Photographer agrees that neither EppicSurf.com nor any of its directors, officers, employees, partners or agents shall be liable for any damages, whether direct, indirect, consequential or incidental, arising out of the use of, or the inability to use, the Submitted Materials. Photographer further acknowledges that he or she is legally responsible for any challenges made by a third party regarding copyright in the Submitted materials.

6. Indemnification. Photographer agrees to indemnify, defend and hold EppicSurf.com and its officers, directors, owners, agents, information providers and licensors (collectively, the "EppicSurf.com Parties") harmless from and against any and all claims, liability, losses, costs and expenses (including attorneys' fees) incurred by any EppicSurf.com Party in connection with: (i) any use or alleged use of the EppicSurf.com web site under Photographer's member name by any person, whether or not authorized by Photographer; (ii) any Submitted Materials uploaded under the Photographer's member name; or (iii) any breach of Photographer's representations and warranties contained in Section 5 above. EppicSurf.com reserves the right, at Photographer's expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Photographer, and in such case, Photographer agrees to cooperate with EppicSurf.com's defense of such claim.

7. Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION TO ANY DAMAGE OR INJURY TO BUSINESS EARNINGS, PROFITS OR GOODWILL SUFFERED BY ANY PERSON ARISING FROM THIS AGREEMENT, OR THE TERMINATION OF THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS. IN NO CASE SHALL EITHER PARTY BE LIABLE FOR ANY AMOUNT IN EXCESS OF THE AMOUNTS PAID UNDER THIS AGREEMENT.

8. Independent Contractor Relationship. Photographer's relationship with EppicSurf.com is that of an independent contractor, and nothing in this Agreement is intended to, or should be construed to, create a partnership, agency, joint venture or employment relationship. Photographer will not be entitled to any of the benefits, which

EppicSurf.com may make available to its employees, including, but not limited to, group health or life insurance, profit-sharing or retirement benefits. Photographer is not authorized to make any representation, contract or commitment on behalf of EppicSurf.com unless specifically requested or authorized in writing to do so by a EppicSurf.com officers. Photographer is solely responsible for, and will file, on a timely basis, all tax returns and payments required to be filed with, or made to, any federal, state or local tax authority with respect to the performance of services and receipt of fees under this Agreement. Photographer shall be solely liable for any failure to pay applicable taxes. Photographer is solely responsible for, and must maintain adequate records of, expenses incurred in the course of performing services under this Agreement. No part of Photographer's compensation will be subject to withholding by EppicSurf.com for the payment of any social security, federal, state or any other employee payroll taxes. EppicSurf.com will regularly report amounts paid to Photographer by filing Form 1099-MISC with the Internal Revenue Service as required by law.

9. Term and Termination. 9.1 Term. The initial term of this Agreement is for one (1) year from the Professional Studio Account Activation Date, unless earlier terminated as provided in this Agreement. Thereafter, upon payment of the applicable annual membership fee (Section 2) this Agreement will renew on its anniversary date for one (1) year term, unless EppicSurf.com provides fifteen (14) days written notice prior to any such anniversary date that the Agreement shall not renew. 9.2 Termination by EppicSurf.com. EppicSurf.com may terminate this Agreement with or without cause, at any time upon fifteen (14) days prior written notice to Photographer. EppicSurf.com also may terminate this Agreement immediately upon material breach of Section 10 ("Online Conduct").

10. Online Conduct. Photographer shall not use the service for any of the following activities: (i) displaying in public albums or galleries photos that contain nudity, obscene or pornographic material of any kind; (ii) posting, photos, captions, names, posts or descriptions that convey blatant expressions of bigotry, prejudice, racism, hatred or profanity; (iii) defaming any person or group; (iv) linking to any site that promotes any of the above; (v) uploading material containing any virus or other content that may damage the service, the network, or any other user's equipment or software; (vi) violates any laws, rules, or regulations of any governmental or other administrative organization having authority over the service, or users. EppicSurf.com shall be the sole judge of online conduct and may refuse to publish any photograph at its sole discretion. Photographer agrees to indemnify EppicSurf.com from any and all damages, costs,

claims, expenses or other liability (including reasonable attorneys' fees) arising from or relating to the breach or alleged breach by Photographer of the provisions of this Section 10. Photographer will also abide by the provisions posted on the EppicSurf.com website in the Terms of Service and Privacy Statement, as amended from time to time.

11. Successors and Assigns. Photographer may not subcontract or otherwise delegate its obligations under this Agreement without EppicSurf.com's prior written consent. Subject to the foregoing, this Agreement will be for the benefit of EppicSurf.com's successors and assigns, and will be binding on Photographer's assignees.

12. Notices. Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (i) by personal delivery when delivered personally; (ii) by overnight courier upon written verification of receipt; (iii) by telecopy or facsimile transmission upon acknowledgment of receipt of electronic transmission; or (iv) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth below or such other address as either party may specify in writing.

13. Governing Law. This Agreement shall all be governed and construed in accordance with the laws of the State of California applicable to agreements made and to be performed in California, and that any legal action or proceeding between EppicSurf.com and you for any purpose concerning this Agreement or the parties' obligations hereunder shall be brought exclusively in a federal or state court of competent jurisdiction sitting in California. EppicSurf.com's failure to enforce any provision of this Agreement shall not constitute a waiver of any provision or right.

14. Severability. Should any provisions of this Agreement be held by a court of law to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.

15. Waiver. The waiver by EppicSurf.com of a breach of any provision of this Agreement by Photographer shall not operate or be construed as a waiver of any other or subsequent breach by Photographer.

16. Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior

or contemporaneous oral or written agreements concerning such subject matter. This Agreement may only be changed by mutual agreement of authorized representatives of the parties in writing.