

# PUBLISHER AGREEMENT

Before you can be a Publisher that uses the Publisher services of our Site, you must agree to terms and conditions in this document (the “Agreement”). If you press the SIGN UP NOW button on the RegNow Account Activation page on our Site, you will form a contract between you and us as of the date you press the button. So, it is important for you to carefully review this Agreement prior to agreeing to it. If you do not wish to enter into this Agreement, then you should not press the SIGN UP NOW button. But, if you do not press the SIGN UP NOW button, you will not be able to sell your Product on our Site.

## WHAT DO CERTAIN WORDS MEAN?

A few terms in this Agreement have special definitions.

- “We” or “us” means our company, RegNow, Inc., a Minnesota Company.
- “Our” or “ours” means things that we own.
- “You” or the “Publisher” means you, which is the person or business that is shown as the Publisher and/or “Company” on the RegNow Account Activation page you filled out prior to getting this Agreement.
- “Your” or “yours” refer to things that you own, both tangible and intangible (such as intellectual property).
- “License Right” is a right to install, use and/or enhance the capabilities of a Software program.
- “Services” are additional optional value added reseller services that you may obtain from us, in some instances for an additional price, which may include:
  - Delivery of pre-determined license keys or tokens to End Users
  - Creation of license keys or tokens using criteria and algorithms you have specified to us
  - Distribution of copies of your Software to End Users
  - Advertisements or other promotions through our Site or other means concerning your Software
  - Access to our Affiliate program, which will allow other persons to promote your Software or solicit sales of License Rights via our Site
- “Software” is the software program and attached data that is associated with any particular Product. You will identify one or more items of Software for each set of License Rights that you sell to us.
- “Site” means our Web site, found at [www.regnow.com](http://www.regnow.com), which will act as a retail merchant to sell your License Rights, and which may be used to fulfill some or all of the additional Services you purchase.
- “End Users” means the persons or businesses that may choose to purchase License Rights through our Site.
- “Suggested Retail Price” means the price that you input into the RegNow system as the recommended selling price of the product. While Publisher may load retail prices for the Products, RegNow is solely responsible for resale prices in accordance with applicable law.

- “Total Sales Price” means the price paid by an End User (less any discounts or coupons applied to the purchase) for a completed purchase, including any applicable taxes or shipping, but excluding any CD-ROM fee or Download Insurance fee charged to the End User as part of the purchase.
- “Discount” means a portion of the Total Sales Price of each Product that RegNow may deduct from the Suggested Retail Price it must pay to you for each product sold by RegNow in a given transaction with an End User.
- “Site Certification” is defined as a classification for a RegNow vendor’s website which does not contain links, redirects or direct traffic of any means to a non-DR Affiliate Network supported ecommerce system.

## WHAT DOES THIS AGREEMENT COVER?

- As End Users are directed to our Site, we will provide a Web-based payment system to allow the End User to purchase a License Right for your Software. You agree to sell to us the License Rights at the time that the End User makes the purchase from us for the price set forth under “How We Handle the Money.” If necessary in order for us to fulfill the End User’s purchase, you will cooperate with our requests in delivering or providing the License Right to the End User (in whatever form you have chosen to use for your Software).
- After you enter into this Agreement, you will be able to indicate which of our additional Services you want to obtain through your online account interface. We may amend or change the Services we provide, at any time upon notice to you, and those changes will be effective for any transactions that take place after the date of the change.
- Please note that we do not provide software help-desk or other forms of technical support concerning your Software. Our support is limited to assistance with the use of our Site and its shopping cart to make purchases, as well as concerning any deliveries of Software files, license keys or tokens if you have purchased those Services from us.

## WHAT RIGHTS DO YOU GRANT TO US?

- You give us the right to sell License Rights as described in this Agreement. Also, if you purchase any additional Services from us, you also permit us to copy, store and distribute to others, as appropriate for the particular set of Services you purchase, any or all of your: Software license keys or tokens, copies of your Software in authenticated or un-authenticated form and in electronic form for download distribution and/or in physical form (such as CD-Rom) for physical distribution.
- Other than the rights described above, as we need them to fulfill the purposes of this Agreement, you do not grant us any rights in the intellectual property of your Software, your name or your trademarks.
- Any end user license agreement (“EULA”) you make with an End User is strictly an agreement between you and the End User, and we are not a party to that EULA.

## HOW DO WE HANDLE THE MONEY?

**RegNow’s Discount off Suggested Retail Price.** When we sell your License Rights, we will be the retail merchant of record for the sale to the End User. For each sale of a License Right, we shall retain

from the purchase price we pay to you for the products we have sold to the End User the greater of an amount equal to: (a) the Suggested Retail Price less the Discount of 6.9% of the Total Sales Price plus \$1 per unit of software in the End User's order, or (b) \$2.00 per customer order.

- All amounts which we owe you for the sale of a License Right shall be placed in an in-house account that we will maintain for you, and pay you from that account as described below.
- CD-ROM Option: You will be required to upload your product files and we will then create a custom CD-ROM for the product(s). Then, whenever a user purchases the software, the user will be given the option to also purchase it on CD-ROM. We agree to pay you 20% of the selling price for every CD sold. RegNow shall set and maintain CD pricing. This option must be offered to End Users for all Software offered for sale via RegNow.
- Download Insurance Service: You will be required to offer Download Insurance Service to all End Users. RegNow shall set and maintain all Download Insurance Service pricing. We agree to pay you 20% of the selling price for each approved order of our Download Insurance Service. This service provides storage of your file on our server for the customer to re-download their purchase for up to two years, by providing the customer a download link. This service is required on all products where we host files and pass them along to End Users after a sale. Download Insurance Service - We agree to pay you 20% of the selling price for each approved order of our Download Insurance Service. This service provides storage of your file on our server for the customer to re-download their purchase for up to two years, by providing the customer a download link. This service is required on all products where we host files and pass them along to End Users after a sale.
- If you desire additional Services from us that require payment of additional fees, those fees will be described to you once you activate your account and logon in the online account interface. You will have an opportunity to accept those fees when choosing to use the Service. As we provide the Services to you, we will deduct the fees you owe from your account. In the event you cease offering one or more of the value added services required in this Agreement, you will be notified and your account suspended.

**Taxes** - In addition to charging the End Users your stated price, we will collect and remit to the proper authorities, where we are legally required to do so, any sales tax, value-added-tax (VAT), or similar tax or similar government fees that are based on the sale of your Products (collectively "Sales Taxes"). Any collected Sales Taxes will not be placed into your account but shall instead be paid by us to the appropriate government authority.

**Affiliate Program** - You may elect to participate in our Affiliate Program. In the Affiliate Program, other members of the RegNow community may elect to promote your Software by driving traffic to your web site, and we track the sources of traffic to your site. When an End User makes a purchase upon being driven to your site by an Affiliate, that Affiliate is eligible for an Affiliate Commission, which you agree we may deduct and pay from the sales price of the product. Any Affiliate commissions that result from a particular sale will also be deducted from your account and paid over to whichever Affiliate our systems indicates referred the sale to us. You may set the Affiliate commission on a per product, per account and on a per Affiliate basis. If you do not provide an Affiliate percentage, a default commission of 30% is set by our system.

All affiliates within the Affiliate Network shall remain our sole property, and shall not belong to you. In order to enter the network, each affiliate has entered into a contractual relationship with us. Any

affiliate recruited by you into our Affiliate Network through your own efforts or through the use of the affiliate recruiting tool we provide to you, or through any other service or other resource we provide to you shall remain our sole property. You shall not bypass or circumvent the network with respect to any engagement with a Network Affiliate. The Affiliate Network may make available to you tools and resources for the explicit purpose of communicating with affiliates. You agree you shall not use these tools in a manner that may result in, among other things, avoiding your obligation to pay for services and/or fees associated with the Network, including avoiding paying any Affiliate Commissions, Discount or other cost of sale to us, or the recruitment of affiliates to another affiliate or affiliate-related network.

**Refunds/Chargebacks** - If we process any refunds to End Users who have purchased your Products from us, we will deduct the amount of the refund from your account. We will process refund requests made to us and give you notice of such requests when received. However, if you respond within 2 business days from receiving our notice that you object to the refund or require additional information, we will work with you to determine whether the refund request is valid. If a credit card processor charges back to us an amount against a sale of your License Rights (which they may do for any reason allowable under the applicable credit card processor's merchant regulations including fraud, consumer complaint or government order), we may choose to make the refund and deduct the amount of the chargeback from your account. When there is any refund or chargeback of a transaction we have already processed, we will keep our original retail margin.. In the event of return or chargeback, all associated affiliate fees will be retained by us and returned to you. However, we will be responsible for fees payable to credit card processors, including any merchant fees or credit card transaction fees. We will also be responsible for any chargeback fees charged by the credit card processors unless the chargeback arose out of your own fraudulent acts or omissions.

**Payment Method/Frequency** - At the end of each pay cycle, we will send you a payment in the form you select in your account settings for the payable amount in your account. However, our obligation to pay you out of your account is subject to the following:

- Standard pay cycles are on a monthly basis unless otherwise specified and unless you are due less than the monthly minimums.
- All payments will be made via ACH direct deposit unless otherwise specified. Due to availability, non-US clients may not be eligible for ACH direct deposits. In this case, checks shall be used as the default method of payment at no additional fee.
- Alternate payment options are available. Direct Wires may be processed at your request for a fee of \$10 per wire. Corporate checks/bank drafts are also available for a fee of \$10 per draft. The DR VISA Electron card is available also as a payment option. Please see specific terms and conditions at [www.regnow.com](http://www.regnow.com) if you would like to activate this payment option.
- We may determine to holdback some or all of the money that is in your account if we believe that it might be necessary to cover future refunds, charges against your account, or other liabilities you may owe to us. We may also holdback some or all of the money if we believe that the funds represent fraudulent transactions or involve other kinds of illegal activities. We will only holdback those amounts which are reasonable under the circumstances. Our statements or other communication from us will note how much we are holding back. We will keep any held-back amounts only for a reasonable time as determined in our sole discretion, and will promptly pay over to you any remaining held back amounts after that reasonable time has passed. Regardless of any holdback we may choose to keep, you agree to pay us, upon demand, for any shortfall owed to us due to refunds, chargebacks, commissions or fees for Services rendered if they are unpaid for more than 90 days. If

we actually keep (or setoff) against your account with us any of the funds we have held back, we will do so in a manner that we believe fairly reflects your liability owed to us, and we will note the setoff and an explanation of the setoff on your next statement that we issue to you.

- If the total amount we owe to you at the end of a monthly pay cycle will be less than \$25 we will withhold payment until a later pay cycle when the total amount owed is greater than the above amounts.
- Your first payment will not be due to you any earlier than the pay cycle that follows the 60th day after the date of the first sale in your account. All subsequent payments shall be on the pay schedule you select.
- Any and all fees, payments, compensation, consideration, and other money amounts shall be expressed and payable in United States Dollars unless otherwise requested by you and approved by us. Amounts in your account with us will not accrue interest while in our possession.
- We may amend our Fee Schedule, or any non-scheduled fees, at any time, but we will give you at least 30 days notice prior to the amendment about any fees change.

## **WHAT DO YOU PROMISE TO US?**

You make the following promises, representations and warranties to us, and we provide our value added reseller services to you in reliance on the same:

- You have the right to sell the License Rights to us for purposes of resale through our Site. If you have us distribute your Software or associated files, license keys or tokens, you have the right to permit us to do those Services for you. You warrant that our sale, copying, storage and distribution of the License Rights or the Software will not infringe, violate or misuse anybody else's intellectual property rights. You warrant that the above warranties and promises are valid for sale and distribution to End Users throughout the world.
- Any descriptions you provide for your Software that will be displayed on our Site are accurate, and will not be in violation of any applicable laws or regulations concerning advertising claims or other forms of consumer protection laws.
- In consideration of using our Affiliate Network and gaining access to its affiliates, services and resources, you agree you will not display links, redirects, or direct traffic of any means to a non-DR Affiliate Network supported ecommerce system. (This is necessary to ensure that all traffic and subsequent sales generated by affiliates are properly identified and the referring affiliate is paid its appropriate affiliate commission.) You must apply for Site Certification after your product(s) have been activated on RegNow. If you have not submitted for Site Certification, satisfied the requirements for Site Certification and been approved for Site Certification within 5 days of your first order on this contract, we reserve the right to retain an amount equal to 15% of the Affiliate commission for your affiliate referred orders and may remove your products from the Affiliate Network. This pricing will be applied to all affiliate referred orders processed through your account until such time as you meet the Site Certification requirements.
- You have the right to enter into this Agreement, and that you are of legal age and otherwise competent to be contractually bound to this Agreement. Also, if you are a corporation or other form of business entity, the person who has pressed the SIGN UP NOW button is authorized to

bind you, and if that person is not so authorized that person agrees that he or she is personally responsible for whatever is done on your account under this Agreement.

- Your Software, including all content within it, is not libelous, does not slander others, does not contain obscene or pornographic material, is not illegal to use, nor does it contain devices which are intended to be used to perform illegal activities (such as, but not limited to, tools, devices or software used to defeat data encryption devices), nor is it designed as a tool for processing e-mail for mass mailing (“spamming” tools or the like). Our distribution of your License Rights and/or the Software will not violate any laws concerning export over national borders, including laws involving encryption technology. You agree that we may, in our sole discretion, decline to carry (or to continue to carry) any of your Products at any time, with or without reason.
- All of the information you entered on the Publisher Registration page is correct as of the time you entered it. You also promise that you will update any of that information when it has changed by updating your online account interface. You can access your Publisher Registration information on your [Publisher Account](#) page.
- Anyplace you promote the sale of the License Rights where you provide End Users with a hyperlink or other means to reach our Site (whether on a Web site, e-mail, on paper or any other means); you will not display any inaccurate or misleading information concerning your identity or location.
- If you ever have reason to believe there is any reason these promises are not true, now or in the future, you promise to promptly tell us.

## WHAT RIGHTS DO WE HAVE AND KEEP?

- Although we will generally try to give you advance notice, you acknowledge that we can, at any time without advance notice and for any reason, determine that we do not wish to distribute any or all of your License Rights or your Software.
- We are not obligated to pay you any amounts in your account that are connected with any activities that are deemed to be fraudulent or criminal. The existence or possibility of fraud or criminal activity will be determined by us in our reasonable discretion, and we may make any inquiries and investigations we deem appropriate.
- Our Site has a Privacy Policy posted at <http://www.regnow.com/privacy.html>, and that policy describes how we may store, use and disclose personal information about you and your End Users. You agree to the terms of that Privacy Policy as it is now issued and as it may be amended in the future by us. You agree that you will not do anything to interfere with our Privacy Policy and how it impacts your End Users, and agree that we have sole control of the terms and enforcement of our Privacy Policy.
- Our Privacy Policy, DMCA Notice, Terms and Conditions of Sale and other relevant legal disclaimers shall be permanently displayed in the shopping cart and other checkout pages.
- We are permitted to display in any post-purchase pages (including any thank you page, confirmation page, confirmation e-mail, and any pages following the actual submission for order processing) information of our choosing, including in our sole discretion cross-sells, up-sells and other marketing. To the extent we sell additional products to End Users as a result of our activity in this regard, we will pay to you the applicable affiliate commission the Publisher of the product listed in the RegNow system.

- If we determine that the sale of your Product into any particular place will put us in violation of local tax laws, and if resolving that problem will cost us an unreasonable amount of time, effort or money, we may choose to refuse to make sales to End Users in those locations.
- Our trademarks, service marks and business names (our “Trademarks”) are owned or licensed solely and exclusively by us. All of your use of our Trademarks shall inure to our benefit. You agree, upon our demand, to promptly stop or alter any of your uses of our Trademarks which we deem to be improper or which may have the potential to put our Trademark rights at risk.

## **WHAT DO YOU NEED TO DO ABOUT SPAM AND ADVERTISING?**

You may not use commercial e-mail (solicited or unsolicited) to market your Software, or that identifies us or our Web site, where the e-mail violates any applicable laws or regulations regarding the use of commercial e-mail. You must comply with any legal obligations to provide proper labeling and content within your marketing e-mails, and to provide opt-in or opt-out capabilities to recipients and comply with any such requests. Any advertising or other marketing materials that mention our company or our Web site, or which contain hyperlinks to our Web site, must be in compliance with all laws concerning advertising and marketing for the territories you deliver those materials to. You are responsible for compliance with all of the above, whether you provide the e-mails or advertisements on your own or use the services of a third party. If we are charged any fines, penalties or incur any costs, including attorney fees, because of your non-compliance with the above, you agree to reimburse us any of those amounts upon our demand.

Because we are the seller of your product(s) to the End User, we are the party with whom the End User is transacting business. As such, the End User is giving his/her/its personally identifiable information to us. To the extent permitted under applicable laws and not otherwise prohibited by an End User’s request to us, all End User information resulting from a transaction will be shared by us with you and - where applicable the affiliate who drove the End User to your site. You agree you will only use End User information in compliance with our publicly displayed privacy policy, your publicly displayed privacy policy, and all applicable laws and regulations, including by way of example but not limitation, CAN-Spam Act of 2003 15 U.S.C. § 7701-7713 (2003).

## **WHAT WARRANTIES DO WE DISCLAIM?**

We provide our reseller services to you on an AS IS basis and make no promises as to the percentage up-time or that our site will operate without error. **WE MAKE NO WARRANTIES CONCERNING THE QUALITY OF OUR RESELLER SERVICES ON THE SITE, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.** Except for any obligations we have to pay you the amounts in your account that are owed to you, you agree that your sole remedy for any breach of this Agreement by us is for you to terminate this Agreement.

## **HOW IS OUR LIABILITY LIMITED?**

**UNDER NO CIRCUMSTANCES SHALL OUR TOTAL LIABILITY UNDER THIS AGREEMENT OR ARISING OUT OF OUR RELATIONSHIP WITH YOU UNDER THIS AGREEMENT, REGARDLESS OF HOW THE LIABILITY ARISES, EXCEED THE NET AMOUNT REALIZED BY US UNDER THIS AGREEMENT. WE ALSO SHALL NOT HAVE ANY LIABILITY TO YOU OR TO ANY OTHER PERSON OR ORGANIZATION FOR ANY DAMAGES RELATING TO ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY DESCRIPTION, WHETHER ARISING OUT OF WARRANTY OR OTHER CONTRACT, NEGLIGENCE OR OTHER TORT, OR**

OTHERWISE.

## HOW LONG DOES THIS AGREEMENT LAST?

- This Agreement starts on the date you press the SIGN UP NOW button, and will last until the day either of us gives at least 30 days prior notice to the other that the Agreement should terminate. In the event you are in material breach of this Agreement, we have no obligation to give you prior notice of the termination. Except for the 30 day prior notice to terminate, neither you nor we are obligated to continue under this Agreement for any period of time, and you should not rely upon whether or not we will continue to distribute your Product for any period of time.
- Once this Agreement has been terminated without any renewals or amendments per the amendment terms below:
  - You will immediately remove any reference to our name or any hyperlinks to our Site that deal with the sale of your License Rights or the distribution of your Software.
  - We will promptly halt any sale of your License Rights. We will promptly give notice to all Affiliates that we know are promoting the sale of your License Rights to discontinue linking to our Site for that purpose, but we are not responsible for whether or not the Affiliate complies with that notice.
  - We will continue to make payments to you out of your account, on the regular pay cycle dates, until the time that your account has reached a zero balance. Our holdback rights, as described above, survive past the termination date of the Agreement. Your obligation to pay us for any shortfall in your account survives the termination of the Agreement.
  - We may hold-back funds and charge against those funds any amounts which we are entitled to charge under this Agreement.
  - You will continue to be responsible for any liability that might arise out of fraudulent transactions, any infringement of intellectual property rights, and any other violation of law that may have occurred as a result of your Product being distributed via our Site. We are entitled to set off against any funds we may be holding any amount needed to reimburse us for our costs or expenses of defending against any claims against us related to your breach of any promise to us in this Agreement, including an amount to pay any attorneys' fees we incur associated with any such claims.

## ANYTHING ELSE WE AGREE UPON?

- You may not assign this Agreement, or any of your rights under this Agreement. Any attempt to assign in violation of the preceding shall, at our option, render this Agreement null and void. However, the provisions of this Agreement shall be binding upon and inure to the benefit of the parties and their permitted successors and assigns.
- Neither you nor we are obligated to deal exclusively with the other, and you may use other means or companies to distribute your License Keys and/or Software, and we may distribute Software and/or License Rights provided by others that may be similar to or competitive with your Software.
- We are relieved of any obligation to perform under this Agreement if we are unable to perform as a result of natural disaster, war, emergency conditions, labor strike, acts of terrorism, the substantial inoperability of the Internet, the inability to obtain supplies, or other reasons or conditions beyond our reasonable control.

- If you are obligated under this Agreement to tell us something or you wish to give us legal notice of any kind, you must do so in writing and deliver it by certified mail, postage pre-paid and return receipt requested OR by nationally recognized overnight courier which provides a written proof of delivery, to the following address:

RegNow, Inc  
Attn: General Counsel  
9625 76th Street, Suite 150  
Eden Prairie, MN 55344

- If we are obligated under this Agreement to tell you something or we wish to give you legal notice of any kind, we may choose to do so by use of any of the addresses shown on your Publisher Registration page, including postal mail or e-mail or posts within the RegNow user interface.
- We reserve the right to amend/modify this contract or any portion of this contract. In the event of an amendment or modification, you will be notified as indicated above. If you are opposed to the amendment/modification, you will have the option of terminating your contract as outlined in the Agreement. If you do not terminate the agreement within 30 days after we send notice of the amendments/modifications to you, you will be deemed to have accepted the new amended/modified version as the new agreement between us effective as of that 30th day, and the prior version will be considered as having terminated. The waiver of any provision or the breach of any provision of this Agreement shall not be effective unless made in writing. Any waiver by either party of any provision or the breach of any provision of this Agreement shall not operate as or be construed to be a continuing waiver of the provision or the breach of the provision.
- This Agreement shall be governed by and interpreted under the laws of the State of Minnesota. The parties specifically disclaim application of the United Nations Convention on the International Sale of Goods.
- If there are any disputes or conflicts related to or arising out of this Agreement, you and we shall use reasonable means to resolve the conflict prior to starting any lawsuits or other litigation, including negotiation between management personnel capable of resolving the conflicts. However, in the event either you or we should start any litigation arising out of this Agreement, you expressly agree that the litigation will take place exclusively in the state or federal courts located in Hennepin County, Minnesota, USA, and you expressly agree that any such court has personal jurisdiction over you. You waive all defenses of lack of personal jurisdiction and forum non-conveniens. Process may be served on either party in the manner authorized by applicable law or court rule, but if you have provided an inadequate street address, you agree we may serve you by e-mail.
- This Agreement sets forth the entire understanding between you and us concerning the subject matter hereof, and any prior understandings, or understandings that are not expressly contained in this Agreement, shall have no effect as of the date this Agreement is effective.
- The provisions of this Agreement shall not in any respect whatsoever be deemed to create a partnership, joint venture, or other business combination between you and us. Neither you nor we shall be obligated by any agreement, representation or warranty made by the other, nor shall you or we be obligated for damages to any person or organization for personal injuries or property damage directly or indirectly arising out of the conduct of the other party's business or caused by the other party's negligence, willful act, or failure to act. There are no third-party beneficiaries through you under this Agreement.

- In the event any portion of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement.
- The provisions of this Agreement which, by their terms, require performance after the termination of this Agreement, or have application to events that may occur after the termination of this Agreement, shall survive the termination of this Agreement.
- This Agreement is written with titles and headings intended to provide a greater understanding of the terms of the Agreement. However, the titles and headings of the various sections and paragraphs in this Agreement are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify or impose any construction or meaning on any of the provisions of this Agreement.

Version 2.1

Last Update Sept 1, 2005