

## REALGRAVITY PUBLISHER TERMS AND CONDITIONS AGREEMENT

**WHEREAS**, Publisher and RealGravity hereby wish to enter into this Agreement whereby RealGravity will make available, subject to the terms and conditions set forth herein, its RG Service on the "Site or Sites," as defined below, for the consideration set forth herein.

**NOW THEREFORE**, in consideration of the mutual covenants, agreements and warranties stated in this Agreement, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

**DESCRIPTION OF SERVICE:** The RG Service and Software enables the display of an RG Player on Sites selected by Publisher, and displays Videos, Advertising and other content and features in the RG Player. When appropriate, the RG Service selects Videos, Advertising and other content based on Content Data and Customer Data collected and processed using RG's Processing Software.

**1. DEFINITIONS.** For purposes of this Agreement, the following terms shall have the meanings set forth below:

- A. "Account" means Publisher's billing account for the RG Service. Publisher will not maintain multiple Accounts without RealGravity's prior written consent.
- B. "Advertising" means all advertising displayed in the RG Player on Publisher's Sites (for example, pre-roll video ads, companion display ads, and graphic overlay ads).
- C. "Affiliate" means any corporation, firm, partnership, person or other entity, which directly or indirectly owns, is owned by or is under common ownership with such party, and any person, firm, partnership, corporation or other entity actually controlled by, controlling or under common control with such party.
- J. "Content Data" means the SEO tags, headlines, descriptions, word frequency counts and other data concerning the content on the Sites that is collected through use of the RGS, forwarded to the Servers, and analyzed by the Processing Software.
- K. "Content Provider" means an owner or licensor of Video, as defined below, to the RG Network, other than Publisher.
- L. "Content Provider Video" means Video that is owned or controlled by a Content Provider.
- M. "CPM" means cost per One Thousand (1,000) stream events.
- N. "Customer Data" means the data concerning the characteristics and activities of Users that is collected through use of the RGS, forwarded to the Servers, and analyzed by the Processing Software.
- D. "Documentation" means any accompanying proprietary documentation made available to Publisher by RealGravity for use with the RG Service and Software, including any documentation available online or otherwise.
- E. "Processing Software" means the proprietary RealGravity software which analyzes the Content Data and Customer Data and selects the Videos for display in the RG Player.
- F. "RGS" means the proprietary RealGravity scripts, which are provided to Publisher to be installed by the Publisher on the Sites for the purpose of displaying the RG Player, and collecting Customer Data and Content Data. The RGS may be modified, from time to time, by RealGravity.
- G. "RG Network" means websites that are not owned or controlled by Publisher, and which use the RGS.
- H. "RG Player" means the visible area at Publisher's Sites where the RGS is installed and which is rendered by the Service, displaying a video player and ancillary features.
- I. "RG Service" means the Software and services provided to Publisher by RealGravity under this Agreement, as they may be modified from time to time by RealGravity.
- O. "Servers" means the servers controlled by RealGravity (or its Affiliates) upon which the Processing Software, Content Data, and Customer Data are stored.
- P. "Sites" means a group of web pages at Internet web sites owned or controlled by Publisher that are linked to an Account.
- Q. "Software" means the RGS and the Processing Software.
- R. "Stream" means the initiation to conclusion of a single Video, as measured by RG's Google Analytics account, with a maximum file transfer size of 10MB. A Stream which results in data transfer of more than 10MB will be considered more than one Stream for the purpose of this Agreement. The Stream count per Video will increment by one Stream at each 10MB threshold; (eg: 1MB-10MB = 1 Stream, 10.1-20MB = 2 Streams, etc.). The Stream count per Video will also increment by one Stream for each insertion of a video advertisement that causes the Video to stop while the advertisement plays; (eg: a Video that runs with a pre-roll video advertisement, and a mid-roll video advertisement, is equal to two Streams). For clarity, the Stream count will not increment for the insertion of other forms of video Advertising which allow the Video to continue playing, such as companion units or graphic overlays.
- S. "User" means an individual, human end user who visits or uses any of the Sites.

T. "Video" means the video content (other than Advertising) displayed in the RG Player at the Sites. The layout, sources, and update frequency of Video varies with the version of the RG Service implemented.

**2. ADVERTISING SALES AND RG SERVICE USAGE:** The RG Service displays Videos and Advertising in the RG Player. RealGravity will implement various ad technologies and require specific RG Service and RG Player settings for this purpose. The advertising units include, but are not limited to, pre-roll video ads, companion display ads, and graphic overlay ads. RealGravity may add support for new ad technologies with or without notice. RealGravity may eliminate support for any ad technology in the RG Service at RealGravity's sole discretion.

Advertising will be sold by RealGravity, its ad network partners, or its Content Providers ("**RG Initiated Sales**"). RealGravity will be responsible for billing and collecting from all advertisers.

The RG Service and RG Player shall operate at all times on a user-initiated (e.g. no auto-play) and sound-on audio playback basis unless otherwise mutually agreed upon by the Parties.

Either Party may request discontinued use of the RG Service and RG Players on Site(s) upon prior 24 hour written notice.

**3. PUBLISHER REVENUE:** Publisher will receive revenue as put forth in the RealGravity Publisher Terms and Conditions Authorization Form ("Publisher Revenue").

**4. PAYMENT TERMS:** Publisher Revenue will be paid to Publisher within thirty (30) days of the end of the month in which RealGravity collects the ad revenue attributed to Advertising displayed on the Publisher's Site. Each such payment shall be accompanied by a report that shows in reasonable detail the basis for the payment made. If the total Publisher Revenue for a month is less than US\$100.00, those Publisher Revenues will roll over, and be included in Publisher Revenue payable for the next calendar month.

RealGravity may change its Publisher Revenue and payment policies for the RG Service from time to time, on thirty (30) days prior written notice to Publisher. The changes to the Publisher Revenue or payment policies will be emailed to Publisher or posted at [www.Realgravity.com](http://www.Realgravity.com) (or such other URL RealGravity may provide from time to time), and will be effective on thirty (30) days notice to Publisher (or such later date as may be specified by Realgravity in the notice). Publisher's continued use of the RG Service following effective date of such changes shall be deemed Publisher's acceptance of the new Publisher Revenue or payment policies.

RealGravity will maintain accurate records with respect to the calculation of Publisher Revenue due under this Agreement, for no less than three (3) years following the relevant

transactions. Publisher may, upon reasonable prior written notice to RealGravity, and no more than once in any twelve (12) month period, cause an independent auditor of nationally recognized standing to inspect the appropriate records reasonably related to the calculation of Publisher Revenue during normal business hours. Such examination will be undertaken in a manner reasonably calculated not to interfere with normal business operations. In the event that there has been an underpayment, RealGravity shall remit the underpayment to Publisher within ten (10) business days. The fees charged by such auditor in connection with the inspection will be paid by the Publisher unless the auditor discovers an underpayment of greater than 10%, in which case RealGravity will pay the reasonable fees of the auditor. All information from the audit shall be deemed Confidential Information.

**5. NON-QUALIFYING ADVERTISING.** RealGravity will not be obligated to remit payment for (and shall be entitled to a refund for Publisher Revenue paid with respect to): (a) any amounts which result from impressions of (or clicks on) Advertising generated by any person, robot, automated program or similar device, including, without limitation, through any fraudulent act, or (b) amounts for which the RealGravity is required to provide a refund or credit to an advertiser or third-party provider following receipt of payment from such advertiser or third party provider due to the determination that the impressions or clicks for which the billing party has received payment are fraudulent or automated.

**6. NONEXCLUSIVE LICENSE:** RealGravity hereby grants Publisher a limited, revocable, non-exclusive, non-transferable, non-sublicensable license to install, copy and use the RGS solely as necessary to use the RG Service. Publisher will determine the placement of the RGS. Publisher may also access and use the "user" modules of the Processing Software available at RealGravity's website (e.g. the user configurable settings for video players and playlists), solely for purposes of facilitating the set up and operation of the RG Service on the Sites. Publisher's license of, use of and access to the Software and the RG Service (which may include, without limitation, the Software, Documentation and the Videos) is subject to Publisher's compliance with the terms and conditions of this Agreement, including the following:

(i) Publisher will use the Software, RG Service and Videos solely for Publisher's own use, and will not make the Software or RG Service available for application service provider or service bureau use.

(ii) Publisher will comply with all applicable laws and regulations in Publisher's use of and access to the Documentation, Software, Service and Videos.

**7. PROHIBITED ACTIVITIES:** Publisher will not, nor will Publisher authorize or encourage any third party to (i) copy (except the RGS as expressly provided herein), modify, adapt, translate or otherwise create derivative works of the

Software or the Documentation; (ii) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of or trade secrets related to the Software, except as expressly permitted by the law in effect in the jurisdiction in which Publisher is located; or (iii) rent, lease, sell, assign or otherwise transfer rights in or to this Agreement, the Software, the Documentation or the RG Service.

Publisher will not, nor will Publisher authorize or encourage any third party to: (i) directly or indirectly generate impressions of or clicks on any Advertising through any automated, deceptive, fraudulent or other invalid means, including but not limited to, repeated manual clicks, or the use of robots or other automated tools, (ii) edit, modify filter, change remove, obscure, minimize or frame the RG Player in any way, (iii) use, post, transmit or introduce any device, software or routine which interferes or attempts to interfere with the operation of the RG Service or the Software, or (iv) install the RGS on any Site that contains any pornographic, hate-related, defamatory, tortuous, violent or illegal content.

**8. RG SERVICE LICENSE:** Publisher hereby grants RealGravity (and its Affiliates) a revocable license to display the RG Player on the Sites, to display Advertising, Videos, and ancillary features and content in the RG Player, and to collect and use Content Data and Customer Data solely for purposes of providing the RG Service, and for soliciting ad sales bids for Publisher's ad inventory.

Subject to the foregoing limitation of use and Section 10 below, through Publisher's use of the RealGravity Service, RealGravity may collect certain data, including, without limitation, various identities, counts and characteristics of Streams, Videos, placements (including the content therein) and advertisements (including the content therein) (collectively, "**Video Data**"). RealGravity uses such information to provide the RealGravity Service and has the right to use and share with third parties certain aggregate Video Data (Video Data aggregated with other users' information) that is not identifiable of any particular user of the RealGravity Service. RealGravity will not share with any third party any of Publisher Video Data that is specific to Publisher, or identifiable of Publisher, without first receiving Publisher's prior approval. Publisher acknowledges, however, that certain Video Data specific to Publisher and/or identifiable of Publisher may be transmitted to third parties, depending on how Publisher configures Publisher settings when using the RealGravity Service.

Publisher may only use any data, statistics, and other information derived from using or analyzing the RealGravity Service (e.g., any IO terms, information or data about Streams or Videos or placements or advertisements or Publisher performance, any pricing information, or any information regarding any user of the RealGravity Service (collectively "**Other Data**") in connection with Publisher's use of the RealGravity Service, including any advertising campaign-planning purposes. All Other Data is the Confidential

Information of RealGravity and/or the party that provided the information. Publisher, as the recipient of Other Data, may not disclose any of it to any third party, except on a confidential basis to an employee, agent, client or partner who has a legitimate need to know to enable Publisher to perform under the Agreement, and who is subject to these non-disclosure and use restrictions.

**9. CONFIDENTIALITY:** "Confidential Information" includes any proprietary data and any other information disclosed by one party to the other in writing and marked "confidential" or disclosed orally and, within five business days, reduced to writing and marked "confidential". Notwithstanding the foregoing, Confidential Information will not include any information that is or becomes known to the general public, which is already in the receiving party's possession prior to disclosure by a party or which is independently developed by the receiving party without the use of Confidential Information. Neither party will use or disclose the other party's Confidential Information without the other's prior written consent except for the purpose of performing its obligations under this Agreement or if required by law, regulation or court order. In which case, the party being compelled to disclose Confidential Information will give the other party as much notice as is reasonably practicable prior to disclosing such information. Upon termination of this Agreement, the parties will promptly either return or destroy all Confidential Information and, upon request, provide written certification of such.

**10. INFORMATION RIGHTS AND PUBLICITY:** RealGravity and its Affiliates may retain and use information collected in the provision of the RG Service, subject to the terms of its Privacy Policy (located at [www.Realgravity.com](http://www.Realgravity.com) or such other URL as RealGravity may provide from time to time). RealGravity will not share information associated with Publisher, the Sites, or Publisher's Users, with any third parties unless RealGravity (i) has Publisher's consent; (ii) concludes that it is required by law or has a good faith belief that access, preservation or disclosure of such information is reasonably necessary to protect the rights, property or safety of RealGravity, its users or the public; or (iii) provides such information in certain limited circumstances to third parties to carry out tasks on RealGravity's behalf (e.g., billing or data storage) with strict restrictions that prevent the data from being used or shared except as directed by RealGravity. When this is done, it is subject to agreements that oblige those parties to process such information only on RealGravity's instructions and in compliance with this Agreement and appropriate confidentiality and security measures.

**11. PRIVACY AND USER TERMS OF USE:** Publisher and RealGravity each agree that it will not, and will not authorize or encourage any third party to, use the RG Service to track or collect personally identifiable information of Users, nor will either party associate any data gathered from the Sites with any personally identifying information from any source as part of its use of the RG Service. Publisher's privacy policy and/or terms of use governing its relationship with Users will

provide notice of the use of cookies that collect anonymous data, permit the use of such data in connection with the RG Service, and contain such other provisions as may be required under applicable laws and regulations. Each party will comply with all applicable laws relating to the collection and use of information from Users (provided that RealGravity may rely upon the adequacy of Publisher's notices to, and permissions from, Users with respect to the RG Service).

**12. INDEMNIFICATION:** Each party agrees to indemnify, hold harmless and defend the other, and all related affiliates, parents, subsidiaries, and each of the officers, directors, employees and related companies of each against any and all third-party claims, actions, proceedings, and suits brought against the party or any of its officers, directors, employees, agents or affiliates, and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including, without limitation, reasonable attorneys' fees and other litigation expenses) incurred by the party or any of its officers, directors, employees, agents or affiliates, arising out of or relating to any breach by the other party of any term or condition of this Agreement.

**13. CHANGES TO RG SERVICE:** RealGravity and/or its suppliers may, from time to time, modify the RG Services, making improvements or other changes to the RG Service and Software, at any time, with or without notice.

**14. DISCLAIMER OF WARRANTIES:** THE INFORMATION, CONTENT AND SERVICES INCLUDED IN OR AVAILABLE THROUGH THE RG SERVICE, INCLUDING THE VIDEOS, MAY INCLUDE INACCURACIES OR ERRORS. REALGRAVITY DOES NOT REPRESENT OR WARRANT THAT THE RG SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE RG SERVICE, THE SOFTWARE OR ANY OTHER SOFTWARE ON THE SERVERS, ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. REALGRAVITY DOES NOT WARRANT OR REPRESENT THAT THE RG SERVICE OR THE VIDEOS WILL BE CORRECT, ACCURATE, TIMELY OR OTHERWISE RELIABLE. PUBLISHER SPECIFICALLY AGREES THAT REALGRAVITY AND ITS AFFILIATES SHALL NOT BE RESPONSIBLE FOR UNAUTHORIZED ACCESS TO OR ALTERATION OF THE CUSTOMER DATA OR CONTENT DATA.

THE RG SERVICE, SOFTWARE AND VIDEOS ARE PROVIDED "AS IS" AND THERE ARE NO WARRANTIES, CLAIMS OR REPRESENTATIONS MADE BY REALGRAVITY AND/OR ITS AFFILIATES OR SERVICE PROVIDERS, EITHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE RG SERVICE, THE SOFTWARE, THE DOCUMENTATION OR VIDEOS, INCLUDING WARRANTIES OF QUALITY, PERFORMANCE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, NOR ARE THERE ANY WARRANTIES CREATED BY COURSE OF DEALING, COURSE OF PERFORMANCE, OR TRADE USAGE. REALGRAVITY DOES NOT WARRANT THAT THE RG SERVICE, THE SOFTWARE OR VIDEOS WILL MEET YOUR NEEDS OR BE FREE FROM ERRORS, OR THAT THE OPERATION OF THE SERVICE WILL BE UNINTERRUPTED. THE FOREGOING EXCLUSIONS AND DISCLAIMERS ARE AN

ESSENTIAL PART OF THIS AGREEMENT AND FORMED THE BASIS FOR DETERMINING THE FEES PAYABLE HEREUNDER. SOME STATES DO NOT ALLOW EXCLUSION OF AN IMPLIED WARRANTY, SO THIS DISCLAIMER MAY NOT APPLY TO PUBLISHER.

**15. LIMITATION OF LIABILITY:** REALGRAVITY AND ITS AFFILIATES AND SERVICE PROVIDERS WILL NOT BE LIABLE TO PUBLISHER OR ANY THIRD-PARTY CLAIMANT FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOST DATA COLLECTED THROUGH THE SERVICE), OR INCIDENTAL DAMAGES, WHETHER BASED ON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, INDEMNITY OR CONTRIBUTION, OR OTHERWISE, EVEN IF REALGRAVITY AND/OR ITS AFFILIATES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE EXCLUSION CONTAINED IN THIS SECTION SHALL APPLY REGARDLESS OF THE FAILURE OF THE EXCLUSIVE REMEDY PROVIDED IN THE FOLLOWING PARAGRAPH. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE LIMITATIONS OR EXCLUSIONS IN THIS AND THE FOREGOING PARAGRAPH MAY NOT APPLY TO PUBLISHER.

REALGRAVITY'S (AND ITS AFFILIATES) TOTAL CUMULATIVE LIABILITY TO PUBLISHER OR ANY OTHER PARTY FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED U.S. \$500.

**17. PROPRIETARY RIGHTS:** The RG Service and Software, and all intellectual property rights therein, are, and shall remain, the property of RealGravity (and/or its Affiliates and suppliers). All rights in and to the Software not expressly granted to Publisher in this Agreement are hereby expressly reserved and retained by RealGravity and its licensors without restriction, including, without limitation, RealGravity's (and its Affiliates) right to sole ownership of the Software and Documentation. Without limiting the generality of the foregoing, Publisher agrees not to (and to not authorize or encourage any third party to): (i) use the trademarks, trade names, service marks, logos, domain names and other distinctive brand features or any copyright or other proprietary rights associated with the RG Service for any purpose without the express written consent of RealGravity; (ii) register, attempt to register, or assist anyone else to register any trademark, trade name, service marks, logos, domain names and other distinctive brand features, copyright or other proprietary rights associated with RealGravity (or its Affiliates) other than in the name of RealGravity (or its Affiliates, as the case may be); or (iii) remove, obscure, or alter any notice of copyright, trademark, or other proprietary right appearing in or on any item included with the RG Service.

**18. TERM and TERMINATION:** RealGravity may terminate this agreement at any time and for any reason, upon 30 day

written (including electronic) notice to Publisher. Publisher may terminate this agreement at any time and for any reason, upon 30 day written (including electronic) notice to RealGravity. This Agreement may be terminated by either party without prior notice if: (a) the other party files a petition for bankruptcy or is adjudicated a bankrupt, (b) a petition in bankruptcy is filed against the other party, (c) the other party becomes insolvent or makes an assignment for the benefit of its creditors or an arrangement for its creditors pursuant to any bankruptcy law, (d) the other party discontinues its business, or (e) a receiver is appointed for the other party or its business.

Upon any termination or expiration of this Agreement, RealGravity will cease providing the RG Service, and Publisher will delete all copies of RealGravity's RGS from all Sites and certify thereto in writing to RealGravity within three (3) business days of such termination. The rights and obligations of the parties under Sections 3 (for Publisher Revenue payable for Advertising served prior to termination), 4, 5, 9, 10, 11, 12, 14, 15, 17, 18, 20 and 21 will survive termination of this Agreement.

**19. MODIFICATIONS TO TERMS OF SERVICE AND OTHER POLICIES.** RealGravity reserves the right to change or modify any of the terms and conditions contained in this Agreement or any policy governing the RG Service, at any time, by posting the new agreement or policy on the website located at [www.Realgravity.com](http://www.Realgravity.com) (or such other URL as RealGravity may provide). Publisher is responsible for regularly reviewing the terms and conditions and policy. No amendment to or modification of this Agreement will be binding on RealGravity unless (i) in writing and signed by a duly authorized representative of RealGravity, (ii) Publisher accepts the updated terms online, or (iii) Publisher continues to use the RG Service after RealGravity has posted updates to the Agreement or to any policy governing the Service.

**20. ASSIGNMENT.** Neither this Agreement nor any right or obligation hereunder is assignable in whole or in part, whether by operation of law or otherwise, by either party without the express written consent of the other party and

any such attempted assignment shall be void and unenforceable; provided, however, either may assign this Agreement, in whole or in part, to any entity which controls, is controlled by, or is under common control with such entity, or to any entity resulting from any merger or consolidation with such entity, or to any entity which acquires all or substantially all of the assets of such entity.

**21. MISCELLANEOUS; APPLICABLE LAW AND VENUE:** RealGravity shall be excused from performance hereunder to the extent that performance is prevented, delayed or obstructed by causes beyond its reasonable control. This Agreement (including any amendment agreed upon by the parties in writing) represents the complete agreement between the parties concerning its subject matter, and supersedes all prior agreements and representations between the parties. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed to the extent necessary to make it enforceable to the maximum extent permissible so as to affect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect. This Agreement shall be governed by and construed under the laws of the state of California without reference to its conflict of law principles. In the event of any conflicts between foreign law, rules, and regulations, and California law, rules, and regulations, California law, rules and regulations shall prevail and govern. Each party agrees to submit to the exclusive and personal jurisdiction of the courts located in Los Angeles County, California. Any notices to RealGravity must be sent to: Realgravity Inc., 5757 Wilshire Blvd, Suite 345, Los Angeles, CA, 90036 USA via first class or air mail or overnight courier, and are deemed given upon receipt. A waiver of any default is not a waiver of any subsequent default. You may not assign or otherwise transfer any of Publisher's rights hereunder without RealGravity's prior written consent, and any such attempt is void. The relationship between RealGravity and Publisher is not one of a legal partnership relationship, but is one of independent contractors. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.