

Your Agreement – General Terms

1. General

This Agreement sets out the terms and conditions between Fan Media Pty Limited ACN 600 744 198 (the “**Bookmaker**”) and the Affiliate (“**You**”) in relation to Your application to set up an Affiliate’s Account and if successful, membership of the Affiliate Program to promote on behalf of the Bookmaker, the Bookmaker’s websites.

By applying for an Affiliate Account with the Bookmaker, You acknowledge and agree to be bound by the Terms and Conditions contained in this Agreement.

2. Application and Your appointment

- (a) To apply for an Affiliate Account, You must complete the application form and submit it onto the Bookmaker’s Website. The Bookmaker will review Your application and confirm via email whether Your application has been successful. To operate the Account within Australia, you must be first registered with an Australian Business Number.
- (b) If Your application is successful, the Bookmaker grants You a non-exclusive, non-transferable, non-assignable right (except as provided below), during the term of this Agreement, to use (including the right to copy, transmit, distribute, display) the Bookmaker’s name, and other related textual and graphic material made available by the Bookmaker to You from time to time, to:
 - (i) Advertise, market and promote the Bookmaker Websites; and
 - (ii) Introduce Clients to the Bookmaker.

3. Your Accounts

- (a) Your Account under this Agreement includes any existing Account(s) held by You; any Account(s) setup by You at the request of the Bookmaker; and any Account held by a Related Body Corporate of You at the time or subsequent to entering into this Agreement.
- (b) This Agreement also applies to the Bookmaker Business; the Bookmaker Websites and any future gaming business or brand of the Bookmaker which has an Affiliate Program.

4. Licence

- (i) The parties agree that if the Licence expires, is terminated, lapses or is suspended for any reason and the Bookmaker (or a Related Body Corporate of the Bookmaker) is issued with another licence by an authority in any jurisdiction or external territory of Australia in replacement or the same, the term “Licence” under this Agreement will refer to such subsequent licence, unless otherwise communicated to You by the Bookmaker.
- (ii) In the event of any lapse or cancellation of the licence, the Bookmaker shall not be held liable to You or any of Your representative for any loss, claim or action.

5. Your Obligations

- (a) You will actively and effectively encourage Clients to establish a Betting Account with the Bookmaker.
- (b) You will promote the Bookmaker Websites and the Bookmaker Business by:
 - (i) Including the Bookmaker in bookmaker listings on Your Websites;
 - (ii) Provide exposure to the Bookmaker via Your Websites;
 - (iii) Place links from Your Websites to the Bookmaker Websites;
 - (iv) Other promotions as agreed by the parties from time-to-time.
- (c) You are responsible for
 - (i) operating and promptly updating Your Websites;
 - (ii) ensuring that all content on Your Website is not misleading, deceptive, unlawful, illegal, libellous or in breach of any third party rights;
 - (iii) using the correct links or codes, as provided by the Bookmaker, to ensure that Clients can be identified by the Bookmaker as being referred by You; and

- (iv) ensuring that the Bookmaker has been made aware of Your current contact details and bank details for payment of the Commission.

(d) You must not:

- (i) intentionally promote the Bookmaker Websites to Minors or to persons in jurisdictions where it is illegal to do so; or provide content that is discriminatory, sexually explicit, related to alcohol, violent or discriminatory; encourages illegal activities or includes any content that may damage the Bookmaker's brand;
- (ii) establish or operate a website that is deceptively similar in look and feel to one or more of the Bookmaker Websites;
- (iii) make representations about the Bookmaker, the Bookmaker Business or the Bookmaker Websites which You are aware or ought reasonably to be aware are untrue, misleading or deceptive or that the Bookmaker has directed not be made;
- (iv) unless the Bookmaker consents, open or operate a Betting Account with the Bookmaker, for or on behalf of an Affiliate or any officer of an Affiliate as an Affiliate Account, or appoint sub-Affiliates or marketing agents to promote the Bookmaker, the Bookmaker Business or the Bookmaker Websites;
- (v) spam or engage in unsolicited bulk email or bulk SMS or telephone contact in relation to promoting or advertising the Bookmaker Websites;
- (vi) engage in misleading marketing, including online;
- (vii) mislead others as to the relationship between You and the Bookmaker; including by holding Yourself out as an agent or employee of the Bookmaker or by creating blogs, social networking sites, forums or microsites that give the misleading impression that You are a part of the Bookmaker group of companies or are an agent or employee of the Bookmaker;
- (viii) do any act or fail to do any act that puts the Bookmaker in breach of the Licence.
- (ix) refer your spouse, partner or a family member under your affiliate account. They are permitted to hold a betting account provided it is not linked to your affiliate account.

(e) **Notification**

If You become aware of any matter, fact or circumstance that is likely to put the Bookmaker in breach of any law or regulation, or results in a breach of this Agreement by either party, or which may prejudice the security or integrity of the Bookmaker Websites, then You must promptly notify the Bookmaker in writing.

(f) **Reasonable assistance**

You agree to provide reasonable assistance to the Bookmaker if required to meet legal, regulatory or license requirements or conditions, provided however this does not extend to providing any financial assistance.

(g) **Conduct and good faith**

- (i) You must follow all reasonable directions of the Bookmaker relevant to Your performance under this Agreement. If requested by the Bookmaker, You must cease any conduct, including any form or method of advertising or marketing, relevant or related to Your performance under this Agreement.
- (ii) You must be just and faithful in Your activities and dealings with the Bookmaker.
- (iii) You will not knowingly benefit from known or suspected traffic not generated using accepted Internet marketing practices whether or not it causes the Bookmaker harm, including but not limited to "cookie stuffing" or other blackhat marketing techniques. The Bookmaker reserves the right to retain all amounts due to You under this Agreement if the Bookmaker has reason to believe that such traffic has been caused with Your knowledge.
- (iv) Should fraudulent activity (as assessed by the Bookmaker in its sole discretion), arise from a Client directed to the Bookmaker Website via Your Website/s, the Bookmaker retains the right to retract the Commissions paid to You at any time in respect of that Client and to apply any costs associated in dealing with any fraudulent transactions. The Bookmaker's decision in this regard will be final and no correspondence will be entered into.

- (v) Any attempt at fraudulent activity by You including using or providing for use any unauthorised bonus codes or unauthorised creative material and any other act which the Bookmaker determines is being used to collect fraudulent Commissions shall result in this Agreement being terminated immediately and all Commissions payable shall be forfeited.
- (vi) You will be solely responsible for ensuring that material posted on Your Websites is not libellous, does not infringe a third party's intellectual property or is not otherwise illegal. You will indemnify and hold the Bookmaker harmless from all claims, damages and expense (including legal fees) relating to the marketing and contents of Your Websites.

(h) **Compliance with Act and Codes**

The Affiliate and any employees of the Affiliate who have direct dealings with customers must, in carrying out activities on behalf of the Bookmaker, conduct themselves as if bound by the provisions of the applicable Act, and any applicable Codes and Guidelines.

(i) **Employee Approval**

The Affiliate must not permit any employee to have direct dealings with customers of the Bookmaker unless a copy of their CV and any information reasonably required by the Commission has been provided to the Bookmaker and the Commission, and the Commission has confirmed in writing it does not object.

(j) **Customer Communications and Record-Keeping**

- (i) All telephone calls between the Affiliate (or its employees) and customers or potential customers involving wagers or complaints must be recorded and provided to the Bookmaker and the Commission (and its Inspectors) upon request.
- (ii) All other direct communications with individual customers or potential customers, including but not limited to text messages, mail, email, social media, and online communication platforms (e.g., WhatsApp), must be recorded and provided to the Bookmaker and the Commission (and its Inspectors) upon request.

(k) **Cooperation with Investigations**

The Affiliate agrees to provide any information reasonably requested by the Bookmaker or the Commission and to cooperate fully with any investigation conducted by either. The Affiliate and its employees must voluntarily attend any Commission hearing if requested and must have appropriate arrangements to require employees of the Affiliate to cooperate and attend if necessary.

6. Bookmaker's Obligations

(a) **General Obligations**

The Bookmaker will, at its discretion:

- (i) provide details of its products and services available to Clients;
- (ii) provide marketing materials for placement on Your Websites;
- (iii) operate and update the Bookmaker Websites;
- (iv) maintain a record of each Client introduced by You and each of Your Client's transactions
- (v) supply You with unique links and codes to ensure that Clients can be identified by the Bookmaker as Your Clients;
- (vi) develop and implement a marketing plan; and
- (vii) pay Commissions for the lifetime of Your Clients in accordance with this Agreement, providing this Agreement is not terminated.

(b) **Referrals and Clients**

- (i) If any Referral fails the Bookmaker's account opening process (for example, fails to satisfy eligibility, identification or verification requirements), then the Bookmaker will suspend the Referrals Betting Account, and the Referral will not be Your Client under this Agreement.
- (ii) The Bookmaker will open Betting Accounts for approved Referrals and commence monitoring the wagering activity of each of Your Clients for the purposes of generating accurate reports as required under this Agreement.
- (iii) The Bookmaker reserves the right to disaffiliate any clients who have been inactive for 6months or longer.

7. **Obligations of both parties:**

(a) **Laws**

- (i) Each party must comply with all relevant laws and regulations, including:
 - (i) the Spam Act 2003;
 - (ii) the Anti-Money Laundering and Counter-Terrorism Financing Act 2006;
 - (iii) the Privacy Laws; and
 - (iv) the Bookmaker's Licence.

8. **Commission and payments**

(a) **Payments**

- (i) You must actively promote the Bookmaker on Your website in prominent positions, and refer at least 10 new First Time Depositors in a rolling 3 month period in order to be eligible for monthly Commissions.
- (ii) The Bookmaker will pay the Commission to You in Australian dollars unless another currency of payment is otherwise agreed, by electronic transfer into the bank account nominated by You, by the 15th day of the next month, subject to:
 - (i) the payment received by the depositing Clients, was in aggregate of \$100 ("**Minimum Payment Threshold**"); and
 - (ii) there being no dispute over the Commission; and
 - (iii) any other term of this Agreement.

For the avoidance of doubt, where the Minimum Payment Threshold has not been met, then the Minimum Payment Threshold will be forwarded to the following month/s until it has been met.

- (iii) The Bookmaker reserves the right to apply a negative carryover on monthly commission calculations at its sole discretion.
- (iv) Where an Affiliate promotes more than one Brand, the Revenue Share shall be calculated across all Products and Brands.

(b) **Overseas Affiliates**

If you are an Affiliate operating from a jurisdiction that is outside of Australia, You must submit an invoice to the Bookmaker on monthly basis, by the second day of the new month, to reflect Commissions generated in the previous month. You acknowledge that the Bookmaker cannot guarantee payment of the invoice by the 15th of the month, for invoices received past this date.

(c) **Australian Affiliates – RCTI and Power to withhold if no**

ABN If You are an Australian Affiliate, You acknowledge and agree that:

- (i) The GST provisions apply to You;
- (ii) You must be registered with an Australian Business Number.

- (iii) Your failure to provide an Australian Business Number may result in the Bookmaker withholding payments to You, in order for it to comply with the Taxation Administration Act 1953 (Cth) and related legislation.

(d) **Employees**

You are liable to pay all wages, superannuation and any other contributions or payments required by law to be paid to any employee, subcontractor or agent engaged by You in the performance of any services. You acknowledge that such persons are not employees of the Bookmaker and You (and not the Bookmaker) bear all liability for such payments.

9. **Account suspension**

- (a) The Bookmaker reserves the right to suspend You from participation in the Affiliate Program if it suspects any of the following:
 - (i) Promoting betting behaviour that may prove detrimental to the Bookmaker, including but not limited to arbitration betting and bonus abuse;
 - (ii) Unusual betting behaviour stemming from Your Clients which would indicate systematic abuse of the Affiliate Program to extract funds. The Bookmaker also reserves the right to withhold any earnings from suspected betting patterns, including but not limited to instances where more than 50% of Your monthly revenue is derived from a single bet or from a single Client.
 - (iii) You have ceased active promotion of the Bookmaker.
 - (iv) You fail to refer a minimum of four new depositing Customers within any 3 month period;

10. **GST**

- (a) If a party makes a supply to another party under or in connection with this Agreement in Australia, then (unless the consideration is expressly stated to be inclusive of GST) the consideration for that supply is exclusive of GST, and in addition to paying or providing that consideration the recipient must:
 - (i) pay to the supplier an amount equal to any GST for which the supplier is liable on that supply, without deduction or set-off of any other amount; and
 - (ii) make the payment as and when the consideration or part of it must be paid or provided.
- (b) If you are an Affiliate who operates within Australia, you acknowledge and accept that you are not required to provide the Bookmaker with an Tax Invoice and the Bookmaker will provide You with a recipient created tax invoice.
- (c) If a party provides payment for or any satisfaction of a claim or a right to claim under or in connection with this agreement (for example, for a breach of any warranty or for reimbursement of any expense) that gives rise to a liability for GST, the provider must pay, and indemnify the claimant against, the amount of that GST.
- (d) If a party has a claim under or in connection with this agreement for a cost on which that party must pay an amount for GST, the claim is for the cost plus all amounts for GST (except any amount for GST for which that party is entitled to an input tax credit).
- (e) If a party has a claim under or in connection with this Agreement whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

11. **Relationship Management**

(a) **Responsibilities of Representatives**

The parties' will appoint representatives that will be responsible for operational co-ordination and management between the parties. If none are appointed, the contacts for the parties shall be deemed to be the representative.

(b) **Reports**

Upon written request, the Bookmaker will allow You to access relevant reports, including, the applicable Commission and Your Client Reports, online and in real time.

(c) **Review meetings**

The parties' representatives must be available to speak by telephone at least once each calendar month.

12. **Intellectual Property**

(a) **License of Existing Intellectual Property Rights**

The Bookmaker retains the right, title and interest in its Intellectual Property Rights, and grants to You a royalty-free, non-exclusive, non-transferable and revocable licence for the term of this Agreement to:

- (a) use the Bookmaker's trademarks and brands;
- (b) display the Bookmaker's trademarks, logos and brands on Your Websites;
- (c) create a link from Your Websites to the Bookmaker Websites;
- (d) send an electronic message containing the Bookmaker trademarks, logos, branding, its website or any advertising or promotional material (other than permitted by this Agreement) to the extent necessary to advertise, market and promote the Bookmaker Websites and to introduce Clients to the Bookmaker.

13. **Confidentiality**

(a) **Obligation of confidentiality**

- (i) A party who is a recipient (the "**Recipient**") of Confidential Information of the other party (the "**Discloser**") must keep such Confidential Information strictly confidential, must not disclose it to any third party unless expressly permitted herein, and must use such Confidential Information only for the purposes of this Agreement.
- (ii) Where the Bookmaker creates a report, that report will be Confidential Information of the Bookmaker and You must keep such Confidential Information strictly confidential, must not disclose it to any third party unless expressly permitted by the Bookmaker, and must use such Confidential Information only for the purposes of this Agreement.

(b) **Use of Confidential Information** A party may only use other party's Confidential Information as required for the proper performance of this Agreement and may only disclose the other party's Confidential Information:

- i. to persons who need the information for the proper performance of this Agreement;
- ii. as required by law or by a stock exchange;
- iii. to a legal, financial or other advisor including an auditor; or
- iv. if required in connection with legal proceedings relating to this Agreement, and any such disclosure must be made on an expressly confidential basis.

(c) **Damages and other remedies**

Each party acknowledges that a breach of this clause may cause the other party irreparable damage or which monetary damages would not be an adequate remedy. Accordingly, in addition to other remedies that may be available, each party may seek and obtain injunctive relief against such a breach or threatened breach.

(d) **Survival after expiry and termination**

The obligations under this clause survive for a period of two years, following the expiry and termination of this Agreement.

14. **Termination**

(a) **Insolvency**

Either party may terminate this Agreement immediately by notice to the other party if that other party becomes Insolvent or ceases or threatens to cease business.

(b) **The Bookmaker's rights to terminate**

The Bookmaker may terminate this Agreement in whole immediately by notice to You:

(i) if You breach the obligations under this Agreement and:

(i) the breach is material and cannot be remedied; or

(ii) the breach can be remedied, but You fail to do so within 20 Business Days of the Bookmaker giving notice to You of the breach; or

(ii) if You are convicted of a criminal offence including fraud; or breach any law or do anything which causes risk to or affects the Bookmaker's ability to hold or maintain its Licence or causes the imposition of any penalty under its Licence.

(iii) if the Bookmaker's Licence is terminated and it or its Related Bodies Corporate do not obtain another licence to operate in any Australian jurisdiction within 60 days of that termination.

(c) **Termination by either party**

Either party may terminate this Agreement in whole at any time by giving the other party at least 14 day's prior written notice designating the termination date.

(d) **Force Majeure**

Either party may terminate this Agreement in whole by giving written notice to the other party with effect from the date specified in the notice if a Force Majeure Event continues for more than 60 days.

(e) **No other grounds for termination**

This Agreement may only be terminated as expressly provided for in this Agreement.

(f) **Termination for Regulatory Breach**

The Bookmaker may immediately terminate this Agreement if the Affiliate or its employees breach any of the obligations set out in Section 5(e)–5(h), or if their conduct causes the Bookmaker to reasonably determine that continuation of this Agreement would be inconsistent with its regulatory obligations.

(g) **Effect**

(i) Upon termination You must:

(i) Return to the Bookmaker any Confidential Information and all copies of it in Your possession, custody and control or if the material is incapable of being returned, then You must destroy the confidential information and provide a statutory declaration indicating that You have done so.

(ii) Cease using all trade names, trademarks, service marks, logos and other materials of the Bookmaker and remove all advertising promoting the Bookmaker on Your website and disable any links from Your Website to the Bookmaker's website.

(ii) All rights and licenses given to You in this Agreement shall immediately terminate.

(iii) You will be entitled only to those unpaid Commission, if any, earned by You on or prior to the date of termination. You will not be entitled to Commissions occurring after the date of termination and will cease to earn Commission on the revenue of Clients. You are not entitled

in contract, tort or otherwise to any additional payment or compensation for any loss or expense incurred as a result of termination of this Agreement.

- (iv) If You have failed to fulfil Your obligations and responsibilities or have acted in breach of this Agreement, the Bookmaker will not pay You the Commission owing to You on termination and You will cease to earn Commission on the revenue of Clients.
- (v) The Bookmaker may withhold Your final payment for a reasonable time to ensure that the correct amount is paid.
- (vi) If the Bookmaker continues to permit activity (generation of revenue) from Clients after termination, this will not constitute a continuation or renewal of this Agreement or a waiver of termination.
- (vii) The parties will be released from all obligations and liabilities to each other occurring or arising after the date of such termination, except with respect to those obligations which by their nature are designed to survive termination, as set out in this Agreement. Termination will not relieve either party from any liability arising from any breach of this Agreement, which occurred prior to termination.
- (h) **Rights surviving termination**
The parties agree that such rights and remedies will survive the termination of this Agreement.

15. **Warranties, representations and disclosure**

(a) **Warranties**

Each party provides the following warranties on a continuing basis:

- (i) that it has full corporate power and authority to enter into, perform and observe its obligation under this Agreement;
- (ii) that this Agreement and the transactions contemplated by it will not contravene its constituent documents or any law, regulation or directive, obligation or undertaking by which it is bound or cause a limitation on its powers or those of its directors to be exceeded; and
- (iii) that its obligations under this Agreement are valid and binding and enforceable in accordance with their terms.

(b) **Your warranties**

You provide the following warranties on a continuing basis:

- (i) You will perform obligations under this Agreement with due care and skill, in a proper and professional manner consistent with standard industry practice;
- (ii) Entry into this Agreement and performance of Your obligations under this Agreement is permitted by, and not in breach of, any trust deed;
- (iii) You will comply with all relevant laws;
- (iv) You warrant and covenant that any Commission or other income generated from this Agreement will not exceed 80% of Your total income.
- (v) Your Websites do not, and the reproduction, distribution, transmission, public performance and public display of the Bookmaker's material as permitted in this Agreement, do not:
 - (i) invade the right of privacy or publicity of any third person,
 - (ii) contain any libellous, obscene, indecent or otherwise unlawful material and You have not received any notice of such a violation.

16. **Indemnity**

You will indemnify, defend and hold harmless the Bookmaker and their respective officers, directors, Personnel, agents, successors and assigns, against any Liability arising from, in connection with any of the following:

- (i) any breach by You of this Agreement,
- (ii) personal injury, death or loss of or damage to real or tangible personal property caused by or to You under or in connection with this Agreement; or

- (iii) fraud, wilful misconduct or any unlawful act or omission by You. This clause will survive termination of this Agreement.

17. Assignment

You must not assign or novate all or any part of the right, title, interest and obligations under this Agreement without the Bookmaker's prior consent, which may not be unreasonably withheld or delayed, and no fee may be charged for such consent.

18. Force Majeure

(a) Event of Force Majeure

A party is not liable for any default or delay in the performance of its obligations to the extent such default or delay is caused by a Force Majeure Event. A party which is prevented in whole or in part from carrying out its obligations under this Agreement as a result of a Force Majeure Event must promptly notify the other party accordingly. The notice must:

- (i) specify the obligations it cannot perform;
- (ii) fully describe the Force Majeure Event;
- (iii) where possible, estimate the time during which the Force Majeure Event will continue; and
- (iv) describe at a high level the actions proposed to remedy the Force Majeure Event.

While the Force Majeure Event continues, the obligations which cannot be performed because of the Force Majeure Event will be suspended.

(b) Remedy and mitigation of Force Majeure

The party that is prevented from carrying out its obligations under this Agreement as a result of a Force Majeure Event must remedy the Force Majeure Event to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible, and must take all action reasonably practicable to mitigate any loss suffered by a party as a result of its failure to carry out its obligations under this Agreement.

(c) Termination

If the Force Majeure event continues for a period of sixty days or more, then the other party that is prevented from carrying out its obligations, may terminate the agreement by notice to the party.

19. Notices

(a) Method of notice

A party giving notice or notifying under this Agreement must do so in writing:

- (i) directed to the address specified by each party on entering into this Agreement, as varied by any notice; and
- (ii) hand delivered (including delivery by courier) or sent by registered post.
- (iii) sent by email communications.

(b) Receipt of notice

A notice given in accordance with this clause is taken to be received:

- (i) if hand delivered, on delivery;
- (ii) if sent by registered post, seven Business Days after posting; and
- (iii) if sent by email, on opening of the email by the recipient or 24 hours from the time the email successfully sent by the sender, whichever is the earlier.

20. Dispute Resolution

- (a) If there is a dispute arising out of this Agreement ("**Dispute**"), a party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) unless it has complied with this clause.
- (b) A party must first by notice to the other refer provide written notice of the Dispute and the parties shall consult with one another in good faith and use their best endeavours to resolve such Dispute to the mutual satisfaction of both parties without resort to litigation.
- (c) If the Dispute cannot be resolved within 20 Business Days of referral, then either party may give notice of particulars of the Dispute to the other ("**Dispute Notice**") and require that the Dispute be resolved by a mediator acceptable to both of the parties.
- (d) Should the parties be unable to agree on the appointment of the mediator within 10 Business Days of the date of the Dispute Notice, either party may request the President for the time being of the Law Institute of New South Wales to nominate an appropriate person or persons to determine the matters so under Dispute. The parties hereby agree to accept as mediator the person so nominated.
 - (i) Any mediator appointed under this clause shall act as a mediator in an attempt to resolve the Dispute by agreement of the parties. The parties must comply with the mediator's instructions about the conduct of the mediation. Each party is entitled to legal representation during the mediation. The mediation procedure, and all matters discussed at the mediation, are confidential. If the Dispute is settled by mediation, each party must sign the terms of settlement, which will bind the parties and override the terms of this Agreement if there is any conflict. The terms of settlement may be used in evidence in any later court proceedings concerning the Dispute.
 - (ii) If the Dispute is not settled within 20 Business Days after the mediator has indicated to the parties his acceptance of the appointment (or within any other period the parties agree in writing), the mediation must cease and either party may commence whatever legal proceedings in any court or tribunal of competent jurisdiction to resolve the Dispute or any matters arising out of the Dispute.
 - (iii) Subject to clause (e) below, nothing the parties or the mediator say or do during the mediation procedure and no documents concerning the Dispute created for the mediation procedure, may be used in or required to be produced in any court proceedings concerning the Dispute.
 - (iv) The parties must pay the mediator's costs and expenses equally, unless the mediator determined otherwise.
- (e) Nothing in this Agreement shall prejudice the right of a party to institute proceedings to enforce payment due under this Agreement or to seek injunctive or urgent declaratory relief.
- (f) The parties must continue to perform their obligations under this Agreement, despite the reference of any Dispute to mediation so as to ensure the uninterrupted continuation of this Agreement, unless the subject matter of the Dispute is such that it prevents the uninterrupted continuation of the Agreement.

21. **Miscellaneous**

(a) **Costs**

Each party will bear their own legal and other costs and expenses (including costs and expenses relating to human resources, finance, accounts payable and management time) relating directly or indirectly to the preparation of, and performance of their respective obligations under this Agreement.

(b) **Waiver and exercise of rights**

A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right. A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

(c) **Rights cumulative**

Subject to any express provision in this Agreement to the contrary, the rights and remedies of a party under this Agreement are cumulative and are in addition to any other rights and remedies of that party.

(d) **Consent**

Subject to any express provision in this Agreement to the contrary, each party must not unreasonably refuse, delay or withhold any consent contemplated by this Agreement.

(e) **Further assurance**

Each party will promptly execute all documents and do all things that any other party from time to time reasonably requires of it to effect, perfect or complete the provisions of this Agreement and transactions contemplated by it.

(f) **Governing law and jurisdiction**

This Agreement is governed by and is to be construed in accordance with the laws applicable in New South Wales, Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts in New South Wales, Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

(g) **Relationship**

Except as otherwise expressly provided in this Agreement, nothing contained or implied in this Agreement constitutes a party the partner, agent, or legal representative of the other party for any purpose or creates any partnership, agency or trust, and no party has any authority to bind the other party in any way.

(h) **Severability**

If part or all of any provision of this Agreement is illegal or unenforceable in a particular jurisdiction, such provision may be read down or severed from this Agreement to the extent of such illegality or unenforceability in that jurisdiction, and the remaining provisions of this Agreement continue in force.

(i) **Entire Agreement**

This Agreement:

- (i) constitutes the entire agreement between the parties as to its subject matter; and
- (ii) in relation to that subject matter, supersedes any prior understanding, arrangement or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party.

(j) **Variation**

The Bookmaker reserves the right to modify this Agreement at any time. Wherever possible, these changes will be notified to You, however it is Your responsibility to check the terms and conditions regularly. Your continued participation in the Affiliate Program after we have posted changes will constitute binding acceptance of any changes.

22. **Definitions**

In this Agreement, unless the contrary intention appears:

Account means one or more account(s) created within the Affiliate Program for the purpose of tracking an Affiliate Client.

Adjustment Note has the meaning given in the GST Act.

Affiliate Program means the program operated by the Bookmaker.

Agreement means this agreement, as amended from time to time, and it includes its schedules and any annexures.

Your Websites means all digital assets or inventory owned or controlled by You, including, but not limited to:

- (a) Internet Websites or other key products or platforms offered by You;
- (b) Related applications built for mobile phones, tablets or browsers;
- (c) Widgets built for display on 3rd party applications or websites;
- (d) Social media assets including Facebook, Google+ and Twitter;
- (e) Websites within Your range of domain names with betting related content owned by You for the purposes of reaching the broadest possible audience;
- (f) Websites within Your parent company subject to editorial discretion;
- (g) Third party websites, exchanges or publishing networks in which You have sponsorship or have purchases advertising inventory,
- (h) Other websites operated by You as agreed by the Bookmaker to be an Affiliate Website under this Agreement.

Betting Account means a betting account opened by Your Client with the Bookmaker.

Bookmaker Business means the Bookmaker's gaming business of accepting bets for purposes under the Licence.

Bookmaker Websites means one or more of the websites as advised by the Bookmaker to You from time to time, which are operated by an associated entity of the Bookmaker.

Business Day means a day that is not a Saturday, Sunday or gazetted public holiday in New South Wales, Australian Business Hours means 9.00am to 5.00pm, in New South Wales, on a Business Day.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether a law, in equity, under statute or otherwise.

Client means a Referral who is introduced to the Bookmaker through Your Website and opens a Betting Account through one of the Bookmaker Websites for betting purposes within 30 days of their introduction by way of setting a cookie in the Referral's internet browser, or other similar tracking service and the Referral's application is accepted by the Bookmaker.

Client Reports means a consolidated report generated by the Bookmaker which includes details of all betting, betting results and payments received from and made to Your Clients.

Commission means 25% of the Net Revenue of each of Your Clients unless otherwise agreed.

Commission Report means a statement generated by the Bookmaker detailing the Commission of each Client.

Confidential Information means non-public information, but excludes the Excluded Information.

CPA means a one-time payment for a Referral at an agreed amount, once the Referral has met the minimum requirements.

Excluded Information means Information that:

- (a) is received by the Recipient from a third party who is not under an obligation of confidence relation to such Information;
- (b) is generally and publicly available other than as a result of a breach of confidence by the disclosing or receiving the Information;
- (c) has been independently developed by the Recipient's Personnel who do not have access to any of the Discloser's Confidential Information; or
- (d) was lawfully known to the Recipient prior to receipt of the Information from the Discloser.

Force Majeure Event means fire, flood, earthquake, elements of nature or act of God; riot, civil disorder, war, terrorism, rebellion or revolution; or by other similar cause beyond the reasonable control of the non-performing party; but in each case only if, and to the extent that, the non-performing party is without fault in causing the default or delay, and the default or delay could not have been prevented by taking steps specifically required under this Agreement or by taking other reasonable precautions.

GST has the meaning given in the GST Act.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Insolvency Event: means a person is Insolvent if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it has had a appointed, or is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this Agreement);
- (d) an application or order has been made, resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in (a), (b) or (c) above;
- (e) it is taken (under section 459(F)(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459(C)(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this Agreement reasonably deduces it is to subject);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to any or all of (a) to (g) happens in connection with that person under the law of any jurisdiction.

Intellectual Property Rights means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Liability means all liabilities, losses, damages, costs and expenses, including reasonable legal fees and disbursements and costs of investigation, settlement, judgment, interest and penalties, for which a party is liable, and which have been incurred or awarded, whether or not yet paid or met by that party.

Licence means the Licence issued to the Bookmaker by an Australian state or territory in order to conduct the Bookmaker Business (or a Related Body Corporate of the Bookmaker).

Minor means a person under the age of 18.

Net Revenue means the gross turnover of the total betting transactions of each of Your Client's wagered through their Betting Account during the previous month, less:

- (i) any payments to Your Clients as winnings or refunds or otherwise;
- (ii) any betting duties or taxes (or provisions therefore) for or related to each Betting Account transaction or Your Client;
- (iii) any debt or other amount owing by Your Client to the Bookmaker (or any Related Body Corporate of the Bookmaker) unless repaid;
- (iv) any amount owing to or withheld by the Bookmaker as a result of any fraud or suspected fraud of Your Client;
- (v) any returned stakes to Your Client;
- (vi) any free, discounted or matched bet or any bet/deposit bonuses or other incentives offered to Your Client;
- (vii) any reversed transactions or charge-backs;
- (viii) any void or voided bets by Your Client;
- (ix) any credit card or payment fees;
- (x) any product fees paid to sporting bodies payable for each transaction by Your Client;

- (xi) any associated costs with running a contest, e.g. overlay for unfilled contests, proportionate to the number of entrants;
- (xii) any race field fees paid to racing bodies payable for each transaction by Your Client.

Personal Information is as defined in the Privacy Act 1988 (Cth).

Personnel means employees and individual contractors, whether full-time, part-time or casual.

Privacy Laws means the Privacy Act 1988 (Cth) and any other requirement under Australian law, industry code, policy or statement relating to the handling of Personal Information.

Referral means a potential Client who is not a Minor and who has never held a Betting Account with the Bookmaker who is introduced to the Bookmaker by You.

Related Body Corporate has the meaning given in the Corporations Act 2001 (Cth).

Tax Invoice has the meaning given in the GST Act.

23. Interpretation

In this Agreement unless the contrary intention appears, a reference to:

- (a) an agreement or another instrument includes any variation or replacement of either of them;
- (b) an annexure or schedule is a reference to an annexure or schedule to this Agreement and a reference to this Agreement includes a recital, annexure or schedule;
- (c) a statute, ordinance, code or other law includes regulations and other instrument under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) the word person includes a firm, body corporate, unincorporated association or an authority;
- (e) a person includes the person's executors successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (f) dollar amounts means Australian dollars;
- (g) if the due date for the payment of money is not a Business Day, the due date will be deemed to be the next Business Day;
- (h) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (j) headings are included for convenience and do not affect the interpretation of this Agreement.

Signed:

Affiliate Manager PlayUp

Signed:

Affiliate