

**PORTUGAL**  
**Standard Terms And Conditions For The Purchase Of Advertising**

Date: 21<sup>st</sup> May 2018

The Beaffiliates.pt Program is created for the promotion of the “Betcltic.pt” brand which is managed by the Betcltic Everest Group and may be accessed by application made through [www.beaffiliates.pt](http://www.beaffiliates.pt).

These Terms and Conditions for the Purchase of Advertising Services, should your application to join be successful and so confirmed to you in writing, constitutes the entire agreement and applicable terms between the parties mentioned below, unless and to the extent otherwise expressly stated hereon in (the “**Agreement**”).

Of the first part:

(i) **BC GLOBAL SERVICES LIMITED** a company registered in England and Wales with company number 05517750 and with its registered address at 100 Hammersmith Road, London W6 7JP, United Kingdom and hereinafter referred to as “we”, “us”, “our”; and Of the second part:

(iii) **the Individual or Company** specified on the [www.beaffiliates.pt](http://www.beaffiliates.pt) application page, and subsequently confirmed to you by e-mail or in writing (hereinafter referred to as “you”, or “your”).

Each may be referred to herein as a “party” and together as the “parties”.

## **1. Definitions and interpretation**

1.1 **Agreement** shall have the meaning as set out above, unless different terms (including any commission fees) have been subsequently notified to you in writing expressly deviating from these Standard Terms and Conditions, and only in such case, the additional terms shall take precedence over these Standard Terms and Conditions, and to the extent of any inconsistency and taken with the rest of the non-conflicting terms herein, shall constitute the Agreement.

1.2 **Active Player** means a customer, being a genuine bona fide person, which has satisfied the mandatory requirements of a New Customer, and which then makes a minimum of one action per calendar month including a minimum accumulated deposit or accumulated real money wager/rake of (€10) on any product. We reserve the right to refuse Active Players (or to close their accounts) if necessary to comply with any requirements we may periodically establish in order to comply with internal policies or procedures and applicable laws in Portugal.

1.3 **Advertising Materials** means all the artwork, banners, html mailers, editorial columns, images, logos, graphic designs and links or other materials supplied to you by us from time to time in order to advertise our Website, brands, products or services;

1.4 **Commission Fees** means the sum payable to you calculated on new customer acquisitions (as set out at [www.beaffiliates.pt](http://www.beaffiliates.pt)) or as may have otherwise been

subsequently confirmed to you in writing. If we notify you of a different commission structure in writing, that commission shall, once agreed, take precedence over that published at [www.beaffiliates.pt](http://www.beaffiliates.pt) from time to time;

1.5 **New Customer** means a person who does not have an account with our Sites, and who opens an account and becomes tracked to your account and fulfils the following conditions: (i) deposits a minimum of 20€; (ii) placing one or more real money wagers or real money bets, on one or more of the products available on our Sites; and (iii) arrives at any one of our Sites via one of your click-through URLs, which is placed on your own website or an approved website, as approved or provided to you by us (or through any offline method which has been agreed by us prior to said customer/-s being so directed);

1.6 **Records** means such accounts and records as are reasonably necessary to evidence the placement and appearance of any Advertising Material and the amount of business or traffic generated by such Advertising Material and the calculation of any fees due to you;

1.7 **Services** means the provision of advertising space by you for us and other services as may be agreed from time to time;

1.8 **Sites** means: [www.betclic.pt](http://www.betclic.pt) and any other websites which we may notify you in writing from time to time in respect of Portugal which may be duly licensed to offer its goods and services to residents of Portugal from time to time.

## 2. Your Application and Appointment

2.1 To become a member of the “Beaffiliates.pt Program” you will need to accept this Agreement by ticking the box confirming your acceptance and completing and submitting an online application form.

The application form will form an integral part of this Agreement. We reserve the right in our sole discretion to determine whether or not to accept your application and our decision is final and not subject to any right of appeal. We will notify you by email as to whether or not your application has been successful. You will provide to us any documentation we request to help us verify your Affiliate Application and / or to verify the Affiliate Account information provided to us at any time during the term of the Affiliate Agreement. The requested documentation may include but is not limited to utility bills, bank statements, individual or corporate identity papers. Failure to provide documents upon request within the requested time, and to our full satisfaction may result in the suspension of the Affiliate Agreement and may also result in a suspension of the processing of any payments due to you and or termination of the Affiliate Agreement.

2.2 This Agreement shall only apply if and as from the date your application to Beaffiliates.pt Program is confirmed to you as being successful. In the event that your application is successful, you agree to be bound by this Agreement and that you shall provide the Services in respect of our Site as set out below.

2.3 Once confirmed in accordance with the above, if you are appointed as a non-exclusive affiliate with the right to direct New Customers to our Site and to earn Commission Fees from New Customers Acquisition in accordance with the conditions set out in this Agreement. The affiliate shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under this agreement. You understand that we have the right to procure services from others performing services of the same or similar nature to those provided by you. You shall have no claim to Commission Fees or other compensation on business secured by or through persons or entities other than you.

2.4 You shall not open more than one affiliate account on beaffiliates.pt without our prior written consent nor will you earn commission on your own or related persons' sports, or casino/games account(s). The program is intended for professional website publishers only.

2.5 This Agreement is a binding contract, and shall apply to the provision of all advertising services, purchase orders, forms or other oral or written agreements unless to the extent expressly excluded in such purchase order, form, or agreement for the provision of services. You understand that by providing any advertising services to us you agree to be bound by this Agreement to the exclusion of any other terms, and that should you not agree to the terms, or no longer wish to be bound by them, you should provide us with notice of termination in the time period specified herein.

### **3. Advertising campaign monitoring**

3.1 Linking to our Site(s): By agreeing to participate in the Beaffiliates.pt Program, you are agreeing to create and maintain unique links from your site to the Site/s licensed to operate and offer its services to residents of Portugal. You may link to us with any of the Advertising Materials which we have supplied to you. Kindly note that this is the only method by which you may advertise on our behalf. All other advertising, including use or promotion of any website, including social media sites, which has not been previously agreed to and approved by us in Portugal, buying blind traffic, or any traffic without listing all websites where you are promoting our brand on your account, and using any form of spamming is strictly prohibited and will be considered as a breach of this Agreement allowing us the option, exercisable at our discretion, to immediately disable banners, terminate such advertising or this Agreement immediately and without further notice to you and to exclude any traffic generated in this manner from Commission Fees payable to you without limitation to other rights available to us at law.

3.2 Tracking of Active Players: We shall register suitable New Customers, and track your Active Player's bets and plays making available to you a report summarizing their activities, which you can access from this website. Please note Active Players accounts may be terminated by us on an immediate basis in the event that we no longer wish to promote our Site/s as we may determine in accordance with our business strategy, legal policies, applicable law, and the terms of our gaming licenses. The corresponding Active Players shall be removed from the tracking associated with your account.

3.3 Supply and Use of Advertising Material: We shall supply to you Advertising Material to be published on your website/s. You will only use our approved Advertising Material and will not alter their appearance nor refer to us in any promotional materials other than those that are available from [www.beaffiliates.pt](http://www.beaffiliates.pt). The appearance and syntax of the hypertext transfer links are designed and designated by us and constitute the only authorized and permitted representation of our Sites. In particular, you are not permitted to create a direct link to the promotional materials on our Sites.

3.4 Active Player Requirement: If your account does not show at least five (5) Active Players in any consecutive three (3) month period, we reserve the right to terminate your account(s) without further notice.

3.5 Schedule for Publications: Where we provide you with a schedule of the dates and times on which promotional materials are to be published on each of your website(s), you must publish the materials in accordance with that schedule.

3.6 Prominent Display of Advertising Materials: You shall incorporate prominently and continually display the most up-to-date links and Advertising Materials provided by us on all pages of your website(s) in a manner and location agreed by us and you shall not alter the form, location or operation of the links without our prior written consent. You are eligible for Commission Fees based upon your continued promotion of Sports, Casino, and Games on the Site. You are not eligible for any commission on any product which you promote in Portugal for which we do not have a full and current license and promotion of which has not been agreed with us in advance. If we detect that you have failed to promote our brand/s in any consecutive three (3) month period, we reserve the right to terminate your account(s) immediately and without further notice.

### 3.7 Permitted Marketing and Player Exclusion

#### 3.7.1 Right to Exclude Certain Player Activity in Portugal

We may close some player accounts in Portugal for self-exclusion, fraud, money-laundering, legal, business or any other reason whatsoever. Except where there is a suspicion of fraud, money laundering or any illegal activity we will pay commissions on Active Player activity, up to the point the player account is closed. In the case of fraud, money laundering, or any other illegal activity, including breach of these Terms and Conditions, we reserve the right to terminate the agreement without any notice. In such case, we may not pay out on any fraudulent commission, or we may deduct it, or ask the Affiliate to make a repayment of the fraudulent amount. Once the player account is closed there will be no further activity and you will therefore not earn any further Commission.

#### 3.7.2 Obligation to ensure marketing is legal prior to promotion

It shall remain your full and sole responsibility to assess if your marketing activity in Portugal is legal and in full compliance with any advertising laws, ethics or morals or other acceptable codes of conduct as at the time may be in force and effect.

### 3.7.3 Consequences of Failure to Comply

Any breach of this section 3.7 may result in very serious consequences for you, for us, or for both Parties, including without limitation, fines, penalties, breaches of license conditions and ability to do business, as well as potential criminal action against yourself or us by the applicable advertising authorities or agencies. Without prejudice to any of our rights herein or at law, we may forthwith terminate this agreement, in part or in its entirety and any of your accounts should you act in breach of the above and you shall be held fully responsible and liable for any such resulting fine, penalty, claim, action, or loss which is caused to us as a result of your action or default as the case may be.

### 3.8 Fraud and Restrictions on Transfer or Opening of Accounts

The Beaffiliates.pt Program is intended for your direct participation. You shall not open affiliate accounts on behalf of any other person, company or participant. Opening an affiliate account for any third party whatsoever, brokering an affiliate account or the transfer of an affiliate account is strictly prohibited. Registering as a player or making deposits directly or indirectly to any player account through his tracker(s) for the player's own personal use and/or that of relatives, friends, employees or other third parties, or in any other way attempting to artificially increase the commission payable to you or to otherwise defraud us may result in any or all of the following actions to be taken at our sole discretion and upon our reasonable suspicion of such activity; the respective commission earned being set-off and deducted from future payments, the respective commission earned being withheld indefinitely by us, the immediate termination of your affiliate account without further notice, the balance of the player account being withheld indefinitely by us, de-tracking of the player, and/or the immediate termination of the player account without further notice. We reserve the right to delay payment of Commission Fees suspected to be related to fraudulent activity on the Sites pending the completion of our investigations. If you require your account to be transferred to another beneficial account owner, you must request prior permission to do so by Contacting Us. Approval is solely at our discretion and shall be confirmed to you in writing if the transfer is permitted.

### 3.9 Disclaimer

You agree that you are solely responsible for the development, operation, and maintenance of your site and for all materials that appear on your site (other than with respect to the Advertising Material). Specifically, you are responsible for ensuring that materials posted on your site are not libellous, illegal or otherwise unsuitable, aimed at children, display pornography or other illegal sexual acts, promote violence, promote discrimination based on race, sex, religion, politics, nationality, disability, sexual orientation, or age, promote illegal activities or violate intellectual property rights. We disclaim all liability for any failure to strictly observe good ethics, moral codes, and reserve the right to take legal action for damage caused to the "Betclit" or any other brand owned by the Group and reputation which may ensue due to breach of this clause. Further, you will indemnify and hold us harmless from all claims, damages, and expenses (including, without limitation, legal fees) arising directly or

indirectly out of the contents of your website which are in breach of this section. No affiliation or impression of sponsorship can be made between our Site and your site, or any endorsement of one by the other.

### **3.10 No Authority**

You have no authority and shall not make any claims or representations, or give any warranty, in connection with or on behalf of Betcltic Everest Group, the Site, or on our behalf. You understand that any breach of this obligation shall be void and without effect on us, and may have serious consequences. We further reserve the right to immediately terminate this Agreement without further notice if you act in contravention of this section.

### **3.11 Prohibition on Registration of Domain Names**

You shall be prohibited from registering (or applying to register) nor permit, procure or encourage any other person to register or to use any domain name similar to any domain name used by or registered by us or any of the Betcltic Everest Group of companies, which includes "Betcltic", "Betclick", "Expekt", "Monte Carlo", "Everest", "EverestPoker", "EverestCasino", "Imperial Casino" or any other name that could be understood to designate the Betcltic Everest Group. In the event that you deem it necessary or desirable to utilize a domain name which is not currently owned by us, you will notify us in order that we may take all reasonable steps to register it and, if such registration is successful, to grant you a royalty-free license to use the name for the duration of this Agreement. You hereby acknowledge that registering domain names in breach of our competitor's trademarks is also illegal. You hereby acknowledge that damages would not be an adequate remedy for any breach of this clause and you hereby agree to assign and carry out all acts required in order to assign all right, title and interest to domain names registered in contravention of this clause to us (or to any member within our group of companies as we may appoint), and to promptly perform all actions required by the applicable domain name registrar to complete the conveyance of the domain names and hereby appoint us as your agent to carry out such acts on your behalf should you fail to carry out said actions promptly. You shall not be eligible for any Commission Fees on traffic or Active Players generated through any domain name registered in contravention of this clause.

### **3.12 No Bidding on Brand Terms**

You may not purchase or register keywords, search terms or other identifiers for use in any search engine, portal, sponsored advertising service or other search or referral service and which are identical or similar to any of Betcltic, Expekt, Montecarlo Casino, Everest, Everest Poker, Everest Casino, Imperial Casino, Beaffiliates trade marks or otherwise include the words "betcltic", "expekt", "montecarlocasino" "montecarlo", "everest" or any misspelling or variations thereof or which attach "sports", "games", "bet", "casino" or "poker" to the foregoing, or include metatag keywords on your website which are identical or similar to any trade-marks owned or licensed by us or by the Betcltic Everest Group.

### 3.13 Good Faith

You will not knowingly benefit from known or suspected traffic not generated in good faith whether or not it actually causes us damage. We reserve the right to retain all amounts otherwise due to you under this Agreement if we have reasonable cause to believe such traffic is being generated and/or suspend or close accounts where you, or your Active Players are found to be abusing any of our offers or promotions and whether with or without your knowledge. Such situations shall include (without limitation) different customers betting both sides of an event or market so as to limit risk and claim bonuses.

## 4. Payment of Commission Fees

4.1 Subject to your compliance with the terms of this Agreement, you will earn Commission Fees calculated on a per account basis (in the event you have more than one authorized account with us) as set out here (unless otherwise notified to you) based on the New Customer Acquisition of your referred and approved Active Users. Kindly note that each of your Beaffiliates.pt accounts (if you have more than one) must have a minimum of 5 (five) Active Customers before you will be eligible for a Commission Fee payment. You are entitled to one payout per calendar month per account, provided you have fulfilled the above requirement at the end of the preceding month and provided further amounts owed to you achieve the minimum threshold level set out at Clause 4.2.

4.2 Should your payment be less than EUR 50 (fifty Euro), we reserve the right to roll it forward to future months for payment.

4.3 “**Net Revenue**” is defined below, apportioned to all Active Customers attributed to your account:

(a) **Sports:** all gross monies received by us in respect of all settled bets made by Active Users after deducting; (i) winnings; (ii) betting duties, taxes or other statutory deductions or payments to regulatory and/or licensing authorities (or reasonable provisions in respect thereof) (iii) charges levied by electronic payment or credit card organisations; (iv) bad debts; (v) fraud; (vi) returned stakes; (vii) transactions which are reversed by instruction from the card-holder’s bank (chargebacks); (viii) voided bets and (ix) bet/deposit bonuses and (x) administration fees (xi) tournament fees.

(a) **Casino:** the gross stakes, less (i) winnings; (ii) voids or returns, (iii) jackpot contributions, (iv) bonuses (v) duties, taxes or other statutory deductions or payments to regulatory and/or licensing authorities (or reasonable provisions in respect thereof) third party royalties and/or hosting fees due to system or game providers (vi) credits made to users, (vii) charge-backs, (viii) bad debts (ix) fraud (x) charges levied by electronic payment or credit card organisations; and (xi) administration fees.

*N.B. In the event that any items included within the Net Revenue are not capable of being directly attributed to individual players, we reserve the right to use our benchmark figure as a reasonable and proportionate allocation of each of the aforementioned costs to the Active Player(s) within your account.*

4.4 Commission Fees will be calculated on a cumulative basis derived from your New Customer Acquisition and available Net Revenue between all products and over all Sites covered by these Standard Terms and Conditions derived on one account resulting in the total Net Revenue derived

from the sum of both positive and or negative revenue from each product for any calendar month (or part thereof) on the relevant account. Net Revenue will be paid only for a three years period.

4.5 The first day that a new Customer places wagers will define the rate of commission that will be earned. For example, if a new customer places a wager in Sportsbook, a sportsbook commission will be applied to your account. If a new customer places a wager in Casino, the Casino commission will be applied to your account. If a new customer places their wagers in Sportsbook and Casino, only the Sportsbook commission will be applied by default i.e. the Casino commission will not be applied.

4.6 You are eligible for payment on the balance of your sports and casino earnings across promotions made for Betclix from the same account. Negative commission balances in either of sports and casino will be deducted from available commissions on any of the other products which is tracked on that account.

4.7 If the Net Revenue generated in respect of any calendar month (or part thereof) shall be zero or a negative figure when assessed across all of the brands for which you provide Services, such figure shall be carried forward to any following calendar month (or part thereof) in respect of the relevant account and may, at our discretion, be offset against the Commission Fees otherwise due for any following calendar month (or part thereof).

4.8 Payment shall be effected through one of the methods detailed below (Method of Payment), no later than thirty (30) days from the end of each month.

4.9 Our records and the data as contained in our information systems will, for the purposes of payment, be final and binding unless there is any obvious system error.

## **5. Method of Payment**

5.1 Commission Fees will be paid via any of the following methods which are currently available and selected by you, and any others which we may notify to you from time to time as they may become available. It is your responsibility to keep your payment details updated at all times by submitting valid supporting documentation. Any payments which cannot be processed shall be forfeit after 180 calendar days and you shall not be able to reclaim them at a later date.

- (i) transfer to a nominated bank account (bank charges may apply);
- (ii) credit to an e-wallet eg Neteller or Skrill (MoneyBookers);

5.2 All Commission Fees will be due and paid in Euro.

## **6. License and Intellectual Property Rights**

6.1 You acknowledge and agree that any and all intellectual property rights subsisting in the Advertising Materials is and shall remain our sole property or that of such other party as may be identified therein. You shall not during or at any time after the expiry or termination of the Agreement in any way question or dispute the ownership by us or the owner thereof and nothing in this Agreement shall give you



any right in respect of any Intellectual Property Rights belonging to us, used by us under license or by any other person.

6.2 We grant you a non-exclusive, non-transferable license to use the Advertising Materials, and to use our trade name, trademarks, service marks, logos and any other designations, which we may from time to time approve solely for the duration of this Agreement and for the sole purpose of allowing you to fulfil your obligations in accordance with this Agreement. This license cannot be sub-licensed, assigned or otherwise transferred by you. Your right to use the marks, Advertising Materials and any other intellectual property is limited to and arises only out of this license. You shall not assert the invalidity, unenforceability, or contest the ownership of said rights in any action or proceeding of whatever kind or nature, and shall not take any action that may prejudice our rights, render the same generic, or otherwise weaken their validity or diminish their associated goodwill. You must notify us immediately if you become aware of the misuse of the Advertising Materials, or our logos or trademarks by any third party.

## **7. Confidential Information**

7.1 The parties acknowledge a duty during and after the duration of the Agreement, not to disclose without the other's prior written permission any confidential information either concerning the other's business, its business plans, customers or associated companies.

7.2 7.2 In particular during and after the duration of the Agreement you acknowledge your responsibility to treat in complete confidence all marketing and sales information and statistics relating to our business with which we may supply you in the course of the provision by you of the Services.

## **8. Warranties and Indemnities**

8.1 You represent and warrant to us that:

- You are fully aware of and understand the nature of the Site/s and Services;
- You have the capacity to and will undertake and perform your obligations under the Agreement and by doing so shall not breach any rule, law or regulation of Portugal, the Serviços de Regulação e Inspeção de Jogos, Turismo de Portugal ("SRIJ") and any relevant jurisdiction or the rules, bye-laws, recommendations, guidelines or regulations of any governing body or organization that may be relevant or applicable to yourself and US;
- any e-mail sent by you advertising us shall only be sent to individuals who are of legal age according to Portuguese laws and who have opted-in to receiving from you information regarding third parties and whose details are not included on any 'blacklist' with which we provide you;

- by performing your obligations under the Agreement, you shall not be in breach of any advertising laws, regulations, standards or codes of practice that may be relevant or applicable to yourself or the Services;
- you unconditionally and irrevocably agree as a continuing obligation to indemnify us against losses which we may incur at any time or from time to time and all costs and expenses (including, but not limited to reasonable legal fees) in respect of or as a result of any breach of warranty, or any breach of this Agreement.

## 9. Term and Termination

- 9.1 The term of this Agreement will begin when you are approved as an affiliate and will continue unless and until either party notifies the other in writing that it wishes to terminate the Agreement by providing a minimum thirty (30) days' notice, in which case this Agreement will be terminated. For the avoidance of doubt, termination shall be immediate if so required by a change in law or policy.
- 9.2 We may also terminate this Agreement immediately for business reasons or other reasons of internal policy and control. We shall endeavour to provide the requisite minimum thirty (30) days prior notice, however, where this is not feasible, you shall nevertheless be entitled to compensation for a thirty (30) day period from the date of notice of termination, based on the amounts paid to you with respect to the immediately preceding 30 days. The foregoing shall be notwithstanding a shorter period for player account closure and removal of all promotional banners and advertising activity.
- 9.3 For purposes of notification of termination, delivery via e-mail is considered a written and immediate form of notification and it is your obligation to ensure that your details and information with us are kept properly updated.
- 9.4 All Commission Fees which accrued prior and up to the date of termination shall become due and payable and shall be paid within thirty (30) days from the end of the month in which termination was effected (unless the provisions of Clause 9.2 apply).
- 9.5 You undertake to request a payout of all earned commissions within twelve (12) months. If payment has not been made or requested within a period of more than twelve (12) months from the date of termination the right to request payment shall expire and any payment due shall be forfeit.
- 9.6 We comply with the European Gaming and Betting Association (EGBA) Standards (<http://www.egba.eu/en/consumers/standards>) and your failure to agree or abide by the rules and principles of the Standards entitles us to terminate this Agreement with immediate effect. Further, your failure to abide by gambling and any other related legislation, codes of practice and guidelines issued by Portuguese authorities including the Serviço de Regulação e Inspeção de Jogos (SRIJ). Breach of such codes or laws entitles us to terminate this Agreement with immediate effect.

- 9.7 9.7 Upon termination you must remove all of our banners/icons from your site and disable all links from your site to ours. All rights and licenses given to you in this Agreement shall immediately terminate. You will return to us any confidential information, and all copies of it in your possession, custody and control and will cease all uses of our trademarks, logos, and Advertising Materials.
- 9.8 Provisions governing (i) Records and Audit (ii) Intellectual Property Rights (iii) Confidential Information (iv) Warranties and Indemnities (v) and (Governing Law and Jurisdiction) shall survive termination of the Agreement.

## **10. Relationship of the Parties**

We and you are independent contractors and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between us. You will have no authority to make or accept any offers or representations on our behalf. You will not make any statement, whether on your site or otherwise, that would contradict anything in this Agreement.

## **11. Modification**

We may modify any of the terms and conditions contained in this Agreement or replace it at any time for legal and business purposes and in our sole discretion, by posting a change notice. If any modification is unacceptable to you or you fail to accept the new terms within 30 days of the posting of the change notice your Account will be closed and this Agreement shall terminate automatically.

## **12. Ecommerce ad Data Protection**

12.1 You acknowledge and agree that regulations 9(1) and 9(2) (information to be provided by electronic means), 11(1) (placing of the order) of the Electronic Commerce (EC Directive) Regulations 2002 shall not apply to or have any effect on this Agreement

12.2 Data Protection

### **DEFINITIONS**

Data Protection Legislation: (i) unless and until the GDPR is no longer directly applicable in the EEA, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

- a. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

- b. The parties acknowledge that for the purposes of the Data Protection Legislation, the Affiliate is the data controller and Beaffiliates is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- c. Without prejudice to the generality of clause 12.2a, You will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Beaffiliates for the duration and purposes of this agreement.
- d. Without prejudice to the generality of clause 12.2a, Beaffiliates shall, in relation to any Personal Data processed in connection with the performance by Beaffiliates of its obligations under this agreement:
  - (a) process that Personal Data only on the written instructions of the Affiliate unless Beaffiliates is required by the laws of any regulatory authority and member of the European Union or by the laws of the European Union applicable to Beaffiliates to process Personal Data (Applicable Laws). Where Beaffiliates is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Beaffiliates shall promptly notify the Affiliate of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Beaffiliates from so notifying the Affiliate;
  - (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
  - (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Affiliate has been obtained and the following conditions are fulfilled:
    - (i) the Affiliate or Beaffiliates has provided appropriate safeguards in relation to the transfer;
    - (ii) the data subject has enforceable rights and effective legal remedies;

- (iii) Beaffiliates complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - (iv) Beaffiliates complies with reasonable instructions notified to it in advance by the Affiliate with respect to the processing of the Personal Data;
  - (e) assist the Affiliate, at the Affiliate's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (f) notify the Affiliate without undue delay on becoming aware of a Personal Data breach;
  - (g) at the written direction of the Affiliate, delete or return Personal Data and copies thereof to the Affiliate on termination of the agreement unless required by Applicable Law to store the Personal Data; and
  - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause.
- e. The Affiliate consents to Beaffiliates appointing a third-party processor of Personal Data under this agreement. Beaffiliates confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause. As between the Affiliate and Beaffiliates, Beaffiliates shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause.
- f. Either party may, at any time on not less than 30 days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
- g. You undertake to include on your and or your affiliate's websites, a data processing consent form, a privacy policy that discloses that third parties may place anonymous cookies on the browsers of visitors to its websites and may send their own cookies to the visitors' cookie file.

### **13. Limitation of Liability**

We will not be liable for indirect, special, or consequential damages (or any loss of revenue, profits, or data) arising in connection with this Agreement or the Beaffiliates.pt Program, even if we have been advised of the possibility of such damages. Further, our aggregate liability arising with respect to this Agreement and the Beaffiliate.pt Program will not exceed the total Referral Fees paid or payable to you under this Agreement in the prior three (3) months prior to giving rise to any claim. Any liability arising under this Agreement shall be satisfied solely from the Commission Fees generated and is limited to direct damages.

#### **14. Independent Investigation**

You acknowledge that you have read and understand your obligations under this Agreement and agree to all its Terms and Conditions. You understand that we may at any time (directly or indirectly) solicit customer referrals on terms that may differ from those contained in this Agreement or operate or contract with websites that are similar to or compete with your website. You have independently evaluated the desirability of participating in this Beaffiliates.pt Program and are not relying on any representation, guarantee, or statement other than as set out in this Agreement.

#### **15. Other Provisions**

- 15.1 Any failure by us to enforce or to exercise at any time any right under the Agreement shall not be construed as a waiver of any such term or right and shall in no way affect our right later to enforce or exercise it.
- 15.2 Neither Party will be responsible for failure of performance due to causes beyond its control, including, without limitation, acts of God or nature, war, terrorist attack, or mandatory compliance with any law.
- 15.3 If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable then such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.
- 15.4 You shall not assign, transfer, charge or deal in any other manner with your obligations under the Agreement. We shall have the right to assign the Agreement and any of its rights or obligations under it to any of its group companies.
- 15.5 Any notice, invoice or other communication which either party is required by this Agreement to serve on the other party shall be sufficiently served if sent by post or email to the other party.
- 15.6 A person who is not a party to the Agreement has no rights to enforce any clause of this Agreement.
- 15.7 This Agreement and any other written correspondence under which we agree a variation to this Agreement constitute the entire Agreement and understanding of the parties and supersede any previous agreement between the parties relating to the same matter.

#### **16. Governing Law and Jurisdiction**

This Agreement shall be governed by English law and each party submits to the exclusive jurisdiction of England and Wales. This is without prejudice to us filing any claim or applying for an injunction in any other jurisdiction.