

Whale Affiliates Terms and Conditions

Last Update: 06.15.2020

General Terms and Conditions

Purpose of the Affiliate Program

This affiliate agreement (the Agreement) sets out the complete terms and conditions between Whale Affiliates, whose principal place of business is situated at 4 Fransche Bloemweg, Willemstad, Curaçao (together, or individually as the context requires, Whale Affiliates), and you, regarding your application to participate as an affiliate (an Affiliate) in the Whale Affiliates affiliate program (the "Affiliate Program").

It is important that you read and understand this Agreement. By completing an application to join the Affiliate Program you are – subject to Whale Affiliates' approval of your application – agreeing to the terms and conditions of this Agreement. If you do not agree to the following terms and conditions you should discontinue your application.

1.1 This Agreement replaces all previous terms and conditions relating to the Affiliate Program or any previous affiliate program offered by Whale Affiliates. You agree that this Agreement supersedes all previous agreements you have had with Whale Affiliates or any Group Company (as defined below). Notices to the Affiliate concerning any such alteration in the Affiliate Program and/or this Agreement shall be made in writing and will take effect fourteen (14) days' after such notice in writing is deemed to have been received under this Agreement. The Affiliate's continued participation in the Affiliate Program, including but not limited to acceptance of any commissions from the Company, after such change notice is deemed to have been received under this Agreement, will always be deemed as a binding irrevocable accept of the new terms and conditions and/or other changes in the Affiliate Program

If you have any queries or questions in relation to this Agreement, or wish to notify Whale Affiliates of any matter related hereto, you may contact us at affiliates@whalesaffiliates.com Whale Affiliates

"Affiliate" means a customer who has signed up to the Whale Affiliates program in order to promote Whale Affiliates brands through Affiliate's links.

"Affiliate Payment" means any Revenue Share, Hybrid Payments and/or CPA Payments;

"Affiliate Program" means an Internet marketing practice that connects businesses selling products online with websites related to those products. The websites are run by third parties who sell products and services for the Internet company and in return receive a commission.

"Whale Affiliates" means the website at <https://whaleaffiliates.com/> and its advertised program.

"Application" means your application to join the Affiliate Program via the Affiliate Program Site;

"Whale Affiliates" means between Whale Affiliates, whose principal place of business is situated at 4 Fransche Bloemweg, Willemstad, Curaçao;

"Business Day" means any day from Monday to Friday 8am to 5pm GMT (excluding Saturdays and Sundays) which is not an official public holiday in Curacao;

“CPA Payments” means the CPA reward payments described in clause 4.5;

“Commencement Date” means the date on which Whale Affiliates confirms that your application to join the Affiliate Program has been accepted;

“Confidential Information” means all information in any form relating to a party (and any Group Company in the case of Whale Affiliates) (the “Disclosing Party”) that is directly or indirectly disclosed to the other party (the “Receiving Party), including any personal data and/or customer data, by any of the Disclosing Party’s employees, professional advisers or contractors before or after the Commencement Date;

“Customers” refers to a user who satisfies each of the following: (1) is a new end user who originates from your Tracking Code via your website, email newsletter or other method acknowledged and approved by us; (ii) uses the tracking mechanism connected to a Property site and registers with that Property site; and (iii) opens a player account as a result of registering with the Property site;

“Good Industry Practice” means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor acting in good faith;

“Group Company” means Whale Affiliates and anybody corporate which is from time to time a holding company of that company, a subsidiary of that company or a subsidiary of a holding company of that company (“holding company and “subsidiary having the meanings attributed to them by the Companies Act of the Laws of Curacao) and shall include any company in which a Group Company has a shareholding of 50% or more;

“Hybrid Payment” means the hybrid payments described in clause 4.6;

“Immediate family” means your spouse, partner, parent, child or sibling;

“Internet Site” means your website or websites located at the web address(es) provided to Whale Affiliates in your Application or subsequently changed from time to time and notified to Whale Affiliates via the Affiliate Program Site;

“IPR” means any and all patents, trademarks, service marks, rights in designs (including semi-conductor topography design rights and circuit layout rights), get-up, trade, business or domain names, goodwill associated with the foregoing, e-mail address names, copyright including rights in computer software (in both source and object code) and rights in databases (in each case whether registered or not and any applications to register and rights to apply for registration of any of the foregoing), rights in inventions and web-formatting scripts (including HTML and XML scripts), know-how, trade secrets and other intellectual property rights which may now or in the future subsist in any part of the world including all rights of reversion and the right to sue for and recover damages for past infringements;

“Property Sites” The following properties participate in the Whale Affiliates Program. As part of Whale Affiliates’ efforts to maintain the integrity of the Properties’ Sites, all websites deemed a copy of any of the Properties’ Sites, including and not limited to the Sites below, will be asked to remove all suspect/plagiarized content.

<https://www.tortugacasino.com/>

A website will be classed as having enough similar content to jeopardize a Property's Sites in any one of the search engines if there is as little as 15% copied content. Should the copy not be updated within 5 working days, your Affiliate Account and all Referral Fee payments will be suspended pending review of the situation.

"Tracking Links" means hypertext links (either a banner or text link) downloaded from the Affiliate Program Site that link to the property sites webpages or any other site owned or controlled by Whale Affiliates or any Group Company;

"Net Gaming Revenue" means Gross Gaming Revenue (total gross bets less total payouts), minus bonuses and admin fees (includes jackpot contribution, game licenses, game royalties, finance fees and applicable taxes);

"Parties" means the parties to this Agreement;

"Revenue Share" means the revenue share payments described in Clause 4.3; and is calculated as follows:

Net Gaming Revenue = (Bets – wins – bonuses) – 25% admin fee

Our default revenue share (unless otherwise agreed) is as follows:

Casino

Reward 35% of Net Gaming Revenue

"Admin Fee" includes jackpot contribution, game licenses, game royalties, finance fees and applicable taxes

1.2 In this Agreement (except where the context requires otherwise)

(a) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

(b) the singular includes the plural and vice versa; and

(c) reference to a statute or statutory provision is a reference to that statute or statutory provision and to all orders, regulations, instruments or other subordinate legislation made under the relevant statute.

2.1 In consideration of you making the Links available on the Internet Site and subject to the terms and conditions of this Agreement, Whale Affiliates will procure that you are granted a non-exclusive, non-transferable, terminable license to use the Links on the Internet Site solely for your internal business purposes and in accordance with such other limitations and restrictions as set out in this Agreement.

Qualifying Conditions

2.1

It is a condition of this Agreement that you will not do any of the following:

- (a) display the Links other than on the Internet Site;
- (b) display the Code in any offline media without Whale Affiliates' prior written approval;
- (c) display data from the Links via any electronically accessible medium other than the Internet Site without the express written consent of Whale Affiliates;
- (d) do anything that would cause Whale Affiliates to believe that a Customer has clicked through the Links to register for an account when that is not the case, sometimes known as 'cookie stuffing'; and/or
- (e) use the Links or Code in a way which proves or is likely to prove detrimental to Whale Affiliates.

3.1 You warrant and undertake that:

- (a) you have full capacity and authority to enter into this Agreement and any other documents executed by you that may be associated with this Agreement;
- (b) you will at all times conduct yourself with all due skill, care and diligence, including Good Industry Practice, and in accordance with your own established procedures and all applicable laws, enactments, orders, regulations and other similar instruments;
- (c) you will comply with Whale Affiliates' security guidelines and requirements as may be issued by Whale Affiliates from time to time whether in writing or otherwise;
- (d) all information you provided in your Application is correct and that you will notify Whale Affiliates promptly of any changes;
- (e) you will promptly change the address of the Internet Site on request by Whale Affiliates;
- (f) you will keep secret and not allow anyone else to use your login and password details for the Affiliate Program Site;
- (g) the Links will not be placed on any part of the Internet Site which may be aimed at people under 18 years of age;
- (h) you will not directly or indirectly offer any potential Affiliate or Sub-Affiliate any incentive (including payment of money or other benefit) to use the Links or Code;
- (i) you have obtained and will maintain in force all necessary registrations, authorisations, consents and licenses to enable you to fulfil your obligations under this Agreement and that you will fully comply with all applicable laws and regulations including any advertising codes;
- (j) the Internet Site will not contain any material which is defamatory, violent, pornographic, unlawful, threatening, obscene or racially, ethnically, or otherwise discriminatory or in breach of any third-party rights and shall not link to any such material;
- (k) you will not seek to challenge the validity of IPR belonging to Whale Affiliates or any Group Company;
- (l) you will use all reasonable endeavours to display the Links and Code on the Internet Site without interruption for the duration of this Agreement;
- (m) you will ensure that all communications originating from you relating to Whale Affiliates or our properties make it clear that such communications are sent by and on behalf of you (and not from or on behalf of Whale Affiliates or our properties);
- (n) you will not edit, alter or amend any marketing, promotional and/or creative materials which have been produced by or on behalf of Whale Affiliates;
- (o) you will not encourage or assist any Affiliates to breach any terms and conditions agreed to when opening an account with Whale Affiliates or a Group Company;
- (p) you will not, and you will not encourage or assist any Affiliates to, engage in behaviour which in Whale Affiliates' reasonable opinion breaches the terms or abuses the spirit of a promotion, competition, tournament or offer operated by Whale Affiliates or a Group Company; and
- (q) you will carry customers acquisition at all time. Dormant Affiliate account, showing no or close to none acquisition activity for a period for 60 days will see their deal reviewed with a 5% revenue share decrease each

month. Dormant Affiliate account with no or close to none acquisition activity for a period of 180 days or more will be closed.

(r) you will not register any domain names or register keywords, search terms or other identifiers for user in any search engine, portal, sponsored advertising service or other search or referral service that incorporate terms which are identical or similar to 'Whale Affiliates' or any other trademarks owned by Whale Affiliates or a Group Company and you will at all times comply with such reasonable guidelines for the use of such trademarks as may be issued from time to time. Whale Affiliates decision on whether any marketing is in breach of this clause shall be final and there shall lie no appeal from such decision.

You shall not engage in spamming and must at all times practice "Netiquette", this includes any attempt to spam a user through the chat functionality in the participating Property's chat facility. We consider any unsolicited, unexpected or unwanted SMS sent to a user in order to extort their valuables, mislead them or any message originating from someone the user has not specifically authorized to have their mobile number to be spam. The Affiliate must NOT send SMS messages containing any reference to, or in any way connected with, a Property or a Property Site, without the express consent of Whale Affiliates. Once such consent has been granted by Whale Affiliates, SMS messages may only be sent provided they comply with commonly accepted opt-in rules, meaning the user has consented to receiving SMS from you, and is given the option to opt-out in each SMS. In addition, all email marketing must be based on commonly accepted opt-in rules, meaning the user has consented to receiving the email from you, and is given the option to opt-out in each email. You shall not be entitled to, earn Referral Fees from Referred Users generated in bad faith, or arising from unauthorized advertising or promotion. In the event that we determine that you have engaged in any form of unauthorized advertising or promotion, or engaged in any unlawful or bad faith activities (regardless of whether you had knowledge of the same), we reserve the right to take various actions including, but not limited to, withholding and forfeiting of Referral Fees and/or immediately terminating this Agreement.

3.2 You agree that:

(a) you or your Immediate Family may not become Customers and you shall not be entitled to any payment under this Agreement in relation to such persons;

(b) Whale Affiliates s may monitor the Internet Site to ensure you are complying with the terms of this Agreement and you will provide Whale Affiliates with all data and information – including passwords – to enable Whale Affiliates to perform such monitoring at no cost to Whale Affiliates; and

(c) the Electronic Commerce (EC Directive) Regulations 2002 will not apply to this Agreement.

(d) all Customer data and information shall belong exclusively to Whale Affiliates

3.3 You warrant that:

(a) you are not and have never been engaged in any activity, practice or conduct which would constitute an offence.

(b) you have not been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body or any customer regarding any offence or alleged offence, and no such investigation, inquiry or proceedings have been threatened or are pending and there are no circumstances likely to give rise to any such investigation, inquiry or proceedings.

Payments

4.1 In consideration of the display of the Links and Code and introducing Customers and subject to clause 15 of this Agreement, you will be entitled to payment on the following terms.

4.2 You will be able to indicate your initial preferred payment option ("Commission Option) upon having been approved to join the program. The chosen option will be confirmed by Whale Affiliates once Whale Affiliates accepts your Application.

4.3 Subject to these terms, if you select a "Revenue Share", Whale Affiliates shall pay you in respect of each Customer:

(a) the applicable percentages of Net Gaming Revenue for as long as a Customer has an account with Whale Affiliates brands or a Group Company.

4.4 If a CPA Payment deal is offered, Whale Affiliates shall pay you the selected payment or current standard payment which is payable in accordance with the terms on the Affiliate Program Site.

(a) You shall be entitled to a one-off commission based on a number of first-time depositing players directed to our brands who have successfully met minimum deposit (baseline), wagering and/or other requirements as per prior agreement. These amounts are at the discretion of Whale Affiliates and we reserve the right to change these amounts with prior written notice at any time.

(b) All CPA deals are subject to a 24 hours termination policy.

(c) Whale Affiliates decision with regards to this will be considered final and no further correspondence will be entered into. Right of admission to the CPA program will be reserved at all times and for any reason. If we determine, in our sole discretion, that you are enrolled in the CPA program to benefit from it by referring players that we deem not legitimately interested in our products or services or of a similar average value to our current players, we reserve the right to terminate your participation in the program with immediate effect. Should this occur, from the moment of your notification, your CPA payment generated on existing or new referred players will be forfeited and considered null and void with no further correspondence entered into.

4.5 If a Hybrid Payment deal is offered, Whale Affiliates shall pay you:

(a) the selected hybrid CPA payments payable in accordance with the terms on Affiliate Program Site;

(b) the selected "Revenue Share" percentages of Net Gaming Revenue for as long as each Customer has an account with Whale Affiliates brands or a Group Company.

4.6 Whale Affiliates may withdraw a Commission Option at any time by giving notice to you. You will then be required to select another Commission Option via the Affiliate Program Site which will apply to any Customers whose date of first registration is on or after your date of selection.

4.7 You will be able to review statements showing the number of Customers introduced by you via the Links or using the Code and Affiliate Payments, if any, which have accrued over the course of the calendar month, using the Affiliate Program Site. Such statements are for information purposes only. Whale Affiliates will endeavour to ensure that such statements will be updated daily but is under no obligation to do so. Provided that you have reached the threshold set out in clause 4.10, Whale Affiliates will, at the end of a calendar month, inform you of the amount of the Affiliate Payments, if any, for the preceding calendar month (the "Amount Due").

4.8 In the event that the Amount Due for a calendar month is a negative amount, Whale Affiliates will not carry forward or set off such negative amount against Amounts Due for future months which would otherwise be payable to you. If the Amount Due for a particular calendar month does not exceed 100 EUR or the equivalent in any other currency, Whale Affiliates will be entitled to withhold and carry forward such amount to the end of the next calendar month in which the Amount Due (including any sums carried forward in this way) exceeds 100 EUR or the equivalent in any other currency, at which time payment shall be made in accordance with clause 4.11.

4.09 Subject to clause 4.10 Amounts Due to you in respect of a calendar month will,

(a) in the event that you are registered for VAT or any equivalent tax in the jurisdiction in which you are based, be paid within 30 days of either (i) Whale Affiliates issuing you an invoice for the amount due under the self-billing arrangements described in clause 6 below; or (ii) receipt of your invoice for the amount due; or

(b) if you are not registered for VAT or any equivalent tax in the jurisdiction in which you are based, be paid within 30 days of the end of such calendar month or, if Whale Affiliates requires an invoice in respect of the services, within 30 days of either (i) Whale Affiliates issuing you an invoice for the amount due under the self-billing arrangements described in clause 6 below; or (ii) receipt of your invoice for the amount due.

4.10 All payments made to you by Whale Affiliates under this Agreement are

(a) deemed exclusive of any VAT or other tax payable

(b) will be paid in Euros;

4.11 In the event that a Customer:

(a) has been introduced in breach of any term of this Agreement;

(b) makes an initial deposit which is subject to a chargeback or which is reversed for any other reason;

(c) uses your code or that of a member of your Immediate Family (or the code relating to any similar or replacement Whale Affiliates customer referral scheme) when signing up for an account;

(d) fails any identity or credit checks carried out by Whale Affiliates or on its behalf;

(e) is located in a territory from which the Whale Affiliates and its Group Companies does not accept customers;
or

(f) has their account closed within 25 Business Days of the account opening you will not be entitled to receive any Affiliate Payments in respect of such Customer. In the event that any such payment has already been made to you in respect of such Customer you will promptly repay the amount paid on receiving notice from Whale Affiliates. Whale Affiliates will be entitled, but not obliged, to set-off any amount owed as a result against future Affiliate Payments.

5.1 In addition to payments to be made under clause 4 above, where a new affiliate registers for the Affiliate Program for the first time via the Links (a "Sub-Affiliate") you will be entitled to a payment equivalent to the percentage notified to you via the Affiliate Program Site, of any payments made to such Sub-Affiliate under its affiliate agreement with Whale Affiliates.

5.2 Sub-Affiliates may not be directly or indirectly owned or controlled by you or your Immediate Family and you shall not be entitled to any payment under this Agreement in relation to such a Sub-Affiliate.

5.3 In the event that any Affiliate Payment to a Sub-Affiliate is reclaimed under the terms of its agreement with Whale Affiliates or payments are made to you in breach of clause 5.2 above you will promptly repay the amount paid on receiving notice from Whale Affiliates. Whale Affiliates will be entitled, but not obliged, to set-off any amount owed as a result against future payments under this Agreement.

5.4 All payments under clause 5 will terminate when payments to the relevant Sub-Affiliate end for whatever reason.

5.5 Whale Affiliates may change the level of any payment due under clause 5.2 above in respect of future Sub-Affiliates you refer at any time by giving notice to you.

5.6 Payments under clause 5 will be made in accordance with clauses 4.10 to 4.12 above.

6.1 Whale Affiliates will notify you if it decides, in its absolute discretion, to raise invoices on your behalf in respect of the services you supply under this Agreement as part of a self-billing arrangement.

6.2 In the event that Whale Affiliates notifies you that it will raise invoices on your behalf and you are VAT registered in a member state of the European Union, you agree:

(a) that Whale Affiliates will raise invoices in respect of the services you supply under this Agreement as part of a self-billing arrangement;

(b) not to raise any invoices for services provided under this Agreement while the self-billing arrangements are in place;

(c) that you will accept each self-billed invoice issued by Whale Affiliates in respect of the services provided by you under this Agreement;

(d) to immediately notify Whale Affiliates in the event that

(i) your VAT number changes;

(ii) you are no longer registered for VAT; or

(iii) your business is transferred as a going concern.

Whale Affiliates makes no representation that any of its services, or those provided by any Group Company, will be uninterrupted or error free and, to the fullest extent permissible by law, it will not be liable for the consequences of any such interruptions or errors.

Termination

7.1 All IPR in the Links belongs to Whale Affiliates. All IPR in any third-party materials shall belong to the third party owner thereof.

7.2 Nothing in this Agreement purports to grant a license, provide any warranty or offer any indemnity in respect of any data that is not owned by Whale Affiliates or a Group Company. In the event that you require access to any such data, you agree that you will give Whale Affiliates an opportunity to secure rights to the same and (if it becomes necessary to do so) you will pay the costs of securing a license to the same from the relevant third party data owner or either party may terminate this Agreement immediately.

7.3 Each party shall immediately notify the other party if any claim or demand is made or action brought against it for any infringement or alleged infringement of any IPR which may affect the supply or use of the Links.

8.1 You acknowledge that the security of Whale Affiliates' data and its systems is fundamental to the business of Whale Affiliates and its Group Companies, and if you become aware of a breach or potential breach of security relating to the Links, you will immediately notify Whale Affiliates of such breach or potential breach and use your best endeavours to ensure that any potential breach does not become an actual breach and/or to remedy any actual breach and its consequences.

8.2 You warrant that you will at all times comply with the provisions of the Data Protection Act (Cap 440 of the Laws of Curacao) and the Privacy and Electronic Communications (EC Directive) Regulations 2003 as updated and amended from time to time and any equivalent legislation in any jurisdiction which is applicable to the Internet Site and your activities.

9.1 During the term of this Agreement and after termination or expiration of this Agreement, each party shall not use any Confidential Information belonging to the other party for any purpose other than in pursuance of its rights and obligations under this Agreement nor disclose any of the other party's Confidential Information to any person except with the prior written consent of the other party and shall follow Good Industry Practice to prevent the use or disclosure of the Confidential Information. This obligation will not apply to any Confidential Information that

(a) has come into the public domain other than by breach of this Agreement, or any other duty of confidence;

(b) is obtained from a third party without breach of this clause or any other duty of confidence;

(c) has been disclosed to a party by a third party, other than a company within its Group not in breach of any duty of confidence;

(d) is trivial or obvious;

(e) is required to be disclosed by law or other regulatory requirement provided notice is given to the other party prior to disclosure where legal to do so; or

(f) is in the possession of the Party at the time the Confidential Information was disclosed to it by any other party or which is independently developed without reference to any Confidential Information of the other party.

9.2 Each party may disclose any Confidential Information to its directors, other officers, employees, advisers and sub-contractors and to those of any company in its Group to the extent that such disclosure is reasonably necessary in order to comply with its obligations under this Agreement and provided that they are subject to equivalent confidentiality obligations as those set out in this clause.

9.3 On termination of this Agreement each party shall (on request) deliver up to the other party or destroy all copies of Confidential Information in its possession, and (if so requested) shall use all reasonable endeavours to destroy all copies of Confidential Information stored electronically except to the extent that it is obliged to retain such information under any law, regulation or license condition applicable to that party or any company in its Group.

9.4 The parties shall together determine the content of any communications concerning the relationship between the parties. Such communications shall be issued at a time and in a manner agreed by the parties. You will indemnify and hold harmless Whale Affiliates and its Group Companies from and against any and all losses, demands, claims, damages, costs, expenses (including consequential losses and loss of profit, reasonable legal costs and expenses and VAT thereon if applicable) and liabilities suffered or incurred, directly or indirectly, by Whale Affiliates in consequence of any breach by you of your obligations under this Agreement.

10.1 Save as provided by statute and to the fullest extent permitted by law, the following provisions set out the entire liability of Whale Affiliates and its Group Companies (including any liability for the acts and omissions of its employees, agents and sub-contractors) to you whether in contract, tort, statute, equity or otherwise:

(a) you acknowledge and agree that (except as expressly provided in this Agreement) the Links, Affiliate Program Site and all Whale Affiliates and its Group Companies products are provided "AS IS" without warranties of any kind (whether express or implied);

(b) all conditions, warranties, terms and undertakings (whether express or implied), statutory or otherwise relating to the delivery, performance, quality, accuracy, uninterrupted use, fitness for purpose, occurrence or reliability of the Links or the Affiliate Program Site are hereby excluded; and

(c) neither Whale Affiliates nor its Group Companies will be liable to you for any losses relating to your use of the Links or the Affiliate Program Site or any breach of this Agreement by Whale Affiliates including loss of profits (whether direct or indirect), revenues, goodwill, anticipated savings, data or any type of special, indirect, consequential or economic loss (including loss or damage suffered by you as a result of an action brought by a third party) even if such loss was reasonably foreseeable or Whale Affiliates or its Group Companies had been advised of the possibility of you incurring such loss.

10.2 No exclusion or limitation set out in this Agreement shall apply in the case of:

(a) fraud or fraudulent misrepresentation;

(b) death or personal injury resulting from the negligence of any party or any of its employees, agents or sub-contractors; and/or

10.3 The time limit within which you must commence proceedings against Whale Affiliates to recover on any claim shall be 6 months from the date you become aware or should reasonably have become aware of the relevant breach that would form the subject of the claim.

11.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control, and in such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 15 Business Days, the party not affected may terminate this Agreement immediately by giving notice to other party.

11.2 This Agreement shall commence on the Commencement Date and, subject to clause 11.2, shall continue until either party serves 5 Business Days' written notice of an intention to terminate.

(a) Upon receipt of the termination the Affiliate has 7 days to remove any materials and links from its platform.

(b) Upon receipt of the termination notice the Affiliate revokes its right to any improved deal and offers. A sunset clause takes effect and allows a standard revenue share of 35% for 180 days after the receipt of the termination notice.

11.3 Whale Affiliates may terminate this Agreement immediately in the event that:

(a) the Affiliate breaches any of the terms of this Agreement which, in the case of a breach capable of remedy, has not been remedied within five (5) Business Days of receipt of a notice from Whale Affiliates specifying the breach and requiring its remedy;

(b) the Affiliate suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due, begins negotiations for or makes any voluntary arrangement with its creditors, becomes subject to an administration order, has an administrative receiver or receivers appointed in respect of the whole or any part of its assets, goes into liquidation (voluntary or otherwise save for any voluntary liquidation entered into solely for the purposes of a bona fide reconstruction or amalgamation);

(c) the Affiliate is made the subject of a bankruptcy petition or order;

(d) the Affiliate ceases or threatens to cease carrying on its business;

(e) the Affiliate shows no activity nor acquisitions for 180 days

(f) the Affiliate, in Whale Affiliates' opinion, is in breach of the terms of any applicable advertising code of practice including the CAP code and any voluntary codes Whale Affiliates has agreed to abide by;

(g) Whale Affiliates ceases to accept Customers from or to advertise in any jurisdiction which is targeted by the Internet Site; or

(h) fails to change the web address of the Internet Site on Whale Affiliates' request in accordance with clause 3.1(e).

11.4 Clauses 11.2(b) and (c) will apply if any event occurs, or proceeding is taken, with respect to the Affiliate in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in those clauses.

12.1 Except as set out in clause 12.3 below, termination of this Agreement shall be without prejudice to any rights or obligations which shall have accrued prior to termination.

12.2 On termination of this Agreement all licenses granted to the Affiliate pursuant to this Agreement will immediately terminate.

12.3 If Whale Affiliates terminates this Agreement under clause 11.2 or you terminate this Agreement under clause 11.1 (except when you do so following a material variation to the terms of the Agreement as provided herein) you will not be entitled to receive any further payments pursuant to clauses 4 and 5 following such termination.

12.4 Clause 9 together with any other clauses the survival of which is necessary for the interpretation or enforcement of this Agreement will survive termination of this Agreement for whatever reason.

13.1 You will not assign, novate, declare a trust of or otherwise dispose of this Agreement, or any part thereof, without the prior written approval of Whale Affiliates.

13.2 Whale Affiliates may assign or sub-contract any of its rights and obligations under this Agreement to a Group Company at any time without giving notice to you.

14.1 This Agreement constitutes the entire and only Agreement between the parties with regards to its subject matter and the parties confirm that they have not been induced to enter into this Agreement in reliance upon, nor has it been given, any warranty (including in particular any warranty as to merchantability, fitness for purpose or uninterrupted functionality), representation, statement, assurance, covenant, agreement, undertaking, indemnity or commitment of any nature whatsoever other than as are expressly set out in this Agreement and, to the extent that it has been, it unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation thereto.

15.1 Nothing in this Agreement and no action taken by the parties pursuant to this Agreement shall constitute, or be deemed to constitute:

(a) the parties as a partnership, association, joint venture or other co-operative entity; or

(b) any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

16.1 No breach of any provision of this Agreement shall be waived or discharged except with the express written consent of the parties.

16.2 No failure or delay by a party to exercise any of its rights under this Agreement shall operate as a waiver thereof and no single or partial exercise of any such right shall prevent any other or further exercise of that or any other right.

16.3 Whale Affiliates may modify all or any part of this Agreement at any time. Whale Affiliates will give you five (5) Business Days' notice of any such changes. If you do not agree to the changes you may serve notice to terminate this Agreement under clause 14.1 before the changes take effect and such changes will not apply for the duration of the notice period set out in clause 14.1. If you fail to terminate this Agreement and continue to participate in the Affiliate Program you will be deemed to have accepted the changes made under this clause. The latest modified date of these terms and conditions will be displayed at the top of this Agreement.

17.1 Notices and communications from Whale Affiliates will be made by e-mail to the address provided by you on your application to join the Affiliate Program.

17.2 You should send all notices and communications to the following email address affiliates@whaleaffiliates.com or such other e-mail address as notified to you via the Affiliate Program Site from time to time.

17.3 Notices and communications will be deemed received 4 hours after being sent provided that if such notice would then be deemed to have been received outside the hours of 09:00 to 18:00 (CET time) it will be deemed to have been received at 09:00 on the next Business Day.

18.1 Except for any Group Company and Whale Affiliates no third party may enforce any rights granted to it under this Agreement.

19.1 the Customer shall, upon request from the Whale Affiliates, do and execute, or procure that there shall be done and executed, all such documents, deeds, matters, acts or things as that other may at any time require to give it the full benefit of this Agreement.

20.1 This Agreement (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Agreement or its formation) shall be governed by and construed in accordance with Curacao law and the parties hereby irrevocably submit to the jurisdiction of the courts of Curacao.

21.1 Whale Affiliates complies with the GDPR, information and data provided by the Affiliate are solely for internal use only, in any case, the data collected shall not be shared with third-party partners or for marketing purposes. We collect the following data: First name, Last name, Email, Confirm email, Date of birth, Phone number, Address, City, Post code, State, Country, Language, Preferred IM, IM account, Referred by, Affiliate/Company Name, Channel. The data collected is available on request.