

## CATENA MEDIA'S T&C FOR OPERATORS

These terms and conditions "T&Cs" have been updated the 1<sup>st</sup> January 2018 and are accepted by the Operator, as defined in the relevant insertion order the "IO" made by the Operator to Catena Operations Ltd, a company organised under the laws of Malta, with registration number C62481 "Catena", as the governing T&Cs of Catena's services.

Catena and the Operator are hereinafter jointly also referred to as the "Parties" and each individually as a "Party".

### BACKGROUND:

- A. The Operator Group (whether via the Operator or one of its Group Companies) is the owner and/or operator of one or several online B2C gambling websites (or equivalent applications for mobile devices) which may be supplemented with additional websites/applications from time to time, the "Website(s)".
- B. Catena and its Group Companies are the owners and/or operators of certain affiliate websites which specialise in marketing and sending persons to other online B2C gambling websites (or equivalent applications for mobile devices).
- C. The Operator wishes the Catena Group to promote the Operator Group's services and drive persons to the Website(s), and Catena agrees to (and procure the Catena Group to) do so on and subject to the terms set out herein and as specified in the IO.

### AGREED PROVISIONS:

#### 1. **Definitions and Interpretation**

- 1.1. For the purpose of the T&Cs the following capitalised words and expressions have the following meanings:

"Account" means an account identified by a unique user name, that Catena, directly or indirectly, holds with the Operator from time to time;

"Operator Group" means the Operator and its Group Companies (or any of them as the context requires);

"Affiliate Link" means the link provided to Catena by the Operator (or via the affiliate system), which enables the Operator Group to identify Catena as an affiliate of the Operator Group or enables the Operator Group to identify a visitor to any of the Website(s) as having been directed there from a Catena Controlled Source;

"Bonus Code" means any code established by the Operator Group and/or Catena to assist them in recognising a visitor to any of the Website(s) as having been directed there by Catena from the Catena Controlled Source and as having special privileges with the Operator Group;

"Confidential Information" means any and all confidential and/or proprietary information of the other Party (or any of its Group Companies), whether communicated orally or in writing, including information concerning the other Party's inventions, trade secrets, know-how, methods, processes, techniques, code, technologies, existing and potential customer and clients lists, financial information, strategic business plans, other technical, business, and operational information and the terms and conditions of these T&Cs and the relevant IO;

"Cookies" means that mechanism used by the Operator Group to store and retrieve information about, and identify, a visitor to the Website(s);

"Effective Termination Date" as defined in Clause 4.3;

"Fees" means the fees payable by the Operator to Catena hereunder as calculated in accordance with the relevant IO subject to the provisions of Clause 4;

**"Group Company"** means, in relation to either Party, each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that Party (and for the purposes of these T&Cs, **"holding company"** and **"subsidiary"** shall be as defined in the Maltese Companies Act 2006;

**"Lifetime"** means the period of time irrespective of the termination of these T&Cs during which a Referred Player keeps a deposit with a member of the Operator Group or is a registered user of, or otherwise active on, the Website(s);

**"Intellectual Property Rights"** means all intellectual property rights of any nature whatsoever throughout the world and for the full duration of any and all intellectual property protection afforded to the same including all: patents, registered trade marks, service marks, copyright, designs and any and all applications for registration of any of the same wheresoever made; unregistered trade marks, service marks, designs, design right and copyright; databases, know-how, trade secrets and Confidential Information howsoever arising; computer software; and any right or interest in any of the foregoing;

**"Marketing Materials"** means any marketing or creative materials that have been provided or otherwise made available to one Party (and/or its Group Companies) by the other (and/or its Group Companies) in connection with Catena's services to the Operator and/or these T&Cs from time to time;

**"Marks"** means each Party and its Group Companies' respective brands, logos, devices, trademarks, domain names, service names and/or trade names;

**"Player Account"** means a uniquely identifiable account or profile that enables a Referred Player, or a prospective Referred Player, to participate in any of the services offered via the Website(s) from time to time;

**"Catena Controlled Source"** means any source from which Catena or a member of the Catena Group generates visitors to the Website(s), including websites, email marketing, offline campaigns, paid search, banner display advertising, SEO, organic social, paid social and native advertising;

**"Catena Group"** means Catena and its Group Companies (or any of them as the context requires);

**"Qualified Player"** means a Referred Player who after opening a Player Account makes a first deposit of money into the account of a member of the Operator Group;

**"Referred Player"** means a person who (i) has been introduced or referred to the Website(s) via any of the Catena Controlled Sources; (ii) that has not previously held a Player Account; and (iii) registers with any member of the Operator Group by either:

- using an Affiliate Link or Bonus Code;
- using a Cookie provided by Catena; and/or
- registering through a landing page or page on the Website(s) as it may appear from time for which a URL link is provided to Catena,

and whether or not such Referred Player is or becomes a Qualified Player;

**"Term"** as defined in Clause 9.1;

**"Tracker"** means any method used by the Operator Group to positively identify a person as having been introduced or referred to a Website by, or otherwise tracked to, Catena whether or not such person is or becomes a Qualified Player; and

**"Website(s)"** as defined in the Background above.

- 1.2. In these T&Cs any references, express or implied, to statutes or provisions are references to those statutes or provisions as amended or re-enacted from time to time. References to **Clauses** are to clauses in these T&Cs. The terms **include** and **including** shall be construed as illustrative, without limiting the sense or scope of the words

preceding them. A reference to **in writing** or **written** includes faxes and email. References to a **person** include natural persons, companies, partnerships and any other organisations (whether or not in each case having separate legal personality). The singular includes the plural and vice versa.

## **2. Other Terms**

- 2.1 The Parties hereby agree and acknowledge that the terms and conditions set out in this T&Cs will take precedence over any conflicting or contradictory term(s) and/or condition(s) in any other agreement entered into between the Parties.
- 2.2 Any amendments to these T&Cs shall be notified to the Operator through email, and shall have effect from the date of notice, unless they are contested within two weeks.

## **3. Rights and Obligations of the Parties**

- 3.1 Throughout the Term, Catena may refer or introduce persons (or procure the referral or introduction of persons) to the Website(s), in consideration for which the Operator shall pay Catena the Fees.
- 3.2 Throughout the Term and for an indefinite period thereafter the Operator shall (and shall procure that the Operator Group shall) track any person introduced or referred to a Website by Catena whether or not such person becomes a Referred Player and, further, undertakes to use all reasonable endeavours to ensure that, at all material times, any persons who should be tracked pursuant to these T&Cs is and remains properly tracked on all Website(s).
- 3.3 The Operator is not permitted to remove any Referred Player from a Tracker or to otherwise alter or in any way change the Tracker assigned to any given person without Catena's prior written consent (not to be unreasonably withheld or delayed).
- 3.4 The Operator will not (and shall procure that no members of the Operator Group will) interfere with Referred Players in any way that lowers the Fees due to Catena or otherwise take any steps to artificially depress the Fees due to Catena.
- 3.5 If any person introduced or referred to a Website is moved, transferred, required to create a new player account with or via, or otherwise migrated to any alternative website or equivalent mobile application ("**Alternative Website**"), irrespective of whether such Alternative Website is, in whole or in part, beneficially owned and/or operated by the Operator Group, the Operator hereby undertakes that it shall procure that those persons are and remain adequately tracked, to Catena's sole satisfaction, on the Alternative Website and the Operator shall continue to pay, or procure payment of, the Fees in respect of any such persons in full as would otherwise have been payable by the Operator to Catena had no migration event or similar occurred.
- 3.6 If the Operator receives a warning or a notification from any governmental body in relation to non-compliance, the Operator shall immediately notify Catena of such warning or notification.

## **4. Fees and Payment**

- 4.1 In consideration for Catena referring (or procuring the referral of) persons to the Website(s), the Operator shall pay Catena the Fees in accordance with the terms of the IO and these T&Cs.
- 4.2 The Operator agrees that it shall not at any time vary the calculation of the Fees as set out in the IO without the written consent of Catena.
- 4.3 The Operator agrees that, notwithstanding any termination of Catena's Services (the date of any such termination taking effect being the "**Effective Termination Date**"), the Fees payable to Catena:
- (a) in respect of all Qualified Players referred by Catena before the Effective Termination Date; and
  - (b) in respect of all Referred Players who are referred by Catena before the Effective Termination Date and then become Qualified Players after the Effective Termination Date, shall in each case be payable on a Lifetime basis if there is an applicable profit share deal between the Parties.

- 4.4 Catena may elect (at its absolute discretion) by notice in writing to the Operator not to receive any Fees in connection with Referred Players registered as resident in certain countries and/or regions within countries. In the event of the provision of such notice to the Operator, the Operator undertakes to comply with its terms.
- 4.5 The Operator shall pay Catena in satisfaction of any invoice it receives from Catena within fifteen (15) days of the date of that invoice.
- 4.6 The Operator shall make all payments to Catena in full via bank wire transfer to the bank account designated by Catena from time to time by an authorized representative of Catena. All amounts stated in the IO or these T&Cs are exclusive of Value Added Tax (VAT) (which shall be payable if appropriate following receipt of a valid VAT invoice) and any other tax, duty, levy or similar charge which may from time to time be imposed. All payments shall be free and clear of any set off or other deduction unless expressly agreed hereunder.
- 4.7 The acceptance by Catena of a part payment of any sums required to be paid under these T&Cs shall not constitute a waiver or release of the right of Catena to payment in full of such sums.
- 4.8 All Accounts shall be treated separate, and no negative carry-over shall apply.
- 4.9 Without prejudice to any other action permitted by applicable law, if the Operator fails to pay any sums owed to Catena by the due date, Catena shall be entitled to charge interest on the overdue amount at the rate of 4 per cent over the then current interest rate as established by the European Central Bank, which shall be charged from the day following the date on which the outstanding amount(s) fell due for payment up to the date of actual payment.

## **5. Reporting and Audit**

- 5.1 Catena shall, throughout the Term and for an indefinite period thereafter, as/if applicable, have the right to request from the Operator (and the Operator shall promptly upon such request deliver to Catena) a report or reports in such format and frequency as Catena may reasonably request, which shall contain all information necessary to enable Catena to verify the accuracy of the payments received from the Operator under the IO and these T&Cs, including the following information as it relates to the relevant period:
- (a) user identification, login and account names of each Referred Player and Qualified Player received by the Operator during the relevant period, including Tracker identification and date of registration;
  - (b) the Catena Controlled Source that referred the Qualified Player to the Operator;
  - (c) the date the relevant referral was made; and
  - (d) details of amounts deposited and revenue per player, broken down by individual products/offers.
- 5.2 No more than twice in any calendar year, Catena may appoint an independent accountant to examine and audit the books and records kept by the Operator Group to verify compliance of the Operator with its payment obligations hereunder. The Operator shall be entitled to anonymise such player personal data as may be necessary in order to comply with its privacy obligations.
- 5.3 If the independent accountant determines that any amount paid pursuant to these T&Cs should be adjusted, the Operator shall make the adjustment payment within five (5) business days of such determination. In addition to such adjustment payment, the Operator shall pay to Catena interest on the adjustment amount, from the due date up to the date of actual payment, at the rate of 4 % over the then current interest rate as established by the European Central Bank.
- 5.4 Any inspection or audit in accordance with this Clause 5 shall be at Catena's expense unless the inspection reveals a discrepancy in excess of 3 % of sums due in which case the Operator's shall reimburse Catena for the costs of any such audit.

## 6. **Warranties**

6.1 Each Party represents and warrants to the other that:

- (a) it is duly authorised to sign and execute these T&Cs;
- (b) it acts as agent for itself and all of its Group Companies and that it has the requisite rights, powers and authority to do so;
- (c) it has and will retain throughout the Term all right, title and authority to enter into these T&Cs, to grant to the other Party the rights and licences granted in these T&Cs and to perform all of its obligations under these T&Cs; and
- (d) it has obtained and will maintain in force all necessary registrations, authorisations, consents and licences to enable it to fulfil its obligations under these T&Cs and that it fully complies with all applicable laws and regulations.

6.2 Each Party agrees to (i) perform any further act/s and execute and deliver any further document(s) which may be reasonably required to carry out the provisions of these T&Cs; and (ii) at all times act in good faith so as to preserve for the other Party the benefits intended under these T&Cs.

## 7. **Indemnity**

7.1 Each Party shall hold the other Party and its directors, officers, agents and employees, harmless from and against any and all liabilities, claims, suits damages, judgments, costs and expenses, including reasonable external legal fees, directly arising out of, or in connection with:

- (a) any negligence or intentional acts or omissions of the indemnifying Party in performing its duties or obligations under these T&Cs;
- (b) any breach of any applicable laws or regulations; and/or
- (c) any breach by the indemnifying Party of any warranty, representation or undertaking by the indemnifying Party contained in these T&Cs.

## 8. **Intellectual Property Rights**

8.1 The Operator hereby grants to Catena (for itself and each member of the Catena Group) for the Term a non-exclusive, irrevocable licence to use the Operator Marks and Marketing Materials for the purpose of fulfilling its obligations under these T&Cs and the relevant IO.

8.2 The Operator represents and warrants that the use by Catena and its Group Companies of the Operator's Marks and Marketing Materials as permitted hereunder shall not infringe any intellectual property and/or other rights of any third party.

8.3 Catena (or the relevant member of the Catena Group) is and shall remain the owner of all Intellectual Property Rights in any Marketing Materials which it creates or provides to the Operator (or any of its Group Companies), except only to the extent that such Marketing Materials contain the Operator's Marks or Marketing Materials.

## **9. Term and Termination**

- 9.1 These T&Cs shall take effect from the Effective Date and shall continue indefinitely and in full force until such time as it is terminated in accordance with the provisions set out herein (the "**Term**").
- 9.2 These T&Cs may be terminated by either Party at any time, by providing two (2) weeks' written notice to the other Party in accordance with the notice requirements set out in Clause 10. Each Party shall be entitled to immediately terminate these T&Cs:
- (a) if the other Party is in material breach of any term, condition or provision of these T&Cs and does not remedy such breach within seven (7) days of being required by written notice to do so; or
  - (b) if the other Party becomes insolvent or makes any arrangement or composition with or assignment for the benefit of its creditors, or is any of its assets are the subject of any form of seizure, or goes into liquidation, either voluntary (other than for solvent reconstruction or amalgamation) or compulsory, or if the receiver or administrator is appointed over its assets.
- 9.3 These T&Cs are valid as long as an IO is applicable between the parties. Any termination of the IO shall automatically result in the termination of these T&Cs.
- 9.4 Termination of these T&Cs and/or the IO shall be without prejudice to the Operator's obligation to (a) make payment to Catena of any amounts accrued up to the date of such termination; or (b) to pay the Fees on a Lifetime basis as specified in Clause 4.3.

## **10. Notices**

- 10.1 All notices or other communications required or permitted by these T&Cs will be in writing and will be sufficiently given if delivered as follows:
- If to Catena:  
To the email address the Operator regularly uses to contact Catena, or such other as indicated by the Operator.
- If to the Operator:  
To the email address Catena regularly uses to contact the Operator, or such other as indicated by Catena.
- 10.2 Any such emailed notices or communications will be deemed to have been effective upon the date of sending the email.
- 10.3 Any email address set forth or referred to in this Clause may be changed by written notice of such change provided as contemplated in this Clause.

## **11. Confidentiality**

- 11.1 Each Party undertakes that it will not at any time disclose or permit the disclosure of any Confidential Information, except:
- (a) to the extent required by applicable law or stock exchange rules or by any competent authority but in that case only after consultation with the other Party about the timing and content of such disclosure;
  - (b) to its professional advisers subject to a duty of confidentiality and only to the extent necessary for any lawful purpose; and
  - (c) to the extent that such Confidential Information is or comes into in the public domain other than as a result of the breach of these T&Cs.
- 11.2 The provisions of this Clause 11 shall survive the termination of these T&Cs, howsoever occurring.

## **12. Applicable Law and Jurisdiction**

- 12.1 These T&Cs shall be governed by and construed in accordance with the laws of Malta.
- 12.2 In the event of any dispute, controversy or claim arising out of or relating to these T&Cs, or the breach, interpretation, termination, or validity thereof, the parties agree to refer such dispute, controversy or claim to arbitration. The arbitration shall take place under the Rules of Arbitration as established under the Malta Arbitration Act (Cap 387 of the Laws of Malta), as in force at the time the dispute is referred to it. The place of arbitration shall be in Malta. There shall be one arbitrator jointly appointed by both Parties or in default of agreement on the arbitrator there shall be three arbitrators appointed in accordance with the said Rules. The arbitration shall be held according to the laws of Malta both insofar as matters of procedure as well as in relation to substantive matters. The language to be used in the arbitral proceedings shall be the English language. The Parties agree that the award of the arbitrators shall be the sole and exclusive remedy between them regarding any claims, counterclaims or other issues arising out of these T&Cs, and the award shall be final and binding.
- 12.3 This Clause 12 replaces shall apply to the IO and these T&Cs.

## **13. Insertion Orders and Transfer & Assignment of Operator's Business or Assets**

- 13.1 The Parties may from time to time agree on insertion orders (each a "IO"). All IOs between Catena and the Operator and its services thereunder shall be governed by these T&Cs, if not otherwise specified. In case of any discrepancies between these T&Cs and the IO, the later shall prevail.
- 13.2 If the Operator sells or assigns its business or assets (e.g. a website or the right to a website), which are covered by Catena's services, these T&Cs shall continue apply to such websites and accounts, towards any other third party operator ("**New Operator**"), continuing to use Catena's services, and such New Operator shall assume all payment obligations of the Operator under these T&Cs.

## **14. Miscellaneous**

- 14.1 The Operator shall remain the sole Party responsible for the content of the Website(s) and for the conduct of its (and the Operator Group's) business in general. Catena acts purely as an intermediary in the acquisition of persons as customers of the Website(s). The Parties are independent contractors. No partnership or joint venture is intended to be created by these T&Cs, nor any principal-agent or employer-employee relationship. Neither Party has, nor shall attempt to assert, the authority to make commitments for or to bind the other Party in any manner whatsoever.
- 14.2 No consent by a Party to, nor waiver of, a breach by the other, whether express or implied, shall constitute a consent to or waiver of or excuse for any other different or subsequent breach, unless such waiver or consent is in writing and signed by the Party claimed to have waived or consented. Except as otherwise provided herein, no term or provision hereof shall be deemed waived and no breach excused, unless a written notice has been given to that effect.
- 14.3 These T&Cs shall be binding upon the Parties and each of their respective successors and permitted assigns and transferees.
- 14.4 Neither Party to these T&Cs shall be entitled, without the prior written consent of the other, to assign, novate or otherwise transfer all or any of its rights or obligations under these T&Cs or the IO.
- 14.5 A Party shall not be liable for any failure to perform its obligations under these T&Cs or the IO if that failure is beyond the reasonable control of that Party including as a direct result of force majeure.
- 14.6 If a provision of these T&Cs is held to be invalid, illegal, not binding, or unenforceable (either in whole or in part), the remainder of these T&Cs shall continue to be effective to the extent that, in view of the term's substance and purpose, such remainder is not inextricably related to and therefore severable from the invalid, illegal, not binding or unenforceable provision. The Parties shall make every commercially reasonable effort to reach an agreement on a

new provision which differs as little as possible from the invalid, illegal, not binding or unenforceable provision, taking into account the substance and purpose of these T&Cs.