



## **AFFILIATE AGREEMENT**

This affiliate agreement (the "**Agreement**") dated as of \_\_\_\_\_ (the "**Effective Date**") is entered into by and between PointsBet Canada Operations 1 Inc., a British Columbia corporation, with its principal offices at 315 Queen Street W., Toronto, Ontario, M5V 2A4, Canada ("**PointsBet**") and \_\_\_\_\_, having an office at \_\_\_\_\_ ("**Affiliate**" or "**You**"). PointsBet and Affiliate are, individually, referred to in this Agreement as a "**Party**" and are collectively referred to in this Agreement as the "**Parties**".

**WHEREAS**, PointsBet is an internet and mobile sportsbook and online casino operator; and

**WHEREAS**, PointsBet wishes to retain Affiliate to provide the Services.

**NOW, THEREFORE**, for and in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

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

- (a) The following terms shall have the following meanings for all purposes of this Agreement and such meanings shall be equally applicable to both the singular and the plural forms of the terms herein defined:

**"Affiliate Platforms"** means the website(s) and other social media platforms owned, controlled by or operated by the Affiliate, including website(s) or platforms owned and operated by third parties on behalf of the Affiliate in respect of which the Affiliate has an interest, direct or indirect, as specified in **Schedule B**.

**"Applicable Laws"** means any and all Laws to which the relevant Party is subject;

**"Confidential Information"** means any non-public information disclosed by a Party to the other Party, whether orally or in writing and whether or not specifically labeled or identified as "confidential", including but not limited to the terms and conditions of this Agreement, trade secrets, any information relating to a Party's software code, customers, partners, product plans, designs, ideas, concepts, costs, prices, finances, marketing plans, business opportunities, personnel, research, development or know-how and any other technical or business information;

**"Control"** means the power to direct or cause the actions, policies and/or management of a person by the ownership of stock, ownership of voting security, contract or any other method;

**"Cost of Sales"** means: (i) fees payable to geolocation providers; (ii) fees payable to customer verification service providers; (iii) fees payable to process customer financial transactions such as debit/credit cards, automated clearing house, wire transfers and prepaid cards; and (iv) fees payable to data feed providers;



**"CPA Commissions"** has the meaning set forth in the attached Exhibit;

**"Force Majeure"** means an act or event beyond the reasonable control of a Party that prevents either Party from performance under this Agreement, including but not limited to, a strike, failure of power, telecommunications or connectivity failure, restrictive Laws, inability to obtain or maintain (for any reason outside of a Party's reasonable control) any license, riot, insurrection, war, terrorism and/or any act in furtherance of terrorism, outbreak or pandemic, or act of God;

**"Governmental Authority"** means any federal, provincial, state, local, tribal, or foreign government or any provincial, departmental or other political subdivision thereof, or any entity, body or authority having or asserting executive, legislative, judicial, regulatory, administrative or other governmental functions or any court, department, commission, board, bureau, agency, instrumentality or administrative body of any of the foregoing, including any relevant gaming authority;

**"Gross Gaming Revenue"** means the sums received by PointsBet from sports wagering, less the total sums actually paid out as winnings to patrons;

**"Intellectual Property"** means any and all copyright and related rights, designs, trademarks, trade names, internet domain names, insignias, service marks, patents, database rights, inventions and discoveries and all other intellectual and industrial property rights of a similar or corresponding nature in any of the relevant territories, in each case whether registered or unregistered, and including the right to apply for and all applications for any of the foregoing together with all statutory, equitable and common law rights attaching thereto in any applicable territories, including the right to sue for damages (and retain such damages) and all other legal and equitable remedies in respect of any infringement or misuse of any of such intellectual and industrial property or rights of a similar nature;

**"Law"** means any applicable statute, law, regulation, ordinance, rule (including the rules of any applicable stock exchange), judgment, rule of law, order, decree, permit, approval, concession, grant, franchise, license, agreement, requirement or other governmental restriction or any similar form of decision of, or any provision or condition of any permit, license or other operating authorization (including any gaming license or other governmental approval) issued under any of the foregoing by, any Governmental Authority having jurisdiction over the matter or matters in question, whether now or hereafter in effect and in each case as amended (including all of the terms and provisions of the common law of such Governmental Authority), as interpreted and enforced at the time in question;

**"Net Gaming Revenue"** means Gross Gaming Revenue received by PointsBet, less: (i) provincial, local and federal gaming/excise/privilege Tax payments; (ii) fees or other amounts payable to Governmental Authorities or sporting and provincial or federal sporting bodies or Sports League; (iii) Cost of Sales; (iv) promotions, credits, bonuses, rebates and similar



payments returned to customers; and (v) credit card charge-backs, fraudulent or otherwise voided or modified transactions;

**“person”** means any individual, corporation, limited liability company, trust, joint venture, association, company, limited or general partnership, unincorporated organization or body, governmental authority, or other entity;

**“Prohibited Player”** includes (i) any individual who is on any gaming authority’s or other operator’s prohibited or exclusion list, (ii) any individual who has made PointsBet or Affiliate reasonably aware that they are a problem gambler, (iii) any individual who PointsBet has determined is a problem gambler; (iv) a player who has inside or non-public information; or (v) an individual who is an athlete, coach, manager, or other Sports Personnel or individual that is part of or involved in a Sports League that is restricted from playing as per the regulations of any gaming authority;

**“Qualifying Player”** means an individual, other than a Restricted Player, who is legally eligible to register and place wagers on PointsBet sports book.

**“Qualifying Casino Player(s)”** means an individual, other than a Restricted Player who is legally eligible to register and place wagers on PointsBet’s online casino.

**“Registration Date”** means a Qualifying Player and/or Qualifying Casino Player’s date of registration as a PointsBet customer;

**“Related Entities”** means any person or entity that, directly or indirectly, Controls, is Controlled by or is under common Control with a Party;

**“Restricted Player”** has the meaning ascribed thereto in Section 4(b);

**“Services”** mean the services set forth in the applicable attached Exhibit(s);

**“Sports League”** means any sporting league, competition, association or other similar organization, whether professional or amateur, and its governing body, including but not limited to the National Football League, National Basketball Association, National Hockey League, Major League Baseball, Major League Soccer, PGA Tour, NCAA and other college leagues or conferences e.g. AAC, Big Ten, Big 12, PAC 12 and SEC;

**“Sports Personnel”** means any person including but not limited to players, coaches, team and medical staff and other relevant personnel of any Sports League;

**“Sports Rules”** means any Sports League constitution, by-laws, rules (including integrity rules), regulations, interpretations, procedures, policies, determinations, resolutions and agreements (including specifically but without limitation any collective bargaining agreements to which a Sports League is party), as applicable and any decrees, determination, decision and ruling of a Sports League’s commissioner or other Sports League role or official similar to a commissioner (or such person’s designee(s)), as they currently exist and as they may be modified or amended from time to time;



“**Tax**” means all taxes (including, without limitation, income, profit, franchise, sales, use, real property, personal property, ad valorem, excise, employment, social security and wage withholding taxes) and installments and estimated taxes, assessments, deficiencies, levies, imposts, duties, withholdings, or other similar charges of every kind, character and description and any interest, penalties or additions to tax imposed thereon or in connection therewith; and

- (b) The Section and exhibit headings are for convenience only and shall not affect the interpretation of this Agreement.
- (c) References to the singular include the plural and vice versa, and references to one gender include the other gender.
- (d) Any phrase introduced by the expressions “including”, “include”, “for example” or “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) Any reference to a statute, regulations, statutory provision, or subordinate legislation (together “**legislation**”) shall (except where the context otherwise requires):
  - (i) be deemed to include any by-laws, licenses, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made under that legislation; and
  - (ii) shall be construed as referring to any legislation which replaces, re-enacts, amends or consolidates such legislation (with or without modification) at any time.
- (f) If there is any inconsistency or conflict between the Sections of this Agreement and an exhibit or schedule, then the Sections of this Agreement shall govern and prevail to the extent of the conflict or inconsistency.

## 2. **Affiliate Conditions Precedent.**

- (a) Conditions Precedent. The Parties’ respective obligations under this Agreement shall not become effective until this Agreement is executed by each Party, and is further conditioned upon Affiliate:
  - (i) if required, receiving, and maintaining throughout the Term a license or approval as a registered vendor from each relevant gaming or regulatory authority of any province in which the Services are to be performed and providing PointsBet with evidence of the same; and
  - (ii) meeting PointsBet’s affiliate background verification requirements pursuant to **Section 2(b)**.
- (b) Affiliate Verification.



- (c) PointsBet reserves the right to perform background checks on You and certain representatives of the Affiliate and request any relevant information and/or documentation from You in evaluating Your suitability as a PointsBet affiliate. PointsBet may require Affiliate to provide information and/or documents including (but not limited to) such information to verify it and its authorized officers/representatives' identities, personal history, registration details (such as company name and address), criminal history, and liquor or cannabis registration and violations. Such investigation activities may include the use of specific third-party companies, who perform such investigations as required. PointsBet, in its sole discretion, may determine that Affiliate is not suitable to be a PointsBet affiliate on the basis of any findings arising out of any such background checks, investigations conducted, or other information provided during this verification process. If Affiliate initially passes such background verification requirements but PointsBet subsequently becomes aware that any information provided to PointsBet is false or misleading, or it no longer meet PointsBet's suitability requirements (e.g., Affiliate or its employees are reasonably alleged to have committed or convicted of committing a crime or otherwise connected with criminal activity), PointsBet may immediately terminate this Agreement upon written notice to Affiliate.
- (d) Without limiting the generality of the foregoing, PointsBet may determine that Affiliate is not suitable to be a PointsBet affiliate for any of the following reasons:
- (i) PointsBet determines Affiliate's marketing methods are unsuitable in any way for any reason;
  - (ii) Affiliate's conduct, activities, content, website, business, or provision of the Services includes any content that PointsBet in its absolute discretion deems to be unlawful, harmful, violent, threatening, defamatory, discriminatory, racist, obscene, or harassing including but not limited to:
    - (A) sexually explicit, pornographic or obscene content (whether in text, video, graphics or other medium);
    - (B) speech or images that are offensive, profane, hateful, threatening, harmful, defamatory, libelous, harassing or discriminatory (whether based on race, ethnicity, creed, religion, gender, sexual orientation, physical disability or otherwise);
    - (C) graphic violence;
    - (D) politically sensitive or controversial issues; or
    - (E) any unlawful behavior or conduct or be seen to promote such behavior or conduct;
  - (iii) You, Your work, Your advertising or any other of Your actions appeals to or is designed to appeal to individuals under the age of nineteen (19);



- (iv) Affiliate is in breach of, may be in breach of, or may be likely to breach, any Laws or obligations specified herein; or
  - (v) You, or the content on the Affiliate Platforms promotes or previously promoted illegal gambling operations or websites, and You have not disclosed that You promote or no longer market those sites.
- (e) Multiple Accounts. Affiliate must not attempt to open more than one Affiliate account without prior written consent from PointsBet. Affiliate is not permitted to wager with an Affiliate account. If Affiliate would like to wager with PointsBet, please set up a separate betting account. In the event Affiliate opens more than one Affiliate account without PointsBet's permission or earn fees on its own separate betting account or a Related Entity's betting account, PointsBet has the right to void all current and future activity on those accounts, require repayment of any amounts previously paid by PointsBet to You and You will not be entitled to any fees (past or future) from such activity.

### 3. **Consideration.**

- (a) Fees or commissions. In consideration of the provision of the Services and the rights granted to PointsBet under this Agreement, PointsBet shall pay the Affiliate fees or commissions owed in accordance with and subject to the terms as set forth in the applicable attached Exhibit(s).
- (b) Payment. Unless otherwise set forth on the applicable attached Exhibit(s), PointsBet shall pay amounts due to Affiliate on a monthly basis within thirty (30) days following the end of the month in which such fees are earned, except for any amounts disputed by PointsBet pursuant to Section 3(d) below.
- (c) Taxes. All fees or other amounts payable by PointsBet under this Agreement are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any Governmental Authority on such amounts. Affiliate shall be responsible for any taxes imposed on, or with respect to, Affiliate's income, revenues, gross receipts, personnel, or real or personal property, or other assets. To the extent applicable, PointsBet shall be entitled to deduct or otherwise withhold from any amount payable to Affiliate, any withholding taxes, charges, fees, or other payments as required by Applicable Laws.
- (d) Disputes and Recalculations. PointsBet shall notify Affiliate in writing of any dispute related to the eligibility of a Qualifying Player and/or Qualifying Casino Player or any other matter that may arise in connection with this Agreement. PointsBet reserves the right to withhold or terminate any amounts due to Affiliate if PointsBet reasonably suspects that a referred Qualifying Player and/or Qualifying Casino Player was made fraudulently or was a Restricted Player as defined in Section 4(b). PointsBet also reserves the right to request immediate repayment of funds paid in excess of amounts owed to Affiliate as a result of either:
  - (i) a miscalculation; or



- (ii) a recalculation based upon findings that a player was a Restricted Player

Failure to repay any such amounts within seven (7) days of the request shall be deemed to be a material breach of this Agreement.

- (e) Offset. Whenever PointsBet is to pay any sum to Affiliate, any amounts that Affiliate owes to PointsBet (including but not limited to amounts that were previously incorrectly paid to Affiliate) may be deducted from that sum before payment.

#### 4. **Qualifying Players; Qualifying Casino Players; Restrictions.**

##### (a) Qualifying Player; Qualifying Casino Player.

- (i) Affiliate shall only earn:
  - a. CPA Commissions for sportsbook if Affiliate satisfies the requirements set forth in **Exhibit 1, Exhibit 2 or Exhibit 3** (as applicable).
- (ii) No fees will be due to Affiliate for an individual who signs up to the PointsBet sports book and/or casino in a province in which You did not receive or have not maintained as of such individual's Registration Date, the necessary license(s) or approval(s) as a registered vendor in such province.
- (iii) PointsBet will not retroactively attribute Affiliate's unique promotional registration code or link to any Qualifying Player and/or Qualifying Casino Player which fails to enter such code at the time of registration.
- (iv) No fees will be due to Affiliate for registration of Affiliate, Affiliate's Related Entities, Affiliate's and/or its Related Entities' directors, officers, employees, agents, or independent contractors ("**Affiliate Personnel**") or Affiliate Personnel's immediate family members (including but not limited to a spouse, partner, parent, child, or sibling) with PointsBet; and
- (v) PointsBet has sole discretion to reject any player whom Affiliate refers.
- (vi) PointsBet shall make a record of each Qualifying Player and/or Qualifying Casino Player's Registration Date.

- (b) Restricted Player. Affiliate shall not receive any compensation for any referred player that is a Restricted Player. A "**Restricted Player**" means any player that:

- (i) the acceptance of such referred player breaches or is reasonably likely to result in a breach of any Laws;
- (ii) is under the age of nineteen (19);
- (iii) the acceptance of such referred player breaches or is reasonably likely to result in a breach of any Sports Rules, obligation or requirement on PointsBet that prohibits the





acceptance of Sports Personnel or otherwise prevents such Sports Personnel from participating in sports wagering;

- (iv) is a player banned from betting with PointsBet or otherwise has been refused service by PointsBet for any reason whatsoever including a breach of PointsBet terms and conditions, fraud, or other undesirable conduct; or
- (v) is a Prohibited Player.

#### 5. **Affiliate Marketing Responsibilities.**

- (a) Promotional Materials. PointsBet may provide Affiliate with access to PointsBet's promotional items including but not limited to PointsBet logos and other Intellectual Property, promotional or bonus codes, and marketing materials ("**Promotional Materials**"). Affiliate must not display or modify any Promotional Materials provided by PointsBet without prior written consent, which may be granted or withheld in PointsBet's sole discretion. PointsBet reserves the right to request any change to Affiliate's use of such Promotional Materials, including to require You to cease using the Promotional Materials if PointsBet determines, in its sole discretion, that Your use has any negative or detrimental effect on PointsBet or the PointsBet brand, and any reasonable change in respect of the positioning of the Promotional Materials.
- (b) Compliance with Promotional Materials. Affiliate agrees to comply with all PointsBet's instructions that may be communicated to You from time to time regarding the use of Promotional Materials and Your marketing of PointsBet in general, including but not limited to, PointsBet's reasonable requests in respect of the placement of links. If Affiliate requests to advertise for PointsBet in a method other than through pre-approved Promotional Materials, any delay in response by PointsBet does not constitute acceptance.
- (c) Marketing Materials. Affiliate shall not market or promote PointsBet or use any of the Promotional Materials on any website, software, application, or portal in any way that infringes upon (a) regulatory restrictions set forth in Schedule "A" attached hereto, or (b) the intellectual property rights of any third party or PointsBet. Affiliate must not purchase any domains that include the name "PointsBet" or bid on any keywords or keyword phrases that include, but are not limited to, "PointsBet" or "pointsbet.ca".
- (d) Social Media. If Affiliate utilizes social media platforms in providing the Services (including but not limited to Facebook, Twitter, and Instagram) under this Agreement, Affiliate must:
  - (i) Clearly identify all advertisements, posts, and marketing communications as such. For example, a Tweet on Twitter related to PointsBet should contain hashtag indicators such as "ad" or "sponsor" at the end of the Tweet;
  - (ii) Comply with the social media platform's terms of use;





- (iii) Comply with applicable regulatory restrictions set forth in Schedule “A”;
  - (iv) Ensure marketing communications related to PointsBet or gambling in general are not directed at persons under the age of nineteen (19);
  - (v) Ensure that all marketing communications and advertisements reference both PointsBet and Affiliate (in either the ad-copy/text or the image);
  - (vi) Clearly indicate in marketing communications that Affiliate’s communications are made without the knowledge or involvement of PointsBet and that any complaint that the recipient may wish to make should be addressed to Affiliate and not PointsBet; and
  - (vii) Include “Gamble Responsibly” (or other such responsible gambling message as reasonably requested by PointsBet) in connection with all marketing communications.
- (e) Costs. Affiliate will bear all costs and expenses Affiliate incurs in connection with providing the Services, including but not limited to, the advertising, marketing, and promotion of PointsBet. Affiliate shall only engage in advertising, marketing and promotional efforts that do not violate any Law, are not published on unsuitable websites, and are not directed at individuals who are under nineteen (19) years of age or who are known to be problem gamblers. Affiliate may not trade as or be associated with a third-party investment business or company that offers investment services on racing or sports. Affiliate must not place any wager for or on behalf of or in any way connected with any Qualifying Player and/or Qualifying Casino Player referred by them to PointsBet.
- (f) Generally. If applicable, Affiliate’s banners, links and data feeds must not be placed, or sold, within unsolicited e-mail, unauthorized newsgroup postings, chat rooms or through the use of "bots". Traffic generated illegally will not be commissionable.
- (g) Non – Compliance. Without prejudice to any other relief or remedy available to PointsBet under this Agreement or law, in the event that a regulatory body or gaming authority penalizes PointsBet for Affiliate’s failure to comply with the requirements set out in this Agreement, including but not limited to the iGaming-Related Marketing and Advertising requirements set out in **Schedule A**, Affiliate shall be solely responsible for any fines or other penalties incurred by PointsBet due to Affiliate’s non-compliance.
- i. If the imposed penalty is non-monetary, Affiliate agrees to pay **CAD \$10,000 (Ten Thousand Canadian Dollars)** as liquidated damages to PointsBet. The Parties acknowledge that the liquidated damages are not intended to be a penalty and are solely intended to compensate for damages to PointsBet.



- ii. PointsBet shall notify Affiliate upon receipt of the fine or other penalty imposed and Affiliate agrees to make all payments within seven (7) business days from receipt of notice.

## 6. Term; Termination.

- (a) Term. The term of this Agreement commences on the Effective Date and continues for a period of one (1) year unless it is terminated earlier in accordance with the terms of this Agreement (the “**Initial Term**”). The Initial Term is subject to automatic renewal, on the same terms and conditions, for rolling additional successive one (1) year terms (the “**Renewal Term**” and together with the Initial Term, the “**Term**”) unless a Party gives the other Party no less than thirty (30) days written notice before the end of the Initial Term or Renewal Term (as applicable) of its intent not to renew this Agreement.
- (b) Mutual Termination for Cause. Either Party may terminate effective upon written notice, to the other Party (the “**Defaulting Party**”) if the Defaulting Party:
  - (i) materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within seven (7) days after receipt of written notice of such breach;
  - (ii) becomes insolvent or is generally unable to pay its debts as they become due;
  - (iii) makes or seeks to make a general assignment for the benefit of its creditors; or
  - (iv) is unable to perform its obligations under this Agreement due to the occurrence of a Force Majeure Event that lasts for more than thirty (30) consecutive days.
- (c) Termination for Cause by PointsBet. PointsBet may terminate this Agreement effective immediately upon written notice to You if You breach section 11(a)(v) or PointsBet or any of its Related Entities are advised by any regulator or gaming authority that:
  - (i) such regulator or gaming authority disapproves of this Agreement and/or relationship with You or any of Your Related Entities;
  - (ii) PointsBet is required to terminate this Agreement by such regulator or gaming authority; and/or
  - (iii) the existence of this Agreement or association with You or any of Your Related Entities would cause or be reasonably likely to cause any of PointsBet’s or its Related Entities’ approvals, permits or licenses under any applicable gaming laws to be in



jeopardy of being revoked, suspended, limited, endorsed with conditions, or otherwise restricted.

(d) Termination without Cause. PointsBet may terminate this Agreement for convenience and without cause on thirty (30) days prior written notice to Affiliate.

(e) Effect of Termination.

- (i) Upon the expiration or termination of this Agreement, Affiliate must immediately cease use of, and remove from Your company website(s) (if applicable), all Promotional Materials and Intellectual Property licensed by PointsBet to You pursuant to this Agreement.
- (ii) In the event that this Agreement is terminated for cause by PointsBet, all payments due to Affiliate by PointsBet shall immediately cease from the date of termination, including for greater certainty any future payments tied to any CPA Commissions or Revenue Commissions, as applicable. In all other instances, payments that have been earned in accordance with the applicable attached Exhibit(s) as of the effective date of termination will be paid in accordance with the Exhibit.
- (iii) The Parties shall have no further obligations or rights under the Agreement, without prejudice to those which have accrued to either Party prior to termination or expiration, except that the provisions of any clauses that by their nature are intended to survive the termination of the Agreement shall remain in full force and effect thereafter.

## **7. Intellectual Property Rights; Ownership.**

- (a) Subject to and in accordance with the terms and conditions of this Agreement, PointsBet grants Affiliate a limited, non-exclusive, royalty-free, non-transferable, and non-sublicensable license during the Term to use PointsBet's Intellectual Property solely to the extent necessary to provide the Services to PointsBet.
- (b) PointsBet grants no other right or license to any PointsBet Intellectual Property to Affiliate by implication, estoppel, or otherwise. Affiliate acknowledges that PointsBet owns all right, title, and interest in, to and under the PointsBet's Intellectual Property and that Affiliate shall not acquire any proprietary rights therein. Any use by Affiliate or any employee, officer, director, partner, shareholder, agent, attorney, third-party advisor, successor or permitted assign of Affiliate (collectively "**Representatives**") of any of PointsBet's Intellectual Property and all goodwill and other rights associated therewith shall inure to the benefit of PointsBet. To the extent the Services include the right of Affiliate or its Representatives to use any of PointsBet's Intellectual Property, no ownership or other rights are being transferred to Affiliate or its



Representatives other than a limited license to use the same in accordance with the terms of this Agreement.

- 8. Limitation of Liability.** PointsBet's aggregate liability in respect of any loss or damage suffered by You and arising out of or in connection with this Agreement, whether in contract, tort (including negligence) or for breach of statutory duty or in any other way, shall not exceed the total amount paid or payable to You under this Agreement.
- 9. Indemnification.** Affiliate hereby agrees to indemnify, defend and hold harmless PointsBet, its shareholders, officers, directors, employees, agents, successors and assigns (collectively, the "**PointsBet Indemnified Parties**"), from and against any and all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, any of the PointsBet Indemnified Parties arising out of or resulting from any claims alleging: (i) breach by Affiliate of any representation, warranty, or obligations set forth in this Agreement; (ii) gross negligence or more culpable act or omission of Affiliate or its personnel (including any recklessness or willful misconduct) in connection with the performance of its obligations under this Agreement; or (iii) that any of Affiliate's marketing materials or use thereof in accordance with the terms of this Agreement or as otherwise directed by PointsBet infringes any intellectual property of a third party.

**10. Relationship of Parties.**

Affiliate and PointsBet are independent Parties, and nothing in this Agreement creates any agency, joint venture, partnership, or other form of joint enterprise, employment, or fiduciary relationship between the Parties. Affiliate is an independent contractor pursuant to this Agreement. Neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement, or undertaking with any third party.

**11. Representations and Warranties.**

- (a) Affiliate hereby represents and warrants to PointsBet that:
- (i) this Agreement has been duly authorized, executed and delivered by Affiliate and constitutes the legal, valid and binding obligation of Affiliate enforceable against Affiliate in accordance with its terms, except as such enforceability may be limited by



bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting the rights of creditors generally and by general principles of equity;

- (ii) Affiliate is either:
    - a. a duly incorporated and validly existing entity and has the corporate power to enter into, deliver and perform, and has taken all necessary action to authorize its entry into, delivery and performance of, this Agreement; or
    - b. conducting business as a sole proprietorship.
  - (iii) all the information provided by You is true and accurate;
  - (iv) You entering into and the performance of Your obligations under this Agreement will not conflict with or violate the provisions of any agreement to which You are party or breach Applicable Laws;
  - (v) You are not a party, and will not become a party, to any agreement with an iGaming operator, including but not limited to operators which provide online casino, sportsbook, daily fantasy sports, or other related internet gaming services, without such iGaming operator holding the necessary license with the provincial government's applicable gaming authority;
  - (vi) You have, and will have throughout the Term, all approvals, permits and licenses (which includes but is not limited to any approvals, permits and licenses necessary from any applicable regulator) required to enter this Agreement, provide the Services, or receive payment under this Agreement;
  - (vii) You have read and understood PointsBet's terms and conditions, a copy of which has been provided to You and is also available at: <https://on.pointsbet.ca/terms-and-conditions>;
  - (viii) You have evaluated the Laws relating to Your activities and obligations hereunder and You have independently concluded that You can enter this Agreement and fulfill Your obligations hereunder without violating any Applicable Laws;
  - (ix) You own or are authorized to operate the Affiliate Platforms, as further described in Schedule B; and
  - (x) You have reviewed and understand the requirements set forth in Schedule A.
- (b) POINTSBET MAKES NO REPRESENTATION THAT THE OPERATION OF ITS WEBSITES WILL BE UNINTERRUPTED OR ERROR-FREE AND WILL NOT BE LIABLE FOR THE CONSEQUENCES OF ANY INTERRUPTIONS OR ERRORS.
- (c) NO OTHER REPRESENTATIONS OR WARRANTIES; NON-RELIANCE. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS SECTION 11:



- (i) NEITHER PARTY TO THIS AGREEMENT, NOR ANY OTHER PERSON ON SUCH PARTY'S BEHALF, HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY, EITHER ORAL OR WRITTEN, WHETHER ARISING BY LAW, COURSE OF DEALING, OR COURSE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED; AND
- (ii) EACH PARTY ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY THE OTHER PARTY, OR ANY OTHER PERSON ON SUCH PARTY'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 11.

## 12. Confidentiality; Feedback.

- (a) Except as and to the extent required by Law, each Party will keep confidential any Confidential Information obtained from the other Party in connection with this Agreement and shall employ commercially reasonable measures to safeguard the confidentiality of Confidential Information which such measures shall be no less than the measures such Party uses to protect the confidentiality of its own Confidential Information.
- (b) Affiliate shall not make any public announcement with respect to any aspect of this Agreement or Your relationship with PointsBet without the prior written approval of PointsBet.
- (c) Upon a written request from the disclosing Party ("**Disclosing Party**"), the receiving Party ("**Receiving Party**") will either return to the Disclosing Party or destroy (at the Receiving Party's choice) all Confidential Information obtained by the Receiving Party from the Disclosing Party in connection with this Agreement and shall destroy all written materials, memoranda, notes and other writings prepared which are based upon or otherwise reflect the information or the relevant portions thereof. Any information not returned or destroyed, including without limitation any oral information, shall remain subject to the confidentiality and limited use obligations of this Agreement.
- (d) The confidentiality and limited use provisions of this Agreement shall not apply to any Confidential Information which:
  - (i) was already in the lawful possession of the Receiving Party at the time of such disclosure unless such possession arose as a result of a breach of confidence;
  - (ii) is or comes into in the public domain other than as a result of the breach of this Agreement;
  - (iii) is obtained by the Receiving Party from a bona fide third party having no apparent restraint on its free right of disposal of such information; or
  - (iv) is or has already been independently generated by the Receiving Party as evidenced by documentary records.



- (e) The Receiving Party shall use the Disclosing Party's Confidential Information solely for the purposes of this Agreement and shall not otherwise use nor disclose or disseminate any such Confidential Information to any other party at any time.
- (f) During the Term, Affiliate may provide feedback to PointsBet about PointsBet's products and services. Unless PointsBet otherwise agrees in writing, Affiliate agrees that PointsBet shall own all feedback, comments, suggestions, ideas, concepts and changes that Affiliate provides to PointsBet regarding PointsBet's products and services (collectively the "**Feedback**") and Affiliate hereby assigns to PointsBet all of Affiliate's right, title and interest thereto. Affiliate will not knowingly provide to PointsBet any Feedback that is subject to third party intellectual property rights. Affiliate agrees to cooperate fully with PointsBet with respect to signing further documents and doing such other acts as are reasonably requested by PointsBet to confirm that PointsBet owns the Feedback and to enable PointsBet to register and/or protect any associated intellectual property rights in and to the Feedback.

### **13. Choice of Law; Forum.**

This Agreement and all related documents (including all exhibits attached hereto) and any matters relating hereto shall be governed by and construed in accordance with the laws of the province of Ontario without regard to conflict of laws principles. The federal and provincial courts located in the city of Toronto shall have exclusive jurisdiction over any dispute arising out of or relating to this Agreement and the transactions contemplated thereby.

### **14. Assignment.**

Affiliate may not assign, transfer, or delegate this Agreement or Affiliate's rights or obligations hereunder, by operation of law or otherwise, in whole or in part, without PointsBet's express prior written consent, to be granted or withheld in PointsBet's sole discretion. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the Parties and their respective successors and assigns. Affiliate may not sub-contract or enter any arrangement whereby another person is to perform any or all of Your obligations under this Agreement.

### **15. Miscellaneous.**

- (a) Amendment; Waiver. This Agreement may only be amended by the written consent of both Parties, and any provision hereof may be waived only by a document signed by the Party against which the waiver is sought to be enforced.
- (b) Invalid Provisions. If any provision of this Agreement is ever held to be invalid or unenforceable, that provision will be severed from the rest of this Agreement, and all of the other provisions of this Agreement will remain in effect but will be amended by the Parties to the extent possible to result in this Agreement having the same relative economic benefits





and detriments to the Parties as existed before the severance of the invalid or unenforceable provision.

- (c) Survival. The obligations of the Parties under Sections **Error! Reference source not found. (Limitation of Liability)**, 9 (**Indemnification**), 11 (**Representations and Warranties**), 12 (**Confidentiality; Feedback**), 13 (**Choice of Law; Forum**) and this Section 15 will survive the termination or expiration of this Agreement and, with respect to any Section that requires reporting, retention of records, audit rights or payment or any other action after the end of the Term, those obligations shall also survive until fulfilled.
- (d) Entire Agreement. This Agreement, including the related exhibits attached hereto, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein and therein and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.
- (e) Counterparts; Electronic Signatures. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one, and the same, document. Electronically transmitted signatures shall have the same force and effect as originals.
- (f) Independent Legal Advice. The Affiliate acknowledges that it has been afforded the opportunity to obtain independent legal advice and confirms by the execution and delivery of this Agreement that they have either done so or waive their right to do so in connection with entering into of this Agreement.
- (g) Communications; Notices. All communications and notices which are required or otherwise provided under this Agreement shall be in writing and shall be deemed given when delivered (i) by hand, (ii) by registered or certified mail, postage prepaid, return receipt requested; (iii) by a nationally recognized overnight courier service; or (iv) by electronic mail, to the respective physical addresses set forth above. For electronic mail, to the email addresses set forth below:  
  
**For PointsBet:** [steve.inglis@pointsbet.ca](mailto:steve.inglis@pointsbet.ca)  
**For Affiliate:** \_\_\_\_\_
- (h) No Contra Preferentum. The Parties acknowledge that they have reviewed and participated in settling the terms of this Agreement and they agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting parties is not applicable in interpreting this Agreement.



IN WITNESS WHEREOF, the Parties have executed this Agreement on the Effective Date.

**Signed** for and on behalf of

**PointsBet Canada Operations 1 Inc.**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Signed** for and on behalf of

\_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



#### Schedule A

##### **Compliance with iGaming-Related Marketing and Advertising Requirements.**

Affiliate will ensure that all advertising, marketing materials and communications made by Affiliate or by any of the Affiliate's Related Entities in connection with this Agreement will:

- (a) not:
  - (i) be based on themes, or use language, intended to appeal primarily to minors (under 19 years old);
  - (ii) appear in media and venues, including on websites, and in digital or online media, directed primarily to minors (under 19 years old), or where most of the audience is reasonably expected to be minors;
  - (iii) contain cartoon figures, symbols, role models, and/or celebrity/entertainer endorsers whose primary appeal is to minors;
  - (iv) imply that gaming, betting, or other forms of gambling is required in order to fulfill family or social obligations or solve personal problems;
  - (v) promote gaming, betting, or other forms of gambling as an alternative to employment, as a financial investment, or as a requirement for financial security;
  - (vi) imply that chances of winning increase the longer one plays, the more one spends or suggest that skill can influence the outcome (for games where skill is not a factor);
  - (vii) contain endorsements by Affiliate that suggest that participating in gaming, betting, or other forms of gambling has contributed to Affiliate's success;
  - (viii) encourage play as a means of recovering past gaming, betting, gambling or other financial losses;
  - (ix) portray, suggest, condone or encourage gaming behaviour that is socially irresponsible or could lead to financial, social or emotional harm;
  - (x) suggest that gaming, betting, or other forms of gambling can provide an escape from personal or professional problems;



- (xi) portray gaming, betting, or other forms of gambling as indispensable or as taking priority in life (e.g., over family, friends or professional or educational commitments);
- (xii) suggest that gaming can enhance personal qualities (e.g., that it can improve self-image or self-esteem, or is a way to gain control, superiority, recognition or admiration);
- (xiii) suggest peer pressure to gamble nor disparage abstention;
- (xiv) link gaming to seduction, sexual success, or enhanced attractiveness;
- (xv) portray gaming in a context of toughness or link it to resilience or irresponsible play;
- (xvi) suggest gaming is a rite of passage;
- (xvii) communicate any inducements, bonuses, or credits relating to gaming, betting, or other forms of gambling;

(A) for greater clarity:

- (1) an inducement includes any offer that may persuade or encourage a person to participate, or to participate frequently, in any gaming activity. Examples include: sign-up offers, deposit offers, offer of a reward, bonus or "boosted" odds, refund/stake-back offers, multi-bet offers, or winnings paid on losing bets. Please note that this is not an exhaustive list;
- (2) this restriction applies whether inducements are advertised directly or indirectly through general references that invite individuals or the general public to learn more about them on the gaming site, and applies whether the inducements are real or perceived, based on what players could expect from viewing the advertisement;
- (3) advertising covered by this prohibition includes any communication of the inducement, whether verbal, written, or otherwise, regardless of the chosen communication channel (including, among other things, links and descriptions, player referrals, internet search engine results, chat rooms, etc.).



- (xviii) target its marketing or advertising of PointsBet's services or products to non-Ontario residents or individuals physically located outside of the Province of Ontario, with all such marketing and advertising to include a statement that such marketing or advertising is intended only for Ontario residents or individuals physically located in the Province of Ontario, subject to any changes as required by relevant gaming authorities, including the Alcohol and Gaming Commission of Ontario and iGaming Ontario. For greater clarity, Affiliate will not state or suggest that non-Ontario residents or individuals physically located outside of the Province of Ontario can participate in or use PointsBet's services or products; and
- (b) comply with any other requirements that PointsBet provides to Affiliate in writing.
- (c) only be conducted on the Affiliate Platforms unless prior written consent is provided by PointsBet.



**Schedule B**

<b>Affiliate Platforms(s)</b>	<b>Website</b>	<b>Instagram</b>	<b>Twitter</b>	<b>Facebook</b>	<b>YouTube</b>	<b>Other</b>
<b>Identifier</b>						