

July 23, 2024 Update

SHIPPIT PARTNER PROGRAM AGREEMENT

To become a Partner, you must create a Partner Account by providing all information indicated as required.

By using the Partner Platform, participating in any Partner Program activities, or signing up for a Partner Account, you agree to be bound by the applicable sections of the Partner Program Agreement (agreement).

The agreement is between you, as Partner, and Shippit and Shippit's related entities. Each a 'Party', and together the 'Parties'.

Shippit reserves the right to update and change the Agreement by posting updates and changes here: <https://www.shipp.it.com/partner-program-agreement/>. If a significant change is made, or one that materially affects you, we will provide reasonable notice by email and you will be able to immediately terminate this agreement without penalty.

Any reference to the agreement includes all terms and documents incorporated by reference.

This agreement addresses different types of Partner activities:

- Part A applies to all Partners (Referral Partners).
- Part B applies only to Developer Partners.

If you do not participate in the partner activities described in Part B then this Part of the Agreement will not apply to you.

You must read and accept all of the terms and conditions contained in this agreement, including Shippit's Acceptable Use Policy (if applicable), before you may become a Partner.

Some types of Shippit Partner Program activities may require that you agree to additional terms (Additional Terms), which will be made known to you at the relevant time (and if those Additional Terms are not accepted by you then you must not engage in those activities). Such Additional Terms are incorporated into this Agreement by reference.

This Part A of the agreement applies to the Partners who are 'Referral Partners'.

1. *A Referral Partner is a Partner who:*

- (a) *Has registered and been approved for a Shippit partner account via the Shippit partner program page; and*

- (b) *Promotes the Shippit service by Referring Prospective Customers to Shippit via the Shippit Partner Portal, by completing a lead submission form at www.shipp.it.com/partners, or by contacting a Shippit Partnerships Manager.*

PART A

1. Definitions and interpretation

The definitions and interpretation that apply to this agreement are set out in Schedule 2.

1. Commencement and term

This agreement starts on the Commencement Date and ends when either party gives to the other party 60 days' written notice to terminate the agreement, unless terminated earlier in accordance with 16.

2. Appointment and referrals

- 2.1 Shippit appoints the Partner on a non-exclusive basis to identify Prospective Clients for Shippit in the Territory and to make Referrals of such persons on the terms of this agreement.
- 2.2 The Partner will refer Prospective Clients to Shippit via the Partner Portal or by email to the Shippit Partnerships Manager.
- 2.3 The Partner may approach Prospective Clients, or make any Referrals in respect of them, without Shippit's prior approval.
- 2.4 The Partner must make Referrals of at least two Prospective Clients within each 12-month period from the Commencement Date to qualify for payment of Commission.
- 2.5 The Partner must not to allow its interests to conflict with its duties under this agreement. If the Partner reasonably suspects it has a conflict of interest it must notify Shippit as soon as practicable.
- 2.6 The Partner must comply with all reasonable and lawful instructions of Shippit.
- 2.7 The Partner must report in writing to Shippit from time to time on progress made with Prospective Clients.
- 2.8 Where a Prospective Client is Referred by the Partner and that Prospective Client later introduces Shippit to a third party who purchases Services from Shippit, the Partner is not, by virtue of the initial Referral, deemed to have Referred the third party to Shippit.

3. Limited scope of authority

- 3.1 Shippit does not grant authority to the Partner, and the Partner must not hold itself out as having authority, or permit any person to hold itself out, as being authorised to bind Shippit in any way. The Partner must not do any act which might reasonably create the impression that the Partner is so authorised.

3.2 The Partner must:

- (a) disclose to each Prospective Client that it is a referral agent for Shippit and that it has no authority or ability to negotiate or vary the Services or the terms of the Services or enter into any contract on behalf of Shippit;
- (b) not negotiate with Prospective Clients any terms for the provision of Services by Shippit;
- (c) not make or enter into any contracts or commitments or incur any liability for or on behalf of Shippit, including for the provision of the Services or the price for them; and
- (d) not, without the prior written approval of Shippit make or give any representations, warranties or other promises concerning the Services.

4. Partner marketing activities

4.1 The Partner may:

- (a) publicly present itself as a Shippit partner and reference the Shippit brand in marketing materials, websites, and communications, in accordance with Shippit's Brand Guidelines available at <https://www.shippit.com/brand-guidelines/>; and
- (b) organise and run marketing events promoting Shippit's services, with or without Shippit's direct involvement, subject to obtaining Shippit's prior approval for all such events. Partner agrees it will bear all costs and expenses related to Partner's marketing or promotion of Shippit or any Shippit Related Entity.

4.2 The Partner agrees that it will not:

- (a) send any email regarding Shippit or to any individual or entity that has not requested such information;
- (b) always include Partner's contact information and 'unsubscribe' information in any email regarding Shippit, the Service or the Shippit platform; and
- (c) not imply that such emails are being sent on behalf of Shippit.

4.3 The Partner agrees it will not:

- (a) engage in any marketing methods with respect to Shippit, including but not limited to online and offline methods such as broadcast, telemarketing, SMS/text message, email communications, social media or video platforms;
- (b) use malware, spyware or any other aggressive advertising or marketing methods in any of its dealings relating to Shippit;
- (c) make any false, misleading or disparaging representations or statements with respect to Shippit or the Services provided by Shippit;
- (d) prior to the termination of this Agreement in accordance with its terms, target communications to Merchants solely on the basis of the intended recipient being a Merchant and with the intention of migrating Merchants away from the Services;
- (e) copy, resemble or mirror the look and feel of Shippit's websites, Shippit Trademarks or Services or otherwise misrepresent Partner's affiliation with Shippit;

- (f) buy search engine advertising, trademarks (or other Intellectual Property assets), or domain names that mention or use Shippit's brand; or
- (g) engage in any other practices which may adversely affect the credibility or reputation of Shippit, including but not limited to using any website in any manner, or having any content on any website, that:
 - (i) uses aggressive or low-quality marketing, including marketing services that are unrelated to Shippit or the Partner's services,
 - (ii) promotes sexually explicit materials, violence, discrimination based on race, sex, religion, nationality, disability, sexual orientation or age, or any illegal or objectionable activities, or
 - (iii) violates any intellectual property or other proprietary rights of any third party; or
 - (iv) violates the Acceptable Use Policy.

5. Intellectual Property

5.1 The Partner may promote Shippit using Shippit's Creative Materials provided to the Partner via the Partner Portal. Any Intellectual Property Rights subsisting in these Creative Materials remains the property of Shippit and the Partner agrees it will not alter, amend or adapt the Creative Materials without Shippit's prior written consent. No rights of any ownership of the Creative Materials will at any time vest in the Partner, even if the Partner has been authorised by Shippit to make changes or modifications to the Creative Materials.

6. Calculation of Commission

6.1 The Partner is entitled to Commission if:

- (a) a Prospective Client Referred by the Partner enters into a Relevant Contract; and
- (b) the Partner has made Referrals of at least two Prospective Clients within each 12-month period from the Commencement Date.

6.2 Shippit must promptly notify the Partner via the Partner Platform of the following:

- (a) the date it enters into a Relevant Contract;
- (b) the value of the Relevant Contract; and
- (c) any resulting Commission that will be paid to the Partner.

6.3 The amount of Commission payable to the Partner is to be calculated after a payment request in relation to the use of the Services under a Relevant Contract has been received by Shippit, at the rate of 10% of Shippit's Subscription Revenue and Usage Revenue received under each Relevant Contract (as it may be renewed, extended or amended) during a period of 1 year from the Relevant Contract's commencement date.

6.4 No Commission or other compensation is payable:

- (a) in relation to a contract entered into between Shippit and a third party in the circumstances described in 2.8; or

(b) beyond the first 1 year term of the Relevant Contracts.

- 6.5 Shippit agrees to make Commissions earned on Subscription Revenue available to be claimed by the Partner after 90 days, provided the Relevant Contract remains on foot during that period.
- 6.6 Shippit agrees to make Commissions earned on Usage Revenue available to be claimed by the Partner after 1 year provided the Relevant Contract remains on foot during that period.
- 6.7 Shippit may reasonably request a Partner provide further information on how a Prospective Client was sourced including without limitation information with respect to traffic sources and methods used to acquire a Prospective Client. Shippit reserves the right to assess the legitimacy and qualification of such Prospective Client for the purposes of determining whether a Commission is payable for such Prospective Client.

7. Payment of Commission

- 7.1 All Commissions claimed by the Partner will be paid out at the end of that current quarter.
- 7.2 If the total sum of all Commissions claimed by the Partner in a quarter are less than \$1000 AUD (one thousand Australian dollars) then the amount will be held over until the end of the following quarter.
- 7.3 The Partner must invoice Shippit for the Commission, together with any applicable GST.
- 7.4 The due date for payment by Shippit of such Commission is 60 days from date of receipt of the invoice.
- 7.5 Commission is payable to the Partner either in the currency in which it is received by Shippit or in Australian dollars, at Shippit's discretion.
- 7.6 Termination or expiry of this agreement does not affect Shippit's obligation to pay Commissions to the Partner in relation to Relevant Contracts entered into during the Term.

8. Records and disputes

- 8.1 Shippit agrees to keep separate accounts and records giving correct and adequate details of all:
 - (a) Relevant Contracts entered into by Shippit;
 - (b) payments received under any Relevant Contract; and
 - (c) deductions made in the calculation of all Subscription Revenue or Usage Revenue.
- 8.2 Shippit must permit the duly appointed representatives of the Partner, acting reasonably and at the Partner's cost, no more than once in any 12-month period, to inspect all such accounts and records and to take copies of them.

8.3 The parties must refer to Shippit's auditors for settlement any dispute as to the amount of Commission payable by Shippit to the Partner. The decision of Shippit's auditors will be final and binding on both parties, except in the case of manifest error.

9. Company's obligations towards the Partner

9.1 Shippit must provide to the Partner any information the Partner reasonably requires carrying out its duties, including marketing information for and details of the Services, information about Shippit, and if Shippit suspends or ceases to perform any of the Services.

9.2 Shippit is not responsible for any expenses incurred by the Partner unless such expenses have been agreed by Shippit in writing, in advance.

9.3 Shippit is not under any obligation to:

- (a) follow up any Referral made by the Partner;
- (b) enter into a Relevant Contract; or
- (c) continue to provide any of the Services (in whole or in part).

10. Compliance

In performing its obligations under the agreement, the Partner must, and must procure that all of its officers, directors, employees, agents, contractors and Related Bodies Corporate, comply with:

- (a) all Applicable Laws; and
- (b) the Mandatory Policies.

11. Anti-bribery

11.1 In performing its obligations under the agreement, the Partner must, and must procure that all of its officers, directors, employees, agents, contractors and Related Bodies Corporate (each an **Associate**):

- (a) comply with all applicable anti-bribery and anti-corruption laws, statutes, regulations regulatory policies from time to time in force, including but not limited to the:
 - (i) *Criminal Code Act 1995* (Cth) (and any amendments to it currently in force); and
 - (ii) state and territory legislation including the *Crimes Act 1900* (NSW), *Crimes Act 1958* (Vic), *Criminal Law Consolidation Act 1935* (SA), *Criminal Code Act 1899* (Qld), *Criminal Code* (WA), *Criminal Code Act 1924* (Tas), *Criminal Code 2002* (ACT) and *Criminal Code Act 1983* (NT)

(collectively, the **Applicable Anti-Bribery Laws**);

- (b) not engage in any activity, which includes not making any facilitation payment, that would constitute an offence under any international foreign bribery laws;
- (c) promptly report to Shippit any request or demand for any undue financial or other advantage of any kind received by the Partner in connection with the performance of this agreement;

- (d) when requested by Shippit from time to time and then annually, certify to Shippit in writing signed by an authorised representative of Shippit that Shippit is in compliance with this 11; and
 - (e) keep, in paper and electronic form, at its normal place of business, detailed, accurate and up-to-date records that describe in reasonable detail all expenditures incurred by it in connection with this agreement, or that may be required by any Applicable Anti-Bribery Laws.
- 11.2 If Shippit reasonably determines at any time, that there is credible evidence that the Partner or any of its Associates has violated any Applicable Anti-bribery Laws, or has not complied with the “Partner Portal Acceptable Use Policy” (if applicable and made available to Partner) Shippit has the right to suspend all access to the Partner Portal and any payments due under this agreement while it investigates. The Partner must co-operate with Shippit's investigation on receipt of a good faith request from Shippit.
- 11.3 If, acting reasonably and in good faith, Shippit determines or becomes aware that the Partner or any of its Associates have violated any Applicable Anti-bribery Laws or the Anti-Bribery Policy, Shippit has the right to terminate this agreement with immediate effect and without payment due of any kind except for Commission already invoiced in accordance with 7.

12. Data protection and privacy

- 12.1 Each party agrees it is (or agrees to be bound as if it is) an APP Entity and complies with and will continue to comply with the Privacy Act and all other applicable privacy laws.
- 12.2 If either party collects, holds, uses or discloses Personal Information in the course of or relating to this agreement, that party must:
- (a) handle all Personal Information in accordance with that party's privacy policy;
 - (b) only use Personal Information for the purpose of performing its obligations under this agreement; and
 - (c) not disclose Personal Information to any third party (including any subcontractor) without the other party's prior written consent or as required by law.
- 12.3 Each party warrants that it:
- (a) will not provide any Sensitive Information to the other party; and
 - (b) has:
 - (i) made all necessary notifications required by APP 5 to; and
 - (ii) obtained all necessary consents required by APP 6 from, the individuals whose Personal Information it is disclosing to the other party in the course of this agreement to enable the other party to lawfully use the Personal Information and perform its obligations in accordance with this agreement.
- 12.4 If either party becomes aware, or there are reasonable grounds to suspect, that a Data Incident has occurred, that party must:

- (a) immediately take reasonable steps to contain the Data Incident and prevent any further serious harm to affected individuals;
- (b) immediately notify the other party in writing stating the:
 - (i) nature and details of the Data Incident;
 - (ii) specific Personal Information affected; and
 - (iii) actions taken by the relevant party at 13.4(a).
- (c) identify whether the Data Incident is an Eligible Data Breach by conducting a thorough investigation of the Data Incident within 20 days of becoming aware of the Data Incident (**Data Breach Investigation**);
- (d) provide a copy of the report of the Data Breach Investigation in 12.4 to the other party on completion;
- (e) engage in discussions with the other party regarding:
 - (i) the conduct and outcomes of the Data Breach Investigation; and
 - (ii) in the case of a Data Incident, which party will make the relevant notifications under the Privacy Act; and
- (f) where it is agreed by the parties that the other party will make the relevant notifications, approve the notifications before they are made (such approval to be given promptly and not to be unreasonably withheld).

12.5 Each party will ensure that its employees, contractors or advisors who are required to handle Personal Information in the course of this agreement are made aware of the obligations of that party in this clause 12.

12.6 Each party is responsible for the acts and omissions of its respective personnel (including subcontractors and advisors), and a breach by any such personnel is a breach by that party.

12.7 The Partner:

- (a) acknowledges that Shippit is reliant on the Partner for direction as to the extent to which Shippit is entitled to use Personal Information disclosed to it in the course of and for the purpose of this agreement; and
- (b) indemnifies Shippit for any reasonable costs, damages or losses arising under claim brought by any third party in connection with any act or omission by Shippit in relation to a third party's Personal Information to the extent that such act or omission resulted directly from the Partner's instructions or the Partner's breach of this agreement.

13. Representations and warranties

Each party represents and warrants to the other that:

- (a) it has full authority to enter into this agreement and is not bound by any agreement with any third party that adversely affects this agreement; and
- (b) it has and will maintain throughout the Term, all necessary powers, authority and consents to enter into and fully perform its obligations under this agreement.

14. Limitation of liability

14.1 Nothing in this agreement limits or excludes a party's liability:

- (a) for death or personal injury caused by its negligence or wilful misconduct or that of its employees, agents or subcontractors as applicable;
- (b) for fraud or fraudulent misrepresentation by it or its employees, agents or subcontractors as applicable; or
- (c) which cannot be limited or excluded under any Applicable Law.

14.2 Subject to 14.1, each party excludes any liability to the other, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connection with this agreement, including any:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of production;
- (d) loss arising in connection with a disclosure where the disclosure is expressly permitted under this agreement;
- (e) loss of business opportunity;
- (f) loss of agreements or contracts;
- (g) loss of or damage to goodwill;
- (h) loss of reputation; or
- (i) loss of use or corruption of software, data or information.

14.3 Subject to 14.1, each party's maximum aggregate liability to the other party for any loss or damage or injury arising out of or in connection with the performance or non-performance of this agreement, including any breach of this agreement however arising, in tort (including negligence), under any statute, custom, law or any other basis, is limited to the fees payable to Shippit by Partner in the 12 (twelve) months prior to the date of breach.

15. Termination

15.1 Without affecting any other right or remedy available to it, either party (the non-defaulting party) may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any term of this agreement and either:
 - (i) the breach is irremediable; or
 - (ii) the breach is remediable and the other party fails to remedy that breach within a period of 30 days after the other party has, or is deemed to have, received written notice requesting it to do so;

- (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) an Insolvency Event occurs in relation to the other party; or
- (e) any warranty given by the other party in 14 of this agreement is found to be untrue or misleading.

15.2 For the purposes of 15.1(b), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:

- (a) a substantial portion of this agreement; or
- (b) any of the obligations set out in 3

over the term of this agreement. In deciding whether any breach is material no regard will be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

16. Consequences of termination

16.1 On termination or expiry of this agreement, Schedule 2 (Definitions and interpretation), 4.1 (Calculation of Commission), 7 (Payment of Commission), 8 (Records and disputes), se 14 (Limitation of liability), this 16 (Consequences of termination), 17 (Confidentiality) to 26 (Governing law and jurisdiction) survive termination or expiry of this agreement together with any other term which by its nature is intended to do so.

16.2 Termination or expiry of this agreement does not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

17. Confidentiality

17.1 Each party (**Recipient**) must keep secret and confidential and not disclose any information relating to another party or its business (which is or has been disclosed to the Recipient by the other party, its representatives or advisers) or the terms of this agreement, except:

- (a) where the information is in the public domain as at the date of this agreement (or subsequently becomes in the public domain other than by breach of any obligation of confidentiality binding on the Recipient);
- (b) if the Recipient is required to disclose the information under any Applicable Law or the rules of any recognised securities exchange, provided that the Recipient has consulted with the provider of the information as to the form and content of the disclosure;
- (c) if disclosure is made to its officers, employees and professional advisers to the extent necessary to enable the Recipient to properly perform its obligations under this agreement, in which case the Recipient must ensure that such persons keep the information secret and confidential and do not disclose the information to any other person;

- (d) where the disclosure is required for use in legal proceedings regarding this agreement; or
 - (e) if the party to whom the information relates has consented in writing before the disclosure.
- 17.2 Each Recipient must ensure that its directors, officers, employees, agents, representatives and Related Bodies Corporate comply in all respects with the Recipient's obligations under this 17.
- 17.3 Each party may from time to time in its discretion share with the Recipient a Client List. The partner agrees that clause 17.1 applies to the Recipient in relation to the Client List.

18. Announcements

- 18.1 Where an announcement is required under any Applicable Law or the rules of any recognised securities exchange, or by any court or other authority of competent jurisdiction, the party required to make the announcement must promptly notify the other parties. The party concerned must make all reasonable attempts to agree the contents of the announcement before making it.

19. GST

- 19.1 Words used in this 19 that have a defined meaning in the GST Law have the same meaning as in the GST Law unless the context indicates otherwise.
- 19.2 Unless expressly stated otherwise, the consideration for any supply under or in connection with this agreement is exclusive of GST.
- 19.3 To the extent that any supply made under or in connection with this agreement is a taxable supply (other than any supply made under another agreement that contains a specific provision dealing with GST), the amount payable by the recipient is the consideration provided under this agreement for that supply (unless it expressly includes GST) plus an amount (**additional amount**) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.
- 19.4 The recipient must pay the additional amount at the same time as the consideration to which it is referable, and on the issue of an invoice relating to the supply.
- 19.5 Whenever an adjustment event occurs in relation to any taxable supply to which 19.3 applies:
- (a) the supplier must determine the amount of the GST component of the consideration payable; and
 - (b) if the GST component of that consideration differs from the amount previously paid, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.

- 19.6 If either party is entitled under this agreement to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with this agreement, the reimbursement or indemnity payment must not include any GST component of the cost or expense to the extent that the cost or expense is the consideration for a creditable acquisition made by the party being reimbursed or indemnified, or by its representative member.

20. Relationship of the parties

- 20.1 Nothing in this agreement gives a party authority to bind the other party in any way.
- 20.2 Nothing in this agreement imposes any fiduciary duties on a party in relation to the other party.

21. Variation

An amendment or variation of any term of this agreement must be in writing and agreed by each party.

22. Assignment and other dealings

- 22.1 No party may assign, novate, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under this agreement without the prior written consent of the other party whose consent must not be unreasonably withheld.
- 22.2 A breach of 22.1 by a party entitles the other party to terminate this agreement.
- 22.3 22.2 does not affect the construction of any other part of this agreement.

23. No waiver

- 23.1 No party may rely on the words or conduct of any other party as being a waiver of any right, power or remedy arising under or in connection with this agreement unless the other party or parties expressly grant a waiver of the right, power or remedy. Any waiver must be in writing, signed by the party granting the waiver and is only effective to the extent set out in that waiver.
- 23.2 Words or conduct referred to in 23.1 include any delay in exercising a right, any election between rights and remedies and any conduct that might otherwise give rise to an estoppel.

24. Severability

- 24.1 If the whole or any part of a provision of this agreement is or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.
- 24.2 24.1 does not apply if the severance of a provision of this agreement in accordance with that clause would materially affect or alter the nature or effect of the parties' obligations under this agreement.

25. Entire agreement

This agreement states all the express terms agreed by the parties about its subject matter. It supersedes all prior agreements, understandings, negotiations and discussions in respect of its subject matter.

26. Governing law and jurisdiction

26.1 This agreement is governed by the law in force in New South Wales, Australia.

26.2 Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in New South Wales, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement.

26.3 Each party irrevocably waives any right it has to object to the venue of any legal process in the courts described in 26.2 on the basis that:

- (a) any proceeding arising out of or in connection with this agreement has been brought in an inconvenient forum; or
- (b) the courts described in 26.2 do not have jurisdiction.

Schedule 1 Mandatory Policies

The Mandatory Policies are:

- Privacy Policy
- Partner Portal Acceptable Use Policy
- Shippit Brand Guidelines

Schedule 2 Definitions and Interpretation

1. Capitalised terms or expressions used in this agreement have the meanings set out in this clause:

APP means an Australian Privacy Principle as defined in the Privacy Act.

APP Entity has the meaning given in the Privacy Act.

Applicable Anti-Bribery Laws means as that term is defined in clause 11.1.

Applicable Laws means the laws of Australia and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the exercise of the parties' rights or the performance of their obligations under this agreement.

Associate means as that term is defined in clause 11.1.

Business Day means a day on which banks are open for business in Sydney, other than a Saturday, Sunday or public holiday in that city.

Client List means a list of the names of (but not commercially sensitive information or trade secrets of, including, trade, market, financial information, or pricing of, or information about the manner in which goods or services are provided to) all Prospective Clients, or existing customers or clients of each party that have current ongoing agreements on foot with each party, (irrespective of whether such client or Prospective Client was Referred under this agreement).

Commencement Date means the date on which the Partner is granted access to the Partner Portal.

Commission has the meaning given in 6.3.

Corporations Act means the *Corporations Act 2001* (Cth).

Creative Materials means the Shippit marketing materials made available via the Partner Portal including Shippit's trade marks and other material in which Intellectual Property Rights subsist.

Data Breach Investigation means an investigation as required to be carried out in accordance with 12.4(c).

Data Incident means an "eligible data breach" (as that term is defined in the Privacy Act) that has, or is reasonably suspected to have, occurred in respect of any Personal Information collected, held, used or disclosed in the course of or relating to this agreement.

Government Agency means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as 'GST Law' in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth) or the *Goods and Services Tax Act 1985* (New Zealand), as applicable.

Insolvency Event means the occurrence of any one or more of the following events in relation to a party:

- 1a) it is insolvent as defined by section 95A of the Corporations Act as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under an applicable law (including under section 459C(2) or section 585 of the Corporations Act) or otherwise is,

or states that it is, unable to pay all its debts as and when they become due and payable;

1b) any step is taken to appoint a receiver, a receiver and manager, a liquidator or a provisional liquidator or other like person to it or any of its assets, operations or business;

1c) an administrator is appointed to it under section 436A, section 436B or section 436C of the Corporations Act;

1d) a controller (as defined in section 9 of the Corporations Act) is appointed to it or any of its assets;

1e) an application is made to a court for an order, or an order is made, that it be wound up, declared bankrupt or that a provisional liquidator, receiver or receiver and manager be appointed, and that application is not withdrawn, struck out or dismissed within 15 Business Days of it being made;

1f) any step is taken to enter into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors[, in each case other than to carry out a reconstruction or amalgamation while solvent];

1g) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;

1h) it is taken to have failed to comply with a statutory demand under section 459F(1) of the Corporations Act;

1i) a notice is issued under section 601AA or section 601AB of the Corporations Act[and not withdrawn or dismissed within 15 Business Days;

1j) it ceases to carry on business or threatens to do so, other than in accordance with the terms of this agreement; or

1k) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the events set out in the above paragraphs of this definition.

Intellectual Property Rights means all intellectual property rights of any kind, in any jurisdiction, subsisting now or in the future (including, without limitation, business, company or trade names, domain names, patents, inventions, copyright, design rights, know-how, trade marks, the right to sue for passing off and rights to use, and protect the confidentiality of, confidential information), whether registered or unregistered, and including the rights to apply for or renew the registration of any such rights and any rights the subject of any lapsed application or registration.

Mandatory Policies means Shippit's business policies listed in **1** as amended by notification to the Partner from time to time.

Merchant means a client of Shippit that uses the Services (irrespective of whether that client was a Prospective Client that was Referred).

Partner Portal means Shippit's site available at: <https://shippit.my.site.com/s/>

Personal Information has the meaning given in the Privacy Act.

Privacy Act means the *Privacy Act 1988* (Cth).

Prospective Client means a person or company having its principal place of business in the Territory, to whom Shippit has not at any time previously provided the Services, and with whom Shippit has not been in bona fide negotiations to provide the Services in the six months before the Referral Date.

Referral means the provision to Shippit of the contact details of an employee at a Prospective Client who is known by one or more individuals at the Partner and is of sufficient seniority to authorise or recommend the purchase of the Services from Shippit. **Refer, Refers** and **Referred** are to be interpreted accordingly.

Referral Date means for each Prospective Client, the date during the term of this agreement on which the Partner first Refers such Prospective Client to Shippit.

Relevant Contract means a contract for the supply of Services entered into between Shippit and a Prospective Client who was Referred by the Partner.

Relevant Deductions means GST or other sales tax, any out of pocket expenses incurred by Shippit in providing the Services (for example, third party courier fees), and any discounts or rebates granted by Shippit.

Sensitive Information has the meaning given in the Privacy Act.

Services means the services provided by Shippit to its customers.

2. **Shippit APIs** means Shippit's "application programming interfaces" that enable the Partner applications to interact with Shippit's Services.
3. **Shippit Partnerships Manager** means the manager designated to that Partner by Shippit to manage the relationship between the Partner and Shippit.
4. **Subscription Revenue** means revenue which is earned through a monthly or annual Relevant Contract including but not limited to the Shippit "base subscription fees", "branded tracking fees", "location fees", or "premium support", less any Relevant Deductions.

Territory means Australia.

5. **Usage Revenue** is defined as revenue which is earned through a consumption model where users pay per transaction, including label fees, shipping net revenue, SMS net revenue or services attached to a delivery such as a returns or transit protection fee, less any Relevant Deductions.

2. In this agreement the following rules of interpretation apply, unless the contrary intention appears or context otherwise requires:
 - (a) headings and subheadings are for convenience only and do not affect the interpretation of this agreement;
 - (c) references to clauses, Schedules, annexures, appendices, attachments and exhibits are references to the clauses of, and the Schedules, annexures, appendices, attachments and exhibits to, this agreement;
 - (d) references to parties are references to the parties to this agreement;
 - (e) references to a party to any agreement or document include that party's permitted assignees and successors, including executors and administrators and legal representatives;
 - (f) words denoting the singular include the plural and words denoting the plural include the singular;
 - (g) words denoting any gender include all genders;

- (h) the word 'person' includes any individual, corporation or other body corporate, partnership, joint venture, trust, association and any Government Agency;
- (i) a reference to a body (other than a party to this agreement), whether statutory or not, that ceases to exist or has its powers or functions transferred to another body is a reference to the body that replaces it or that substantially succeeds to its powers or functions;
- (j) a reference to any agreement or document (including this agreement) includes any amendments to or replacements of that document;
- (k) a reference to a law includes:
 - (i) legislation, regulations and other instruments made under legislation and any consolidations, amendments, re-enactments or replacements of them;
 - (ii) any constitutional provision, treaty or decree;
 - (iii) any judgment; and
 - (iv) any rule or principle of common law or equity,and is a reference to that law as amended, consolidated, re-enacted, replaced or applied to new or different facts;
- (l) any promise, agreement, representation or warranty given or entered into on the part of two or more persons binds them jointly and each of them severally;
- (m) any promise, agreement, representation or warranty given or entered into on the part of two or more persons is for the benefit of them jointly and each of them severally;
- (n) no provision of this agreement will be construed adversely to a party because that party was responsible for the preparation of that provision or this agreement;
- (o) if a period of time begins on a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (p) a reference to time is a reference to Sydney time unless otherwise specified;
- (q) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (r) if any act is required to be performed under this agreement by a party on or by a specified day and the act is performed after 5.00 pm on that day, the act is deemed to be performed on the next day;
- (s) if any act is required to be performed under this agreement on or by a specified day and that day is not a Business Day, the act must be performed on or by the next Business Day;
- (t) a reference to an amount of dollars, Australian dollars, \$ or A\$ is a reference to the lawful currency of the Commonwealth of Australia, unless the amount is specifically denominated in another currency;
- (u) specifying anything in this agreement after the terms 'include', 'including', 'includes', 'for example', 'such as' or any similar expression does not limit the sense of the words, description, definition, phrase or

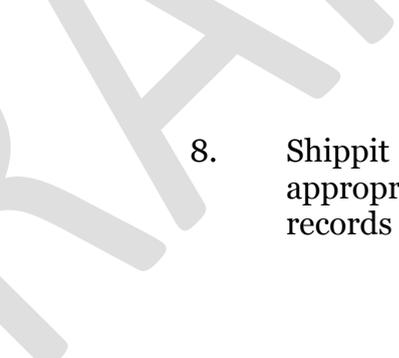
term preceding those terms unless there is express wording to the contrary;

- (v) this agreement includes all Schedules, annexures, appendices, attachments and exhibits to it;
- (w) a reference to **writing** or **written** includes email;
- (x) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (y) an agreement other than this agreement includes a deed, undertaking or legally enforceable agreement or understanding whether in writing or not; and

if there is any conflict between the terms of the main body of this agreement and the terms of this agreement's Schedules and attachments, the terms of the main body of this agreement will prevail.

Schedule 3 API Terms

1. Shippit grants Partner a worldwide, non-exclusive, royalty-free, non-transferable, non-sublicensable, revocable and limited license to use and make calls to Shippit APIs solely in connection with developing, implementing and distributing applications that integrates with Shippit's services, and solely in the manner described in the technical documentation at developer.shippit.com.
2. Shippit may:
 - (a) change or discontinue the availability of some or all of the Shippit APIs at any time for any reason with or without notice;
 - (b) set and enforce limits on Partner use of Shippit APIs (limiting the number of requests that you may make or the number of merchants you may serve), in its sole discretion;
 - (c) require a Partner to install or update any and all software to continue using Shippit APIs;
 - (d) remove access for an integration at any time for any reason;
 - (e) develop products or services that compete with Partner's products or services provided Shippit does not use Partner's Confidential Information; and
 - (f) monitor the use of Shippit APIs to ensure quality, improve Shippit products and services, and verify Partner compliance with terms.
3. If Partner is accessing and using the Shippit API by using Merchant API credentials, it may only do so with the express authorisation of the Merchant for the applicable Merchant store, and only for the purposes of providing Partner's application's service to the Merchant to whom the Merchant API credentials relate.
4. Partner must not, without Shippit's prior written consent:
 - (a) share the API Credentials with any third party;
 - (b) access the Shippit API by any means other than the API credentials provided by Shippit; or
 - (c) include code in integrations where that code is not related to provision of Shippit services.
5. Partner is solely responsible for its applications. Shippit is not liable for any fault in Partner's applications or any harm that may result from its installation or use.
6. Except where expressly stated by Shippit, Shippit will not provide assistance with the installation or use of the application.
7. Partner is solely responsible for any liability which may arise from a merchant's access to or use of the Application, including:
 - (a) the development, use, marketing or distribution of or access to the application, including support of the application; or
 - (b) Partner's access, use, distribution or storage of merchant data.

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8. Shippit has the right to audit, or to appoint an independent auditor under appropriate non-disclosure conditions to audit Partner's App, systems and records to confirm Partner's compliance with these terms.

PART B

This Part B of the agreement applies to the Partners who are 'Developer Partners'.

1. A Developer Partner is a Partner who:
 - (a) has registered and been approved for a Shippit partner account via the Shippit partner program page; and
 - (b) with Shippit's approval, accesses Shippit's APIs, and develops applications to integrate with the Shippit service.
2. Any fees payable for access to Shippit's APIs or application development will be agreed under a separate agreement between Shippit and the Developer Partner.
1. Developer Partner will comply with API term set out in Schedule 3 of the agreement.
2. The Partner may:
 - (a) access for the purpose of building technical integrations, provided such integrations are used in a manner that adheres to Shippit's API terms as set out in Schedule 3; and
 - (b) access certain subsets of Shippit data for use in research, planning, and forecasting activities, subject to a commercial license fee to be determined and agreed upon by both parties.