

## SHOPIFY AFFILIATE MARKETING PROGRAM TERMS

By participating in Shopify's affiliate marketing program (the "**Program**") or any Program activities, using the Platform (as defined below) or clicking "Sign Up" (or a similar box or button) when you sign up for an Affiliate Account (as defined below), you agree to be bound by the following Affiliate Program Agreement (the "**Agreement**"). The Agreement is between you, as Affiliate (as defined below, ), Shopify Inc. ("**Shopify Inc.**") and Shopify Commerce Singapore Pte. Ltd. ("**Shopify Asia**" and, together with Shopify Inc., "**Shopify**" and each a "**Shopify Entity**"). Each of Affiliate and Shopify are a "**Party**", and are together the "**Parties**". Failure to comply with any provisions of the Agreement may result in a loss and/or reduction of Fees (as defined below) and/or Commissions (as defined below), which decisions shall be made by Shopify in Shopify's sole discretion. Shopify reserves the right to update and change the Agreement, along with the electronic insertion order agreed to via the Platform for the provision of Referral Services pursuant to the Agreement (the "**Contract Terms**") , by posting updates and changes to the Shopify website and/or the Platform, as applicable, and/or by issuing new Contract Terms. If a significant change is made, we will provide reasonable notice by email, posting a notice to the Shopify website and/or the Platform, as applicable, and/or by issuing new Contract Terms. Any reference to the Agreement includes any and all terms and documents incorporated by reference.

This Agreement addresses different types of Affiliate activities. Part A applies to all Affiliates. Part B applies to Referral Affiliates. If you do not participate in Affiliate activities described in Part B, then that Part of the Agreement does not apply to you.

You must read, agree with and accept all of the terms and conditions contained in this Agreement, including [Shopify's Privacy Policy](#) and [Shopify's Acceptable Use Policy](#), before you may become an Affiliate. For the avoidance of doubt, [Shopify's Privacy Policy](#) and [Shopify's Acceptable Use Policy](#) form part of this Agreement and are incorporated by reference. For the purposes of the Program and this Agreement, all references to "Account" and "Services" in [Shopify's Acceptable Use Policy](#) will be deemed to refer to "Affiliate Account" and "Services or Affiliate's participation in the Program", respectively. You may also be required to agree to additional Contract Terms. In the event of a conflict or inconsistency between this Agreement and the Contract Terms, the Agreement will govern, to the extent of such conflict or inconsistency. In addition, some types of Program activities may require that you agree to additional terms ("**Additional Terms**"). Such Contract Terms and Additional Terms are incorporated into this Agreement by reference. In the event of conflict or inconsistency between this Agreement and the Additional Terms, the Additional Terms will govern, to the extent of such conflict or inconsistency.

### Part A - Terms Applicable to All Affiliates

#### 1. Definitions

Unless defined elsewhere in the Agreement, including the Contract Terms, capitalized terms set out in the Agreement are defined as follows:

**“Affiliate”** or **“You”** means an individual or entity that has agreed to the terms of this Agreement..

**“Affiliate Account”** means a Program account.

**“Customer”** means any individual that visits or transacts via the Merchant Store.

**“Customer Data”** means information (including personal information) relating to a Customer, including, but not limited to, order information, payment information, and account information.

**“Impact”** means Impact Radius, Inc.

**“Link”** or **“Links”** means text links, graphical hypertext links and other linking code obtained from the Platform which provide direct access to Shopify’s websites and may be included on Websites in accordance with the Agreement.

**“Merchant”** means an individual or business that uses the Service to sell products or services.

**“Merchant Agreement”** means the agreement entered into between an Affiliate and the Merchant governing the Merchant’s use of the Affiliate’s services.

**“Merchant Data”** means information (including personal information) relating to a Merchant, including but not limited to business, financial and product information and any Customer Data. Where Affiliate uses the Shopify API, Merchant Data may be delivered in the form of an API response.

**“Merchant Store”** means the Merchant’s commerce presence hosted by Shopify, including their online store and Point of Sale (POS). For clarity, a Merchant may have more than one Merchant Store.

**“Platform”** means the digital marketing platform owned and operated by Impact.

**“Referral Affiliate”** is an Affiliate who has registered for an Affiliate Account via the Platform and who promotes the Service by registering, and being approved by Shopify, for a Link to refer Merchants to Shopify via such Link.

**“Referred Merchant”** means any unique Merchant that: (a) has registered for a paid Shopify account; and (b) was introduced by an Affiliate that actively promoted the Service.

**“Service”** means the Shopify hosted commerce platform available via [www.shopify.com](http://www.shopify.com) and any associated websites, products or services offered by Shopify.

**“Shopify API”** is defined in the Shopify API Terms.

**“Shopify API Terms”** means the Shopify API License and Terms of Use available at [shopify.com/legal/api-terms](https://shopify.com/legal/api-terms).

**“Shopify Creative”** means any marketing or promotional materials relating to Shopify or Shopify brands, including but not limited to copyrighted content, hypertext links, domain names, icons, buttons, banners, graphic files, images and the Shopify Trademarks.

**“Shopify Related Entity/ies”** means any entity that directly or indirectly controls, is controlled by, or is under common control with, Shopify; where “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of another, whether through the ownership of voting securities, by contract, as trustee or executor, or otherwise.

**“Shopify Trademarks”** means the trademarks, logos, service marks and trade names of Shopify Inc. and any Shopify Related Entities, whether registered or unregistered, including but not limited to the word mark SHOPIFY and the “S” and shopping bag design.

**“Taxes”** means all taxes, federal, provincial, state, local or other governmental sales, value added, goods and services, harmonized or other taxes, fees or charges now in force or enacted in the future.

**“Websites”** means any websites or platforms (including, without limitation, social media pages) that are owned, operated, managed or controlled by Affiliate.

## 2. FTC Guidelines

- 2.1. The Federal Trade Commission in the United States (“**FTC**”) has guidelines for governing endorsements and testimonials. These rules are aimed at increasing transparency between endorsers and consumers. As a member of the Program with Shopify, Affiliate receives compensation for the Referred Merchant referrals made to Shopify. This may establish a “material connection” according to FTC rules, which creates an obligation for Affiliate to provide disclosure to consumers.
- 2.2. Full compliance with these guidelines requires, among other things, that (a) Affiliate clearly and conspicuously disclose that Affiliate is being compensated for referring Referred Merchants to Shopify, and (b) Affiliate not engage in misleading or deceptive advertising. For further information, Affiliate should refer to the statement released by the FTC regarding these guidelines.

## 3. Affiliate Responsibilities

### 3.1. Marketing Activities

- 3.1.1. Affiliate will bear all costs and expenses related to Affiliate’s marketing or promotion of Shopify or any Shopify Related Entity, and, as applicable,

Affiliate's Websites, or other products or services associated with Affiliate's participation in the Program (collectively, "**Affiliate Marketing Activities**") in any area, location, territory or jurisdiction, unless otherwise determined by Shopify in its sole discretion.

- 3.1.2. In no event will Affiliate engage in any Affiliate Marketing Activities except as expressly set forth in this Agreement. In the event that Affiliate has a list of emails where the individuals on the list have expressly elected to receive emails from Affiliate ("**Opt-in List**"), Affiliate may make a written request to Shopify to send emails regarding the offering of Shopify and Shopify Related Entities to the individuals on the Opt-in List (and Shopify may, in its sole discretion, allow Affiliate to send such emails). In conducting all Affiliate Marketing Activities, Affiliate will comply with all applicable laws, rules, regulations and directives, including but not limited to those relating to email marketing and "spamming". Unless Affiliate has secured the applicable Merchant's consent first, Affiliate will not email any Merchant whose email address they have received via Shopify.
- 3.1.3. Without limiting the generality of Section 3.1.2, Affiliate will (i) not send any email regarding Shopify or Shopify Related Entities to any individual or entity that has not requested such information; (ii) always include Affiliate's contact information and "unsubscribe" information in any email regarding Shopify, Shopify Related Entities, the Service or the Shopify platform; and (iii) not imply that such emails are being sent on behalf of Shopify or Shopify Related Entities.
- 3.1.4. Affiliate will not (i) engage in any fax, broadcast, telemarketing or any other offline marketing methods with respect to Shopify or Shopify Related Entities; (ii) use malware, spyware or any other aggressive advertising or marketing methods in any of its dealings relating to Shopify or Shopify Related Entities; (iii) make any false, misleading or disparaging representations or statements with respect to Shopify or Shopify Related Entities; (iv) solicit Merchants to leave the Shopify Service; (v) copy, resemble or mirror the look and feel of Shopify's websites, Shopify Trademarks or Services or otherwise misrepresent Affiliate's affiliation with Shopify or Shopify Related Entities; or (vi) engage in any other practices which may adversely affect the credibility or reputation of Shopify or Shopify Related Entities, including but not limited to, sending email communications or using any Website in any manner, or having any content on any Website, that (a) uses aggressive or low-quality marketing, including marketing services that are unrelated to Shopify or the Affiliate's services, (b) promotes sexually explicit materials, violence, discrimination based on race, sex, religion, nationality, disability, sexual orientation or age, or any illegal or objectionable activities, or (c) violates

any intellectual property or other proprietary rights of any third party; or (d) violates the Acceptable Use Policy.

### 3.2. Compliance with Laws

In addition to, and without limiting the provisions of this Agreement, Affiliate will perform its obligations under this Agreement in accordance with the highest applicable industry standards and in compliance with all applicable laws, rules and regulations, including obtaining any licenses required in order for Affiliate to operate and to offer the products or services associated with Affiliate's participation in the Program.

### 3.3. Affiliate Duty to Inform

Affiliate will promptly inform Shopify of any information known to Affiliate that could reasonably lead to a claim, demand or liability of or against Shopify or the Shopify Related Entities by any third party.

### 3.4. Affiliate Duty to Disclose

If Affiliate is acting as an agent on behalf of a Merchant, then Affiliate will disclose to the Merchant any Fees that Affiliate is entitled to receive from Shopify in accordance with this Agreement that are associated with such Merchant.

### 3.5. Other Affiliate Terms

- 3.5.1. If Affiliate is an individual, you must be the older of (i) 18 years, or (ii) at least the age of majority in the jurisdiction where you reside and from where you carry out Affiliate activities.
- 3.5.2. You confirm that you are becoming an Affiliate for the purposes of carrying on a business activity and not for any personal, household or family purpose.
- 3.5.3. If you sign up for an Affiliate Account on behalf of your employer, your employer will be deemed to be the Affiliate for the purpose of this Agreement, and you represent and warrant that you have the authority to bind your employer to this Agreement. Each Affiliate is responsible for: (a) ensuring that its employees, agents and subcontractors comply with this Agreement and (b) any breach of this Agreement by Affiliate's employees, agents or subcontractors.
- 3.5.4. Affiliate acknowledges and agrees that Affiliate will be responsible for the performance of all of its obligations under the Agreement, regardless of whether it sublicenses or subcontracts any such obligations to any third party, including but not limited to any affiliates or subsidiaries of Affiliate.

- 3.5.5. Affiliate acknowledges and agrees that Affiliate's participation in the Program, including information transmitted to or stored by Shopify, is governed by the Shopify Privacy Policy found at [shopify.com/legal/privacy](https://shopify.com/legal/privacy).
- 3.5.6. Affiliate shall acknowledge and promptly respond to reasonable requests for information from Shopify. From time to time, Affiliate shall take such action and execute and deliver such documents and information as Shopify reasonably requests. In addition and without limiting the foregoing, in the event that Shopify contacts Affiliate in connection with this Agreement and requests acknowledgment or response to such communication, the Affiliate shall respond to Shopify promptly.

#### 4. Fees and Payments

##### 4.1. Commission Plans

Subject to: (i) Affiliate's compliance with this Agreement, and (ii) the commission plan associated with an Affiliate's activities pursuant to the Program, Affiliate will be entitled to receive certain fees from Shopify (the "**Fees**"). The commission plan applicable to Referral Affiliates are set out in Part B below.

##### 4.2. Payment

Affiliates are responsible for all applicable Taxes that arise from or as a result of any activities under this Agreement or with respect to Affiliate's dealings with a Merchant. If Taxes are not collected by Shopify in respect of an Affiliate transaction with a Merchant facilitated by Shopify, Affiliate is responsible for determining if Taxes are payable on such transaction, and if so, self-remitting Taxes to the appropriate tax authorities.

##### 4.3. Additional Payment Information

- 4.3.1. All payments are subject to fraud and risk analysis considerations and anti-money laundering procedures and may be withheld by Shopify during the period of investigation. Shopify may also withhold payment if Affiliate fails to provide Shopify with information that is required to make payment.
- 4.3.2. Notwithstanding anything to the contrary in this Agreement, Shopify will not be responsible to pay any Fees:
  - 4.3.2.1. related to amounts that have been refunded to Merchants by Shopify;
  - 4.3.2.2. for a Referred Merchant created or owned in whole or in part by Affiliate;
  - 4.3.2.3. related to fraudulent sales;

- 4.3.2.4. related to revenues that have been subject to chargebacks;
  - 4.3.2.5. to Affiliates who are employed by Shopify (whether full-time, part-time, term or any other employment-type relationship); or
  - 4.3.2.6. to Affiliates who are employed by the Merchant to whom the Fees relate (whether full-time, part-time, term or any other employment-type relationship).
- 4.3.3. If any Fees paid by Shopify are subsequently discovered to be subject to one or more of the exclusions set out in Section 4.3.2, or to have been paid in error, Shopify will have the right, at its sole discretion, to: (a) reclaim any Fees paid to Affiliate in error; or (b) set off the amounts described in Section 4.3 from payments due to Affiliate in the future. If the Agreement is terminated before such amounts are fully repaid by Affiliate to Shopify, Affiliate will pay to Shopify the remaining balance within thirty (30) days of the effective date of termination of the Agreement.
- 4.3.4. Shopify reserves the right to modify the Fees or the payment terms at any time upon reasonable advance notice to Affiliate. Such notice will be provided by email, and/or by posting notice through the Platform, as applicable, and/or by the issuing of new Contract Terms. In the event of any disputes over Fees, Shopify's determination will be final and binding.

## 5. Termination

### 5.1. Termination

- 5.1.1. Unless otherwise specified in the Agreement, any Party may terminate this Agreement at any time, with or without cause, effective immediately upon notice to another Party.
- 5.1.2. Fraudulent or other unacceptable behaviour by Affiliate, including breach of the [Acceptable Use Policy](#), as determined by Shopify in its sole discretion, may result in one or more of the following actions being taken by Shopify: (a) termination of Affiliate's affiliation with Merchants within the Affiliate Account; (b) suspension of some or all Affiliate privileges under the Program; and (c) termination of the Affiliate Account entirely without notice to, or recourse for, Affiliate.
- 5.1.3. Shopify reserves the right to cancel or modify the Agreement in its entirety, including Fees, at any time. If a significant change is made to the Agreement, including any material change to Fees, Shopify will provide reasonable notice by email, posting a notice on the Platform.

### 5.2. Consequences of Termination

- 5.2.1. Upon termination of this Agreement: (a) each Party will return to the other Party, or destroy (and provide certification of such destruction), all property of the other Party in its possession or control (including all Shopify Creative and all Confidential Information (as defined below)); (b) Affiliate will immediately cease displaying any Shopify Creative or any Shopify Trademarks on any Website or otherwise; and (c) all rights granted to Affiliate under this Agreement will immediately cease, including but not limited to the right of Affiliate to access the Affiliate Account and Platform, Shopify API, or to receive any payments of Fees under this Agreement, unless otherwise determined by Shopify in its sole discretion.
- 5.2.2. This Section 5.2 and the following Sections will survive any termination or expiration of this Agreement:
  - 5.2.2.1. PART A: Section 1 (Definitions), Section 6.4 (Proprietary Rights of Shopify), Section 7 (Confidentiality), Section 8 (Disclaimer of Warranty), Section 9 (Limitation of Liability and Indemnification), and Section 10 (General Provisions)
  - 5.2.2.2. In addition, any provisions of this Agreement that by their nature are intended to survive, will survive termination.

## 6. Intellectual Property Rights

### 6.1. Shopify Creative

- 6.1.1. All Shopify Creative will be solely created and provided by Shopify unless otherwise agreed to by Shopify in writing in advance. Shopify will provide Affiliate with copies of or access to Shopify Creative. The Shopify Creative may also be accessible from the [Shopify brand guidelines](#) (“**Shopify Trademark Usage Guidelines**”). By using the Shopify Creative, you indicate your acceptance of our Shopify Trademark Usage Guidelines and you understand that a violation of these guidelines or this Agreement will result in the termination of your license or permission to use the Shopify Creative. The Shopify Creative is provided “as is” and without warranty of any kind.
- 6.1.2. Affiliate may display Shopify Creative on the Websites solely for the purpose of marketing and promoting the Service and any Shopify brands permitted by Shopify and by Shopify Related Entities during the term of this Agreement, or until such time as Shopify may, upon reasonable prior notice, instruct Affiliate to cease displaying the Shopify Creative. Affiliate may not alter, amend, adapt or translate the Shopify Creative without Shopify’s prior written consent. Nothing contained in any Shopify Creative will in any way be deemed a representation or warranty of Shopify or of any of Shopify Related Entity. The Shopify Creative will at all times be the



sole and exclusive property of Shopify and no rights of ownership will at any time vest with Affiliate even in such instances where Affiliate has been authorized by Shopify to make changes or modifications to the Shopify Creative.

## 6.2. Shopify Trademarks

During the term of this Agreement, Shopify hereby grants to Affiliate a limited, revocable, non-exclusive, non-sublicensable and non-transferable license to display the Shopify Trademarks solely as necessary to perform Affiliate's obligations under this Agreement. Affiliate acknowledges and agrees that: (a) it will use Shopify's Trademarks only as permitted under this Agreement; (b) it will use the Shopify Trademarks in a lawful manner and in strict compliance with all format(s), guidelines, standards and other requirements prescribed by Shopify in writing from time to time, including but not limited to the Shopify Trademark Usage Guidelines; (c) the Shopify Trademarks are and will remain the sole property of Shopify; (d) nothing in this Agreement will confer in Affiliate any right of ownership in the Shopify Trademarks and all use thereof by Affiliate will inure to the benefit of Shopify; (e) Affiliate will not, now or in the future, apply for or contest the validity of any Shopify Trademarks; and (f) Affiliate will not, now or in the future, apply for or use any term or mark confusingly similar to any Shopify Trademarks.

## 6.3. Restrictions on Affiliate's Use of the Shopify Trademarks

Notwithstanding Section 6.2, Affiliate will not:

- 6.3.1. use the Shopify Trademarks or variations or misspellings thereof in Affiliate's business name, logo, branding, advertising, social media or domain name (including without limitation top-level domains, sub-domains and page URLs), products or services, unless granted express written permission by Shopify in advance of each use; or
- 6.3.2. purchase or register search engine or other pay-per-click keywords (such as Google Ads), trademarks, email addresses or domain names that use the Shopify Trademarks or any variations or misspellings thereof that may be deceptively or confusingly similar to the Shopify Trademarks. Partner is required to add the Shopify Trademarks as negative keywords to help prevent violation of this Section.

## 6.4. Proprietary Rights of Shopify

As between Affiliate and Shopify, the Shopify Creative, Shopify Trademarks, all demographic and other information relating to Merchants including Referred Merchants, prospective Affiliates, the Services, the Shopify API, Merchant Data, and all software, documentation, hardware, equipment, devices, templates, tools, documents, processes, methodologies, know-how, websites, and any additional

intellectual or other property used by or on behalf of Shopify or Shopify Related Entities or otherwise related to the Service, the Program, Shopify or Shopify Related Entities, together with all copyrights, trademarks, patents, trade secrets and any other proprietary rights inherent therein and appurtenant thereto (collectively, "**Shopify Property**") will be and remain the sole and exclusive property of Shopify. To the extent, if any, that ownership of any Shopify Property does not automatically vest in Shopify by virtue of this Agreement, or otherwise, and vests in Affiliate, Affiliate hereby transfers and assigns to Shopify, upon the creation thereof, all rights, title and interest Affiliate may have in and to such Shopify Property (and waives any and all moral rights, as applicable), including the right to sue and recover for past, present and future violations thereof.

#### 6.5. Shopify's Use of Affiliate's Intellectual Property

Affiliate grants to Shopify a worldwide, non-exclusive, royalty-free, transferable and sub-licensable right and licence to use and display in any manner the Affiliate's trademarks, service marks, logos, trade names, copyrighted content, graphic files, images and other intellectual property, in connection with and for the purpose of performing its obligations and exercising its rights under this Agreement. In addition, at Shopify's discretion, Shopify may use any such intellectual property for the purposes of promoting or marketing Affiliate, Affiliate's products or services, or as otherwise agreed to with Affiliate.

### 7. Confidentiality

7.1. "**Confidential Information**" will include, but will not be limited to, any and all information associated with a Party's business and not publicly known, including specific business information, technical processes and formulas, software, customer lists, prospective customer lists, names, addresses and other information regarding customers and prospective customers, product designs, sales, costs (including any relevant processing fees), price lists, and other unpublished financial information, business plans and marketing data, and any other confidential and proprietary information, whether or not marked as confidential or proprietary. For the avoidance of doubt, as between Shopify and Affiliate, Merchant Data and Customer Data is the Confidential Information of Shopify.

7.2. Each Party agrees to use the other Party's/ies' Confidential Information solely as necessary for performing its obligations under this Agreement and in accordance with any other obligations in this Agreement including this Section 7. Each Party agrees that it will take all reasonable steps, at least substantially equivalent to the steps it takes to protect its own proprietary information, to prevent the duplication, disclosure or use of any such Confidential Information, other than (i) by or to its employees, agents and subcontractors who must have access to such Confidential Information to perform such Party's obligations under this Agreement, who each will treat such Confidential Information as provided in this

Agreement, and who are each subject to obligations of confidentiality to such Party that are at least as stringent as those contained in this Agreement; or (ii) as required by any law, regulation, or order of any court of proper jurisdiction over the Parties and the subject matter contained in this Agreement, provided that, if legally permitted, the receiving Party will give the disclosing Party prompt written notice and use commercially reasonable efforts to ensure that such disclosure is accorded confidential treatment. Confidential Information will not include any information that the receiving Party can prove: (A) was already in the public domain, or was already known by or in the possession of the receiving Party, at the time of disclosure of such information; (B) is independently developed by the receiving Party without use of or reference to the other Party's/ies' Confidential Information, and without breaching any provisions of this Agreement; or (C) is thereafter rightly obtained by the receiving Party from a source other than the disclosing Party without breaching any provision of this Agreement.

## 8. Disclaimer of Warranty

The Shopify Affiliate Program, the Service, the Shopify Trademarks, the Shopify Creative, Ads (including delivery and related reporting) and the Shopify API are provided "as-is". Shopify makes no warranties under this Agreement, and Shopify expressly disclaims all warranties, express or implied, including, but not limited to, warranties of merchantability, non-infringement or fitness for a particular purpose. Without limiting the foregoing, Shopify further disclaims all representations and warranties, express or implied, that the Service, the Shopify API, the Shopify Trademarks, the Shopify Creative, or the Shopify API satisfy all of Affiliate's or Merchant's requirements and or will be uninterrupted, error-free or free from harmful components.

## 9. Limitation of Liability and Indemnification

### 9.1. Limitation of Liability

Shopify, and the Shopify Related Entities, will have no liability with respect to the Program, the Service, the Shopify API, the Shopify Trademarks, the Shopify Creative or Shopify's obligations under this Agreement or otherwise for any direct, indirect, incidental, special, consequential, or exemplary damages, including but not limited to, damages for losses of profits, goodwill, use, data or other intangible losses resulting in any way from the Service, the Shopify API, the Shopify Trademarks, the Shopify Creative, or Affiliate's participation or inability to participate in the Program, even if Shopify has been advised of the possibility of such damages. In any event, Shopify's, and the Shopify Related Entities', liability to Affiliate under this Agreement for any reason will be limited to the Fees paid to Affiliate by Shopify during the six (6) month period immediately preceding the event giving rise to the claim for damages. This limitation applies to all causes of action in the aggregate, including, but not limited to, breach of contract, breach of warranty, negligence, strict liability, misrepresentations, and other torts. The relationship between a Merchant and an Affiliate is strictly between the Merchant

and the Affiliate, and neither Shopify or the Shopify Related Entities are obligated to intervene in any dispute arising between the Merchant and the Affiliate. Under no circumstances will Shopify, or the Shopify Related Entities, be liable for any direct, indirect, incidental, special, consequential, punitive, extraordinary, exemplary or other damages whatsoever, that result from or relate to the Affiliate's relationship with any Merchant. These limitations will apply even if Shopify or the Shopify Related Entities have been advised of the possibility of such damages. The foregoing limitations will apply to the fullest extent permitted by applicable law.

#### 9.2. Affiliate Indemnification

Affiliate agrees to indemnify, defend and hold harmless Shopify and any Shopify Related Entities and the directors, officers, employees, subcontractors and agents thereof (each, an "**Indemnified Party**", and collectively, the "**Indemnified Parties**"), with respect to any claim, demand, cause of action, debt or liability, including reasonable attorneys' fees (collectively, "**claims**"), to the extent that such claim is based upon or arises out of: (a) Affiliate's breach of any representation, warranty, obligation or covenant under this Agreement; (b) Affiliate's gross negligence or wilful misconduct; (c) any warranty, condition, representation, indemnity or guarantee relating to Shopify and Shopify Related Entities granted by Affiliate to any Merchant, prospective Affiliate or other third party; (d) Affiliate's use of the Shopify API; (e) Affiliate's breach of any term of this Agreement (including any documents it incorporates by reference) or a Merchant Agreement; (f) any third party claim that Affiliate's products or services infringes the intellectual property or other rights of a third party; (g) Affiliate Taxes, including any audits or penalties related thereto; (h) the performance, non-performance or improper performance of the Affiliate's products or services; (i) Affiliate's relationship with any Merchant; and (j) any breach of applicable law by the Affiliate.

#### 9.3. Notice of Indemnification

In claiming any indemnification under this Agreement, the Indemnified Party will promptly provide Affiliate with written notice of any claim which the Indemnified Party believes falls within the scope of the indemnifications provided under this Agreement. The Indemnified Party may, at its own expense, assist in the defense if it so chooses, provided that Affiliate will control such defense and all negotiations relative to the settlement of any such claim and further provided that in settling any claim the Affiliate will not make any admission on behalf of the Indemnified Party or agree to any terms or conditions that do or reasonably could result in any admission by, or the imposition of any liability upon, the Indemnified Party without the prior written approval of the Indemnified Party.

#### 9.4. Non-exclusive remedies

In the event of any breach or threatened breach by Affiliate of any provision of Sections 3, 4.2.4, 6 or 7 above, in addition to all other rights and remedies available to Shopify under this Agreement and under applicable law, Shopify will have the right to (a) immediately enjoin all such activity, without the necessity of showing damages or posting bond or other security, (b) immediately terminate this Agreement and Affiliate's access to the Program and the Platform, (c) receive a prompt refund of all amounts paid to Affiliate under this Agreement, and (d) be indemnified for any losses, damages or liability incurred by Shopify in connection with such violation, in accordance with the provisions of this Section 9.

## 10. General provisions

### 10.1. Force Majeure

If the performance of any part of this Agreement by either Party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, riot, fire, judicial or governmental action (including, but not limited to, any law, regulation or embargo prohibiting the performance contemplated under this Agreement or the failure or refusal of a government agency to issue a license required for any performance pursuant to this Agreement), labour disputes, act of God or any cause beyond the reasonable control of that Party, the Party will be excused from such performance to the extent that it is prevented, hindered or delayed by such cause. Notwithstanding anything in this Agreement to the contrary, the Party prevented from performing under this Agreement by a force majeure event will nevertheless use its best efforts to recommence its performance under this Agreement as soon as reasonably practicable and to mitigate any damages resulting from its non-performance under this Agreement.

### 10.2. Independent Contractors

The Parties to this Agreement are independent contractors. Except with respect to the collection and transfer of payments, credits or refunds between Merchants and Affiliate, or as otherwise expressly stated in this Agreement, neither Shopify or any Shopify Related Entity is an agent, representative or related entity of the Affiliate. Neither Shopify nor the Affiliate will have any right, power or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or otherwise bind, the other Party, except where the Affiliate expressly authorizes Shopify to act on its behalf in this Agreement. For the avoidance of doubt, Affiliate expressly authorizes Shopify to act on its behalf for the purposes of collecting and remitting payment, credits or refunds between Merchant and Affiliate. This Agreement will not be interpreted or construed to create an association, agency, joint venture or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party.

### 10.3. Non-Exclusivity

Nothing in this Agreement is intended to create, nor will it be construed as creating, any exclusive arrangement between the Parties to this Agreement. This Agreement will not restrict either Party from entering into similar arrangements with others, provided it does not breach its obligations under this Agreement by doing so, including without limitation, any confidentiality obligations.

#### 10.4. Notice

Any notice, approval, request, authorization, direction or other communication under this Agreement will be given in writing and will be deemed to have been delivered and given for all purposes (a) on the delivery date if delivered personally, or by email to Affiliate's email address listed in the Affiliate Account or as otherwise provided by the Affiliate to Shopify, and to legal@shopify.com; (b) two (2) business days after deposit with an internationally recognized commercial overnight courier service, with written verification of receipt; or (c) five (5) business days after deposit in certified or registered mail, return receipt requested, postage and charges prepaid. Notice will be sent to the Affiliate at the address provided in the Affiliate Account, and to Shopify at 151 O'Connor Street, Ground floor, Ottawa, Ontario, Canada, K2P 2L8 Attention: Legal Department.

#### 10.5. No Waiver

The failure of any Party to insist upon or enforce strict performance by another Party of any provision of this Agreement or to exercise any right under this Agreement will not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same will be and remain in full force and effect. Each waiver will be set forth in a written instrument signed by the waiving Party.

#### 10.6. Entire Agreement

This Agreement, including any completed application form and all guidelines and other documents linked or otherwise incorporated or referenced in this Agreement, sets forth the entire agreement and supersedes any and all prior agreements, written or oral, of the Parties with respect to the subject matter hereof (including, but not limited to, any prior version of this Agreement). Neither Shopify nor the Affiliate will be bound by, and each Party specifically objects to, any term, condition or other provision that is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) and which is proffered by another Party in any correspondence or other document, unless the Party to be bound thereby specifically agrees to such provision in writing.

#### 10.7. Assignment

All the terms and provisions of this Agreement will be binding upon and inure to the benefit of the Parties to this Agreement and to their respective heirs,

successors, permitted assigns and legal representatives. Shopify will be permitted to assign this agreement without notice to or consent from Affiliate. Affiliate will have no right to assign or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, to any third party without Shopify's prior written consent, to be given or withheld in Shopify's sole discretion.

#### 10.8. Applicable Laws

This Agreement will be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, without regard to principles of conflicts of laws. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement and is hereby expressly excluded.

The parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of the Province of Ontario with respect to any dispute or claim arising out of or in connection with this Agreement.

#### 10.9. Patent Non-Assertion

Affiliate and its affiliates covenant not to assert patent infringement claims against Shopify, Shopify Related Entities, or Shopify products and services including the Shopify API.

#### 10.10. Competitive or Similar Materials

Shopify is not precluded from discussing, reviewing, developing for itself, having developed, acquiring, licensing, or developing for or by third parties, as well as marketing and distributing materials, products or services which are competitive with Affiliate's products or services regardless of their similarity to Affiliate's products or services, provided that Shopify does not use Affiliate's Confidential Information in so doing.

#### 10.11. Feedback

If Affiliate provides any feedback (including identifying potential errors and improvements) to Shopify concerning the Program, the Shopify API, the Shopify Creative or any aspects of the Service ("**Feedback**"), Affiliate hereby assigns to Shopify all right, title, and interest in and to the Feedback, and Shopify is free to use, reproduce, disclose, and otherwise exploit the Feedback without attribution, payment or restriction, including to improve the Program, Shopify API, the Shopify Creative or the Service and to create other products and services. Shopify will treat any Feedback as non-confidential and non-proprietary. Affiliate will not submit any Feedback that it considers confidential or proprietary.

#### 10.12. Service Providers

Affiliate may work with service providers as necessary to facilitate Affiliate's performance under this Agreement. Affiliate acknowledges and agrees that Affiliate is responsible for all of its service providers' acts or omissions in relation to Affiliate's performance of the Agreement, and any act or omission by Affiliate's service provider amounting to a breach of this Agreement will be deemed to be a breach by Affiliate.

#### 10.13. Industry Standards

10.13.1. Affiliate's networks, operating system and software of its web servers, routers, databases, and computer systems (collectively, "**Affiliate System**") must be properly configured to Internet industry standards so as to securely operate Affiliate's Website. If Affiliate does not completely control some aspect of the Affiliate System, Affiliate will use all influence that Affiliate has over the Affiliate System to do so. Affiliate must diligently correct any security deficiency and disconnect immediately any known or suspected intrusions or intruder.

10.13.2. In addition, if Affiliate has access to Merchant Data, Affiliate: (i) will only use or store such information for the purpose of providing the Affiliate's services to the Merchant to whom the Merchant Data relates, and will not share, sell, disclose or otherwise provide such information to any third party, except as provided for in this Agreement; (ii) will not communicate with Customers directly or indirectly, provided however that Affiliate may contact Customers if the information is obtained from another source, such as from the Customers themselves; (iii) will only store such information for as long as reasonably necessary to provide the Affiliate's services to the Merchant to whom the Merchant Data relates; (iv) will use industry standard measures to protect against unauthorized access to, disclosure or use of such information; (v) will comply with all applicable laws and regulations relating to the protection and privacy of personally identifiable information in Affiliate's provision of the Affiliate's services; and (vi) will notify Shopify of any actual or suspected breach or compromise of Merchant Data (a "**Data Breach**") within two (2) business days of becoming aware of such occurrence. Upon learning of the Data Breach, at its own cost, Affiliate will: (A) promptly remedy the Data Breach to prevent any further loss of Merchant Data; (B) investigate the incident; (C) take reasonable actions to mitigate any future anticipated harm to Shopify, the Shopify Related Entities, Merchants or Customers; and (D) regularly communicate the progress of its investigation to Shopify and cooperate to provide Shopify with any additional requested information in a timely manner.

#### 10.14. Severability



If any provision of this Agreement is, for any reason, held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability will not affect any other provision of the Agreement, and the Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained within the Agreement.

10.15. Shopify Asia's Role and a Description of Shopify Entities

- 10.15.1. Shopify Inc. will perform this Agreement on its own behalf and as agent for Shopify Asia. The liability of each Shopify Entity will be several for the purposes of this Agreement.
- 10.15.2. Shopify Inc. is a corporation formed under the laws of Canada, with offices located at 151 O'Connor Street, Ground floor, Ottawa, Ontario, Canada, K2P 2L8.
- 10.15.3. Shopify Asia is a corporation formed under the laws of Singapore, with its offices located at 77 Robinson Road, #13-00 Robinson 77, Singapore 068896.

Part B - Additional Terms Applicable to Referral Affiliates

**This Part B contains terms applicable to Referral Affiliates generally.**

1. Referral Services

Subject to the terms and conditions of the Agreement, including as set forth in the Contract Terms, Affiliate will use their best efforts to (i) promote and market Shopify, and (ii) identify for Shopify prospective Referred Merchants (the "**Referral Services**").

2. Enrollment

To become a Referral Affiliate, an Affiliate must create an Affiliate Account on the Platform by providing all information indicated as required. After Shopify receives your application for an Affiliate Account to participate in the Program, Shopify will review the Websites and notify you of your acceptance or rejection. Shopify requests up to seventy-two (72) hours to review each application. Shopify reserves the right to accept or reject any application for an Affiliate Account for any reason, in its sole discretion. Affiliate acknowledges that Shopify will use the email address provided by Affiliate as the primary method for communication. Affiliate is responsible for keeping its Affiliate Account password secure. Shopify cannot be liable for any loss or damage arising from Affiliate's failure to maintain the security of the Affiliate Account and password.

3. Contract Terms

Affiliate will agree to the Contract Terms via the Platform for the provision of Referral Services pursuant to the Agreement. Each time updates are made to the Contract Terms and accepted by Affiliate on the Platform, such updated Contract Terms hereby

supersede and delete in their entirety any Contract Terms previously accepted by Affiliate on the Platform.

4. Links. Upon acceptance into the Program, Links will be made available to Affiliate through the Platform. Affiliate agrees:
  - 4.1. To only use Links obtained from the Platform; and
  - 4.2. Not to manipulate, alter or otherwise modify any Links (including, without limitation, any linking code).
5. Websites
  - 5.1. Affiliate may not utilize a Website in its performance of the Referral Services unless such domain is listed in Affiliate's Platform profile.
6. Commission Plan for Referral Affiliates
  - 6.1. Affiliate will be paid commissions for Referred Merchants by Impact via the Platform in accordance with the payment terms in the Contract Terms ("**Commissions**"). If you breach the Agreement or otherwise engage in any behavior which Shopify deems improper, in each case as determined by Shopify in its sole discretion, you will not receive any Commissions. Shopify reserves the absolute right, which it may exercise at any time for any reason, without any liability to you, to cancel, reduce or reverse Commissions, modify the payment terms in the Contract Terms or suspend you from the Program.
  - 6.2. Shopify reserves the right to (i) demand and receive information from Affiliate about any Referred Merchant, including but not limited to information with respect to traffic sources and methods used to acquire the Referred Merchant, and (ii) assess the legitimacy and qualification of such Referred Merchant for the purposes of determining whether a Commission is payable for such Referred Merchant. Shopify will not be responsible to pay any Commissions for a Referred Merchant owned in whole or in part by an Affiliate or Affiliate's employer (whether full-time, part-time, term or any other employment type relationship).
7. Unauthorized and Prohibited Activities
  - 7.1. An Affiliate will not:
    - 7.1.1. promote or advertise Shopify or Shopify Related Entities on coupon, deal, or discount sites or on GTP/Get Paid to Click or other incentivized sites, or display any offer code on a public-facing page or through the use of a "click to display" offer code;
    - 7.1.2. use its Link directly in any pay-per-click advertising;

- 7.1.3. purchase search engine or other pay-per-click keywords (such as Google Ads), trademarks or domain names that use the Shopify Trademarks or the names or trademarks of any Shopify Related Entities or any variations or misspellings thereof that may be deceptively or confusingly similar to the Shopify Trademarks or the names or trademarks of any Shopify Related Entity;
  - 7.1.4. create or participate in any third party networks or sub-affiliate networks without the express written permission of Shopify;
  - 7.1.5. use or encourage any means of delivering fraudulent traffic, including but not limited to use of bots or toolbar traffic, cookie stuffing, or use of false or misleading links;
  - 7.1.6. use direct linking to any page on any Shopify website, without prior written permission from Shopify; or
  - 7.1.7. mask its referral sites or use deceptive redirecting links.
- 7.2. A Referred Merchant cannot be a store opened or owned by an Affiliate and for which that Affiliate seeks compensation pursuant to this Agreement. An Affiliate will be deemed to have introduced only those Referred Merchants that access Shopify from that Affiliate's Link assigned by Shopify.