

## PAYTOMORROW AFFILIATE AGREEMENT GENERAL TERMS AND CONDITIONS

## 1. General Representations, Warranties, and Certain Covenants.

- 1.1. Affiliate Warranties and Certain Covenants.** Affiliate represents, warrants, and agrees that (a) it will use commercially reasonable efforts to perform the Services in accordance with accepted industry standards, in a professional and workmanlike manner, but in no event less than a reasonable standard of care; (b) it has the experience, capability, and appropriately skilled resources to perform the Services in a professional, timely, and competent manner; (c) it will supervise properly all Affiliate Personnel; (d) the Services will strictly comply with the requirements of this Agreement and any other PT policies and procedures provided to Affiliate; (e) Affiliate's Services and any Affiliate materials utilized in providing the Services do not and will not infringe upon any third party rights, including but not limited to rights through or in property, contract, employment, trade secret, confidential and proprietary information, or any intellectual property right, trademark, copyright or patent rights; (f) the Services will comply in all material respects with Applicable Laws; (g) Affiliate will pay all taxes or other amounts that Affiliate owes any governmental agency on Fees for Services and other compensation that PT pays pursuant to this Agreement; (h) Affiliate will not knowingly refer to PT a Merchant that has been or is engaged in fraud or attempted fraud; and (i) Affiliate has and will maintain all permits, governmental fees, and licenses necessary for the performance of the Services and has obtained and will continue to obtain all required inspections, authorizations, and approvals.
- 1.2. PT Warranties and Certain Covenants.** PT represents, warrants, and agrees that (a) it will use commercially reasonable efforts to perform the Services in accordance with accepted industry standards, in a professional and workmanlike manner, but in no event less than a reasonable standard of care; (b) it has the experience, capability, and appropriately skilled resources to perform the Services in a professional, timely, and competent manner; (c) it will supervise properly all PT Personnel; (d) the Services will strictly comply with the requirements of this Agreement and any other Affiliate policies and procedures provided to PT; (e) PT's Services and any PT materials utilized in providing the Services do not and will not infringe upon any third party rights, including but not limited to rights through or in property, contract, employment, trade secret, confidential and proprietary information, or any intellectual property right, trademark, copyright or patent rights; (f) the Services will comply in all material respects with Applicable Laws; and (g) PT has and will maintain all permits, governmental fees, and licenses necessary for the performance of the Services and has obtained and will continue to obtain all required inspections, authorizations, and approvals.
- 1.3. Mutual Warranties.** Each Party represents and warrants that (a) it is duly organized and validly existing under the laws of the state of its incorporation or formation and has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof; (b) this Agreement is a legal and valid obligation binding upon it and enforceable against it in accordance with its terms; and (c) its execution, delivery, and performance of this Agreement does not conflict with any agreement, instrument, or understanding, oral or written, to which it may be a party or by which it may be bound, and does not violate any law or regulation of any court, governmental body, or administrative or other agency having jurisdiction over it.
- 1.4. Remedies for Breach of Warranty.** Each Party will cure any and all failures or non-conformity of the Services at that respective Party's sole and exclusive expense.
- 1.5. Indemnification.** For the purposes herein, each Party, when providing indemnification, will be termed an "Indemnifying Party" and each Party, when receiving the benefits of indemnification, will be termed an "Indemnified Party." The term "Indemnified Party" will include that Party's respective shareholders, officers, directors, Personnel, Affiliates, successors, and assigns.
- 1.5.1. Mutual Indemnification.** Each Party will indemnify, defend, and hold harmless the other Party (and applicable Indemnified Parties) from and against any and all damages, obligations, judgments, liabilities, fines, penalties, losses, claims, actions, demands, lawsuits, costs, and expenses including, reasonable attorneys' fees, that arise out of or relate to any negligence, intentional misconduct, or fraud of the Indemnifying Party or the Indemnified Party's breach of any representation, warranty, or covenant in this Agreement.
- 1.5.2. Infringement Indemnity.** Affiliate and PT each, at its sole, respective expense, will defend, indemnify, and hold harmless the Indemnified Party (as the case may be) from and against any and all damages, obligations, judgments, liabilities, fines, penalties, losses, claims, actions, demands, lawsuits, costs, and expenses including reasonable attorneys' fees, that arise out of or relate to (a) third party claims of infringement of a third party's patent, trade secret, copyright, or trademark or other intellectual property right; or (b) infringement by either Party on the other Party's patent, trade secret, copyright, or trademark or other intellectual property right.
- 1.5.3. General Conditions on Indemnity Obligations.** Each Indemnifying Party's obligations under this Agreement will be subject to the Indemnified Party (a) promptly, after receipt of any written claim or notice of any action giving rise to a claim for indemnification, providing the Indemnifying Party notice of the claim or action (provided that failure to so notify the Indemnifying Party will not relieve the Indemnifying Party of its indemnification obligations, except to the extent that the failure or delay is prejudicial); (b) providing reasonable cooperation and assistance in the defense or settlement of any claim; and (c) granting the Indemnifying Party control over the defense and settlement of the same (provided that any Indemnified Party will be entitled to participate in the defense and settlement of the claim and to employ counsel at its own expense to assist in the handling of the claim; and provided further that the Indemnified Party does not invoke its retained right to defend as stated below). The Indemnifying Party will not agree to any settlement on behalf of the Indemnified Party without the Indemnified Party's prior written consent, which consent will not be unreasonably withheld or delayed.
- 1.5.4. Reservation of Right to Defend.** If the Indemnified Party reasonably determines that the Indemnifying Party has failed to diligently assume and maintain a prompt and vigorous defense of any claim, the Indemnified Party may, at its own expense, option, and discretion, assume sole control of the defense of any claim and all related settlement negotiations with counsel of its own choosing and without waiving any other rights to indemnification. If the Indemnified Party provides sufficient evidence to support its right to defend pursuant to this Section, the Indemnifying Party will pay all costs and expenses (including reasonable attorneys' fees) incurred by the Indemnified Party in the defense. Notwithstanding anything to the contrary in the foregoing, the Indemnified Party will not agree to any settlement on behalf of the Indemnifying Party without the Indemnifying Party's express written consent, which consent will not be unreasonably withheld or delayed.
- 1.5.5. Third Party Payments.** The Parties agree that any amounts payable to a third party by either Party as damages pursuant to a claim for which the other Party has an indemnification obligation under this Section 4.5 will be characterized as direct damages of the Indemnified Party.

## 2. Proprietary Information.

### 2.1. Definitions.

- 2.1.1. "Confidential Business Information" means any valuable, secret business information other than Trade Secrets, that is either designated or identified as confidential at the time of the disclosure or is by its nature clearly recognizable as confidential information to a reasonably prudent person with knowledge of PT's business and industry.
- 2.1.2. "Proprietary Information" means the Trade Secrets, Confidential Business Information, Personal Information, and Protected Information.
- 2.1.3. "Trade Secrets" mean trade secrets as defined under the Uniform Trade Secrets Act, as amended from time to time, and will include without regard to form, technical or non-technical data, formulas, patterns, compilations, programs, software programs, devices, methods, techniques, drawings, processes, financial data, credit decisioning, underwriting policies, financial plans, product plans, non-public forecasts, studies, projections, analyses, all customer data of any kind, or lists of actual or potential customers or suppliers, business and contractual relationships, or any other information similar to the foregoing that (a) derives economic value, actual or potential, from not being generally known and not being readily ascertainable by proper means to other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. For the sake of clarity, Trade Secrets includes information to Affiliate or its affiliates by any third parties, which Party or any of its Affiliates is obligated to hold in confidence.
- 2.1.4. "Personal Information" means (i) any information that identifies, or could be used to identify, a particular Person, including the Person's name, address, telephone number, e-mail address, social security number, driver's license, or other identifying information and credit card and financial information; and (ii) any other information considered personal identifying information under then-existing applicable law.
- 2.1.5. "Proprietary Information" means the Trade Secrets, Confidential Business Information, Personal Information, and Protected Information.
- 2.1.6. "Protected Data" means all payment card, cardholder, and sensitive authentication data related to the payment card industry, including without limitation: (i) all data and information that is protected or covered by the PCI DSS, (ii) social security numbers and other official identification numbers; (iii) credit card or debit card numbers; (iv) bank account numbers; (v) critical infrastructure information (including without limitation physical site plans, IT systems information, system passwords, and information security plans); (vi) information protected by nondisclosure agreements; (vii) law enforcement and investigative records (viii) employee information; (ix) internal emails; and (x) internally-produced documents.
- 2.1.7. "Reasonable Security Procedures and Practices" means and includes, without limitation, appropriate security measures for its operations that: (i) are in accordance with technological developments and evolving security needs; (ii) include administrative, technical and physical safeguards, including but not limited to the use of secure and up-to-date encryption to protect Personal Information and Protected Data while in transmission or storage; (iii) use reasonable precautions to protect the security, integrity, and confidentiality of the Personal Information and Protected Data; (iv) protect against unauthorized access to or use of Personal Information and Protected Data that could result in the destruction, use, modification or disclosure of Personal Information and Protected Data, or substantial harm or inconvenience to PT or any individual; and (v) comply with all applicable laws, regulations, standards and industry best practices related to privacy and data security. "Reasonable Security Procedures and Practices" also means and includes, without limitation, establishing a computer network security policy, preventing unauthorized computer systems access, implementing administrative security controls (including in connection with any transfer, communication, remote access or storage of Personal Information and Protected Data as permitted or required under this Agreement), installing computer network firewalls, protecting computer resources from insider abuse, having appropriate administrative procedures to ensure that computer system access is given only to authorized users and is promptly withdrawn from terminated employees or other Persons who are no longer authorized, establishing a single point of contact for responses to security incidents, adhering to current payment card industry security requirements, and monitoring the effectiveness of computer network security.
- 2.1.8. "Trade Secrets" mean trade secrets as defined under the Uniform Trade Secrets Act, as amended from time to time, and will include without regard to form, technical or non-technical data, formulas, patterns, compilations, programs, software programs, devices, methods, techniques, drawings, processes, financial data, financial plans, product plans, non-public forecasts, studies, projections, analyses, all customer data of any kind, or lists of actual or potential customers or suppliers, business and contractual relationships, or any other information similar to the foregoing that (a) derives economic value, actual or potential, from not being generally known and not being readily ascertainable by proper means to other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. For the sake of clarity, Trade Secrets includes information provided to Marketer or its Affiliates by any third parties, which Party or any of its Affiliates is obligated to hold in confidence.

**2.2. Exclusions.** Other than Personal Information and Protected Data, which will always be Proprietary Information, Proprietary Information does not include any information that (1) was in the receiving Party's possession before being disclosed to it by the other/disclosed Party, as evidenced by receiving Party's written records; (2) is or becomes a matter of public knowledge through no fault of the receiving Party; (3) is rightfully received by the receiving Party from a third party without a duty of confidentiality; (4) is independently developed by the receiving Party without use of PT's Proprietary Information, as evidenced by Affiliate's written records.

**2.3. Ownership and Restrictions on Use.** Each Party acknowledges and agrees that the Proprietary Information of the other/disclosed Party remains the sole and exclusive property of the other/disclosed Party or a third party providing the information to the other/disclosed Party, and the disclosure of the information to receiving Party does not confer upon it any license, interest, or right of any kind in or to the Proprietary Information. At all times and notwithstanding any termination of this Agreement, the receiving Party agrees that it will (1) not disclose to any third party the Proprietary Information of the other/disclosed Party, except as approved in writing by the other/disclosed Party; (2) only permit access to the Proprietary Information of the other/disclosed Party to those of its Personnel who have a need to know and have been informed of receiving Party's confidentiality obligations contained in this Agreement; (3) be responsible to the other/disclosed Party, and liable, for any third party's or Personnel's use or disclosure of the Proprietary Information in violation of this Agreement; and (4) only use Proprietary Information that it receives to carry out the purposes of this Agreement and for no other purpose whatsoever.

**2.4. Security.**

- 2.4.1. For Proprietary Information Generally. Each Party will maintain and comply with administrative, technical and physical safeguards that are designed to protect the security and integrity of the Proprietary Information, including in connection with any transfer, communication, remote access or storage of the Proprietary Information as permitted or required under this Agreement. Each Party will immediately notify the other Party of any unauthorized disclosure or use of the other Party's Proprietary Information.
- 2.4.2. For Personal Information and Protected Data. To the extent the Parties have, receive, store or transmit any Personal Information or Protected Data, each Party represents that it has developed, implemented and currently maintains Reasonable Security Procedures and Practices, and covenants that at all times it will maintain and monitor those Reasonable Security Procedures and Practices, to protect the security and integrity of the Personal Information and Protected Data, including but not limited to Personal Information about California or Massachusetts residents, from unauthorized access, destruction, use, modification or disclosure. Without limiting the foregoing, the Parties will, to the extent applicable, comply at all times with California Civil Code § 1798.81.5 (as may be amended), 201 Code of Massachusetts Regulations § 17.00 (as may be amended), and the Payment Card Industry Data Security Standard ("PCI DSS"), and all related best practices and guidelines, as promulgated by the Payment Card Industry Security Standards Council. In addition, each Party will (a) provide the other Party with all notices and cooperation and any consumer consents as reasonably requested by the other Party, or as required by applicable laws under this Section; and (b) notify the other Party immediately of any breach or suspected breach of this Agreement, or any unauthorized access, destruction, use, modification or disclosure of any Personal Information or Protected Data. If any state or federal laws, rules, or regulations relating to the security or protection of Personal Information or Protected Data require that such laws, rules, or regulations be cited or referred to in this Agreement, then this Agreement will be deemed to automatically include a citation or reference to such laws or regulations, to the extent required.

- 2.5. **Required Disclosures.** If either Party is required by a governmental agency or law to disclose any Proprietary Information of the other Party, it must first, if legally permissible, give written notice of the required disclosure to the other Party; take reasonable steps to allow other Party to seek to protect the confidentiality of the Proprietary Information required to be disclosed; and then disclose only that part of the Proprietary Information which, in the written opinion of its legal counsel, it is required to disclose.
- 2.6. **Notice of Unauthorized Disclosures.** Each Party will immediately notify the other Party in writing upon discovery of any loss or unauthorized disclosure of the Proprietary Information of the other Party.
- 2.7. **Limit on Reproductions.** The Parties will not reproduce the Proprietary Information of the other Party in any manner except as approved in advance in writing by an authorized representative of the other Party. All reproductions of Proprietary Information remain the property of the disclosing Party and must bear all confidential or proprietary notices or legends appearing on the original.
- 2.8. **Treatment of Proprietary Information Following Termination.** Upon termination of this Agreement, or earlier, if requested by either Party, the Parties promptly will return to one another any and all physical and electronic materials in their possession or control containing the other Party's Proprietary Information. The materials must be delivered via a secure method and upon such media as may be reasonably required by disclosing Party. Alternatively, with the disclosing Party's prior written consent, the Party may permanently destroy or delete the disclosing Party's Proprietary Information, and if requested, will certify the destruction or deletion in writing to the disclosing Party's However, if the receiving Party, due to requirements of applicable laws, rules, or regulations, must retain any of the disclosing Party's Proprietary Information, or is unable to permanently destroy or delete the disclosing Party's Proprietary Information as permitted above within sixty (60) days after termination of this Agreement, the receiving Party will so notify the disclosing Party in writing, and the Parties will confirm any extended period needed for permanent destruction or deletion of the disclosing Party's Proprietary Information. All Proprietary Information remaining in the receiving Party's possession or control will continue to be subject to the provisions of this Section 6. The methods used to destroy and delete the Proprietary Information must ensure that no Proprietary Information remains readable nor can be reconstructed to be readable. Destruction and deletion must also comply with the following specific requirements:

MEDIUM	DESTRUCTION METHOD
Hard copy	Shredding, pulverizing, burning, or other permanent destruction method
Electronic tangible media, such as disks, tapes	Destruction or erasure of the media
Hard drive or similar storage device	Erasure or elimination of Proprietary Information from the device

- 2.9. **Equitable Relief.** If either Party should breach or threaten to breach any provision of this Section 6 of the Agreement, then the other Party, in addition to any other remedy it may have at law or in equity, will be entitled to seek a restraining order, injunction, or other similar remedy in order to specifically enforce the provisions of this Agreement without proving actual damages or posting bond or other security. Each Party specifically acknowledges that money damages alone would be an inadequate remedy for the injuries and damages that would be suffered and incurred by the other Party and/or its Affiliates as a result of a breach of any provision of this Agreement.
- 2.10. **Survival.** Notwithstanding any termination of this Agreement, each Party's obligations pursuant to this Section 6 will survive (a) for three (3) years after termination with respect to any Confidential Business Information received prior to termination; (b) with respect to Trade Secrets, for so long as the information continues to constitute a trade secret under applicable law; and (c) with respect to Personal Information, for so long as required by Applicable Laws.

**3. Affiliate Personnel.**

- 3.1. **Approval of Subcontractors.** Affiliate may use the services of subcontractors in the performance of the Services, provided that Affiliate will remain liable for all responsibilities and obligations of Affiliate under the terms and conditions of this Agreement, even if some of the responsibilities and obligations are performed by Affiliate's subcontractors. Affiliate Personnel may not be located or perform the Services outside of the United States of America.
- 3.2. **Employer Liability.** All individual Personnel providing Services hereunder must at all times and for all purposes while performing the Services be W-2 employees of the performing Party or of its subcontractors. Each Party accepts full and exclusive liability for complying with the statutory obligations of an employer under any Applicable Laws with regard to the Personnel, including those relating to employee withholding, unemployment taxes, workers' compensation insurance, wage payment, minimum wage, overtime, family and medical leave, and equal employment opportunity, and must make all required withholdings from any amounts paid to any Personnel for providing Services hereunder. Each Party acknowledges and agrees that its

own Personnel will not be employees of the other Party for any purpose, and that no Personnel will be entitled to participate in any welfare, pension, or other benefit plan offered or provided by the other Party to its employees.

#### 4. Miscellaneous.

- 4.1. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes all written or oral, prior or contemporaneous agreements or understandings with respect thereto. No course of dealing or usage of trade will be used to modify the terms hereof.
- 4.2. No Oral Modification.** No modification, extension or waiver of or under this Agreement will be valid unless made in writing and signed by an authorized representative of the Party sought to be charged therewith. No written waiver will constitute, or be construed as, a waiver of any other obligation or condition of this Agreement.
- 4.3. Counterparts.** This Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed an original and all of which will constitute the same agreement.
- 4.4. Unenforceability.** If any provision of this Agreement is found by a court of competent jurisdiction or an arbitrator to be unenforceable or invalid, the unenforceability or invalidity will not render this Agreement unenforceable or invalid as a whole; rather, this Agreement will be construed as if not containing the particular invalid or unenforceable provision or portion thereof, and the rights and obligations of the Parties hereto will be construed and enforced accordingly. In that event, the Parties will negotiate in good faith a replacement provision that would best accomplish the objectives of the unenforceable or invalid provision within the limits of applicable law or applicable court decisions.
- 4.5. Assignment and Successors.** Neither Party may assign or transfer any right or obligation under this Agreement without the other Party's prior written consent, not to be unreasonably withheld; any purported assignment violating the foregoing will be null and void.
- 4.6. Notices.** Notices permitted or required under this Agreement related to the following matters must be in writing and will be deemed delivered if given by personal delivery, by certified mail (postage prepaid and return receipt requested), or by a nationally recognized overnight courier service: (a) notices of default and right to cure, if applicable; (b) notices intended to amend this Agreement; and (c) notices of termination. All other notices may also be delivered by electronic mail and will be deemed given upon personal electronic reply acknowledging receipt. Notices will be sent to the addresses set forth on the first page of this Agreement or to any other address a Party may specify in writing.
- 4.7. Survival.** Any and all provisions, promises, and warranties contained herein, which by their nature or effect are required or intended to be observed, kept, or performed after termination of this Agreement (including, representations and warranties, confidentiality, indemnities, limitation of liability, and miscellaneous provisions), will survive the expiration or termination of this Agreement and remain binding upon and for the benefit of the Parties.
- 4.8. Independent Contractor.** Affiliate will perform this Agreement solely as an independent contractor and not as PT's agent or employee. Affiliate has no authority to make any statement, representation, warranty, or commitment of any kind on PT's behalf or to take any action binding or obligating PT.
- 4.9. Governing Law and Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of North Carolina, without reference to conflict of laws or choice of laws principles. Any action relating in any way to this Agreement shall be brought and enforced in the state or federal courts located in State of North Carolina. Each party irrevocably submits to the jurisdiction of such courts and waives any objection to the laying of venue in such court or any claim that such court is an inconvenient forum
- 4.10. Permits, Licenses.** Each Party will obtain and pay for all permits, governmental fees, and licenses necessary for the performance of the Services and will obtain all required inspections, authorizations, and approvals prior to commencement of the Services. Each Party will provide the Services in accordance with all Applicable Laws.
- 4.11. Certain Rules of Interpretation.** When used herein (a) the word "including" will not be exclusive nor limit the generality of the words preceding it and will mean "including, without limitation"; (b) neutral pronouns and any variations thereof will include the feminine and masculine; (c) all terms used in the singular will include the plural, and *vice versa*, as the context may require; and (d) derivative forms of any capitalized term defined herein will have meanings correlative to the meaning specified herein therefor. Headings of particular sections are inserted only for convenience and are not to be considered a part of this Agreement or be used to define, limit, or construe the scope of any term or provision of this Agreement. Should any provision of this Agreement require interpretation, the Parties agree that the tribunal interpreting or construing the same will not apply a presumption that the terms of this Agreement will be more strictly construed against one Party than against the other.
- 4.12. Third Party Beneficiaries.** PT's Affiliates will be considered third-party beneficiaries of this Agreement and entitled to enforce the provisions of the Agreement in accordance with its terms.