

ATTENTION! ONCE YOU CLICK THE “I AGREE” BUTTON DISPLAYED HEREWITH, THE FOLLOWING TERMS AND CONDITIONS WILL BE LEGALLY BINDING EITHER UPON YOU PERSONALLY, IF YOU ARE ENTERING INTO THIS AGREEMENT ON YOUR OWN BEHALF, OR UPON THE COMPANY OR OTHER LEGAL ENTITY ON BEHALF OF WHICH YOU ARE ACTING (COLLECTIVELY HEREINAFTER “YOU”). YOU SHOULD CAREFULLY READ THE FOLLOWING AGREEMENT GOVERNING THE PANAYA REFERRAL PARTNER PROGRAM BEFORE CLICKING “I AGREE.”

REFERRAL PARTNER AGREEMENT

This Referral Partner Agreement (“Agreement”) is entered into in Menlo Park, California, USA, as of the date on which You click the “I Agree” button displayed herewith, between You and Panaya Inc., a Delaware corporation (“Panaya”), with its offices located at 2480 Sand Hill Road, Menlo Park, California 94025.

1. AGREEMENT SUBJECT TO APPROVAL.

The effectiveness of this Agreement is subject to Panaya’s approval in writing (via mail, fax or e-mail) of Your application for participation in the Panaya Referral Program (“Approval”), and this Agreement shall commence on the date of the Approval (“Effective Date”). Panaya may reject or decline to accept your application for any or no reason at its sole discretion. Panaya may conduct background checks and other screening measures of any sort in connection with your application. If Panaya approves your application, you may refer sales leads to Panaya during the term and in accordance with all terms and conditions of this Agreement, to enable Panaya to solicit orders for Panaya products and/or services (“Products”).

2. LIMITATIONS OF ACTIVITIES.

2.1 Limitations on Activities. Your activities under this Referral Agreement shall be limited as follows:

2.1.1 You shall not be, or purport to be, authorized to legally represent Panaya or to conduct negotiations on behalf of Panaya. You shall not have the authority to make any commitments or agreements or incur any liabilities whatsoever on behalf of Panaya or register this Agreement under local registered agency law nor shall Panaya be liable for any acts, omissions to act, contracts, commitments, promises or representations made by You.

2.1.2 You shall not use any trademarks, names or other identifiers owned or used by Panaya (“Marks”), except that You may refer to Panaya and the Products in conversations and written correspondence with potential customers in the same manner

as Panaya does in its own marketing materials and website. Any other use of Marks (e.g., on Your website) has to be pre-approved by Panaya in writing.

2.1.3 Nothing contained in this Agreement shall be construed to (a) give either party the power to direct and control the day-to-day activities of the other; (b) create an employer-employee relationship; (c) give You the authority to bind Panaya to any contract with a third party; (d) constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint undertaking; or (e) appoint you as a commercial agent.

2.2 No License. You acknowledge and agree that no license is granted under this Agreement to use or access any Products, any of Panaya's proprietary technologies embodied therein, or any data, information or other content provided thereby. As between Panaya and You, Panaya retains all right, title and interest in and to the Products and all technology, data, information or other content embodied therein or provided thereby, as well as any intellectual property rights or similar rights in connection therewith, and You acknowledge that You neither own nor acquire any rights in or to the Products.

2.3 Nonexclusive Referral Agreement. Each party acknowledges that this Agreement does not create an exclusive agreement between the Parties.

3. REFERRALS.

3.1 Submission of Leads. You shall identify each potential customer ("Proposed Lead") in a Panaya Lead Referral Form or via another method jointly agreed by Panaya and You.

3.2 Acceptance of Leads. Within a reasonable period of time following Your submission of a Proposed Lead, Panaya shall provide You with a written (including email) notification of its acceptance or rejection of a Proposed Lead ("Referral Confirmation"). Panaya is under no obligation to accept any Proposed Lead submitted by You and may reject or decline to accept Proposed Leads for any or no reason at its sole discretion, including, without limitation, because:

3.2.1 the Proposed Lead was an existing customer of Panaya at the time of submission;

3.2.2 Panaya was already involved in discussions relating to the sale of a subscription to the Proposed Lead organization at the time of submission;

3.2.3 the Proposed Lead was previously submitted to Panaya by You or any third party;

3.2.4 the Proposed Lead is located in an area in which Panaya has an exclusive arrangement for the sale of Products or in which Panaya is otherwise prohibited by agreement from accepting; or

3.2.5 the Proposed Lead does not meet Panaya's qualification criteria as published on the Panaya Referral Program website.

3.3 Pursuit of Leads by Panaya. The method of contacting and following up with Proposed Leads will be determined in Panaya's sole discretion.

4. REFERRAL FEES.

4.1 A Proposed Lead entitles You to referral fees ("Referral Fees") only if:

4.1.1 You have submitted the Proposed Lead in accordance with Section 3.1; and

4.1.2 Panaya has accepted the Proposed Lead as stated in Section 3.2.

4.2 Payments. Subject to Your compliance with all terms and conditions of this Agreement, Panaya will pay You:

4.2.1 \$250 for each lead accepted; and

4.2.2. Additional \$750 for each accepted lead that becomes a paying Panaya customer within 12 months from the Proposed Lead first submission date.

4.2.3. Payments for earned Referral Fees will be issued once a quarter within thirty (30) days after the end of each calendar quarter.

4.2.4. Payment will be made exclusively through PayPal. Referral Partners that do not have a PayPal account at the time a payment is issued will retain a credit with Panaya until their PayPal account has been established.

4.3 Reports. Within thirty (30) days after the end of each calendar quarter, Panaya will issue quarterly reports to You by e-mail or through an online system, which will show the Lead Referral received by You and their status (accepted, pending, rejected, , closed). Each report shall be deemed final and accepted by You unless Panaya receives a detailed written objection within thirty (30) days of Your receipt of Panaya's report.

4.4 Modifications. Panaya may modify the lead submission process and the amounts and conditions relating to referral payments at any time. Such changes will only affect Proposed Leads submitted by You after said modifications were made.

4.5 Payments After Termination. Except in the event of termination for breach by You, Panaya will continue to pay You commissions in accordance with Section 4.2 on Proposed Leads received prior to the termination of the Agreement.

4.6 No Other Payments. Except as expressly provided in this Section 4, You are not entitled to any fees, reimbursements or other payments. You shall promptly refund to Panaya any overpayments.

5. TERM AND TERMINATION.

5.1 Term. This Agreement shall commence on the Effective Date and shall continue in effect until terminated.

5.2 Termination for Convenience. This Agreement may be terminated by either party for any or no reason upon written notice to the other party thirty (30) days prior to the desired termination date (or with such minimum advance notice as required by mandatory applicable law).

5.3 Termination for Cause. Either party may terminate this Agreement, effective immediately, (a) in the event of a material breach by the other party, which the other party fails to cure within five (5) business days of receipt of a written request to cure from the other party, or (b) if the other party becomes insolvent, makes any assignment for the benefit of creditors, goes to liquidation or has a receiver or trustee appointed for the benefit of creditors, whether voluntary or otherwise, or seeks the protection of, or has a proceeding instituted against it, under the bankruptcy code or any similar statute. If, at the time of Your acceptance of this Agreement or any time thereafter, Panaya would be prohibited from doing business with You under United States export regulations and controls, this Agreement shall automatically be null and void.

5.4 Effect of Termination. Sections 2, 4.5, 4.6, 5.4, and 6 shall survive termination of this Agreement. Upon termination of this Agreement for any reason, You shall immediately cease the use of all Panaya brochures, literature, documentation and other materials within Your control and shall return such materials to Panaya within ten (10) business days. Except as provided in Section 4.5, You shall have no rights or claims against Panaya in connection with termination, expiration or non-renewal of this Agreement; in particular, without any limitation, You hereby irrevocably waive any rights to severance or compensation for lost opportunities or investments to the maximum extent permissible under applicable law.

6. MISCELLANEOUS.

6.1 Governing Law and Arbitration.

6.1.1 This Agreement and any dispute, action, claim or cause of action arising out of or in connection with this Agreement (“Dispute”) will be governed as to all matters, including, but not limited to the validity, construction and performance of this Agreement, by and under the laws of California, USA, without giving effect to conflict of laws principles thereof. Any Dispute shall be subject to the exclusive jurisdiction of the state and federal courts located in California.

6.1.2 If it is necessary for either party to retain the services of an attorney or attorneys to enforce the terms of this Agreement or to file an action to enforce any of the terms, conditions or rights contained herein, or to defend any action, then the prevailing party in any such action will be entitled to recover from the other party its reasonable fees for

attorneys and expert witnesses, plus such court costs and expenses as may be fixed by any arbitration panel or court of competent jurisdiction.

6.2 No Waiver. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. Neither party will be deemed to have waived any rights or remedies hereunder unless such waiver is in writing and signed by a duly authorized representative of the party against which such waiver is asserted.

6.3 Severability. If a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent possible to achieve as nearly as possible the intent of the parties, and the remainder of this Agreement will remain in full force and effect.

6.4 Notices. Except as otherwise expressly provided herein, all notices, approvals, consents and other communications required or permitted under this Agreement will be invalid unless made in writing and given (a) by Panaya via mail, fax or e-mail (to the address or number You provide) or by way of a posting on Panaya's Referral Program Website, or (b) by You to the address set forth in the first paragraph of this Agreement to.

6.5 Assignment. You may not assign, subcontract or delegate this Agreement or any of Your rights or obligations hereunder, in whole or in part, including without limitation by operation of law, without Panaya's prior written consent. Any attempt to assign this Agreement without such consent will be null and void. Panaya may assign this Agreement and subcontract or delegate its obligations hereunder to any third party with or without Your consent. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's permitted successors and assigns.

6.6 Compliance. You represent and warrant that (i) You have submitted and will submit complete and truthful information in connection with your application and all referrals; (ii) You will commit no act that would reflect unfavorably on Panaya; (iii) You are not a party with whom Panaya is prohibited from doing business under U.S. export regulations and controls; and (iv) You will comply with all applicable local, state, federal, and foreign laws, treaties, regulations, and conventions in connection with Your performance of this Agreement, including without limitation, privacy, anti-spam, advertising, copyright, trademark and other intellectual property laws.

6.7 Indemnification. You shall indemnify and hold Panaya harmless from and against any and all third party claims against Panaya arising out of any act, default, misrepresentation or any omission on Your part (including, without limitation, negligence and breach of this Agreement), or any of Your agents, employees or representatives, directly or indirectly relating to this Agreement, including without limitation any claims relating to allegations, actions or proceedings for breach of contract or warranty, regulatory or other legal claims, claims for bodily injury (including death) and damage to property.

6.9 Entire Agreement and Amendment. This Agreement, including all exhibits hereto, constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior or contemporaneous representations, discussions, negotiations, and agreements, whether written or oral, relating to its subject matter. Any amendments or renewals to this Agreement shall be invalid unless made in a writing that is signed by duly authorized representatives of both parties.

6.10 You undertake to keep in confidence and not disclose to any third party any non-public information provided to you by Panaya (including without limitation Panaya's response and progress report in respect of any referral that you make).

6.11 PANAYA WILL NOT BE LIABLE FOR ANY LOSS OF USE, LOSS OF DATA, INTERRUPTION OF BUSINESS, DOWNTIME, LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. PANAYA SOLE LIABILITY TO YOU UNDER THIS AGREEMENT SHALL BE PAYMENT OF REFERRAL FEES IF AND TO THE EXTENT YOU ARE ENTITLED TO THE SAME HEREUNDER. YOU ACKNOWLEDGE AND AGREE THAT THIS SECTION IS AN ESSENTIAL ELEMENT OF THE AGREEMENT AND THAT IN ITS ABSENCE THE ECONOMIC TERMS OF THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT.

BY CLICKING "I AGREE" YOU ARE REPRESENTING THAT (1) YOU HAVE SUBMITTED TRUE AND COMPLETE INFORMATION IN CONNECTION WITH YOUR APPLICATION AND (2) YOU ARE ENTERING INTO THIS AGREEMENT ON YOUR OWN BEHALF OR THAT YOU HAVE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF YOUR COMPANY OR OTHER LEGAL ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY OR DO NOT WISH TO ENTER INTO THIS AGREEMENT ON YOUR OWN BEHALF, OR IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS CONTAINED HEREIN, YOU MUST CLICK "I DECLINE" AND YOU WILL NOT BE ELIGIBLE FOR PARTICIPATION IN THE PANAYA REFERRAL PROGRAM.