

AGENT AGREEMENT

THIS AGENT AGREEMENT (this “Agreement”) is entered into by and between NetGen Communications, Inc. (hereinafter referred to as “NetGen”) and _____, d/b/a _____

(if applicable), a _____ (state)

(corporation/partnership/sole proprietorship), _____ (SS# or FEIN),

with offices at _____

_____ (hereinafter

referred to as “Agent”), effective on the date accepted by NetGen Communications, (the “Effective Date”), as set forth on the signature page hereto.

WHEREAS, NetGen is in the business of providing telecommunications products (“Products”) and desires to increase the sale of its Products, and Agent wishes to enter into an agreement to market and sell said Products as an agent for NetGen;

NOW, THEREFORE, the parties, intending to be legally bound, agree as follows:

1) Appointment of Master or Sub Agent

A. NetGen hereby grants to Agent the non-exclusive right to market and sell the Products under the terms and conditions set forth in this Agreement. During the Term of this Agreement and thereafter, NetGen reserves the right, without obligation or liability to Agent, to market and sell the Products, whether through NetGen’s own representatives, other agents or distributors or by any other means. Agent's authority to act on behalf of NetGen shall be limited to the express grant in this Agreement and Agent shall not claim to have any broader general agency authority.

B. Agent is hereby authorized to market and sell the Products as set forth in Exhibit A, a copy of which is attached hereto and is incorporated herein by reference. NetGen may, from time to time at its sole discretion, but upon notice to Agent, change the Products that Agent may market and sell, and the prices thereof.

2) Term of Agreement

This Agreement shall become effective upon the Effective Date and shall remain in effect for a period of two (2) years unless otherwise terminated in accordance herewith. This Agreement shall automatically renew for successive periods of one (1) year, subject to termination pursuant to section 7, unless either party gives notice of its intent to cancel at least sixty (60) days prior to the end of the initial term or any renewal term then in effect.

3) NetGen Responsibilities to Agent

- A) NetGen will provide Agent with post-sale support (e.g., order processing and documentation, coordinate and communicate due dates between end-users and NetGen).
- B) NetGen will pay Agent's commission as specified in section 6. NetGen will not pay commission directly to Agent's employees, agents, or sub-contractors.
- C) NetGen will provide specifications to Agent for advertising and promotional materials.
- D) NetGen will permit Agent to be identified as affiliated with NetGen Communications through the use of business cards or other promotional materials. The business cards or other promotional material shall state that Agent is an "Authorized Agent" and shall only be used after approval by NetGen. A copy of Agent's business card and any other promotional materials used by it to market and promote the Products, if they contain NetGen's logo, shall be provided to NetGen and kept with the Agent's file.
- E) NetGen will provide Agent with an Organization Help Chart for purposes of identifying the appropriate NetGen person to contact for assistance and/or to escalate the resolution of issues related to this Agreement.

4) Agent's Responsibilities to NetGen Communications

- A) Agent shall use its best efforts to market and sell the Products and to secure customers for NetGen. NetGen shall have no responsibility for customer development or marketing and Agent shall follow NetGen policies and procedures, as they may be modified from time to time by NetGen in its sole discretion (the "Policies and Procedures"). Agent acknowledges that the Policies and Procedures include, but are not limited to, (i) the proper representation and description of the Products and (ii) assistance in obtaining credit information if requested by NetGen. Agent will, at NetGen's request, provide reasonable assistance to NetGen to serve all NetGen customer accounts sold by Agent. All advertising by Agent shall be conducted in a dignified manner and shall conform

to the Policies and Procedures. All advertising of the Products by Agent in any media is subject to NetGen's prior written approval.

- B) Agent warrants that it is: (1) qualified to market and sell the Products because of its knowledge and experience in the telecommunications industry, and (2) has sufficient knowledge of the Products to effectively market and sell them.
- C) Marketing of NetGen products shall be consistent with, and subject to, the terms and conditions set forth in any applicable price sheets, which may be amended from time to time, at NetGen's sole discretion. In the event that the products are offered pursuant to a written contract, Agent shall offer such products subject to the applicable terms and conditions contained in an agreement supplied by NetGen's. Agent shall not offer the products on any terms or conditions that conflict with the terms and conditions contained in the relevant terms and conditions contained in NetGen's customer agreements.
- D) It is expressly understood and agreed that end-user customers who purchase products through Agent are NetGen's customers for those products
- E) Agent shall be liable for any breach of this Agreement by it or any of its employees or agents. NetGen shall not be liable to pay commissions under this Agreement or otherwise for revenue generated by any unauthorized employee or agent of Agent. Agent's employees and agents shall not have any claim against NetGen for commissions, salaries, or other items of expense. Agent expressly agrees that all of its employees and agents are subject to all of the provisions of this Agreement that are applicable to Agent.
- F) Agent agrees to only use NetGen pre-approved agreement forms, NetGen standard proposal form, and NetGen product pricing. Agent agrees it will not make any changes to the terms and conditions or pricing, without the prior written approval of NetGen. If Agent fails to comply with the provisions of this paragraph, Agent will be in material breach of the Agreement and NetGen may immediately terminate the Agreement and pursue any other legal remedies that may be available to it.
- G) By signing this Agreement, Agent acknowledges that that it is committing to generate \$_____ in new billed revenues for NetGen each year.

5) Agent Compensation

NetGen shall compensate Agent for accounts sold by Agent and approved by NetGen in accordance with the fee schedule set forth in Exhibit A, which is attached hereto and

incorporated herein by this reference. Subject to the terms and conditions of this Agreement, Agent will be paid the commissions due under this Agreement within thirty (30) days following the month in which customers procured hereunder are invoiced. Commission payments may be accrued until such time as the total payment due exceeds \$250.00. Agent agrees that NetGen may from time to time, in its sole and absolute discretion, increase or decrease the commission percentages listed in Exhibit A. In such event, the increase or decrease will become effective fifteen (15) days after NetGen gives notice to Agent of the change, but only with respect to revenue generated from customers who purchase after the effective date. All federal, state, local and other taxes that may be due as a result of the payments by NetGen to Agent are the sole responsibility of Agent. At its sole option, NetGen may from time to time deduct from the compensation otherwise due Agent for any calendar month the commissions applicable to customer bills that have not been paid in a timely manner by the customer(s). If and when such bills are paid by the customer(s), NetGen shall promptly remit to Agent the withheld or deducted commission payments.

6) Taxes, Customs, Insurance and Freight

NetGen's prices do not include taxes, customs duties, insurance or freight charges of any nature. All amounts payable by Agent to NetGen Communications under this Agreement are exclusive of any tax, levy or similar governmental charge that may be assessed by any jurisdiction, except for net income, net worth or taxes assessed on NetGen Communications. Agent will pay all other taxes, duties, levies or similar governmental charges or provide NetGen Communications with a certificate of exemption acceptable to the applicable taxing authority.

7) Termination.

This Agreement may be terminated as follows:

- A) By either party effective at the end of the initial term or any renewal term by giving the other party at least sixty (60) days written notice prior to the end of the then-current term.
- B) By Agent upon the material breach by NetGen of this Agreement, which termination shall be effective after written notice of the breach has been given to NetGen by Agent, and NetGen fails to cure such default within thirty (30) days of the receipt of such notice.
- C) By NetGen upon written notice to Agent and a thirty (30) day opportunity to cure the default if:
 - i) Agent materially breaches this Agreement;
 - ii) Agent attempts to assign this Agreement;

- iii) Agent receives, or attempts to receive, whether directly or indirectly, sales leads or related information from any person or entity associated with NetGen in a manner that is inconsistent with the Policies and Procedures regarding the distribution of such leads or information.
- D) By NetGen upon written notice if Agent engages in any activity that disparages or otherwise harms the business reputation of NetGen.
- E) If this Agreement is terminated pursuant to this Subsections 7(C) or 7(D), Agent shall not be entitled to any commissions or other compensation under this Agreement following the effective date of such termination.
- F) If this Agreement is terminated pursuant to Subsections 7 (A) or 7 (B), Agent shall be entitled to 100% of the compensation otherwise due under this Agreement for the first six (6) months following termination, 50% of such compensation for the period of six (6) months to twelve (12) months following such termination, and nothing after the first anniversary of such termination.

Termination of this Agreement shall in no event terminate any of Agent's responsibilities under Sections 10, 11 and 12 hereof.

8) Customer Submission Materials

- A) In addition to any other requirements under NetGen's policies and procedures, before any sales prospect submitted by Agent, Agent must identify the specific customer opportunity.
- B) NetGen reserves the right, in its sole discretion, to accept or reject any potential customer submitted by Agent. Agent acknowledges that no potential customer will be accepted until an authorized representative of NetGen approves such customer in writing.

9) Reporting and Payment

- A) Agent shall provide NetGen with a monthly sales report. The sales report shall itemize the products of each customer solicited by Agent for which commissions are due under this Agreement.
- B) NetGen shall have no liability to pay commission on any sales not made in accordance with the terms of this Agreement. NetGen may deduct from any amounts due Agent, amounts which Agent may owe NetGen or its affiliates under this Agreement.

10) Non-solicitation

Agent agrees that, for a period of six months following the termination of this Agreement, it will neither directly nor indirectly, solicit, or attempt to solicit, the business of any customer of NetGen with which Agent had contact, or any customer or prospective customer of NetGen which was provided to Agent by NetGen (whether on a lead list or otherwise) for the purposes of selling products or products that are substantially similar to the Products.

- 11) Confidentiality
- 12) NetGen and Agent acknowledge that confidential information, including, but not limited to, marketing strategies, cost data, customer information, technical data and other information specific to NetGen and Agent will not be shared. In consideration of the right to sell and market NetGen the products and for receipt of commissions, Agent and NetGen specifically understand and agree that the above referenced information, as well as the identity, names, addresses, telephone numbers and personal information about customer accounts contracted by Agent for NetGen, are NetGen's proprietary trade secrets and confidential to NetGen. Agent and NetGen agree not to divulge proprietary information with respect to either party to any entity or individual. Agent and NetGen agree that this provision is binding during the term of this Agreement and for a period of two (2) years thereafter. Agent and NetGen shall comply with all laws, rules and regulations applicable to Agent's business and Agent's performance of its obligations hereunder. Agent shall not make any representations or warranties provided by NetGen except representations and warranties that are consistent in all respects with information provided by NetGen regarding the Products. Agent shall use commercially reasonable efforts at all times to give prompt, courteous and efficient service to customers; shall be governed in all dealings with such customers by the highest standards of honesty, integrity and fair dealing, including without limitation, compliance with all applicable laws, ordinances and regulations; and shall do nothing which would tend to discredit, dishonor, reflect adversely upon or in any manner injure the reputation of NetGen or the products, or the quality image associated with the products and NetGen.
 - A) Intellectual Property Rights. NetGen Communications shall have and retain sole ownership of all its Intellectual Property Rights, including all goodwill pertaining thereto. NetGen Communications hereby grants to Agent the limited right and license to use NetGen Intellectual Property Rights solely in connection with and solely to the extent reasonably necessary for the marketing of the Product in accordance with the terms and conditions of this Agreement. Agent shall make no false or misleading representations with regard to NetGen or the aforementioned Product.

- B) No Copying, Reverse Engineering. Agent shall not copy, reverse engineer, disassemble, decompile, translate, or modify the Product, or grant any other Person the right to do so.
- C) All files, lists, records, documents, drawings, specifications, equipment, and computer programs that incorporate or refer to any Confidential Information of NetGen shall be returned or destroyed by Agent promptly upon termination or expiration of this Agreement.
- D) Notification. Agent shall promptly notify NetGen of (a) any claims, allegations, or other notification that its marketing, licensing, support, or delivery of the Product may or will infringe the Intellectual Property Rights of any other person or entity; or (b) any determination, discovery, or notification that any Person is or may be infringing the Intellectual Property Rights of NetGen. Agent shall not take any legal action relating to the protection or defense of any Intellectual Property Rights pertaining to the Product without the prior written approval of NetGen.

The parties also agree that the potential damage from a breach of this Section would result in irreparable injury to NetGen and that monetary damages would be difficult or impossible to calculate and would not provide full relief to NetGen. Therefore, Agent agrees that NetGen may apply to a court of competent jurisdiction for injunctive relief, including the issuance of a mandatory permanent injunction. Further, if Agent violates this Section, NetGen and Agent agree that Agent forfeits its right to any outstanding or future commission payments. Nothing in this Agreement is intended to limit the remedies available to either party at law or in equity in the event of breach of this or any other provision of this Agreement.

- E) This Agreement will be construed and enforced in accordance with the laws of the State of Georgia (USA) applicable to contracts made and to be wholly enforced within such State. Each party consents to the jurisdiction in connection with any claim, suit or proceeding arising out of or relating to this Agreement or any act or omission relating to this Agreement and each party agrees to raise no objection to the laying of venue in any such court.

13) Limited warranty

Disclaimer. Except as set forth herein, the limited warranties provided in the manufacturer's warranty are NetGen's sole and exclusive warranties pertaining to the product, and NetGen hereby disclaims any other warranty, express or implied, including, without limitation, any warranty of merchantability or fitness for a particular purpose.

- A) Exclusion of consequential damages. In no event shall Netgen be liable to Agent or any end-user for any indirect, special, or consequential damages,

including, without limitation, lost profits, costs of delay, any failure of delivery, costs of lost or damaged data or documentation, or liabilities to third parties arising from any source, even if NetGen is advised of the possibility of such damages.

- B) Limitation of liability. In the event that, notwithstanding section A) above, NetGen is found liable for damages based on any defect in the product, its aggregate liability shall not exceed the amounts paid Agent during the preceding three-month period, which both parties agree to be a reasonable limitation.

14) Indemnity and Limit of Liability

Agent agrees to indemnify and hold harmless NetGen, officers, directors, employees and agents from any and all loss, cost, damage, expense or liability, including, without limitation, court costs and reasonable attorneys' fees, arising out of, in whole or part, directly or indirectly, the sale, marketing or promotion of the Products by Agent or from any representations made by Agent concerning NetGen or the Products and for any claim of copyright, trademark, or service mark infringement or misappropriation of trade secrets arising out of, directly or indirectly, the acts, omissions or representations of Agent. NetGen agrees to indemnify and hold harmless Agent, its stockholders, officers, directors, employees and agents from any and all loss, cost, damage, expense, or liability, including, without limitation, court costs and reasonable attorneys' fees, arising out of, in whole or part, directly or indirectly, the sale, marketing or promotion of the Products by NetGen or any representations made by NetGen concerning Agent or the Products and for any claim of copyright, trademark, or service mark infringement or misappropriation of trade secrets arising out of, directly or indirectly, the acts, omissions or representations of NetGen.

Under no circumstances shall either party be liable to the other party or any other related person or company for any exemplary, direct, reliance, incidental, or consequential damages, expenses or losses, including, without limitation, loss of revenue or profits, arising out of or relating to this Agreement or the business relationship between the parties.

15) Marketing

Agent shall use reasonable commercial efforts and technically qualified people to market, promote, maintain and increase the sale of the Products by all customary means, including, but not limited to, advertising and personal solicitation of customers, processing of orders, and identification of Agent as a source of Products in business listings, trade publications, directories, stationery and advertisements and through distribution of technical literature, catalogues, brochures and advertising matter issued by NetGen.

16) Training

NetGen will provide Agent's employees and agent's initial training regarding the Service(s). Initial training will include, for example, a detailed explanation of all Products, specific sales presentations, and proprietary information that relates to end users. NetGen may hold, at its sole discretion, subsequent training sessions for Agent at no expense to Agent.

17) Sales Aids

NetGen will provide Agent with an agent program description, sales literature, sales aids, and order forms to be used by Agent.

18) Standards of Conduct

Agent shall use commercially reasonable efforts at all times to give prompt, courteous and efficient service to customers; shall be governed in all dealings with such customers by the highest standards of honesty, integrity and fair dealing, including without limitation, compliance with all applicable laws, ordinances and regulations; and shall do nothing which would tend to discredit, dishonor, reflect adversely upon or in any manner injure the reputation of NetGen or the Products, or the quality image associated with the Products and NetGen.

19) Miscellaneous

- A) This Agreement contains the entire agreement of the parties with respect to the subject matter hereof. Neither party is relying on any oral promise or statement made by the other party or any other person to consummate this Agreement. Except as otherwise provided herein, this Agreement may not be altered, amended or supplemented except in writing and signed by the parties hereto.
- B) In the event that any portion of this Agreement is found to be invalid, illegal or unenforceable for any reason whatsoever, the remaining portions of this Agreement shall remain in effect and be binding upon the parties.
- C) No waiver by either party, or any breach by the other party to perform any provision of this Agreement shall be considered a waiver of any future breach of the same provision or any other provision by the party in default.
- D) Agent may not delegate any of its responsibilities hereunder to any person other than one or more individuals, each of whom are employees or agents of Agent. Agent shall not encourage or permit any of its employees or agents to perform or omit to perform any act which performance or omission, if committed by Agent, would be a violation of this Agreement. Agent may not assign this Agreement or any part thereof, to any third party without the prior written consent of NetGen,

which consent NetGen may grant or deny in its sole discretion. Any such attempted assignment without NetGen's prior written approval shall be null and void.

- E) The parties acknowledge and agree that neither of them has made any representations with respect to the subject matter of this Agreement or any representations inducing the execution and delivery hereof except as specifically set forth herein, and the parties acknowledge that they have relied on their own judgment in entering into this Agreement. Without limiting the generality of the foregoing, Agent acknowledges and agrees that NetGen has made no representations or warranties whatsoever regarding (i) the prospects or chances of success of Agent in selling and marketing NetGen's Products; (ii) Agent's required total investment, earnings or earning potential, (iii) whether Agent will derive any income from the sale or marketing of the Products, or (iv) the extent or nature of the market for the Products. Agent represents and warrants that it has independently evaluated the business opportunity reflected in this Agreement on its own merits. Agent acknowledges and agrees that no fee, sum of money or other payment is required to be paid by Agent as a condition of entering into, or acting as NetGen's Agent under, this Agreement.
- F) This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their legal representatives, successors, heirs and assigns.
- G) All notices required by this Agreement shall be in writing and shall be sent to the parties as follows:



To NetGen:

To Agent:

NetGen Communications

1225 Northmeadow Pkwy Suite 114

Roswell, GA 30076

Attn: Director, Channel Marketing

Notice shall be deemed given upon the actual receipt of such communication, but in any event not later than three (3) business days after it is sent by first class U.S. mail, postage prepaid, and one business day after deposit if sent via an overnight mail delivery service.

H) This Agreement shall be construed in accordance with the laws of the State of Georgia.

I) This Agreement may be executed in counterparts, and signatures exchanged by facsimile or other electronic means are effective for all purposes hereunder to the same extent as original signatures.

NetGen Communications.

Agent _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Phone: _____

Phone: _____

Fax: _____

Fax: _____

Email: _____

Email: _____

NetGen Agent Commissions

Exhibit A

SmartATA	10%
MX 8	10%
MX 60, MX 100, MX 120	12%
FaxTap NG	12%
WROC/ IP Phones	12%
BladeWare	12%
Support/Support Renewal	5%