



Products License and Reseller Agreement

This Products License and Volume Purchase Agreement (this "**Agreement**") is effective as of _____, 2013, (the "**Effective Date**") between _____, a _____ ("**Buyer**"), with a place of business at _____, and **NetGen Communications, Inc.** ("**NetGen**"), a Georgia (USA) corporation, with a place of business at 1225 Northmeadow Pkwy, Suite 114, Roswell, GA 30076 USA.

1. **Purchases.** Pursuant to this Agreement:

(a) Buyer may, by submitting a written order in a form approved by NetGen, order the products listed on Exhibit A (as Exhibit A may be modified from time to time) (the "**Products**"). Each written order (as applicable, an "**Order**") shall indicate the Product name, Product number, requested quantity, ship-to address and other details applicable to the Order and shall incorporate the provisions of this Agreement without purporting to modify or alter any of the terms of this Agreement.

(b) Subject to availability, NetGen will accept Orders for Products that conform to this Agreement and will sell and ship such Products in accordance with this Agreement and the Order. NetGen will ship each Order for Products to the address indicated in the Order F.O.B. NetGen's shipping location, ensuring that all subordinate documents bear Buyer's order number, enclose a packing memorandum with each shipment and, when more than one package is shipped, identify the package containing the memorandum. Title and risk of loss will pass from NetGen to Buyer upon NetGen tender of the Products to the common carrier for shipment. Buyer will be wholly responsible for insuring any Products purchased by Buyer pursuant to this Agreement from the time title and risk of loss pass to Buyer.

(c) Buyer shall have a period of 60 calendar days following receipt of any Product within which to notify NetGen, in writing, of shipping discrepancies or Product defects. Failure to give such notice will constitute Buyer's acceptance of the shipment. If Buyer rejects any Product due to defects or non-conformity to the specifications, Buyer may, at its election, either return such Product to NetGen for a replacement Product or for a refund. If Buyer rejects any Product due to shipping discrepancies, then the parties shall agree upon appropriate economical adjustments to the Product pricing.

2. **Billing and Payment.**

(a) NetGen will invoice Buyer for the applicable purchase price, as specified in Schedule A promptly upon shipment of each Order and each such invoice will be due and payable in full within 30 days after the invoice date. The discount level specified in

Schedule A will remain in effect for the first 12 months of this agreement, at which time it may be adjusted by mutual agreement.

(b) NetGen will invoice Buyer monthly for any other fees due in accordance with this Agreement and each such invoice will be due and payable in full within 30 days after the invoice date. Unless otherwise agreed in writing, Buyer will pay NetGen via wire transfer or ACH credit if Buyer's bank is US-based, using the instructions in Exhibit B.

(c) The prices in Exhibit A do not include sales, use, excise, income, or similar taxes. Consequently, in addition to the prices in effect at the time of sale, NetGen shall invoice and Buyer specifically agrees to pay any sales, use, excise, income or similar tax applicable to the price, sale, or furnishing of any services or Products hereunder. For the avoidance of doubt, Buyer agrees that NetGen will increase the amount of such invoice to cover any such taxes levied by Buyer's government authorities that require that Buyer deduct the amount of any such tax from Buyer's payment.

(d) NetGen may modify the prices in Exhibit A after the first anniversary of the Effective Date and not more than once each calendar year thereafter after 60 days written notice.

3. **Product Warranty.** NetGen warrants that each Product sold to Buyer under this Agreement will contain no defects in manufacture and will conform to the applicable Product specifications for 36 months after the date such Product is accepted by Buyer (as applicable, the "**Warranty Period**"). If Buyer provides NetGen with written notice of any breach of the foregoing warranty within the Warranty Period or within 10 days after the expiration thereof, NetGen, at its sole option, will either (i) repair or replace the defective Product, (ii) examine the Product and confirm in writing that it is not defective, or (iii) refund to Buyer the purchase price paid for the Product. The foregoing remedy shall be Buyer's sole and exclusive remedy and NetGen's sole liability, for any breach of warranty under this Section 3.

4. **License.** In connection with each Product sold to Buyer under this Agreement, NetGen grants to Buyer the following license rights:

(a) **End User License.** With respect to the object-code version of the applicable Software contained within each Product shipped to Buyer, an irrevocable, non-exclusive, perpetual, worldwide license to use such Software by the operation of the Product in accordance with its applicable Documentation is hereby granted. The foregoing license shall apply to the Buyer's use of any Product (i) for the processing of signal communications initiated or received by Buyer for its own purposes, or (ii) for the processing of signal communications by third-party customers (the "**Customers**") of Buyer.

(b) **Development License.** With respect to any software development kit (or "**SDK**") purchased by Buyer pursuant to this Agreement, NetGen grants Buyer a non-exclusive, worldwide, royalty-free license to use the SDK and the other development tools included as part of the Software (collectively, the "**Development Tools**") for the purpose of developing, designing, engineering,

constructing, manufacturing, selling and supporting applications that operate on or through any Products in accordance with this Agreement.

(c) Limitations on Development License. The license rights granted to Buyer in Section 4(b) (the “**Development License**”) are subject to the following restrictions:

(i) Buyer may permit its employees and subcontractors to exercise its Development License rights if, and only if, any such exercise is made only on behalf of Buyer and in accordance with this Agreement;

(ii) Buyer may not sell, transfer, license, copy or distribute the Development Tools (except as permitted in Section 4(c)(iii) below);

(iii) Buyer may make limited copies of the SDK for archival and disaster-recovery purposes, provided, however, that any such copy shall be safeguarded by Buyer on secure storage media;

(d) Limitations on All License Rights. All of the license rights granted to Buyer by NetGen under this Agreement are subject to the following limitations:

(i) The license rights granted in this Section 4 permit Buyer to exercise all of such rights notwithstanding any rights NetGen may have with respect to any patent issued in favor of NetGen in the U.S. or in any other country, whether now existing or hereafter issued;

(ii) Buyer may not sell, lease, assign, transfer, license, convey or distribute any of its license rights in any form without the prior written consent of NetGen;

(iii) Absent written permission from NetGen, buyer may not remove any copyright notice or licensing information contained in the Software;

(iv) Buyer may not reverse compile, reverse engineer or reverse assemble the Products or any Software;

(v) If Buyer has access to any Source Code Materials, Buyer may not use the Source Code Materials except in support of its license rights pursuant to this Section 4;

(vi) If Buyer has access to any Source Code Materials, Buyer may not disclose, publish, transfer, convey or otherwise provide access to the Source Code Materials to any person (except as permitted by this Agreement) and Buyer agrees to keep any Source Code Materials to which it obtains access strictly confidential pursuant to [Section 5] of this Agreement; and

(vii) All rights not expressly granted herein are reserved by NetGen.

(e) Promotional Rights. During the term of this Agreement, Buyer shall have the right but not the obligation to indicate to the public that its services are “powered by” NetGen Products and to advertise such Products under the trademarks, marks and trade names that NetGen may adopt from time to time (“NetGen Trademarks”). Nothing herein shall grant to Buyer any right, title or

interest in NetGen's Trademarks. Buyer shall not attempt to register any NetGen Trademark or trade name confusingly similar to those of NetGen. If not exact copies, all representations of NetGen' Trademarks that Buyer intends to use shall first be submitted to NetGen for approval (which shall not be unreasonably withheld) of design, color, and other details. If any NetGen Trademarks are to be used in conjunction with another trademark, then the NetGen Trademark shall be presented equally legibly and equally prominently as the other, but nevertheless separated from the other so that each appears to be a mark in its own right, distinct from the other mark.

5. **Confidentiality**. Each party acknowledges that it or its Personnel may, in the course of this Agreement, be exposed to or otherwise acquire non-public information that is proprietary to and/or confidential to the other party (“**Confidential Information**”). Such Confidential Information shall include, but not be limited to, information relating to each party’s employees or contractors, trade secrets, technology, techniques, proprietary information, customers, vendors, finances and other business information. Each party agrees to hold the Confidential Information of the other party in strict confidence and not to disclose such Confidential Information to third parties or use such Confidential Information in any way for any purpose whatsoever other than as may be (a) required by this Agreement, (b) consented to by the disclosing party, or (c) as may be required by law, in accordance with this Agreement. The term “Confidential Information” shall not include information (i) that is within the public domain at the time of disclosure, or (ii) is or becomes publicly available without breach of this Agreement, or (iii) is received by the receiving party from a third party holding such information legally and having the legal right to disseminate same or (iv) is disclosed by the receiving party with the prior written approval of the disclosing party, or (v) is disclosed by the disclosing party to others on a non-restricted basis, or (vi) is not appropriately marked as Proprietary, Company Confidential, Company Private or with some other appropriate designation or notice indicating the confidential nature of the information. In the event the receiving party is legally compelled to disclose any of the Confidential Information of the other party, it shall, before making any such disclosure, provide prompt written notice to the disclosing party of the legal requirement and shall not disclose the Confidential Information thereunder until the disclosing party has a reasonable opportunity to determine whether disclosure is appropriate, seek a protective order, or pursue other appropriate process to curtail disclosure.

6. **Software Warranty**. NetGen represents, warrants and covenants to Buyer that (a) NetGen has the right to grant to Buyer all rights granted under this Agreement, free and clear of any and all agreements, liens, adverse claims, encumbrances or other interests of any third party, (b) the Software does not and will not contain any copy protection, automatic shut-down, lockout, "time bomb" or similar mechanisms that could interfere with Buyer’s exercise of its rights hereunder, and (c) (i) the Software and Documentation are not subject to any license or other terms that require that other software or documentation incorporating or used with the Software or Documentation be disclosed or distributed in source-code form, be licensed for the purpose of making derivative works, or be redistributable at no charge, and (ii) other than as specified in Exhibit C, the Software does not include any open source code ("OSS"), including, without limitation, any open source code licensed under the terms of the GNU GPL,

LPGL or Mozilla license or any other license that may require that source code be made available or that purports to grant rights or immunities under Buyer's intellectual property.

Except for the foregoing, and to the maximum extent permitted by applicable law, NetGen provides the Software "as is" and with all faults, and hereby disclaims all representations, warranties and conditions, whether express, implied or statutory, including but not limited to any (if any) implied representations, warranties or conditions of merchantability, satisfactory quality, fitness for a particular purpose, lack of viruses, accuracy or completeness of responses, results, and lack of negligence or lack of workmanlike effort. There is no representation, warranty or condition of title, quiet enjoyment, quiet possession, correspondence to description, or non-infringement with regard to the software. The entire risk as to the quality of the Software, its use or performance, remains with Buyer.

7. **Maintenance.** NetGen will provide the Product support services set forth in Exhibit D (the "Support Services") for the prices set forth in Exhibit A. Support Services are available at different levels with different pricing for each level. If Buyer does not check the box on the signature of this Agreement for one of the Support Service levels, the Buyer will be deemed to check the box for "Hourly Support." Once selected or deemed selected, Support Service is in place for a one-year term and the same level of Support Service will automatically renew unless Buyer provides written notice of change or termination at least thirty 30 days before the end of the one year term. Fees for Support Services are due annually in advance, are fully earned when due and non-refundable when paid.

8. **Limitations.** **Except for indemnity obligations under Section 9, in no event will either party be liable to the other party for any damages, including any lost profits, lost savings, procurement of substitute goods or services, or other incidental or consequential damages, even if the responsible party has been advised of the possibility of such damages.**

9. **Indemnification.**

(a) **Intellectual Property.** NetGen will defend and settle at its own expense, and will indemnify Buyer against any damages and costs (including reasonable legal fees) awarded against Buyer resulting from any suit instituted against Buyer to the extent that it is based on a claim that a Product infringes any U.S. patent, infringes any copyright or trademark, or misappropriates any trade secret ("Infringement Claim") of a third party; provided that (i) Buyer notifies NetGen in writing within 20 days of Buyer's receipt of the Infringement Claim, (ii) Buyer grants NetGen sole control of the defense and any settlement negotiations, provided that any settlement or other resolution is not adverse to Buyer's interests, and (iii) Buyer provides NetGen with all reasonable assistance, information, and authority necessary to perform the above at NetGen' sole expense.

(b) **IP Indemnity Procedure.** Should Buyer receive a threat of infringement (and provide reasonable notice to NetGen of such threat) or should all or any part of the Product become, or in NetGen' opinion be likely to become, the subject of a claim of infringement, then Buyer will permit NetGen, at NetGen's option

and expense, to either: (i) procure for Buyer the right to continue using the Product; (ii) replace or modify the Product so that its use becomes non-infringing, without materially impairing the functionality of the Product; or (iii) terminate the Agreement or Buyer's use of the Product and refund the fees paid by Buyer to NetGen in the previous twelve (12) months.

(c) IP Indemnity Exclusions. NetGen's obligations set forth in this Section 9(a) shall not apply with respect to a claim to the extent it arises from any of the following (each an "Excluded Claim"): (i) the use of the Product in a manner other than as permitted under the Agreement; (ii) use of the Product in a manner other than as specified in the documentation provided by NetGen; (iii) any unauthorized modification of the Product or any connection to the Product through a means other than as provided (e.g., APIs); (iv) the use, operation, or combination of the Product with software, data, equipment, or materials not provided or authorized in writing by NetGen, except as provided in accordance with the documentation provided by NetGen; (v) Buyer's continuance of allegedly infringing activity after being informed of the infringement and provided with modifications that would avoid the alleged infringement; or (vi) materials, data, information, directions or specifications provided by or on behalf of Buyer to NetGen.

(d) Sole Remedy. The remedies provided in Sections 9(a)-(d) are Buyer's sole remedy and NetGen's sole liability, under this Agreement for any claim or allegation that any Product or Software infringes the intellectual property rights of any party.

(e) General Indemnity. Each party to this Agreement (as applicable, the "Indemnitor") agrees that it will, at its own expense, defend any claims or suit instituted against the other party to this Agreement (as applicable, the "Indemnitee") and indemnify Indemnitee against any award of damages and costs (including legal fees) made against Indemnitee by a final judgment of a Court of competent jurisdiction or settlement in any such suit insofar as the same are based on a third-party claim (excepting an Infringement Claim) arising out of: (a) Indemnitor's negligent or intentional acts or omissions, or (b) Indemnitor's breach of this Agreement (except to the extent any such breach is subject to indemnification under Section 9(a) of this Agreement). Indemnitee will give Indemnitor notice in writing of the institution of such claim or suit and permit Indemnitor through its counsel to defend the same and give Indemnitor all reasonably available information, assistance and authority to enable Indemnitor to do so. NetGen shall have control of the defense of any such claim or suit including appeals, and of all negotiations thereof, including the right to effect settlement or compromise.

10. Limitation on Liability.

EXCEPT IN THE INSTANCE OF LIABILITY ARISING FROM SECTION 9, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGE TO BUSINESS REPUTATION, LOST BUSINESS OR LOST PROFITS) OF A PARTY, HOWEVER CAUSED, WHETHER BY CONTRACT, TORT, NEGLIGENCE OR OTHERWISE, ARISING FROM OR RELATING TO THE AGREEMENT OR ANY BREACH HEREOF, EVEN

IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.

IN NO EVENT SHALL EITHER PARTY TO THIS AGREEMENT HAVE LIABILITY FOR ANY LOSSES, DAMAGES OR OTHER CLAIMS ARISING UNDER THIS AGREEMENT OR IN CONNECTION WITH THE TRANSACTIONS AND MATTERS CONTEMPLATED BY THIS AGREEMENT UNDER ANY LEGAL THEORY OR CIRCUMSTANCE IN EXCESS OF THE GREATER OF: (a) \$1,000,000, or (b) THE AMOUNTS ACTUALLY PAID BY BUYER TO NETGEN DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH SUCH LIABILITY FIRST AROSE.

11. **Force Majeure.** Neither party shall be liable by reason of any failure or delay in the obligations hereunder on account of strikes, riots, fires, explosions, acts of God, war, government action or any other cause which is beyond the reasonable control of such party.

12. **Term.** This Agreement shall commence on the Effective Date and terminate on (i) Buyer's discontinued use of the Software or (ii) 30 days after NetGen provides Buyer written notice that Buyer is in breach of this Agreement if such breach has not then been waived or cured to NetGen's satisfaction, or (iii) the second anniversary of the Effective Date. Within 15 days after expiration or termination of the Agreement, Buyer shall return all copies of the Software and any Confidential Information to NetGen and shall erase from all computer storage and computer storage devices any images or copies of the Software and any Confidential Information and provide written certification to NetGen that it has done so.

13. **Miscellaneous.**

(a) 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 of the State courts sitting in Fulton County, Georgia and the U.S. District Court for the Northern District of Georgia 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 parties agrees to raise no objection to the laying of venue in any such court.

(b) This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and merges all prior and contemporaneous written or oral communications. This Agreement may not be modified, amended or waived except by a written agreement signed by both parties. If any provision of this Agreement is held to be unenforceable for any reason, it will be adjusted rather than voided (if possible) to achieve the intent of the parties. All other provisions of this Agreement will be deemed valid and enforceable to the extent possible.

(c) Buyer will keep complete and accurate records concerning its purchase and use of the Products and with respect to the number of ports activated through the Products. Buyer will provide NetGen with a written certification as to the number of ports promptly following NetGen's request. NetGen may review and audit Buyer's accounting and other business records, not more than once each calendar year and

following reasonable prior notice, to determine the number of ports in use and Buyer's compliance with this Agreement. If any such review or audit determines that Buyer has underpaid amounts due under this Agreement, Buyer will promptly pay the amount underpaid, together with interest at the rate of 18% per annum from the date such amounts were required to be paid and will pay NetGen' costs and expenses in connection with such audit or review.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

Buyer	NetGen Communications, Inc.
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

Schedule A
Product Pricing

Smart ATA Pricing

Model	Description	List	Qty 10+ 10%	Qty 25+ 15%	Qty 50+ 20%	Qty 100+ 25%
HX402	2 FXS ports	105.00	94.50	89.25	84.00	63.00
HX411	1 FXS port and 1 FXO	110.00	99.00	93.50	88.00	66.00
HX422	2 FXS port and 2 FXO	130.00	117.00	110.50	104.00	78.00

Buyer and NetGen agree that Buyer's discount will be at the quantity _____ level.

Schedule B

NetGen Communications, Inc. Funds-Transfer Instructions:

Bank of America

244 South Main Street

Alpharetta, GA 30004

USA

BofA Wire-Transfer Routing Number: 0260-0959-3

BofA ACH Routing Number: 061000052 (US banks only)

Swift #: BOFAUS3N (International wires of US dollars)

BOFAUS6S (International wires of non-US dollars)

Account #: 003345401338

Schedule C
Open-Source Software

The Smart ACS product (Automatic configuration server (ACS) implementing CPE configuration protocol CWMP as specified in TR-069) provided upon request, is based on the OpenACS open-source project software which is licensed under the GPL license.

Schedule D

Support Service Selection	
<i>(Buyer must select one; Refer to Agreement Section 7)</i>	
Platinum	_____
Gold	_____
Bronze	_____
Hourly Support	_____