

1.2.1 The Ambassador is solely responsible for maintaining his/her own accounting records and books.

2. **Ambassador Referrals to NXG.**

2.1 **Professional Conduct and Compliance.** The Ambassador shall make him or herself available for NXG and will well, conscientiously and lawfully serve NXG and use his or her best efforts to promote the interests of NXG in a professional manner. He or she shall protect the interests of NXG and its business to the best of his or her ability and judgment and in a manner consistent with standards prevailing in similar businesses. He or she shall perform, observe and confirm to such lawful directions and instructions as may be given by NXG from time to time, provided the same are not inconsistent with the terms of this Agreement and at all times, shall promote an accurate image of NXG.

2.2 **Duties and Responsibilities.** Ambassador will use its best efforts to refer, recommend, and endorse NXG to potential customers and similar persons that Ambassador reasonably believes use or need processing services similar to the Services and with which Ambassador has contact or the opportunity to refer in the ordinary course of Ambassador's business (collectively the "Merchants").

In referring Merchants to NXG, Ambassador must provide the Merchant name, address, contact person, and any additional information requested on the online information sheet provided by NXG, along with a copy of the merchant's most recent processing statement to NXG. A Merchant referred by Ambassador under this Agreement is referred to as a "Referred Merchant".

2.3 **Training.** In order to effectively perform the services required by this Agreement, the Ambassador may wish to avail him or herself of the training materials and/or training sessions provided by NXG in order to familiarize him or herself with Processors', Members' and Vendors' requirements. Unless otherwise agreed to by NXG, the Ambassador shall be solely responsible for Ambassador's costs and expenses incurred for training materials and/or in attending training sessions.

2.4 **No Delegation.** The Ambassador acknowledges that the obligations of Ambassador are personal in nature. Ambassador will not utilize or employ others to perform, or otherwise delegate any of Ambassador's duties and obligations under this Agreement, except with the prior written consent of NXG, which consent NXG may grant or withhold in its sole discretion.

2.5 **Disclosure and Use of Logos and/or Trademarks.** The Ambassador shall identify Ambassador to merchants and other parties as an independent contractor of, and not an employee or agent of, NXG and representing the appropriate Processors, Members, or Vendors, as the case may be. Ambassador will not use or display the NXG name or any of its trademarks or services marks or other property except in the form and content approved or provided by NXG.

2.6 **Performance of Other Agreements.** Ambassador shall not take any action the effect of which is to cause NXG to default in performance of any agreement relating to the provision of Merchant Services including, without limitation, a Merchant Agreement or agreements between NXG and a Processor, Member or Vendor. Without limiting the foregoing, Ambassador acknowledges that NXG is subject to limitations on solicitation of Elavon Merchants. Ambassador will not solicit such Elavon Merchants in contravention of the agreement between NXG and Elavon.

3. **Merchant Processing By NXG.** NXG will promptly contact Referred Merchants, assess their financial transaction processing needs, determine whether the Referred Merchants qualify for Services and, if appropriate, assist in submission of an application to an appropriate Sponsor Institution of NXG's sole determination. If a Referred Merchant is accepted by a Sponsor Institution and otherwise qualifies to receive Services under NXG's then existing policies and practices, NXG will enter a Merchant Agreement with the Referred Merchant and coordinate installation of equipment and training of the

Referred Merchant necessary for the receipt of Services. Merchant Agreements are the sole property of NXG and Ambassador will not, and does not by this Agreement, receive or have any right, title or interest in or to a Merchant Agreement.

4. **Notification of Merchant Approval.** NXG will promptly notify Ambassador when a Referred Merchant enters a Merchant Agreement or is declined by a Sponsor Institution or NXG. Ambassador agrees and acknowledges that either the Sponsor Institution or NXG may, at their sole discretion, suspend or terminate Services to Referred Merchant pursuant to Sponsor Institution, MasterCard or Visa rules, regulations or procedures from time to time in effect or the terms of the Merchant Agreement or agreements with Sponsor Institutions.

5. **Compensation.**

5.1 **Referral Fees.** If a Referred Merchant is accepted by NXG and enters a Merchant Agreement and other required agreements with NXG and the Sponsor Institution, NXG will pay Ambassador the fees and compensation described on Schedule 1 (the "Referral Fees"). Referral Fees will be paid by NXG to Ambassador on or before the 30th day of each calendar month. The monthly payment will include Referral Fees attributable to fees received by NXG for Referred Merchant transactions which occurred on or before the last day of the immediately preceding calendar month. NXG's obligation to pay Referral Fees will terminate in all respects upon termination of this Agreement, unless for non-renewal.

5.2 **Sale of NXG Merchant Portfolio.** If NXG sells all or substantially all of its merchant account portfolio and Merchant Agreements to a purchaser that does not agree to assume NXG's obligation to pay Referral Fees, NXG may terminate its obligation to pay Referral Fees by paying to Ambassador, within 30 days following the sale by NXG, a single payment equal to the Referral Fees for the preceding 12 month period (or since the Effective Date if less than 12 months have elapsed), multiplied by the Sales Multiple (defined as a reasonably equivalent multiple of fees or income paid by a purchaser of NXG's merchant portfolio, to a multiple of calendar monthly fees or income), minus any other expenses which occurred as part of the portfolio purchase, i.e., transfer fees, de-conversion fees, etc.

5.3 **Death.** In the event of an Ambassador's death, NXG may in its sole discretion:

5.3.1 Terminate this Agreement and any further obligation to pay Referral Fees, upon payment to the Ambassador's estate of an amount equal to the average monthly Referral Fees for the preceding 12 calendar months (or since the Effective Date if less than 12 calendar months have elapsed), multiplied by 12.

5.3.2 Terminate this Agreement and pay to Ambassador's estate the Referral Fees, when such Referral Fees otherwise become due and payable under this Agreement, from the date of termination to the third anniversary of the date of termination by NXG.

6. **Proprietary Information, Confidentiality.** Ambassador has, and in the future will, receive or otherwise have access to certain information relating to the trade practices, technology, trade secrets, business strategies, business plans, financial and managerial records and other similar records and information of NXG, including the terms of this Agreement and its schedules or exhibits ("Proprietary Information"). Ambassador acknowledges that the Ambassador does not have, and will not acquire, any right, title or interest in or to Proprietary Information. Ambassador will use Ambassador's best efforts to keep and maintain the confidentiality of Proprietary Information and shall not use or disclose Proprietary Information except as permitted under this Agreement or otherwise consented to in writing by NXG. Upon request of NXG, Ambassador shall return to NXG all Proprietary Information including, without

limitation, any notes, copies or derivations made from Proprietary Information whether in electronic format or otherwise.

Proprietary Information does not include information (a) which is or becomes generally available to the public other than as a result of any breach of this Agreement by Ambassador; or (b) becomes available to Ambassador on a non-confidential basis from a person other than NXG if such person is not subject to an obligation of confidentiality to NXG.

Each of NXG and Ambassador acknowledge the obligations of confidentiality with respect to all Proprietary or Confidential Information of Referred Merchants and customers of Referred Merchants ("Customers") including, without limitation, nonpublic personal information of Customers which Ambassador or NXG may receive, view or access by reason of the provision of Services or referral of the Referred Merchants (collectively the "Confidential Information"). Ambassador and NXG mutually agree that they each will not, except as permitted by law or by agreement with Referred Merchants (a) receive, view or access Confidential Information except as necessary for the delivery of Services or the making of referrals in accordance with this Agreement or (b) copy, disclose or use, for any purpose, any of Confidential Information except as necessary for the performance of this Agreement and the provision of Services. Ambassador and NXG will each take all reasonable actions necessary for the preservation of the confidentiality and privacy of Confidential Information. Without limiting the foregoing, Ambassador and NXG each acknowledge that they are each subject to obligations of confidentiality and privacy under governing law and regulation including, without limitation, obligations imposed under federal financial privacy laws and regulations. Ambassador and NXG agree to fully cooperate with the other in the preservation of the confidentiality and privacy of Confidential Information and in their respective compliance with the confidentiality and privacy obligations under governing law. Without limiting the foregoing, Ambassador and NXG will each comply in all respects with applicable provisions of the Gramm-Leach-Bliley Act and regulations thereunder.

Ambassador or NXG, as the case may be, shall provide the other party with prompt written notice of any disclosure of Proprietary Information or Confidential Information, whether intentional or inadvertent.

Ambassador and NXG acknowledge that the use or disclosure of the Confidential Information or the Proprietary Information in contravention of this Agreement will cause irreparable harm not compensable in money damages. Therefore, a party shall be entitled to seek and receive, in addition to any other right or remedy available at law or in equity, injunctive relief or orders of specific performance enforcing the provisions of this Section 6, all without the necessity of posting any bond or other security.

7. **Limitation on Liability.**

- a. **As to the Ambassador.** Unless otherwise agreed in writing between Ambassador and NXG, Ambassador is not liable to NXG for losses arising out of or related to Referred Merchant activities or transactions under a Merchant Agreement or an agreement with a Sponsor Institution or other agreement between a Merchant and NXG or a Sponsor Institution.
- b. **As to NXG.** Unless otherwise agreed in writing between NXG and Ambassador, NXG is not liable to Ambassador for losses arising out of or related to NXG declining to approve Merchants referred by Ambassador or terminating a Merchant Agreement or the provision of Services.
- c. **General Limitation as to Both Parties; Force Majeure.** Neither party shall be liable to the other party for any failure of performance, which is attributed to a cause beyond its reasonable control, including acts of nature, fire, civil disturbances, and facility or equipment failures. Neither party shall be responsible or liable for any exemplary or punitive damages nor any special, consequential or incidental damages incurred by the other party, even if a party knew of the possibility of those damages.

8. **Term and Termination.**

8.1 **Term.** The term of this Agreement (the "Term") is for one (1) year beginning on the Effective Date. Unless either party gives the other party written notice of their intention not to renew at least sixty (60) days prior to an anniversary of the Effective Date, then the Term will automatically renew for successive one (1) year periods on each anniversary of the Effective Date.

8.2 **Termination by NXG:** NXG may terminate this Agreement without incurring further obligation or liability of any kind. Such a termination may, but must not necessarily, be occasioned by the following:

8.2.1 NXG loses its status as an independent sales organization or a member service provider under the Rules or under any material agreement between NXG and Processor, Members or Vendors;

8.2.2 The termination of NXG by any sponsoring bank or Processor in VISA, MasterCard or any other Processor program; or

8.2.3 The Ambassador fails to submit at least one Referral per year.

8.3 **Termination for Cause.** NXG's obligation to pay Referral Fees will terminate immediately upon Ambassador's failure to perform any material term of this Agreement including, but not limited to, (a) encouraging or assisting, directly or indirectly, a Referred Merchant to terminate a Merchant Agreement or an agreement with a Sponsor Institution or (b) referring a Merchant to any person in contravention of this Agreement, or (c) directly or indirectly providing services similar to the Services to any Merchant; provided, however, if Ambassador cures the failure in performance to the reasonable satisfaction of NXG within the cure period provided under this Agreement, NXG will, thereafter, pay Referral Fees to Ambassador in accordance with this Agreement.

9. **Default Provisions and Cure Period.** A party shall be in default under the terms of this Agreement if it fails to perform any of its material obligations and such failure is not cured within fifteen (15) days after written notice from the other party. If such default is not timely and fully cured, then the non-defaulting party may, in addition to any other right or remedy under this Agreement, at law or in equity, terminate this Agreement immediately upon written notice to the other party.

10. **Indemnity, Hold Harmless.** Each party will indemnify and hold harmless the other party, their employees, officers, directors, shareholders, agents, attorneys, corporate parents and affiliates against any and all claims, liabilities, losses, damages, costs, expenses (including without limitation fees and expenses of attorneys and consultants and court costs) either directly or indirectly related to or attributable to the negligence or wrongful act of the other party, or any of its employees, agents or nominees, in the performance hereof, or the breach of this Agreement or any provision hereof from all losses and claims resulting from its actions or failure to act.

11. **Non-Solicitation.** During the Term and for a period of two years following the termination of this Agreement, Ambassador shall not directly or indirectly solicit or encourage any Referred Merchant that is then a party to a Merchant Agreement to (a) terminate a Merchant Agreement or any agreement with a Sponsor Institution, or (b) enter an agreement with Ambassador or any third party for the provision of services similar to the Services provided by NXG.

12. **Survival of Termination of Agreement.** The provisions of paragraphs 6, 7, 10 and 11 shall survive the termination of this Agreement.

13. General Provisions.

- a. Notice. Any notice or modifications pertaining to Ambassador Agreement, Exhibits or Addendums that the parties may desire to deliver, may be delivered by any of the following:
1. Electronic email format with a delivery receipt confirmation.
If to Ambassador: To the email address provided during the electronic registration process.
If to NXG: To salesmanager@nxgen.com
 2. United States Mail, certified or registered, return receipt requested, proper postage prepaid.
 3. Overnight courier that allows the shipment to be traced.
- b. Entire Agreement. This Agreement and its attachments, if any, supersede any and all agreements or negotiations, either oral or in writing, with respect to the subject matter of this Agreement. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.
- c. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.
- d. Attorneys' Fees. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to attorney's fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled. The parties intend this provision to be given the most liberal construction possible and to apply to any circumstances in which such party reasonably incurs expenses.
- e. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Montana and any action brought hereunder, including litigation, arbitration or any other legal proceeding, whether in law or in equity, shall be undertaken in the courts of Flathead County, Montana.
- f. No Waiver. Failure of a party to this Agreement to exercise any rights or privileges granted to or to insist upon the full performance of all obligations assumed hereunder shall not be construed as waiving any such rights, privileges, obligations, or duties, or as creating any right, privilege, obligation, or duty contrary hereto.
- g. Authority. All persons executing this Agreement represent that they are at least 18 years of age or older, have a valid social security number and a U.S. checking or savings account, and have the full authority to enter into and perform this Agreement.
- h. Assignment. No interest or right of Ambassador under this Agreement shall be assigned or transferred in any manner by Ambassador without the express written consent of NXG. NXG may assign this Agreement at any time without prior written notice to Ambassador.
- i. Amendment. No supplement, modification, or amendment of this Agreement shall be binding unless executed by all the parties.
- j. Advice of Professionals. Each party has had the opportunity to be advised by legal counsel and other professionals in connection with this Agreement, and each party has obtained such advice, as each party deems appropriate. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not

be construed in favor of or against any party by reason of the extent to which party or its professionals participated in the preparation of this Agreement.

- k. Legal Construction of Parties' Relationship. The parties agree that nothing in this Agreement shall be construed to create the relationship of principal and agent or of partnership or joint venture between the parties hereto. Neither the method of computing compensation, nor any act of any party shall be deemed to create any relationship between the parties other than the relationship of two independent contractors contracting for services. Neither party has, nor shall hold itself out as having the authority to enter into any contract or create any obligation or liability on behalf of the other party.
- l. No License. This Agreement does not, and is not intended to, grant any license or other right or interest in or to the NXG Proprietary Information or any intellectual or other property of NXG.

SCHEDULE 1
NXGEN Ambassador Referral Fees
(Confidential)

This Schedule is attached to and made a part of the Ambassador Referral Agreement.

1. Referral Fees set forth in Schedule 1 are subject to change and adjustment upon a 30-day notice.
 - a. NXG may modify Schedule 1, in whole or in part, by email notice to Ambassador or posting modifications to the NXG website accessible to Ambassador.
2. NXG agrees to pay Ambassador Referral Fees as follows:
 - a. Referral Fees will be paid at an amount equal to the tiered percentages listed in Table 1, according to the Tier for which the Ambassador qualifies and how the merchant is being referred to NXG (See Table 1 below).
 - b. Referral Fees for a Referred Merchant Agreement will remain under the percentage of pay for which it originally qualified and will not increase or decrease based on the number of active accounts the Ambassador has at any given time.
 - c. Referral Fees will be paid from the fees and compensation received by NXG under or pursuant to Merchant Agreements between the Referred Merchant and NXG for the products or services identified below.
 - d. NXG shall not be obligated to make any payment to the Ambassador with respect to any Merchant Account unless NXG has first received fees or other payments from Processors, Members or Vendors upon which the Referral Fees are based.
 - e. Ambassador is paid referral fees based on current cost. "Current Cost" means the then current cost to NXG.

Table 1: Compensation

TIER/Type of Merchant	Merchant Application Approvals	REFERRAL FEES
Tier 1 / Self-Generated	1 – 25	35% Above Current Cost
Tier 2 / Self-Generated	26 – 50	40% Above Current Cost
Tier 3 / Self-Generated	51+	45% Above Current Cost
Ambassador Generated-Referral Source	All	10% Above Current Cost

3. Types of Merchants:
 - a. A **Self-Generated** merchant is one which the Ambassador brings to NXG through personal / professional contacts.
 - b. An **Ambassador Generated –Referral Source** merchant is one which was referred by a financial institution (bank or credit union), association, another Ambassador, or company Referral Source for which NXG is paying an additional referral fee to the Ambassador.

Ambassador Referral Agreement
Ver 9-02-11

Signature

IPAddress

Date Signed