

NEXGEN SOFTWARE LICENSE AGREEMENT

This Software License Agreement (“Agreement”) is entered into as of the date Licensee accepts the terms of this Agreement by clicking “I Agree” and acknowledging acceptance of the terms contained herein (hereinafter “LICENSEE”) and NEXGEN SOFTWARE SERVICES, INC., a Texas corporation, with its principal place of business at 3400 Research Forest Drive, Suite B-9, The Woodlands, TX 77381, (hereinafter “NEXGEN”), agree as follows:

LICENSE DEFINITIONS

(a) “**LICENSEE**” is the party who has purchased the license rights to use the Developed Program solely for his own personal use. LICENSEE shall include such affiliates, subsidiaries, divisions and business units that are under financial and/or managerial control of LICENSEE.

(b) “**Licensed Computer**” is the personal computer designated by LICENSEE to operate the Software licensed to LICENSEE pursuant to the terms of this Agreement and upon registration of such computer with NEXGEN.

(c) “**Signals**” include any messages, information, and Fibonacci areas generated by the Software and generated for and in conjunction with LICENSEE’s personal and individual use of the Software.

(d) “**Software**” is NEXGEN’s proprietary computer software program T-3 Fibs ProTrader[®], including Signals generated by the software and services provided by NEXGEN and update or upgrade of T-3 Fibs ProTrader[®]; the program’s related materials including user manuals, documentation, and software release notes; and such updates, modifications or new releases of the software program and documentation as may be provided by NEXGEN to LICENSEE.

(e) “**Specifications**” is defined as the functionality of the Software as described in the current applicable user documentation and/or software release notes delivered with the Software.

LICENSE GRANT

(a) **GRANT OF LICENSE.** Subject to the terms and conditions of this Agreement, NEXGEN grants LICENSEE a non-exclusive, non-transferable, perpetual, independent license to use the Software and the Signals.

(b) **SCOPE OF USE.** LICENSEE may use the Software only for LICENSEE’S sole personal use. LICENSEE may install the Software on two (2) Licensed Computers. LICENSEE must obtain a separate registration and identification for each Licensed Computer from NEXGEN.

(c) **USE RESTRICTIONS.** LICENSEE is not authorized to modify, adapt, translate, or create derivative works based upon, in whole or in part the Software or the Signals it generates, or to reverse compile or disassemble the Software and/or its Signals. The rights granted LICENSEE hereunder are restricted exclusively to LICENSEE. All rights not expressly granted to LICENSEE by this Agreement are exclusively reserved to and by NEXGEN.

LICENSEE MAY NOT DISTRIBUTE, CONVEY, SELL, USE OR TRADE ANY SIGNAL OR OTHER INFORMATION GENERATED BY THE SOFTWARE TO ANY PERSON OR GROUP. SUCH PROHIBITED GROUPS INCLUDE, BUT ARE NOT LIMITED TO, ANY POOL, FUND OR INVESTOR GROUPS, WHICH POOL FUNDS TOGETHER AND PAYS COMMISSIONS OR INCENTIVE FEES TO LICENSEE.

(d) **USE ON OTHER COMPUTERS; PERMANENT TRANSFER TO NEW LICENSED COMPUTERS.** LICENSEE may, without incurring additional license charges, move the Software to other computers in the following situations: (i) temporarily, if the Licensed Computers cannot be used because of equipment or software malfunctions or (ii) permanently, onto replacement Licensed Computers if the Licensed Computers are being replaced by LICENSEE with new computers. However, in the event of a permanent move (1) there can be no increase in the quantity of Licensed Computers using the Software over the quantity of Licensed Computers for which the LICENSEE has purchased licenses for the Software, (2) that such relocation of the Software is to another installation site in the same country to which the Software has been delivered initially and (3) upon permanent transfer of the Software to the new computer, LICENSEE shall cease use of the Software on the original Licensed Computer altogether and will promptly give NEXGEN written notice of such relocation. Additional license fee charges are incurred when LICENSEE, having Software licensed on Licensed Computers, either (i) increases the number of Licensed Computers using the Software or (ii) transfers Software copies to additional Licensed Computers which are not then licensed and for which the applicable license fees have not been paid.

NEXGEN reserves the right that upon multiple or repeated requested for re-installation and/or transfer of licenses for any reason, to withhold registration and license, unless LICENSEE pays a new License Fee or upon establishing to NEXGEN’s satisfaction that LICENSEE is not installing the Software on more than two (2) personal computers.

LICENSEE agrees not to hire or solicit any individuals currently employed by NEXGEN or any former NEXGEN employees for one year after their employment is terminated for any services related to the Software

(e) **TRANSFER OF LICENSE GRANT.** The Software may not be assigned, sub-leased, sub-licensed, sold or otherwise transferred, except as provided herein. Upon written consent from NEXGEN, LICENSEE may transfer the license granted herein to another party and such license shall only become effective upon the party receiving the license consenting to and assuming, in writing, all terms of this Agreement. LICENSEE must pay NEXGEN a fee for the transfer, and must also remove the Software Program from the initially Licensed Computer to NEXGEN's satisfaction.

(f) **DOCUMENTATION.** LICENSEE may make, for its internal use only in conjunction with use of the Software, one (1) additional copy of the printed copies of the Software user manuals and documentation which may be supplied to LICENSEE in CD-ROM, electronic and/or hard copy format provided LICENSEE includes all NEXGEN copyrights and all other proprietary notices in the documentation on such copies it produces. LICENSEE may use this copy solely for his own personal use. Further, LICENSEE agrees not to remove or destroy any proprietary markings or proprietary legends placed on or contained within the Software or any related materials or documentation.

(g) **TITLE.** This Agreement grants LICENSEE no title or rights of ownership in the Software. All Software furnished by NEXGEN, and all copies thereof made by LICENSEE, including translations, compilations, and partial copies, and all patches, revisions, and updates thereto are and shall remain the property of NEXGEN or NEXGEN'S licensors, as applicable.

(h) **VERIFICATION OF SOFTWARE DEPLOYED.** Upon reasonable advance notice to LICENSEE and on a non-interference basis with LICENSEE'S normal business operation, NEXGEN has the right to conduct an audit of the quantity of Software LICENSEE has placed into use under this Agreement. Such audit shall not be conducted more frequently than once per year and will be done at NEXGEN'S expense.

(i) **USAGE OF SOFTWARE.** The contents of the Software are highly proprietary information of NEXGEN and/or of its licensors and LICENSEE agrees not to allow any machine readable or other version of the Software to be printed, listed, reproduced, copied, decompiled, disassembled or reverse engineered. LICENSEE will so advise all parties having access to the Software or the output of these restrictions. NEXGEN may not have an adequate remedy at law and injunctive or other equitable relief may be appropriate to restrain unauthorized use, reproduction, disclosure, printing, listing, decompilation, disassembly or reverse engineering.

LICENSEE may also make one (1) copy of the Software in machine-readable form solely for archive or backup purposes in accordance with LICENSEE'S standard archive or backup policies and procedures. Use of Software greater than the quantity of licenses paid for is prohibited and any such use will be subject to additional license fees.

(j) **LIABILITY FOR IMPROPER USE.** In the event LICENSEE improperly use, conveys, trades, or gives any of the Software and/or Signals to any person, LICENSEE agrees that realized or potentially unrealized profits to NEXGEN would be grave. LICENSEE agrees that in order to establish a fair and easy method of calculation of such damages, LICENSEE shall be liable to NEXGEN for the payment of the then current license fee of the Software for each person that LICENSEE allowed to use, conveyed, traded, or gave any of the Software or Signals.

(k) **NO GUARANTEE OF RESULTS.** The Software is a means to analyze data concerning financial markets and to assist LICENSEE in making LICENSEE'S investment decisions. **HOWEVER, NEXGEN DOES NOT GUARANTEE A PARTICULAR RESULT FROM THE USE OF ITS SOFTWARE, AND ONCE PAYMENT IS MADE THERE WILL BE NO REFUNDS FOR THE LICENSE GRANTED HEREIN EXCEPT AS RELATED TO THE LIMITED WARRANTY CONTAINED IN THIS AGREEMENT.**

(l) **THIRD-PARTY SERVICES NECESSARY.** LICENSEE agrees and understands that NEXGEN does not supply the data used by the Software and/or the Signals, and is not responsible for any costs LICENSEE may incur in order to obtain the information necessary for the Software to function. Such fees include, but are not limited to, data charting fees (i.e. Tradestation), exchange or data fees, and chat room fees (i.e. Hotcomm). LICENSEE is sole responsible for any costs, fees, or expenses related to obtaining or using the data necessary to use the Software.

MAINTENANCE AND SUPPORT

COVERAGE

(a) **MAINTENANCE AND SUPPORT PLAN.** NEXGEN will provide maintenance and support for the most current released version and for a period of twelve (12) months after release of the most current released version for the previous sequential version, with respect to: (i) Code Corrections – NEXGEN will supply code corrections to correct substantial deviations of unmodified Software from the then current applicable user documentation and/or software release notes delivered with Software Specifications; (ii) Software Updates/Upgrades – NEXGEN will supply improvements, enhancements and other changes to the Software which NEXGEN, at its discretion, deems to be logical improvements or enhancements and once updated reserves the right to discontinue prior versions; (iii) Call Center Support – NEXGEN will provide support service via telephone, fax and e-mail during NEXGEN'S normal principal period of service ("PPS") during

the hours of 8:00 AM to 5:00 PM, Central Standard Time, Monday through Thursday and 8:00 a.m. to 4:00 p.m. Friday, Central Standard Time except on NEXGEN'S standard holidays.

If NEXGEN determines that the Software is defective, and is unable to correct the problem, NEXGEN will replace the defective software at no additional cost, although LICENSEE will be responsible for the shipping charges of the replacement product, excluding any charges related to downloading the software via any internet protocol or other method of downloading the software directly from NEXGEN.

(b) **LIMITATIONS ON NEXGEN'S OBLIGATIONS.** LICENSEE understands and agrees that NEXGEN may develop and market new or different computer programs which use one or more component(s) of the Software and which may perform any of the functions performed by the Software, but for which such programs are not included as upgrades of the Software covered by this Agreement, and that the inclusion of such programs may be limited to releases of new Software. Nothing contained in this Agreement gives LICENSEE any rights with respect to such new Software, new or different computer programs, or features without consideration of additional license fees and/or terms and conditions.

WARRANTY, INDEMNITY, AND LIABILITY

LIMITED WARRANTY

NEXGEN warrants to LICENSEE that for a period of one (1) year from delivery of the Software by NEXGEN (the "Warranty Period"), the unmodified Software will be capable of operating substantially in conformance with the user documentation and software release notes in effect at the time of delivery of the Software. If, during the Warranty Period, it is determined that the Software does not operate according to such specifications due to NEXGEN'S fault, NEXGEN will undertake good faith efforts to cure the nonconformity. LICENSEE'S only remedy in the event of nonconformity in the Software, or for breach of any warranty is, at NEXGEN's option, either; (i) return of the price paid for the Software or, (ii) repair or replacement of the Software. NEXGEN also will continue technical support and upgrades to software at no additional cost to LICENSEE.

LICENSEE accepts the Software "AS IS, WHERE IS" and LICENSEE assumes all risk as to the quality and performance of the Software.

EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION, NEXGEN MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED AS TO ANY MATTER WHATSOEVER, INCLUDING AND WITHOUT LIMITATION, THE CONDITION OF THE PRODUCT, ITS MERCHANTABILITY, OR ITS FITNESS FOR ANY PARTICULAR PURPOSE.

LIMITATIONS OF NEXGEN'S LIABILITY

LICENSEE specifically agrees that NEXGEN'S liability for actual proven damages arising from any cause whatsoever in LICENSEE'S use of the Software shall be limited to an amount equal to charges payable to NEXGEN by LICENSEE under this Agreement. IN NO EVENT SHALL NEXGEN OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND CONTRACTORS BE LIABLE FOR LOSS OF PROFITS, LOSS OF PRODUCT, LOSS OF BUSINESS OPPORTUNITY, TRADING LOSSES, SPECIAL, CONSEQUENTIAL, AND/OR PUNITIVE DAMAGES.

LICENSEE agrees and understands that any use of the Software and/or Signals for stock and futures trading involves substantial risk and is not suited for everyone. LICENSEE is directed to assess his current and future financial situation prior to making or relying on the Software for such use.

LICENSEE agrees he shall assume full responsibility for the use and interpretation of any Signals that LICENSEE relies on in making or executing any trade. LICENSEE agrees to hold NEXGEN harmless for any loss, claim, or action against or by LICENSEE related to or arising from LICENSEE's use of the Software and/or Signals.

TERMINATION

(a) **TERMINATION BY NEXGEN.** NEXGEN has the right to terminate this Agreement without further obligation or liability (i) if LICENSEE is delinquent in making payments of any sum due under this Agreement and continues to be delinquent for a period of forty-five (45) days after the day on which such payment is due, or (ii) LICENSEE commits any other breach of this Agreement. In the event of a breach of this Agreement, NEXGEN, at its discretion, may provide LICENSEE an opportunity to cure such breach.

(b) **LIQUIDATION OF NEXGEN.** If NEXGEN is liquidated, dissolved, or ceases to carry on business on a regular basis as pertains to the Software licensed by NEXGEN and NEXGEN'S obligations under this Agreement are not assumed by a successor or assignee, this Agreement may be terminated by LICENSEE with thirty (30) days written notice by LICENSEE.

(c) **DISPOSITION OF SOFTWARE ON TERMINATION.** Upon termination of this Agreement or cancellation of the license hereunder for any reason, the license and all other rights granted to LICENSEE shall cease allowing NEXGEN the right to disable the Software through use of the license key generated for each licensed version of the Software, and LICENSEE shall immediately (i) return the Software and all copies of documentation to NEXGEN or alternatively, provide written certification that all copies of the Software and documentation have been destroyed, and (ii) purge all copies of the Software or any portion thereof from all computers and from any computer storage device or medium on which LICENSEE has placed or has permitted others to place the Software.

GENERAL PROVISIONS

GOVERNING LAW

This Agreement shall be governed by the laws of the State of Texas, without reference to any conflict of law. If any provisions of the Agreement or the application of any such provision shall be held by a tribunal of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement shall continue in full force and effect. LICENSEE agrees and acknowledges that NEXGEN provides the software from The Woodlands, Montgomery County, Texas and that all transactions surrounding the issuance of the license, the provision of the software, training and related aspects of the operation of the software are conducted by NEXGEN from its office. Based upon those standards, LICENSEE consents to exclusive jurisdiction and venue in the federal and state courts of Montgomery County, Texas.

DISPUTE RESOLUTION

If LICENSEE and NEXGEN cannot settle a claim, dispute or controversy that arises from or relates to this Agreement, both parties agree to initially submit any and all such claims, disputes, and controversies to mediation, using one or more third party neutrals. LICENSEE and NEXGEN further agree to suspend any applicable statute of limitations during the period of mediation-related discussions. All negotiations and discussions held pursuant to this provision shall be treated as confidential and as compromise and settlement discussions for purposes of applicable rules of evidence.

ARBITRATION

LICENSEE and NEXGEN agree to submit any claim or dispute arising from or related to this Agreement to binding arbitration with American Arbitration Association (“AAA”) pursuant to the AAA rules for Intellectual Property. The Arbitration shall be conducted by one arbitrator and shall be final and binding upon both LICENSEE and NEXGEN. The arbitrator might not award either LICENSEE or NEXGEN attorney fees or expenses related to bringing an arbitration pursuant to a claim or dispute of this Agreement. Provided however each party shall retain the right to seek injunctive relief with a court of competent jurisdiction for violations of this Agreement that meet the standard for a temporary restraining order as provided for pursuant to Texas law. Any arbitration hearing shall be conducted in The Woodlands, Montgomery County, Texas.

EXPORT LAW CONTROLS; EXPORT ASSURANCE DECLARATION

(a) LICENSEE agrees to comply with all export and re-export restrictions and regulations imposed by the governments of the United States or the country to which the Software is shipped to LICENSEE. LICENSEE will not commit any act or omission that will result in a breach of any such export requirements. This section shall survive the expiration or termination of the license or this Agreement.

(b) LICENSEE acknowledges that (i) NEXGEN Software may contain routines that implement the U.S. Government Data Encryption Standard (“DES”) and (ii) that export of DES technology is controlled by agencies of the U.S. Government. LICENSEE will not export, re-export or re-license for export any Software until and unless LICENSEE has complied in all respects with all export and re-export restrictions of the USA and the country to which the Software are shipped.

LICENSEE further agrees that the Software will not be transferred or re-licensed for export if LICENSEE knows or suspects that the Software will be exported in violation of such restrictions. LICENSEE further certifies that the Software will not be re-exported to countries included in prohibited Country Groups of the U.S. Export Administration Regulations, or delivered to national citizens of these countries, or to any person or group as currently listed under such regulations.**MISCELLANEOUS**

(a) **RELATIONSHIP TO OTHER PARTIES.** LICENSEE represents and acknowledges to NEXGEN that LICENSEE is not and has not been associated with R2R STRATEGIC, LLC. LICENSEE agrees that if LICENSEE becomes associated with or otherwise engages with R2R STRATEGIC, LLC that LICENSEE will immediately notify NEXGEN and that this Agreement shall terminate effective immediately without refund or other recourse against NEXGEN or R2R STRATEGIC, LLC.

(b) **WAIVER, MODIFICATION.** The waiver, amendment or modification of this Agreement or any right

hereunder shall not be effective unless made in writing and signed by the party against whom enforcement is sought. NEXGEN reserve the rights to modify the term of this Agreement in subsequent writing delivered to LICENSEE at such time. Any modification of the terms of the Agreement shall only be prospective and shall not operate to negate any rights granted to LICENSEE or NEXGEN. LICENSEE shall be deemed to have accepted any changes or modifications to this Agreement upon receipt of such changes, unless LICENSEE objects to such changes and agrees to terminate its license ad use of the Software.

(c) **FORCE MAJEURE.** In the event circumstances beyond either party's reasonable control prevent such party, ("Affected Party") from performing its obligations under this Agreement, the performance of such obligations shall be suspended to the extent as is reasonable under the circumstances; provided, however, that during the suspension the Affected Party shall use its commercially reasonable efforts to resume its performance under the Agreement; and provided, further, however, that if the Affected Party's performance is suspended for a period of greater than ninety (90) days, the other party shall have the option to terminate the Agreement upon written notice thereof to the Affected Party.

(d) **NOTICE.** Any notice or other communication required or permitted hereunder shall be given in writing to the other party at the address stated on page one hereof or such other address as shall be given by one party to the other in writing.

(e) **PRESS RELEASES.** NEXGEN reserves the right to announce the inclusion of LICENSEE as a customer of NEXGEN in a press release that NEXGEN will draft and distribute to NEXGEN'S media contact database only upon the prior review and approval of content by LICENSEE. NEXGEN further reserves the right to develop case studies and/or other media relations documents that may include such details as approved by LICENSEE prior to any release.

(f) **SUCCESSORS AND ASSIGNS.** All terms and provisions of this Agreement shall be binding upon and inure for the benefit of the parties hereto, and their successors and assigns and legal representatives, except that LICENSEE may not assign this Agreement nor any right granted hereunder, in whole or in part without NEXGEN'S prior written consent. For purposes of this Agreement, assignment shall apply to change of control by and of LICENSEE.

(g) **BENEFICIARY.** NEXGEN'S licensors of software included in the Software are direct and intended third party beneficiaries of this Agreement and may enforce this Agreement directly against LICENSEE.

(h) **ENTIRE AGREEMENT.** The parties acknowledge that this Agreement expresses their entire understanding and agreement, and that there have been no warranties, representations, covenants or understandings made by either party to the other except such as are expressly set forth herein.

Agreed To By:

NEXGEN INC.:

LICENSEE:

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____