User(s)

Software Licence and Services Agreement

between

BLUE TRADING SYSTEMS, LLC

&

This agreement is made on _____, 20

Between:

(1) Blue Trading Systems, LLC a North Carolina limited liability company ("_BTS_") at 194 Finley Golf Course Rd, Chapel Hill, NC 27517 (Licensor); and

(2) _____ (Licensee).

In consideration of the mutual covenants exchanged herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this _agreement_ agree to be legally bound as follows:

First Name	Last Name	Firm	username

1. **Definitions.** For purposes of this *agreement*, the terms below shall have the meanings defined below. Additional terms are defined in the preamble above and throughout this *agreement*.

   1.1. **"*Software*"** means the *software* program (in machine-readable, object code format) identified in the *preamble*, any subsequent patches or releases (as defined in Section 3.4) provided by BTS, and any related documentation made generally available by BTS to all of its *software* licensees.

   1.2. **"*Term*"** means, collectively, the initial term and any and all renewal terms (as each is defined in Section 4.1).

2. **License Grant and Limitations**

   2.1. **Grant.** BTS hereby grants Licensee a nonexclusive, nontransferable license to use the *software* during the *term* solely as authorized in this agreement. Licensee acknowledges that the *software* is licensed and not sold to Licensee. Licensee acknowledges BTS's intellectual property rights in the *software* and Licensee shall not claim any right, title, or interest (including but not limited to copyright, patent, trade secret, trademark and all other intellectual property rights) in the *software*.

   2.2. **User Limitations.** Licensee shall not permit anyone other than employees of Licensee to access or use the *software*. The maximum number of Licensee's combined employees that are simultaneously accessing or using the *software* at any given time during the term shall not exceed the concurrent user limit set forth in the *preamble* (the "*concurrent user limit*"*).*

   2.3. **Equipment.** Licensee shall be responsible for obtaining all computer workstations, Internet access, operating systems, *software* and other system requirements (collectively, "*equipment*") necessary to run the *software*. Licensee shall only use the *software* on equipment which has been approved in advance by BTS ("*approved equipment*"). The number of Licensee's workstations (or other computers) upon which the *software* is installed, accessed or otherwise used shall not, at any time during the *term*, exceed the Concurrent User Limit.

   2.4. **Additional Restrictions.** Licensee may use the *software* solely for its internal business purposes, and shall not use the *software* to conduct any trades for third parties or otherwise perform services for any third parties. Licensee shall not, directly or indirectly, (i) sublicense, lease, sell, assign, distribute, loan, pledge, rent, or otherwise transfer the *software* (or any copy thereof), (ii) copy the *software*, (iii) attempt to make any alterations, derivative works or otherwise modify the *software*, (iv) attempt to gain access to, derive, decompile, disassemble, reverse-engineer or otherwise obtain the source code for the *software*, (v) use the *software* with any equipment not approved by BTS, or (vi) use the *software* to facilitate illegal trading or to facilitate any other illegal activity.

3. **Services.**

3.1. **Installation.** BTS agrees to install the initial *software* on the approved equipment at a time to be mutually agreed upon by the parties.

3.2. **Training.** BTS agrees to provide training on the use of the *software* at a time to be mutually agreed upon by the parties, up to the limits specified in the *preamble* (as to the number of training sessions, hours, and participants).

3.3. **Telephone/E-Mail Support.** During the *term*, BTS will provide Licensee with telephone and e-mail support during BTS's regular business hours to assist with problems with the *software*. BTS will use commercially reasonable efforts to correct or find a work-around solution to any reproducible material defect identified with respect to the operation of the *software* during the *term*. BTS's obligations are contingent upon (i) Licensee's use of the most current version of the *software* (including any patches and releases provided by BTS per Section 3.4 below), and (ii) Licensee's use of the *software* in compliance with the terms of this *agreement*.

3.4. **Patches and Releases.** BTS may, in its sole discretion from time to time, provide (i) periodic fixes to the *software* ("*patches*") and/or (ii) updated versions of the *software* from time to time ("*releases*"). In the event BTS makes patches or releases available, BTS will notify Licensee by e-mail. Licensee is responsible for updating Licensee's *software* with all Patches and Releases (by download from BTS's website or other means instructed by BTS) within one (1) month of receipt of notice from BTS of the availability of such Patch or Release.

3.5. **Change of equipment.** Licensee shall notify BTS in writing in the event that Licensee desires to change any of the equipment upon which the *software* is installed at any time. Licensee may designate new equipment for use with the *software* to replace previously utilized equipment from time to time, provided that (i) such new equipment is approved in advance by BTS, and (ii) Licensee pays the Ancillary Costs (defined below) associated with BTS's removal of the *software* from the old equipment and installation of the *software* on the new equipment. The "*Ancillary Costs*" means (a) all of BTS's reasonable travel expenses with respect to any *software* removed and installed at Licensee's facility, or (ii) all costs associated with shipping (and insuring) the previously used equipment and the new equipment to and from BTS with respect to any *software* to be removed and installed at BTS's facility. If Licensee elects to have *software* removed and installed at BTS's facility, Licensee assumes all risk of loss or damage to equipment arising from such shipment.

3.6. **Remote Access.** Licensee agrees to cooperate with BTS as requested in order to facilitate BTS's provision of the services described in this Section 3, including without limitation allowing BTS to remotely access Licensee's computers upon which the *software* is installed to diagnose errors, install patches or releases, or otherwise, to the extent desired by BTS.

4. *Term*

4.1. **Initial and Renewal *term*s**. The *term* shall begin on the effective date and shall continue in effect for the period specified as the Initial *term* on the *preamble* (the "*initial term*"), unless sooner terminated as provided for in this *agreement*. Notwithstanding anything to the contrary under any provision of this contract, Licensee shall have at all times the ability to immediately terminate this *agreement* upon written notice to BTS, and have no additional obligation, financial or otherwise hereunder. In the event that Licensee does provide such notice any and all sums already paid to BTS under this agreement shall be considered non-refundable.

4.2. **Termination by BTS.** BTS may terminate this *agreement* at any time, for any reason, upon sixty (60) days prior written notice to Licensee. In addition, BTS may terminate this *agreement* at any time upon thirty (30) days prior written notice in the event of Licensee's breach of this *agreement* which Licensee fails to cure within such thirty (30) days. Notwithstanding the foregoing, in the event of Licensee's breach of Section 2.4, BTS may terminate this *agreement* immediately upon written notice.

4.3. **Effect of termination**. Upon non-renewal or termination of this *agreement*, Licensee shall immediately cease its use of the *software* and delete or destroy all copies of the *software* in its possession or control, and deliver to BTS a certification in writing signed by an officer of Licensee, confirming that all use of the *software* has been discontinued and that all copies of the *software* (including the user's manual, if any) have been deleted or destroyed. The provisions of Sections 4.4 and 5 through 10 shall survive non-renewal or termination of this *agreement* for any reason.

5. Fees and Payments

5.1. Monthly License Fee.

a) **Invoicing and Payment**. Each month during the *term*, Licensee shall pay BTS the Monthly License Fee specified on the *preamble* in the amount specified on the *preamble* (the "*Monthly License Fee*"). The Monthly License Fee shall be due and payable each month on the monthly anniversary of the Effective Date, or on the last day of the month for any month which does not include such month anniversary. BTS will provide an invoice to Licensee by e-mail at least ten (10) days prior to the due date of the Monthly License Fee.

b) **Change to Monthly Fee**. BTS shall have the right to change the License/Support Fee that applies to any Renewal *term* by giving written notice to Licensee at least ninety (90) days prior to the beginning of that Renewal *term*. If Licensee does not wish to pay at the new rate, Licensee may elect not to renew this *agreement* prior to the new rate going into effect as permitted by Section 4.1 above. Rate increases for the licensed system shall not exceed eight percent (8%) per year.

5.2. **Additional Service Fees.** Unless otherwise agreed upon by the parties in writing, Licensee agrees to pay BTS's then-current standard rate for any additional services requested by Licensee which are not included in this *agreement*. BTS will provide an invoice to Licensee for such services and Licensee agrees to pay such invoice within thirty (30) days. Licensee acknowledges that the additional fees described in this Section may apply if Licensee requests support for any *software* which Licensee has failed to update as described in Section 3.4 within one (1) month of notification from BTS of a new Patch or Release.

6. **Confidentiality** Each party acknowledges that from time to time during the *term*, such party (the "*Receiving Party*") may come into possession of certain confidential information (defined below) of the other party (the "*Disclosing Party*"). Each party, as the receiving party, agrees that it shall not, directly or indirectly, (i) use any confidential information of the disclosing party for any purpose except to perform its obligations or exercise its rights under this *agreement*, or (ii) disclose or otherwise make available to any third party any of the disclosing party's confidential information except as authorized by the disclosing party in advance in writing. For purposes of this *agreement*, "*confidential information*" means any confidential information of the disclosing party which is provided to the receiving party in connection with this *agreement*, except for any information that (a) is generally available in the public domain through no fault of the receiving party in breach of this *agreement*, (b) is rightfully received by the receiving party outside of the scope of this *agreement* from a third party with no obligation of confidentiality to the disclosing party, (c) was known to the receiving party prior to receipt from the disclosing party, (d) was independently developed by the receiving party without reference to the confidential information of the disclosing party, or (e) the receiving party is required by law, or court order issued by a court with competent jurisdiction, to disclose, in which case the receiving party shall provide written notice to the disclosing party of such law or court order, prior to any disclosure, to enable the disclosing party to seek relief from disclosure or otherwise intervene. BTS acknowledges that any non-public information relating to trades made by Licensee using the *software* will be treated as confidential information of Licensee. Licensee acknowledges that any non-public information relating to the *software* will be treated as confidential Information of BTS.

7. **Transferability.** Each of the parties hereto acknowledges that licensee shall have the right to assign this contract to any third party, provided that such party engages, employs, or has as partners or members the principals engaged in using the *software* through Licensee.

8. **No Warranties.**

8.2. **Disclaimer.** THE *SOFTWARE* IS LICENSED "AS IS" AND BTS MAKES NO EXPRESS OR IMPLIED WARRANTIES AS TO THE SOFTWARE. BTS HEREBY DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE SOFTWARE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTY WITH RESPECT TO FUNCTIONALITY, OPERATION, OR PERFORMANCE OF THE SOFTWARE. FOR EXAMPLE, BTS DOES NOT REPRESENT OR WARRANT THAT LICENSEE'S USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE.

8.3. **Online Trading.** LICENSEE ACKNOWLEDGES THAT ITS USE OF THE SOFTWARE MAY BE SUBJECT TO DELAYS, DATA DELIVERY FAILURES AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, AND BTS IS NOT RESPONSIBLE FOR ANY SUCH DELAYS, FAILURES, OR OTHER PROBLEMS. LICENSEE ACKNOWLEDGES THAT THE SOFTWARE MAY NOT BE ABLE TO EXECUTE TRADES AT THE PRECISE TIME OR IN THE PRECISE MANNER SPECIFIED BY THE LICENSEE DUE TO SOFTWARE ERRORS OR CIRCUMSTANCES BEYOND BTS'S OR THE *SOFTWARE*'S CONTROL (INCLUDING WITHOUT LIMITATION MARKET VOLATILITY, INTERNET TRAFFIC, TRADING VOLUMES, QUOTE DELAYS, ILLIQUIDITY, AND OTHER MARKET CONDITIONS), AND THAT BTS IS NOT RESPONSIBLE FOR ANY DIFFERENCE IN PROFITS OR LOSSES CAUSED BY ANY SUCH DELAY, FAILURE, OR OTHER PROBLEMS. LICENSEE SHOULD BE READY TO UTILIZE ANOTHER SYSTEM TO TRADE IN CASE OF ANY UNEXPECTED FAILURES.

8.4. **Backups.** LICENSEE IS RESPONSIBLE FOR BACKING UP ON A REGULAR BASIS LICENSEE'S DATA ARISING FROM LICENSEE'S USE OF THE *SOFTWARE*. BTS IS NOT RESPONSIBLE FOR ANY LOSS OF ANY OF LICENSEE'S DATA.

8.5. **Assumption of Risk.** LICENSEE ASSUMES ALL RESPONSIBILITY FOR ALL LOSSES AND LIABILITIES THAT MAY ARISE FROM OR RELATE TO USER ERROR, INCLUDING WITHOUT LIMITATION ANY TRADES CONDUCTED BY OR THROUGH THE SOFTWARE BASED ON INSTRUCTIONS OR RULES SET IMPROPERLY BY LICENSEE'S EMPLOYEES.

9. **Limitations of Liability.** IN NO EVENT SHALL BTS BE LIABLE FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL (SUCH AS LOSS OF PROFITS), INDIRECT OR PUNITIVE DAMAGES, ARISING OUT OF THE PROVISION, PERFORMANCE, OR USE OF THE SOFTWARE, WHETHER ARISING OUT OF CONTRACT, TORT OR ANY OTHER LEGAL OR EQUITABLE THEORY. IN NO EVENT, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS *AGREEMENT*, SHALL BTS'S AGGREGATE LIABILITY TO LICENSEE OR ANY THIRD PARTY EXCEED THE FEES PAID TO BTS BY LICENSEE UNDER THIS AGREEMENT DURING THE PRECEDING TWELVE (12) MONTHS. ANY ACTION BY LICENSEE UNDER OR RELATING TO THIS AGREEMENT MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER SUCH CAUSE OF ACTION HAS ACCRUED.

10. **Infringement Indemnity.** BTS shall indemnify and defend Licensee against any third party claims against Licensee during the *term* that the *software* infringes any United States patent or copyright, provided that BTS is given prompt notice of such claim and is given information, reasonable assistance, and the sole authority to defend or settle such claim. In the defense or settlement of any such claim, provided this *agreement* has not already been terminated, BTS shall, in its reasonable judgment and at its option and expense: (i) obtain for Licensee the right to continue using the *software*; (ii) replace or modify the *software* so that it becomes non-infringing while giving substantially equivalent functionality; or (iii) if BTS determines the remedies in (i) or (ii) are not commercially reasonable, as its sole obligation, terminate this *agreement* (including the license granted herein), in which case Licensee will have no further obligations to pay the Monthly License Fee. BTS shall have no liability to indemnify and defend Licensee to the extent (i) the alleged infringement is based on infringing information, data, *software*, applications, services, or programs created or furnished by or on behalf of Licensee; (ii) the alleged infringement is the result of a modification made by anyone other than BTS; or (iii) Licensee uses the *software* other than in accordance with this *agreement* or BTS's instructions. This Section states BTS's entire liability and Licensee's sole and exclusive remedy for claims relating to infringement.

11. Other Provisions.

11.1. **Audit Rights.** BTS or its authorized representative, provided Licensee approves such representative, with such approval not to be reasonably withheld, shall have the right to conduct audits of Licensee's use of the *software* from time to time to ensure compliance with the terms of this *agreement*. Licensee shall grant BTS, upon BTS's request, access to the Licensee's premises and equipment during Licensee's regular business hours for the purpose of conducting the compliance audit. BTS agrees that it will not unreasonably interfere with Licensee's business activities while conducting the compliance audit. If an audit reveals that Licensee has used the *software* in violation of this *agreement*, then BTS may, at its option, provide notice to terminate this *agreement* pursuant to Section 4.3 and avail itself of any other legal and equitable remedies available. BTS will bear the cost of such audit unless a material breach is revealed, in which case Licensee shall bear the costs associated with the audit.

11.2. **Governing Law**. This *agreement* and any controversy or claim arising out of or relating to this *agreement* shall be construed in accordance with and governed by the internal laws of the State of North Carolina without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of North Carolina to the rights and obligations of the parties.

11.3. **Choice of Forum, Venue, and Consent to Jurisdiction.** BTS and Licensee agree that any suit or proceeding arising out of relating to this *agreement* or the *software* may be instituted and maintained in the courts of the State of North Carolina located in Orange County or the United States District Court for the Middle District of North Carolina. Licensee consents to and waives any objection to the exercise of jurisdiction over it by such courts with respect to any such suit or proceeding. However, nothing herein shall prevent BTS from instituting or maintaining a suit or proceeding in any other court with proper jurisdiction.

11.4. **Export Restrictions.** This *agreement* is expressly made subject to any laws, regulations, orders or other restrictions on the export from the USA of the *software* which may be imposed from time to time by the government of the United States of America (including, without limitation, those imposed by the U.S. Department of Commerce and U.S. Treasury Department). Licensee shall not export the *software* or use it outside of the USA without the prior written consent of BTS and in accordance with such governmental restrictions.

11.5. **Notices; Payments**. Any oral or written notice contemplated, required, or permitted under this *agreement* by Licensee shall be sufficient if sent by e-mail to BTS at support@bluetradesys.com. Payments owed by Licensee under this *agreement* shall be mailed by check to Blue Trading Systems, LLC, 194 Finley Golf Course Road, Suite 100, Chapel Hill, NC 27517 (or any other address specified by BTS). Any oral or written notice contemplated, required, or permitted under this *agreement* by BTS shall be sufficient if sent by e-mail to Licensee at the e-mail address listed in the *preamble*. Such notices shall be deemed effective on the first business day following the date such e-mail was sent.

11.6.   **No Assignment.** Licensee shall not assign or otherwise transfer in any way this *agreement*, or any of its rights or obligations arising under this *agreement*, without the prior written consent of BTS. Any attempt by Licensee to do so without BTS's consent shall be deemed null and void. BTS may assign this *agreement* to an affiliate or in connection with the sale of its stock or substantially all of its assets or business to which this *agreement* relates.

11.7.   **Force Majeure.** BTS shall not be responsible for any delay or failure to perform its obligations specified in this *agreement* due to causes beyond BTS's reasonable control.

11.8.   **Waiver***.* The waiver or failure of a party to exercise in any respect any rights provided for in this *agreement* shall not be deemed a waiver of any further right under this *agreement*.

11.9.   **Severability***.* If any term or provision of this *agreement* is declared invalid by a court of competent jurisdiction or by operation of law, the remaining terms and provisions of this *agreement* shall be unimpaired, and the invalid term or provision shall be replaced by such valid term or provision as comes closest to the intention underlying the invalid term or provision.

11.10.   **Amendments.** No amendment or modification of any provision of this *agreement* shall be effective unless the same shall be in writing and signed by all of the affected parties.

11.11.   **Entire *agreement*.** This *agreement* constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior proposals, negotiations, conversations, discussions, and agreements between the parties concerning the subject matter hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement below by signature of their respective duly authorized representatives to be effective as of the Effective Date.

Blue Trading Systems, LLC:

By: _____

Printed Name: _____

Title: _____

Date: _____

Licensee: _____

By: _____

Printed Name: _____

Title: _____

Date: _____