

ENTERPRISE LICENSE AND SERVICES AGREEMENT (MASTER)

Apollo Enterprise Imaging Corp and _____

THIS ENTERPRISE LICENSE AND SERVICES AGREEMENT ("this Agreement") made as of the _____ day of _____, 20__ (the "Agreement Effective Date") between _____, a _____, having an office at _____ (hereinafter referred to as the "Customer") and **APOLLO ENTERPRISE IMAGING CORP**, a Delaware corporation, having an office at 8245 Boone Boulevard, Suite 620, Tysons, Virginia, USA 22182 (hereinafter referred to as "Apollo")

RECITALS:

- (1) Customer wishes to obtain from or through Apollo a license and services relating to the installation, testing, implementation, support and use of Apollo's software **arcc**® (hereinafter "**arcc**") and Apollo wishes to provide such license and services to Customer.
- (2) The parties desire to specify in this Agreement the definitive terms and conditions governing such license and the provision of such services.

NOW THEREFORE in consideration of the premises and the covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the parties) Customer and Apollo agree as follows:

ARTICLE 1: DEFINITIONS

- 1.1 "Acceptance Date" is the date of successful completion of all phases of any applicable Acceptance Test as determined in accordance with this Agreement.
- 1.2 "Acceptance Test Period" is the time period during which Customer, with Apollo's assistance, will conduct an Acceptance Test in accordance with this Agreement.
- 1.3 "Acceptance Test or Acceptance Testing" is the process for determining that the Software (including each component, individually and in combination) performs without Deficiencies. The Acceptance Test includes the performance of appropriate tests, routines, diagnostic operations and diagnostic procedures.
- 1.4 "Account" means a unique account created for a Customer's Representative or Administrator to access and use the Software and Services.
- 1.5 "Administrator(s)" means those Users designated by Customer who are authorized to sign, whether electronically or in writing, Schedules and to create Customer Accounts and otherwise administer Customer's use of the Software and Services
- 1.6 "Affiliates" mean all entities controlling, controlled by or under common control with a party and any organizations which may hereafter become an Affiliate of a party. For purposes of this definition, direct or indirect ownership or control of more than 50% of the voting interests of an entity shall be deemed control.
- 1.7 "Agreement" means this Agreement and all Schedules and Statements of Work incorporated into this Agreement in accordance with its terms.
- 1.8 "Agreement Effective Date" means the date first written above. "Schedule Effective Date" means the date designated as such in the applicable Schedule.
- 1.9 "Apollo Personnel" has the meaning set out in Section 5.1(a).
- 1.10 "**arcc**" shall mean the Apollo **arcc**® (Apollo Repository for Clinical Content) software which is licensed, in whole or in part, to Customer under this Agreement as more fully described in the applicable Schedule(s).

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1.11 "Capture Event Monthly Commitment" shall mean the minimum number of Capture Events set forth in the applicable Schedule for which Customer agrees to pay irrespective of actual usage.

1.12 "Capture Event" or "CE" means a patient interaction with Customer (except where expressly provided otherwise in the applicable Schedule) in the course of which clinical multimedia objects are acquired, stored, retrieved and managed through the Software. Clinical multimedia objects include pictures, videos, audio clips, DICOM images, proprietary image objects from specialized medical imaging modalities, and images embedded in documents. The number of clinical multimedia objects typically acquired in the course of the applicable single interaction are covered by a single capture event fee.

1.13 "Clinical Volume" means more than one Capture Events.

1.14 "Confidential Information" has the meaning set out in Article 12.

1.15 "Content" means the audio and visual information, documents, software, products and services contained in or made available via the Software and Services, other than Customer Data

1.15 "Critical Problem" means a Deficiency which crashes Customer's system or renders it inoperable, stops Customer's production of data, results in lost or destroyed data, or substantially impairs Customer's operations which are dependent on the Software.

1.16 "Customer Data" means (a) all data and information (including all information whether or not Personal Information, and whether or not contained in or on any database or electronic information storage system or media owned by or in the custody or control of Customer) of any kind and in any form, provided by Customer to Apollo to operate the Software or to enable Apollo personnel to perform any of the Services; (b) any other data or information otherwise owned by or in the custody or control of Customer except for any provided by Apollo; (c) all Personal Information collected or processed by the Software or Apollo personnel as part of the Services; and (d) all data that are created, developed, generated, prepared or produced as a result of any compilation of (whether combined or compiled with other data or not) developments or modifications to the data described above, but in the event such compilation, development or modification includes Apollo's data with Customer Data, excluding Apollo's data that are proprietary to Apollo immediately prior to the Schedule Date or are proprietary to Apollo but are not first created or produced in the performance of the Services, such excluded Apollo data to be licensed to Customer in accordance with Article 4 of this Agreement.

1.17 "Customer Materials" means: (a) materials, including all algorithms, audio or video recordings, computer code, documentation, images, reports, software development tools, specifications, technical information, and technologies, recorded in any form and on any media, that are proprietary to Customer and provided to Apollo to operate the Software or enable Apollo to perform the Services; and all such materials that are created, developed, generated, prepared or produced as a result of any developments, enhancements or modifications by Customer to the material described above; (b) Customer Data; and (c) all materials described in a Schedule as remaining the property of Customer.

1.18 "Customizations" means any enhancements or changes to **arcc**, developed by Apollo on behalf of Customer, in accordance with a Schedule.

1.19 "Deficiency" means any failure of the Software to perform in all material respects in conformity with the Documentation or other applicable requirements of this agreement. "Deficiencies" refers to more than one Deficiency.

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1.20 "Documentation" means (a) documentation in either printed or machine-readable form produced, provided, or to be provided, to Customer by Apollo (including any documentation specifically identified in a Schedule) relating to the design, capabilities, functionality, installation, use, configuration, user-level maintenance or operation of the Software, including the Implementation Plan used by the parties to install and implement the Software, system and technical manuals, program manuals, test and diagnostic information, specifications, maintenance information, plans, sales materials, schematics, program listings, flow charts, application manuals, training manuals, user manuals, test documentation and data, reference materials and operating procedures and (b) any additional documentation produced or provided by Apollo with respect to any Customization.

1.21 "Encumbrance" means any encumbrance of any kind whatsoever, and includes an assignment, charge, hypothecation, lien, mortgage, pledge, security interest, trust or other right or claim of others.

1.22 "Fee" shall mean the amount charged for the Software and the Services stated in the applicable Schedule. "Fees" means the aggregate amount of Fees.

1.23 "Hardware Configuration" means the equipment and computer hardware listed in a Schedule and any substitute replacement, upgrade or additional equipment and hardware to be used by Customer to support the use of the Software.

1.24 "Implementation Date" means the date on which the Implementation Services are completed.

1.25 "Implementation Plan" means the mutually agreed upon definitive plan, to be prepared by the parties in the manner set forth in Article Five below that will be mutually agreed upon by the parties in advance of implementation, describing the Implementation Services to be performed.

1.26 "Implementation Services" means those services including installation, training, configuration, and other tasks as are required to assist Customer in implementing the Software or enhancing its use described in an applicable Schedule to this Agreement described in Article Five hereof .

1.27 "Intellectual Property Rights" means any intellectual or other proprietary rights protected or protectable now or in the future under the laws of the United States, any State, any foreign country, or any political subdivision of any country, including any intellectual property rights protected by legislation or by common law (such as confidential information and trade secrets).

1.28 "Major Problem" means a Deficiency which is capable of being reasonably circumvented by Customer and which does not preclude Customer from operating the Software.

1.29 "Minor Problem" means a Deficiency which is neither a Critical Problem nor a Major Problem and which does not preclude Customer from operating the Software.

1.30 "Professional Services" means any consulting, professional, development, project management, program management, training or other services provided to Customer other than Implementation Services and Support Services.

1.31 "Party" means a party to this Agreement.

1.32 "Personal Information" refers to information regarding a specific patient including an individual's name, address, age, date of birth, sex, gender identity, and religion, whether recorded in printed form, on film, by electronic means or otherwise.

1.33 "Recommended Configuration" means a recommended configuration of hardware, equipment, operating system or other third-party software specified in a Schedule to enable the Software to be used in a system.

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1.34 "Representatives" means a party's employees, agents and contractors. In the case of Customer, Representatives shall also be deemed to include (i) the employees, agents and contractors of Customer's Affiliates and (ii) any other Users authorized by Customer to utilize the Services provided.

1.35 "Schedule" means a document setting out the specific details of the Software, Services, or Subscription to be provided to Customer and other related terms and conditions specific to the transaction, which is agreed upon and signed by both parties. A Schedule may be submitted online or in hard copy form. The Schedule shall set forth, among other things, a description of the software and support and other services covered, the Schedule Effective Date and its term, the Capture Event Monthly Commitment (if applicable), the applicable Fees, the billing period, and any other charges which apply. A Schedule may be amended in any respect by a writing signed and dated by the parties. An Apollo proposal or quotation that is accepted in writing by Customer can act as the Schedule for this Agreement so long as the customer signatory has Customer's authority to bind Customer to the contractual commitment.

1.36 "Services" means the Implementation Services, Support Services, and Professional Services to be performed under and in accordance with this Agreement. Services may also include web-based applications, technical support and Documentation.

1.37 "Software" shall mean the **arcc** software components specifically described in one or more applicable Schedule(s).

1.38 "Subscription" shall mean a combined offering which provides the Software and Services specifically described in one or more applicable Schedules(s).

1.39 "Support Services" means the Software troubleshooting, maintenance and support services to be performed under and in accordance with this Agreement. These services may be performed by a technician at Customer's designated location or remotely via phone or the internet.

1.40 "Term" means with respect to this Agreement the period between the Agreement Effective Date and termination hereof pursuant Section 16.1 and with respect to an individual Schedule, the term stated in the applicable Schedule.

1.41 "Timetable" means the date(s) specified in a Schedule or Statement of Work for the performance of Services.

1.42 "Transaction Volume" means the aggregate number of Capture Events (or other agreed upon measurement metric) which occur in the course of Customer's use of the Software during a specific month or other period identified in the applicable Schedule as measured by the number of Capture Events (or other measurement metric) posted by Customer during such monthly or other period, as the same may be verified by Apollo through a subsequent audit.

1.43 "User" means a Representative who is authorized by Customer to access and use Software and Services in the course of the performance of duties to Customer and/or its patients and who has been issued a user identification and password or other approved form of access by Customer.

ARTICLE 2: SCOPE OF AGREEMENT

2.1 This Agreement contemplates that Apollo and Customer will agree to one or more Schedules and Statements of Work with respect to the Software and Services to be supplied by Apollo and licensed or delivered to Customer. Each Schedule or Statement of Work will be duly completed as described in this Agreement and executed and delivered by each Party and thereupon become part of this Agreement.

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2.2 Each such Schedule or Statement of Work will be deemed automatically incorporated by this reference into this Agreement and shall be governed by all the terms and conditions of this Agreement; provided that in the event the provisions of said Schedule or Statement of Work conflict or are inconsistent with the terms and conditions of this Agreement, the provisions of the applicable Schedule or Statement of Work shall control and take precedence over the conflicting or inconsistent provisions of the terms and conditions of this Agreement. Except for such conflicting or inconsistent provisions, the terms and conditions of this Agreement shall not be deemed amended, modified, cancelled, waived or released unless pursuant to a written amendment by the parties as specified in Article 24.

ARTICLE 3: TERM; RENEWAL

3.1 This Agreement is effective from the Agreement Effective Date and continues in full force and effect until terminated in accordance with its provisions.

3.2 Each Schedule or Statement of Work is or will be effective from the Effective Date thereof and continues or will continue in full force and effect for the Term stated therein unless earlier terminated in accordance with the provisions of this Agreement.

Upon expiration of the initial Term stated in a Schedule and each renewal term thereafter, the Schedule shall renew automatically for an additional year unless either party elects to terminate the Schedule by giving the other party notice at least sixty days prior to the end of the then current term. Apollo shall have the right with respect to each renewal term to increase the Fees then in effect by not more than three percent (3%) by giving Customer written notice of the price increase not less than ninety days prior to the end of the then current term.

ARTICLE 4: LICENSE; USE OF LICENSE

4.1 Subject to the terms and conditions of this Agreement, Apollo grants to Customer and its duly authorized Representatives with respect to each Schedule a limited, non-exclusive, non-transferable (except as expressly permitted by this Agreement) license to use the Software listed thereon and the Services covered thereby in the United States and Canada in the manner described therein and the related Documentation during the term set forth in the applicable Schedule pertaining thereto or, if said Schedule is terminated earlier, the period otherwise determined in accordance therewith.

4.2 Customer hereby grants to Apollo a non-exclusive, royalty-free, non-transferable, limited right to use the Customer Materials that may be provided by Customer solely for the purpose of carrying out this Agreement and the Services to be rendered hereunder. The parties agree that this grant of rights is expressly made subject to Apollo's confidentiality obligations set forth herein and any other restrictions specified in the applicable Schedule.

4.3 Customer will not have any rights, title or interest in or to the Software or the Services covered by a Schedule except those expressly granted in this Agreement or the applicable Schedule. Apollo reserves to itself all rights, title and interest now existing or hereafter arising in and to the Software or the Services not expressly granted to Customer in this Agreement and the applicable Schedule. Without limiting the foregoing, Apollo retains all copyright, patent, and other intellectual property rights in and to such Software or Services except those expressly granted to Customer in this Agreement and the applicable Schedule. All rights, title and interest in and to any enhancements, modifications and derivative works that Apollo makes to the Software or its accompanying Documentation, including all Intellectual Property Rights therein, will belong exclusively to Apollo.

4.4 The Software shall be provided to Customer in object code form only. Customer shall not disassemble, decompile, or reverse engineer the Software and Customer shall use the Software only for the purposes intended by this Agreement and in accordance with the software specifications set forth in the Documentation

4.5 Customer and its Representatives may use the Software and Services solely for and in the course of Customer's own internal business operations. Customer may not resell any of the Software or Services. Except as otherwise explicitly provided in this Agreement and the applicable Schedule,

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Customer will not, and will not permit or authorize any Representatives or other third parties to: (a) rent, lease, or otherwise permit third parties to use the Software or Services except with the prior written consent by Apollo; (b) use the Software or Services to provide services to third parties (e.g., as a service bureau) except with the prior written consent by Apollo; (c) circumvent or disable any security or other technological features or measures of the Software, or (d) reverse engineer any element of the Software, or (e) use the Software or Services or any of Apollo's Confidential Information or proprietary information to create a product that competes with Apollo.

4.6 Customer is responsible for managing access to each Account. Customer may permit its Representative to access the Software through the Representative's Account, provided that Customer ensures that each Representative using such Account complies with the terms of this Agreement, and that Customer remains responsible for any action taken by a Representative using an Account. If a Schedule include limits on the number of users, Customer will ensure that each User is issued credentials specific to that User and that those credentials are not shared with anyone else.

4.7 If Customer uses the Software or Services on behalf of its patients or if it grants access to the Software or Services to its patients, Customer will be responsible for ensuring that such patients are not able to access confidential or proprietary information of another Patient.

4.8 Customer will use the Software in compliance with all applicable federal, state and local laws and regulations, including without limitation all export laws, and in a manner that does not infringe on the rights of any third party.

4.9 Customer will use all commercially reasonable efforts to prevent any unauthorized or non-compliant use of the Software or Services by any Representative. It will immediately notify Apollo orally (and thereafter confirm in writing) of any unauthorized or non-compliant use known to Customer whether by a Representative or any other person or entity. In the event of an unauthorized or non-compliant use by any person or entity as to whom Customer bears responsibility under this Agreement, Customer will take all steps reasonably necessary to stop the unauthorized or non-compliant use. The parties will cooperate concerning and assist in taking any reasonable actions to be taken by either Customer or Apollo to prevent or stop unauthorized or non-compliant use of the Services.

4.10 Apollo shall be entitled to suspend Customer's or any Representative's use of the Software or Services if Apollo determines such suspension is necessary or advisable to prevent any unauthorized or non-compliant use of such Services. Apollo will use commercially reasonable efforts to notify Customer prior to any such suspension and will only suspend such use to the extent necessary to prevent such unauthorized or non-compliant use.

4.11 For so long as Customer is current with its payment of the Fees specified in the applicable Schedule(s), Apollo will provide Customer with the second and third tier technical Support Services described thereon for the Software covered thereby. Said Support Services are provided from Apollo's office-based support team from 9am-8pm Eastern Time, Monday through Friday, excluding U.S. holidays and on-call remotely outside of these hours. First tier support shall be the responsibility of Customer. Apollo will provide its support services via phone, e-mail, remote access (if authorized), and on-site to the extent provided in the applicable Schedule and will coordinate its support with Customer's support desk or any other provider of support functions designated by Customer. Apollo will use commercially reasonable efforts to monitor calls and problem reports and conduct regularly scheduled consultations with users designated by Customer to evaluate client satisfaction. Apollo will render all Support Services in a timely, professional and workmanlike manner.

ARTICLE 5: IMPLEMENTATION AND PROFESSIONAL SERVICES

5.1 Apollo Personnel:

- (a) *Staffing.* Apollo will provide adequate qualified staff, whether employees of Apollo or personnel provided by permitted subcontractors, (the "Apollo Personnel") to complete the Services within the applicable Timetable.

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- (b) *Compensation, Benefits and Taxes.* Apollo Personnel shall be under the sole supervision and control of Apollo. Apollo shall be solely responsible for the payment of compensation of Apollo Personnel, and for any worker's compensation, disability benefits, unemployment insurance, withholding, or employment-related taxes for any Apollo Personnel.
- (c) *Compliance.* Apollo Personnel will comply with all applicable Apollo and Customer rules, regulations and policies for security, remote access, network and equipment use policies, personnel identification, access and work, including the execution of any confidentiality or access agreements required by Customer for access to its facilities or Confidential Information.

5.2 Upon completion of the Implementation Plan, it shall be signed by the parties and added as a Schedule to this Agreement.

5.3 If any Other Professional Services are required or advisable at any point during the Term of this Agreement, the parties will agree to an additional scope of work, the terms and conditions of which will be governed by a Schedule signed and delivered by the parties.

5.4 Apollo may not subcontract any Services to be performed hereunder unless the applicable Schedule permits it to do so or Customer has given its prior written consent.

5.5 Upon completion of the work to be performed under each Schedule, Apollo shall provide a written report to Customer which summarizes the final outcome under the Implementation Plan or the plan for other Professional Services and shall meet any other reporting requirement specified in the applicable Schedule.

ARTICLE 6: ACCEPTANCE

6.1 Any Acceptance Testing shall be conducted as provided in the applicable Schedule. Customer shall have the period to review and accept the completed test results specified in the applicable Schedule, or a reasonable period if no period is specified. Apollo shall have the period set forth in the applicable Schedule to remedy any Deficiencies identified by Customer, or a reasonable period if no period is specified. Customer promptly shall notify Apollo at any time during the Acceptance Test Period of any Deficiency encountered in conducting the Acceptance Test using Apollo's standard deficiency report form.

6.2 Unless the applicable Schedule provides otherwise:

- (a) Apollo agrees to deliver to Customer all necessary Documentation prior to the start of an Acceptance Test.
- (b) Customer agrees to commence an Acceptance Test for the Software no later than ten (10) business days following the date on which Apollo has completed the delivery and installation of the Software.

6.3 Should Apollo receive notice of a Deficiency, upon Customer's request, Apollo agrees to take all actions as are necessary to correct the Deficiency promptly, but in any case within ten (10) business days or such longer correction period as mutually agreed to by the Parties ("Correction Period").

6.4 Apollo will give Customer five (5) business days prior written notice of the date of the expiry of the Acceptance Test Period. Customer agrees to notify Apollo, within five (5) business days after such notice, whether or not the Customer is satisfied that the Software has successfully performed the Acceptance Test. If Customer is not satisfied, it shall specify in reasonable detail in such notice the Deficiencies which remain to be corrected. Notwithstanding anything to the contrary in this Article, the Software shall be deemed to be accepted if no notice of Deficiency has been delivered to Apollo with respect thereto prior to the end of such five (5) business days

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6.5 Customer may elect to conditionally accept the Software with all or part of the Deficiencies not corrected, in which case, Apollo agrees to correct the Deficiencies promptly, but in any case within thirty (30) days of notification by Customer of its conditional acceptance.

6.6 Notwithstanding the foregoing, except when the Schedule provides for the use of the Software for production/clinical purposes either prior to or as part of the Acceptance Test, the use by Customer of the Software for production/clinical purposes for at least twenty (20) consecutive business days during the Acceptance Test Period shall constitute acceptance of the Software unless Customer provides Apollo with notice of a Deficiency encountered during such period. If one or more Deficiencies have been identified prior to the start of such period, such acceptance shall be conditional and Apollo shall continue to be obligated to remedy any previously identified Deficiencies in accordance with this Agreement.

6.7 Where a Schedule contemplates the delivery and/or implementation of the Software in multiple phases, Customer shall have the right to conduct an Acceptance Test for each phase, as well as a final integration and interoperability test of those previously accepted earlier phases.

ARTICLE 7: CUSTOMIZATIONS AND OWNERSHIP THEREOF

7.1 In the event that Customer requests Customization, Apollo agrees to provide Customer with a written estimate of the cost of the Professional Services to be rendered. If the parties agree to undertake the Customization, they shall do so in accordance with the terms and conditions set forth in a Schedule governing the performance of the Professional Services.

7.2 Customer will not have any rights, title or interest in or to **arcc** as a result of any Customization except those expressly granted in the applicable Schedule. Apollo reserves to itself all rights, title and interest now existing or hereafter arising in and to **arcc** resulting from the Professional Services not expressly granted to Customer in the applicable Schedule. Without limiting the foregoing, Apollo retains all copyright, patent, and other intellectual property rights in and to **arcc** resulting from such Professional Services except those expressly granted to Customer in the applicable Schedule. All rights, title and interest in and to any enhancements, modifications and derivative works that Apollo makes to **arcc** or its accompanying Documentation, including all Intellectual Property Rights therein, will belong exclusively to Apollo.

7.3 Unless otherwise provided expressly in the applicable Schedule, Apollo shall own all right, title and interest, including, without limitation, all Intellectual Property and any other proprietary right or interest, in and to any Customization and any other related work product developed for or provided to Customer as part of the Services performed under this agreement with respect to the Customization.

7.4 Customer shall execute and deliver such instruments and take such other steps as may be requested by Apollo from time to time in order to give effect to the provisions of this Article.

ARTICLE 8: TRAINING

Apollo agrees to provide all necessary instructions and training in accordance with the applicable Schedule to enable Customer's personnel to configure, operate and/or maintain the Software covered thereby. The fees payable for this training will be stated in the Implementation Plan or other applicable Schedule.

ARTICLE 9: DOCUMENTATION

9.1 Concurrently with the delivery of the Software, Apollo agrees to provide Customer with sufficiently detailed Documentation to enable Customer to utilize the Software. Documentation will be provided in electronic or printed form.

9.2 Apollo agrees to furnish Customer with revisions to the existing Documentation that it may develop for the Software when such revisions are published generally.

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ARTICLE 10 : FEES AND PAYMENTS

10.1 Customer shall pay the Fees stated in an applicable Schedule:

- (a) If for a Subscription, 40% of the First Year Subscription Fee and Service Fees are due upon signature of the Agreement, 40% of the First Year Subscription Fee and Service Fees are due upon installation of the software into the testing or production environment, whichever comes first, and the remaining First Year Subscription Fee and Service Fees are due upon installation and acceptance or first clinical use into the Production environment. Thereafter, 100% of Subscription Fees will be paid at the beginning of the period covered by said Fees determined in accordance with the applicable Schedule. Apollo will generate invoices for each of the above contemplated events. Customer will pay the full amount of each invoice within thirty (30) days of date of said invoice.
- (b) In all other cases, 40% of the Software License Fee, Implementation and Professional Services amounts are due upon signature of the Agreement, 40% of the Software License Fee, Implementation and Professional Services amounts are due upon installation of the software into the testing or production environment, whichever comes first, and the remainder of the Software License Fee, Implementation and Professional Services amounts are due upon installation and acceptance or first clinical use into the Production environment. Thereafter, 100% of Support Fees will be paid at the beginning of the period covered by said Fees determined in accordance with the applicable Schedule. Apollo will generate invoices for each of the above contemplated events. Customer will pay the full amount of each invoice within thirty (30) days of date of said invoice.
- (c) Implementation Delays. If Customer delays or postpones implementation of any Software or any milestone set forth in the Implementation Plan for more than ninety (90) days beyond its originally scheduled date set forth in the Implementation Plan, for any reason, other than Apollo's breach of this Agreement, Apollo shall be entitled to issue an invoice to Customer as if such date or milestone had not been delayed or postponed.
- (d) If, on the first anniversary of the contract execution or the effective date of any attached schedule(s), regardless of implementation status, Apollo at its sole discretion, may invoice the remaining balances for Software License, Implementation, Professional Service or Subscription fees.

10.2 All amounts payable under this Agreement will be denominated in United States dollars, and Customer will pay all such amounts in United States dollars.

10.3 If actual Transaction Volume in any Billing Period exceeds contracted Transaction Volume as stated in the applicable Schedule:

- (a) If for a Subscription, the net difference of the Subscription Fee will be invoiced at the CE Rate multiplied by the net difference between actual and contracted Transaction Volume. The contracted Transaction Volume listed on said Schedule remains unchanged for future Billing Periods remaining in the Agreement unless a change is mutually agreed upon by Apollo and Customer.
- (b) In all other cases, the net difference of the Software Fee will be invoiced at the CE Rate multiplied by the net difference between actual and contracted Transaction Volume. This payment will cause an amendment to the Transaction Volume on said Schedule increasing the contracted Transaction Volume listed on said Schedule to the Actual Transaction Volume for all future Billing Periods remaining in the Agreement.

10.4 Any amount not paid when due will be subject to finance charges equal to one and one-half percent (1.5%) of the unpaid balance per month or the highest rate permitted by applicable usury law, whichever is less, determined and compounded daily from the date due until the date paid. Customer will reimburse any costs or expenses (including, but not limited to, reasonable attorneys' Fees) incurred by

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Apollo to collect any amount that is not paid when due. Amounts due from Customer under this Agreement may not be withheld or offset by Customer against any amounts due to Customer for any reason.

10.5 An invoice address of Customer to which the invoices should be sent by Apollo will be included in the applicable Schedule.

10.6 Customer shall reimburse all reasonable travel, accommodation, transportation and other incidental expenses which are incurred by Apollo personnel while performing services under this Agreement within thirty (30) days after the date of the invoice listing such expenses. Travel expenses will be billed with supporting receipts, including reasonable charges for air travel, car rental, lodging, and per diem costs.

10.7 In the event of any dispute with regard to any invoice, the undisputed portion will be paid as provided herein. Apollo shall continue to provide the Services, Customer shall continue to pay all undisputed amounts and both parties shall continue to perform their obligations under this Agreement while good faith efforts are being made by each party to resolve such dispute.

ARTICLE 11: TAXES

11.1 Customer is obligated to pay and responsible for all sales, use, consumption, value added and other similar taxes which are levied upon or with respect to the Software or Services to be provided under this Agreement. Notwithstanding the foregoing, Customer shall not be obligated to pay any taxes based on Apollo's income, capital, franchise, or investment, or on any property owned by Apollo or which constitute corporate excise or corporate privilege, or license taxes.

11.2 Customer shall not deduct or set-off any taxes for which it is liable under this Article against any payment it is obligated to make under this Agreement.

ARTICLE 12: CONFIDENTIALITY

12.1 As used in this Agreement, "Confidential Information" of a party or its Representatives means secret or confidential information which is not generally known to the public and may include, but is not limited to information about or relating to:

- (a) computer software, know-how, technical data, research, business or financial information, plans or strategies, business practices, operations, or procedures;
- (b) Customers, patients and clients, business partners or employees;
- (c) research plans, data and results;
- (d) computer systems and communications network, including information stored thereon;
- (e) in the case of Apollo, the confidential and proprietary components of the Software and the Documentation supplied pursuant to this Agreement;
- (f) any subject matter which due to its nature, or the circumstances surrounding its communication, would be reasonably interpreted as constituting confidential information;
- (g) any other subject matter of any nature, and in any form, received from or belonging to such party which is marked or identified as confidential or proprietary;
- (h) any other oral or visual information identified as confidential or proprietary at the time of disclosure which is thereafter promptly summarized in writing and provided to the other party; and
- (i) proprietary or confidential information of a third party in the possession of a party hereto or its Representatives.

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12.2 Each party agrees (a) to disclose the Confidential Information only to those of its Representatives who have a need to know the information for any purpose contemplated by this Agreement and are under an enforceable legal obligation to keep same confidential on substantially the same terms as those set forth in this Article and (b) to take appropriate action to ensure their compliance with such obligation. Subject to the foregoing, each party agrees not to sell, license, transfer publish, disclose, display, or make available to others the Confidential Information of the other party or to use it for any purpose other than those contemplated by this Agreement.

12.3 Each party agrees to make the same efforts and use the same measures to ensure that the Confidential Information of the other party is treated and used only as permitted in this Agreement as it does to prevent disclosure of its own confidential or proprietary information of like significance, but in no event less than those which meet a reasonable standard of care.

12.4 Each party agrees not to copy, reproduce, exploit or use for any purpose the Confidential Information of the other party or its respective Representatives except as otherwise provided in this Agreement or as may be required for the performance of this Agreement. Each party, upon request of the other party (unless such information is necessary to continue performance of this Agreement) or within thirty (30) days after termination of this Agreement (whichever is earlier), agrees to return and cause its Representatives to return, all copies of Confidential Information belonging to or provided by the other party or destroy such copies as directed by that party and certify their destruction. In the event of a loss of any item containing Confidential Information of the disclosing party, the receiving party agrees to promptly notify the disclosing party in writing upon discovery of such loss. These obligations shall survive termination of this Agreement or any Schedule.

12.5 Notwithstanding the foregoing, neither party shall be obligated to comply with the obligations imposed by this Article if such information:

- (a) was known to the recipient at the time of disclosure as evidenced by any documents or other records or files in the possession of the recipient prior to such disclosure;
- (b) is publicly known or generally available to the public at the time of disclosure to the recipient or is subsequently generally made available to the public, without restrictions as to its use or disclosure, without fault of the recipient;
- (c) is disclosed to the recipient by reason by another person or entity having the right to disclose or publicize it;
- (d) is intentionally distributed without restrictions as to confidentiality by the disclosing party;
- (e) is information or data which the recipient is compelled, pursuant to United States Federal, State or local law(s) or regulations, to disclose;
- (f) is required to be disclosed in the course of a judicial or regulatory proceeding; or
- (g) is independently developed by the recipient without use or reference to the disclosing party's Confidential Information as shown by documents and other records or files in the possession of the recipient.

12.6 With respect to any disclosure required pursuant to paragraphs (e) or (f) above, the party being compelled to disclose shall provide the other party with prompt notice (to the extent permitted by law) in order to allow the other party to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and shall co-operate with such party and its legal counsel to the fullest extent. The party being compelled to disclose will only disclose that portion of the Confidential Information it is legally compelled to disclose and only to the extent compelled to do so.

12.7 Each party acknowledges that, unless specifically provided otherwise in this Agreement or a Schedule, it shall not acquire any Intellectual Property Rights in and to any Confidential Information.

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12.8 Each party agrees that if a court of competent jurisdiction determines that the recipient has breached, or attempted or threatened to breach, its obligations to the other party under this Article or with respect to the proprietary rights of the other party, the other party will suffer irreparable harm and monetary damages will be inadequate to compensate the other party for such breach. Accordingly, the other party, in addition to and not in lieu of any other rights, remedies or damages available to it at law or in equity, shall be entitled to seek appropriate injunctive relief and other measures restraining further attempted or threatened breaches of such obligations, without requirement to post any bond.

ARTICLE 13: WARRANTIES

13.1 Each party warrants to the other party that: (i) it is duly incorporated or organized, and validly subsisting, under the laws of its place of incorporation or registration; (ii) it is properly qualified where qualification is necessary for the conduct of its business; (iii) it has sufficient corporate or other power to enter into and perform its obligations pursuant to this Agreement; (iv) this Agreement has been duly executed and delivered by such party and (assuming the due authorization, execution and binding delivery hereof by the other party) is a valid and binding obligation of such party, enforceable against it in accordance with its terms, and (v) the execution, delivery and performance of this Agreement shall not violate or constitute a default under the governing corporate or other organizational documents of such party or any provision of law, any order of any court or agency of government, or any agreement, contract, commitment or instrument to which such party is a party or by which the party or its properties or assets are bound.

13.2 Apollo further warrants that:

- (a) It owns or is a perpetual licensee of all components of **arcc** including all Intellectual Property Rights relating thereto;
- (b) It has and will continue to have all necessary rights and authority necessary to grant all licenses and rights granted by this Agreement, free and clear of all Encumbrances;
- (c) **arcc** complies in all material respects with all applicable laws and is not the subject of any pending or threatened claim of infringement or other violation of law;
- (d) **arcc** does not and will not violate, infringe upon, or constitute misappropriation of the rights of any third party, including any patents, copyrights, trademarks, trade secrets, or other Intellectual Property Rights of any third party;
- (e) the Software conforms and will continue to conform in all material respects with the Documentation; and
- (f) the Software does not and will not contain any feature that prevents or inhibits its use in any material respect, including any computer virus, worm, lock, drop-dead device, Trojan-horse routine, trap door, time bomb, or any other code or instruction that may be used to access, modify, delete, damage, or disable the functioning of the Software or any other software, hardware, or other property owned or used by Customer.

13.3 EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS ARTICLE, APOLLO MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. APOLLO EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF ANY KIND, INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

ARTICLE 14: INDEMNIFICATION

14.1 Apollo shall defend Customer and its Representatives ("Customer's Indemnitees") against any claim, demand, suit or proceeding (a "Claim") made or brought against any of them by a third party alleging that the use of the Software or Services in accordance with this Agreement infringes or misappropriates such third party's Intellectual Property Rights, and will indemnify any of Customer's

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Indemnites from any damages, attorney fees and costs finally awarded against a Customer Indemnitee as a result of the Claim, or for amounts paid to settle a Claim, provided the Customer Indemnitee (a) promptly gives Apollo written notice of the Claim or any threatened Claim, (b) gives Apollo sole control of the defense and settlement of the Claim unless Apollo fails to assume such defense after notice of the Claim or threatened Claim and (c) cooperates with and gives Apollo all reasonable assistance in the conduct of such defense. Apollo shall not settle any Claim unless the claimant unconditionally and irrevocably releases the Customer Indemnitees of all liability. Once Apollo is notified by Customer or learns in some other fashion of a Claim or a threatened Claim, it may in its sole discretion and at no cost to Customer (i) modify the use of the Software in a manner that eliminates or resolves the alleged violation underlying the Claim, (ii) obtain a license for the continued use by Customer of the Software in accordance with this Agreement, or (iii) terminate the Schedule for such Software upon 30 days' written notice to Customer.

14.2 Customer shall defend Apollo and its Representatives ("Apollo Indemnitees") against any claim, demand, suit or proceeding made or brought against any of them by a third party alleging that Customer Data, or Customer's use of the Software in breach of this Agreement, infringes or misappropriates such third party's intellectual property rights or violates applicable law (a "Claim"), and will indemnify Apollo from any damages, attorney fees and costs finally awarded against an Apollo Indemnitee as a result of the Claim, or for any amounts paid to settle a Claim, provided the Apollo Indemnitee (a) promptly gives Customer written notice of the Claim or any threatened Claim, (b) gives Customer sole control of the defense and settlement of the Claim unless Customer fails to assume such defense after notice of the Claim or threatened Claim and (c) cooperates with and gives Customer all reasonable assistance.

14.3 Customer shall not settle any Claim unless the claimant unconditionally and irrevocably releases the Apollo Indemnitees of all liability.

14.4 This Article states the indemnifying party's sole obligation to, and the indemnified party's exclusive remedy against, the other party for any Claim described in this Article.

ARTICLE 15: LIMITATION OF LIABILITY

15.1 Except as otherwise specifically provided under this Agreement, each party's liability to the other party for any claim, demand or cause of action whether based on contract, tort (including negligence) or otherwise, for any losses, damages, costs and expense (including but not limited to legal fees) (collectively, "Losses") arising out of or resulting from the use of the Software or the Services performed under an Schedule shall not exceed the lesser of (a) the aggregate of all amounts to be paid by Customer under such Schedule, and (b) \$[1,000,000.00]. This limitation of liability shall not apply to liability under Article 12 (Confidentiality) or the violation of a party's Intellectual Property Rights.

15.2 EXCEPT IN THE CASE OF A BREACH OF ARTICLE 12 (CONFIDENTIALITY) OR A VIOLATION OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PERFORMANCE OF THE SOFTWARE, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, EVEN IF SUCH PARTY IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

ARTICLE 16: TERMINATION

16.1 This Agreement shall terminate at such time as all Schedules hereunder have been fully and satisfactorily performed, expired or been terminated in accordance with their respective terms.

16.2 In the event either party becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver, or interim receiver, for its business or assets or shall avail itself of, or becomes subject to, any proceedings under any other federal or state statute relating to bankruptcy, insolvency, reorganization, moratorium, arrangement of debt or the protection of rights of creditors generally, is declared insolvent or bankrupt, acknowledges its insolvency or inability to pay its debts generally as they become due, makes any proposal, arrangement or compromise with its

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creditors under applicable bankruptcy or insolvency legislation, or otherwise takes any action for the purposes of the foregoing, then the other party is, entitled to immediately upon written notice terminate this Agreement.

16.3 In the event that Apollo fails in any material respect to perform its obligations under this Agreement or any Schedule or Schedule and the failure continues for a period of thirty (30) business days after written notice of the failure has been received by Apollo, Customer shall be entitled to terminate this Agreement, or the applicable Schedule, subject to the survival rights of Article 28. If the breach is corrected within the applicable grace period, this Agreement shall continue in full force and effect, without limitation of any right to damages resulting from the breach.

16.4 In the event that Customer fails in any material respect to perform its obligations (including its payment obligations) under this Agreement and the failure continues for a period of ten (10) business days after written notice of the failure has been received by Customer, Apollo shall be entitled to terminate this Agreement, subject to the survival rights of Article 28. If the breach is corrected within the applicable grace period, this Agreement shall continue in full force and effect, without limitation of any right to damages resulting from the breach.

16.5 In the event Apollo terminates this Agreement or an Schedule for cause, all discounts granted on pricing from the Agreement Effective Date or the Schedule Effective Date, as the case may be, to the date of termination shall be deemed rescinded, all Fees billed prior to that date or yet to be billed will be paid by Customer to Apollo.

16.6 If this Agreement is terminated for any reason, Customer will pay Apollo any Fees or other amounts that have accrued prior to the effective date of the termination and any and all liabilities of Customer under this Agreement which accrued prior to the effective date of the termination will survive, Subject to Section 16.7, Customer will discontinue all use of the Software, and Apollo will delete any Customer data in its systems within one hundred eighty (180) days after the effective date of termination.

16.7 At the termination of this Agreement as a whole or of any Schedule hereunder, regardless of the reason for such termination, Apollo will cooperate and work in close consultation with Customer and any third party designated by Customer to assist Customer in establishing any necessary substitute or replacement systems or services and to ensure the orderly transfer, with minimum disruption. Customer shall pay Apollo for such termination assistance at Apollo's time and materials rate then in effect and shall reimburse Apollo for any reasonable expenses incurred in connection with the provision of any such assistance.

ARTICLE 17: FORCE MAJEURE

Neither party will be liable for, or be considered to be in breach of or default under this Agreement, on account of, any delay or failure to perform as required by this Agreement resulting from any cause or condition beyond its reasonable control. The party prevented from performing must (i) notify the other party immediately and in reasonable detail of the reason it is unable to perform; (ii) notify the other party promptly of any material changes in the relevant circumstances; and (iii) use commercially reasonable efforts to avoid or remove the cause of such delay or non-performance and to minimize the consequences thereof.

ARTICLE 18: ASSIGNMENT

Neither party may assign or transfer its rights, duties or obligations under this Agreement, in whole or in part, to any person or entity, without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided that in the event of a merger or consolidation of a party with another entity, or the sale of any portion of a party's business to which this Agreement relates, this Agreement shall be deemed to be assigned to the entity resulting from such merger or consolidation or such successor in interest provided such entity or successor assumes and becomes legally obligated to fulfill in all respects all such party's obligations under this Agreement. Any attempted assignment in contravention of this ARTICLE shall be null and void.

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ARTICLE 19: NOTICES

Any formal notice, request, demand, consent or other communication required or permitted under this Agreement or any Schedule, excluding requests for support services or other routine communications, is to be given in writing by personal delivery, by facsimile transmission or by registered or certified mail, during normal postal conditions, postage prepaid, written receipt requested, addressed to the party for which it is intended and addressed as follows:

Apollo:
Apollo Enterprise Imaging Corp
8245 Boone Boulevard, Suite 620,
Tysons Corner, Virginia 22182
U.S.A.
Phone: (703) 288-1474
Fax: (703) 288-1479

Customer:

Phone:
Fax:

Either party may change its contact information for purposes of receipt of communications by giving not less than ten (10) business days prior written notice of the change to the other party in the manner prescribed above.

Any notice so given is deemed to have been received on the next business day following the date it was hand delivered or transmitted by telegram or facsimile machine, or if mailed on the fifth business day next following the mailing of the notice during normal postal conditions.

ARTICLE 20: WAIVER

No term or provision of this Agreement is deemed waived and no breach excused, unless the waiver or consent is in writing and signed by the party claimed to be bound by it. Any consent by any party to, or waiver of, a breach by the other, whether expressed or implied, does not constitute a consent to, waiver of, or excuse for, any other different or subsequent breach.

ARTICLE 21: GOVERNING LAW AND LEGAL COSTS

This Agreement is governed by and construed in accordance with the applicable laws of the Commonwealth of Virginia without regard to choice-of-law principles. If either Party is successful in an action or proceeding in respect of this Agreement, the prevailing Party shall be entitled to recover from the other Party, its reasonable legal costs and expense of bringing and maintaining any such action or proceeding.

ARTICLE 22: SEVERABILITY

If any provision of this Agreement is held to be invalid, illegal or unenforceable, all other provisions will nevertheless continue in full force and effect.

ARTICLE 23: ENTIRE AGREEMENT

This Agreement includes all Schedules and Statements of Work. This Agreement and each Schedule and Statement of Work constitute, or will constitute when entered into, the entire agreement between the parties with respect to the subject matter of this Agreement or Schedule or Statement of Work and supersedes or will supersede all previous negotiations, proposals, commitments, writings and understandings of any nature whatsoever, whether oral or written, regarding the subject matter of this Agreement or Schedule or Statement of Work.

ARTICLE 24: AMENDMENTS AND CONSENTS

No modification, amendment, supplement to or waiver of this Agreement or any Schedule subject hereto, or any of the respective terms and conditions contained herein or therein shall be binding upon the parties hereto unless made in writing and signed by both parties. If any consents of a party are required pursuant to this Agreement, such consents shall not be unreasonably withheld or unduly delayed.

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ARTICLE 25: BENEFITS; RELATIONSHIP

25.1 This Agreement is binding upon and inures to the benefit of the parties and their respective successors and permitted assigns, if any except that nothing contained in this provision shall be construed to permit any attempted assignment which would be unauthorized or void under this Agreement.

25.2 Nothing stated in this Agreement shall be interpreted or construed as: (a) creating or evidencing any association, joint venture, partnership, or franchise between the parties; or (b) imposing any association, joint venture, partnership or franchise obligation or liability on either party.

ARTICLE 26: REMEDIES CUMULATIVE

The rights and remedies granted to each party under this Agreement are cumulative and are in addition to and not in substitution for each party's rights provided by law, equity or otherwise, and shall not merge upon termination of this Agreement or any Schedule. Each party may exercise its rights concurrently or separately and the exercise of one remedy is not deemed an exclusive election of that remedy or preclude the exercise of any other remedy.

ARTICLE 27: DISPUTE RESOLUTION

27.1 The parties agree to notify each other as promptly as possible of any conflict arising out of this Agreement, including any dispute as to whether an event of default has occurred. The parties further agree to attempt to resolve all such conflicts as promptly as possible and in good faith.

27.2 If the parties do not reach resolution of any controversy or claim arising out of or relating to this capital agreement or breach thereof, it shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Either party may apply to any court of competent jurisdiction for injunctive relief or other interim measures, and any such application shall not be deemed incompatible with this Agreement to arbitrate or as a waiver of this Agreement to arbitrate. The arbitration shall be conducted by a single arbitrator, who shall be a lawyer familiar with software licensing and other appropriate issues. A judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

ARTICLE 28: SURVIVAL

Any terms and conditions of this Agreement which by their nature extend beyond the termination or expiration of this Agreement shall survive such termination or expiration, including without limiting the generality of the foregoing, the Articles captioned "Confidentiality," "Indemnification," and "Limitation of Liability," Section 4.3 (Apollo's reservation of rights) and Section 13.3 (disclaimer)

ARTICLE 29: INDEPENDENT CONTRACTORS

Each party's relationship with the other party will be that of an independent contractor. Nothing in this agreement is to be construed as designating either party as an agent, employee, joint venturer or partner of the other party. Except as otherwise expressly agreed in this agreement, neither Party shall have the authority to serve as agent for the other Party, to make any statement, representation or commitment of any kind on behalf of the other Party not to take any action which may be binding on the other Party.

ARTICLE 30: NON-SOLICITATION OF PERSONNEL

Neither party shall solicit for hire any of the other party's employees who are directly involved in the provision or receipt of Services during the time such personnel are involved providing or receiving such Services and for six (6) months thereafter without the other party's prior written consent. This provision shall not restrict the right of either party (1) to solicit the employment of the personnel of the other party after such personnel have separated or have been separated from the service of such party, provided that the hiring party did not induce such separation, (2) to solicit or recruit generally in the media, and (3) to hire, without the prior written consent of the other party, any personnel of the other party who answers

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any advertisement or who otherwise voluntarily applies for hire without having been initially personally solicited or recruited by the hiring Party.

ARTICLE 31: COUNTERPARTS

This Agreement and any Schedule or Statement of Work may be executed in counterparts, each of which is deemed to be an original and all of which together are deemed to be one and the same instrument. The delivery of a facsimile copy of an executed counterpart of this Agreement or Schedule or Statement of Work shall be deemed to be valid execution and delivery of this Agreement or Schedule or Statement of Work, but the Party delivering a facsimile copy shall deliver an original copy of the document as soon as possible after delivery of the facsimile copy.

ARTICLE 32: PUBLICITY

Customer shall not use Apollo's name or any of its trademarks, logos, service marks or other intellectual property, or refer to Apollo or any of its employees, in any advertising, publications, marketing materials or other publicity without the prior written approval of Apollo, which it may withhold in its sole discretion. Customer agrees that Apollo may identify Customer as a customer and use Customer's name in advertising or for other publicity purposes, subject to any reasonable guidelines provided in writing by Customer to govern such use of logos and trademarks.

IN WITNESS WHEREOF this Agreement has been executed by the parties as of the date first written above.

Apollo Enterprise Imaging Corp

[Customer]

Signature: _____

Name: _____

Title: _____

Date: _____
