

SOFTWARE MAINTENANCE AND SUPPORT

THIS AGREEMENT is made as of this [date] (“Effective Date”) by and between APOLLONIAN PUBLICATIONS, LLC, a Washington limited liability company, with offices at 1825 Leslie Rd #240 Richland, WA 99352 (“LICENSOR”), and [Name of Second Party], a [type of organization], with offices at [Second Party’s address] (“LICENSEE”) (collectively, the “PARTIES”).

WITNESSETH:

WHEREAS, LICENSOR has licensed certain Software and Documentation known as “RealityCharting™,” a business software application that acts as a problem-solving tool following the Apollo Problem Solving method (the “Licensed Software”) to LICENSEE pursuant to a “License Agreement” the terms of which are incorporated herein;

WHEREAS, LICENSEE desires to secure software maintenance and support beyond the 90 day warranty period in the License Agreement; and

WHEREAS, LICENSOR desires to provide such maintenance and support on the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and agreements set forth herein, the parties, each intending to be legally bound hereby, do promise and agree as follows.

1. DEFINITIONS

Terms used in this Exhibit and not otherwise defined shall have the same meaning as set forth in the License Agreement. As used herein, the following words shall have the meanings ascribed to them below:

- A. “Error” means an error in the Software that significantly degrades the Software as compared to the Documentation.
- B. “Fix” means the repair or replacement of binary or executable code versions of the Software to remedy an Error.
- C. “Maintenance” means the services identified in Section 3.
- D. “Priority A Error” means an Error that renders the Software inoperative or causes the Software to substantially fail.
- E. “Priority B Error” means an Error that substantially degrades the performance of the Software or materially restricts use of the Software.
- F. “Priority C Error” means an Error that causes only a minor impact on the use of the Software.
- G. “Workaround” means a change in the procedures or data supplied by Licensor to Licensee to avoid an Error without substantially impairing use of the Software.

2. SERVICE WARRANTY

While Licensor is providing Maintenance to Licensee, Licensor warrants that it shall maintain the Software in good working order, keep it free from defects in material and workmanship, remedy any failure of the Software to perform in accordance with the warranty set forth in the License Agreement or which impairs Licensee’s use thereof, or any other defect, malfunction or non-conformity in the Software.

3. SERVICES

While Licensor is providing Maintenance to Licensee, Licensor agrees to furnish to Licensee the following support services:

- A. *Error Correction.* Licensor shall use its best efforts to correct any Error that is reported by Licensee, discovered by Licensor or reported by any other user of the Software in accordance with the priority level reasonably assigned to such Error by Licensee.

B. *Priority A Errors.* Within 24 hours of learning of a Priority A Error, Licensor shall assign Licensor engineers to correct the Error, provide Licensee with reports on the status of the corrections every work day, and initiate work to provide Licensee with a Workaround or Fix. Licensor shall use every reasonable effort to provide Licensee with such Workaround or Fix within forty-eight (48) hours.

C. *Priority B Errors.* Within 48 hours of learning of a Priority B Error, Licensor shall assign Licensor engineers to correct the Error, provide Licensee with periodic reports on the status of the corrections, and initiate work to provide Licensee with a Workaround or Fix. Licensor shall use its best efforts to provide Licensee with such workaround or Fix within five (5) calendar days, and Licensor shall use its best efforts to include the Fix for the Error in the next regular maintenance release within sixty (60) calendar days.

D. *Priority C Errors.* Licensor shall use commercially reasonable efforts to include the Fix for the Error in the next major release of the Software.

E. *Errors not Caused by the Software.* If Licensor reasonably believes that a problem reported by Licensee may not be due to an Error in the Software, Licensor will so notify Licensee. At that time, Licensee may (a) instruct Licensor to proceed with problem determination at its possible expense as set forth below and issue a Statement of Work describing the scope of such determination, or (b) instruct Licensor that Licensee does not wish the problem to be pursued at its possible expense. If Licensee requests that Licensor proceed with problem determination at its possible expense and Licensor reasonably determines that the error was not due to an Error in the Software, Licensor shall immediately stop further work and so inform Licensee and Licensee shall pay Licensor at the rate of One hundred Twenty Five (\$125) US Dollars per hour for all work performed in connection with such determination, plus reasonable related expenses incurred therewith. Licensee shall not be liable under this Section 3(e) for problem determination or repair to the extent that problems are due to Errors in the Software, nor shall Licensee be liable for work performed under this Section 3(e) in excess of the scope described in the Statement of Work or after Licensee has notified Licensor in accordance with the terms hereof that it no longer wishes work on the problem determination to be continued at its possible expense. If Licensee instructs Licensor that it does not wish the problem pursued at its possible expense or if such determination requires effort in excess of Licensee instructions, Licensor may, in its reasonable discretion, elect not to investigate the error.

F. *Telephone and Electronic Mail Support.* Licensor shall provide reasonable telephone and/or e-mail consultation with respect to the Software to Licensee during Licensor's normal business hours (Monday through Friday, 8 hours a day in each time zone in which Licensor has an office).

G. *Upgrades and Enhancements.* While Licensor is providing Maintenance to Licensee, Licensor shall provide to Licensee copies of every Upgrade, enhancement, Correction or other improvement or modification of the Software within thirty (30) days of Licensor making such Upgrade, enhancement, improvement, Correction or modification generally available to Licensor's customers.

4. DEFAULT IN PERFORMANCE OF SUPPORT/SERVICE LEVEL REQUIREMENTS

In the event Licensor defaults in any of the support provisions of Section 3, Licensor shall refund to Licensee the Maintenance Fees paid by Licensee. In the event of the foregoing, Licensor shall issue a check to Licensee, and send it to Licensee's address in the License Agreement for notice.

5. MAINTENANCE FEES AND PAYMENT

Maintenance Fee. In consideration of the services to be provided herein, LICENSEE shall pay the Maintenance Fee or other consideration for the Maintenance as agreed between LICENSEE and LICENSOR or its distributor. Payment is due at the beginning of the maintenance term and, as applicable, each subsequent renewal term.

6. MAINTENANCE TERM

Maintenance Term. Licensor will provide Maintenance to Licensee for one year from the Effective Date of this Agreement (the "Maintenance Term"). This Agreement will continue automatically for additional terms equal to the Maintenance Term, (each a "Renewal Term" and collectively with the Maintenance Term, the "Term") unless either Party provides written notice to the other Party at least thirty (30) days prior to the end of the Term, as applicable, that it has elected not to renew this Agreement.

7. LIMITATION ON LIABILITY;

A. *Limitations.* Notwithstanding the warranty provisions set forth in Section 2 herein, all of LICENSOR's obligations with respect to such warranties shall be contingent on LICENSEE's use of the Software in accordance with this Agreement and in accordance with LICENSOR's instructions as provided by LICENSOR in the

Documentation, as such instructions may be amended, supplemented, or modified by LICENSOR from time to time. LICENSOR shall have no warranty obligations with respect to any failures of the Software which are the result of accident, abuse, misapplication, extreme power surge or extreme electromagnetic field.

B. *LICENSEE's Sole Remedy.* LICENSOR's entire liability and LICENSEE's exclusive remedy shall be, at LICENSOR's option, either: (1) return of the Maintenance Fee (2) repair or replacement of the Software upon its return to LICENSOR; provided LICENSOR receives written notice from LICENSEE during the term of this Agreement. Any replacement Software will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.

C. *Disclaimer of Warranties.* LICENSOR DOES NOT REPRESENT OR WARRANT THAT ALL ERRORS IN THE SOFTWARE AND DOCUMENTATION WILL BE CORRECTED. THE WARRANTIES STATED IN SECTION 2 ARE THE SOLE AND THE EXCLUSIVE WARRANTIES OFFERED BY LICENSOR. THERE ARE NO OTHER WARRANTIES RESPECTING THE SOFTWARE AND DOCUMENTATION OR SERVICES PROVIDED HEREUNDER, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF DESIGN, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, EVEN IF LICENSOR HAS BEEN INFORMED OF SUCH PURPOSE. NO AGENT OF LICENSOR IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF LICENSOR AS SET FORTH HEREIN.

D. *Limitation of Liability.* LICENSEE ACKNOWLEDGES AND AGREES THAT THE CONSIDERATION WHICH LICENSOR IS CHARGING HEREUNDER DOES NOT INCLUDE ANY CONSIDERATION FOR ASSUMPTION BY LICENSOR OF THE RISK OF LICENSEE'S CONSEQUENTIAL OR INCIDENTAL DAMAGES WHICH MAY ARISE IN CONNECTION WITH LICENSEE'S USE OF THE SOFTWARE AND DOCUMENTATION. ACCORDINGLY, LICENSEE AGREES THAT LICENSOR SHALL NOT BE RESPONSIBLE TO LICENSEE FOR ANY LOSS-OF-PROFIT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE LICENSING OR USE OF THE SOFTWARE OR DOCUMENTATION. Any provision herein to the contrary notwithstanding, the maximum liability of LICENSOR to any person, firm or corporation whatsoever arising out of or in the connection with any license, use or other employment of any Software delivered to LICENSEE hereunder, whether such liability arises from any claim based on breach or repudiation of contract, warranty, tort or otherwise, shall in no case exceed the actual Maintenance Fee paid to LICENSOR by LICENSEE. The essential purpose of this provision is to limit the potential liability of LICENSOR arising out of this Agreement. The parties acknowledge that the limitations set forth in this Section are integral to the amount of consideration levied in connection with the license of the Software and Documentation and any services rendered hereunder and that, were LICENSOR to assume any further liability other than as set forth herein, such consideration would of necessity be set substantially higher.

8. NOTICES

A. Any notice required to be given pursuant to this Agreement shall be in writing and mailed by certified or registered mail, return receipt requested or delivered by a national overnight express service.

B. Either party may change the address to which notice or payment is to be sent by written notice to the other party pursuant to the provisions of this paragraph.

9. JURISDICTION AND DISPUTES

A. This Agreement shall be governed by the laws of Washington State, USA.

B. All disputes hereunder shall be resolved in the applicable state or federal courts of Washington State, USA. The parties consent to the jurisdiction of such courts, agree to accept service of process by mail, and waive any jurisdictional or venue defenses otherwise available.

10. AGREEMENT BINDING ON SUCCESSORS

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, administrators, successors and assigns subject to Section 12.

11. WAIVER

No waiver by either party of any default shall be deemed as a waiver of any prior or subsequent default of the same or other provisions of this Agreement.

12. SEVERABILITY

If any provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision and such invalid provision shall be deemed to be severed from the Agreement.

13. ASSIGNABILITY

The rights granted hereunder are personal to LICENSEE and may not be assigned by any act of LICENSEE or by operation of law without the consent of LICENSOR.

14. INTEGRATION

This Agreement, subject to the License Agreement, constitutes the entire understanding of the parties, and revokes and supersedes all prior agreements between the parties and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents that may be in conflict therewith.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

LICENSOR

LICENSEE

APOLLONIAN PUBLICATIONS, LLC

Printed Name: _____

Printed Name: _____

Signature: _____

Signature: _____

Title: _____

Title: _____

Date: _____

Date: _____