

Arbortext, Inc.
Strategic Partnering Agreement
OEM Distribution and Licensing Agreement

This Agreement ("Agreement") is made by and between Arbortext, Inc. ("Arbortext"), having its principal place of business at 1000 Victors Way, Ann Arbor, Michigan 48108, USA and

Company Name: Blueberry Software ("Blueberry")
Address: 7151 Wilton Avenue, Suite 201
Sebastopol, CA 95472 USA
Phone: 707-829-5443

for the purpose of establishing a relationship in which Arbortext may incorporate Blueberry proprietary technology in its own software products, and to define the obligations of the parties regarding integration development, distribution, licensing, technical support and related matters.

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1. DEFINITIONS

1.1 Arbortext Customer. An end user granted the right by Arbortext to use the Blueberry Software for its own internal production purposes, either licensed directly under the terms of the Arbortext's end user Software License Agreement or through an Arbortext authorized reseller (which includes Arbortext integrators, OEMs, and other distribution partners).

1.2 Arbortext Products. The Arbortext software identified in **Exhibit B**, into which the Blueberry Software is integrated for distribution to Arbortext Customers.

1.3 Arbortext Software License Agreement. Arbortext's standard end user Software License Agreement attached as **Exhibit D**.

1.4 Blueberry Software. Blueberry software specified in **Exhibit A** that Arbortext is authorized to integrate into Arbortext Products for distribution to Arbortext Customers; distribution form consists of a) machine executable copy of object code, b) documentation in hardcopy and electronic form, and c) software updates available under maintenance.

1.5 Blueberry Technology. Blueberry intellectual property, including Blueberry Software and related documentation, and all Blueberry proprietary designs, ideas, methods, tools, and code related to Blueberry Software and all patent, copyright, trade secret and intellectual property rights in these items.

1.6 Developed Software. Software to be developed by Blueberry specifically for Arbortext under a Statement of Work, including software that incorporates Blueberry Software into Arbortext Products.

1.7 Territory. The geographic area in which Arbortext is authorized to distribute and support the License Programs. Territory is world-wide under this Agreement.

2. GRANT OF LICENSE

2.1 License Grant: In consideration of the royalty payments to be paid by Arbortext to Blueberry pursuant to this Agreement, Blueberry grants Arbortext a non-exclusive, non-transferable, perpetual license to include the Blueberry Software specified in **Exhibit A** in the Arbortext Products specified in **Exhibit B**. Arbortext is granted the right to market, reproduce, sublicense and distribute the Blueberry Software, including any Blueberry Technology embedded in Developed Software, to Arbortext Customers, in object code form, directly or through an Arbortext authorized reseller, solely in conjunction with the concurrent or prior licensing of the Arbortext Products in which they are incorporated. Arbortext's rights shall include a) developing Arbortext's internal expertise with the operation and technology of the Blueberry Software; b) demonstrating the Blueberry Software on Arbortext's premises, at trade shows and/or at prospective Customer sites; c) providing technical support to Arbortext Customers; and d) translating and/or repackaging Blueberry Software documentation in connection with sublicense sales to Arbortext Customers.

2.2 License Exclusions: Arbortext may use the Blueberry Software only to the extent expressly authorized in this Agreement. No other rights are granted by Blueberry to Arbortext. Specifically, but not by way of limitation, Arbortext shall not a) license, transfer or assign any Blueberry Software except in conjunction with the license of the Arbortext Products specified in **Exhibit B** and such other future Arbortext Products as Arbortext may announce; b) create or distribute derivative works of or modifications of the Blueberry Software, except to enable incorporation and use of the Blueberry Software in Arbortext Products; c) use or sublicense others to use the Blueberry Software in any service bureau, lease or rental arrangement except in conjunction with the license of Arbortext Products; or d) provide the Blueberry Software to any end user who is not a licensed Arbortext Customer.

2.3 Reproduction Rights: Arbortext shall have the right to reproduce the Blueberry Software for the sole purposes of a) incorporating it into Arbortext Products; b) sublicensing it to Arbortext Customers in accordance with the terms and conditions of Arbortext's end-user license, pursuant to **Section 3, Sublicense Agreements**; c) distributing it to Arbortext authorized resellers in accordance with this Agreement; d) providing temporary use to potential Arbortext Customers on an evaluation basis; e) providing installation, training and maintenance support, directly and through authorized resellers, to Arbortext Customers. Other than the right to make a reasonable number of copies for archival and backup purposes, Arbortext shall have no other rights to reproduce the Blueberry Software.

2.4 Source License: In order that Arbortext shall have assured use of the Blueberry Software in case of the inability of Blueberry to perform its obligations under this Agreement, in addition to object code Blueberry will provide a copy of the Blueberry Software in source code form. Source code may be used by Arbortext to enable it to perform maintenance, training, and related activities necessary for it to successfully maintain and support its Products should Blueberry or its successors or assigns be unable, unwilling or otherwise fail to perform Blueberry's obligations hereunder. Arbortext shall have the right to use the source code for maintenance purposes, which shall also include incorporation of the source code into the regular source stream used by Arbortext to compile/debug/distribute software modules that include the Blueberry libraries, but shall have no right to distribute the source code to Arbortext resellers or Customers as part of Arbortext Products, or to any other party. Arbortext will not otherwise access Blueberry source code until and unless it has good cause to believe Blueberry has failed to perform its obligations, and in this event will notify Blueberry formally, stating the reasons for accessing the source code. Arbortext will transmit any changes to the Blueberry source code it makes to Blueberry in a timely manner: changes will be adequately documented and commented. No intellectual property right will be created, conveyed, or transferred by virtue of any modification of Blueberry source code by Arbortext. Blueberry copyright and any other intellectual property notices in source code will not be removed or edited. No Arbortext intellectual property notices will be inserted in the source code. In the event Arbortext develops technology with the functionality of Blueberry Software, it will do so making no reference to, or use or knowledge of, the Blueberry Technology with which Arbortext has become familiar in the course of this Agreement that is considered confidential in accord with Section 12, CONFIDENTIAL INFORMATION.

3. SUBLICENSE AGREEMENTS

Any distribution of Blueberry Software shall be accomplished under a sublicense agreement between Arbortext and an Arbortext Customer or Arbortext authorized reseller and under the same proprietary rights limitations as Arbortext uses with respect to its own proprietary software. Any sublicense agreement between Arbortext and an Arbortext Customer may be through Arbortext's standard end-user license, attached hereto as **Exhibit D**, or such other license executed by Arbortext and Arbortext Customer that is in material conformance with Arbortext's end-user license and is consistent with the license restrictions and Arbortext's rights and obligations under this Agreement. Arbortext's license may be in

signature form or in "shrink-wrap" form for use in the United States or other jurisdictions where such license is enforceable.

Any Sublicense agreement between Arbortext and an Arbortext reseller shall be signed by the reseller and shall contain terms and conditions at least as protective of Blueberry's proprietary rights as the terms and conditions of this Agreement. Arbortext will promptly notify Blueberry of any known violation of a license agreement and will enforce such agreements with at least the same degree of diligence used in enforcing similar agreements governing end users of Arbortext's own products.

4. RELATIONSHIP TERMS

4.1 OEM Partnering Relationship

The relationship established under this Agreement is that of Blueberry authorizing Arbortext to include Blueberry Software in Arbortext Products on an OEM partnering basis. To support the relationship established under this Agreement, Blueberry and Arbortext agree to commit sufficient marketing and engineering resources to achieve the product interoperability, support and marketing distribution objectives outlined herein. During the term of this Agreement, Blueberry and Arbortext agree to discuss with each other their confidential business and product development plans and other proprietary information related to the performance of this Agreement and the relationship established. Such confidential information disclosed by either party shall be treated pursuant to **Section 12, Confidential Information**.

4.2 Arbortext Pricing: Arbortext shall be free to set any price on the sale of licenses of the Blueberry Software to Arbortext Customers and resellers so long as Arbortext pays Blueberry the royalties in accordance with the terms of this Agreement.

4.3 Joint Marketing: As agreed from time to time, Blueberry and Arbortext shall engage in joint marketing efforts. Such activities may include, but are not limited to, preparation of a public announcement of the relationship between the parties; identification of the other party as a technology partner on each party's web site; mutual promotion of products and/or technologies on web sites and in promotional literature; sharing demonstration software; sharing booth space at trade shows and exhibitions; participation in each other's partner and user conferences; and such other marketing activities as Blueberry and Arbortext mutually decide. Each party shall pay its own travel and living expenses with regards to joint marketing. Given the technical nature of the relationship, Blueberry shall be consulted before it is committed to any activity under this section, and may decline to participate. In the event the parties choose not to do a joint announcement, either party may issue a public announcement of the relationship, and will submit the text of the announcement to the other party for review and approval prior to release, which approval shall not be unreasonably withheld. No announcement shall be made prior to the first commercial release of Arbortext Products that include Blueberry Software.

4.4 Non-exclusive Relationship: This is a non-exclusive relationship. Blueberry shall have the right to engage in the marketing, distribution and support of any of its products, including the Blueberry Software on its own account or through other OEM relationships; and to enter into any reseller agreement or other relationship with any third party providing for the marketing, distribution or support of any of its products, including the Blueberry Software. Similarly Arbortext shall have the right to enter into other OEM and partner relationships to incorporate other third party software into any Arbortext products as it deems fit.

5. RIGHTS AND OBLIGATIONS

5.1 Rights and Obligations Of Arbortext:

(a) Distribution of Blueberry Software

Arbortext shall at its own expense supply Blueberry Software to Arbortext Customers on appropriate media; shall provide copies of Blueberry Software solely in conjunction with current or prior provision of Arbortext Products and not on a stand-alone basis; and shall distribute and install only the most current version of the Blueberry Software, provided that version successfully integrates with the Arbortext Products.

(b) Documentation

Arbortext shall have the right to use, modify, reproduce, and distribute Blueberry end-user documentation for the Blueberry Software and incorporate it into Arbortext's hardcopy documentation and online "Help" files that are part of the Arbortext Products for the purposes of licensing, marketing, distributing and supporting the Blueberry Software and

for preparing instructional materials or user manuals.

(c) **Arbortext Customer Training**

Arbortext shall at its own or Arbortext Customer expense, provide training to Arbortext Customers in use of the Blueberry Software.

(d) **Arbortext Customer Support**

At its own or Arbortext Customer expense Arbortext shall provide first line maintenance and support to its Arbortext Customers sufficient to answer their queries concerning the function, operation and use of the Blueberry Software and to determine the cause of any reported Arbortext Customer problems with the Blueberry Software. Arbortext shall notify Blueberry if such problems are found to be caused by malfunctions in Blueberry Software, recognizing that Blueberry is not responsible for correcting malfunctions of Blueberry Software induced by Arbortext software. Any direct requests to Blueberry for support services by Arbortext Customers or resellers will be directed to Arbortext.

(e) **Trademark and Trade Name Use**

Arbortext shall have the right to indicate that it is an authorized provider of Blueberry Software and Technology licensed from Blueberry pursuant to this Agreement. Consistent with the joint marketing efforts agreed to by the parties, Arbortext shall have the right to use Blueberry's name, logo, trademarks and tradenames ("Trademarks") in its advertising, catalogues, exhibits, public relations material and manuals covering the Arbortext Products. All uses of Blueberry's name and Trademarks, including use in any web site, press release or publicity of any kind, will be subject to Blueberry's right of prior review and approval, which shall not be unreasonably withheld. Similarly, any use by Blueberry of Arbortext's name or Trademarks, including use in any web site, press release or publicity of any kind, will be subject to Arbortext's right of prior review and approval, which shall not be unreasonably withheld.

(f) **Placement of Intellectual Property Notices**

Intellectual property right notices in the form, "Filter technology Copyright © Blueberry Software 1986-2000. All rights reserved." will appear in Arbortext Products, including documentation, in the same style, placement, and locations as do the equivalent Arbortext notices.

5.2 Rights and Obligations of Blueberry:

(a) **Documentation**

Blueberry shall supply Arbortext with appropriate technical, installation and end-user documentation for the Blueberry Software.

(b) **Training**

Blueberry shall provide to Arbortext training on the use and technology of the Blueberry Software as specified in **Exhibit C**.

(c) **Developed Software**

Blueberry shall develop and provide to Arbortext the Developed Software described in **Exhibit C** at the charges specified therein. If Arbortext requires additional technical assistance, Blueberry agrees to provide additional services pursuant to **Section 7, Blueberry Engineering Services**.

(d) **Master Copy**

Blueberry shall provide Arbortext with a master copy of the Blueberry Software for the purposes of its integration, reproduction and distribution in conjunction with Arbortext Products to licensed Arbortext Customers and resellers. Arbortext agrees to comply with the copyright law as it applies to such Blueberry Software products.

(e) **Software Support**

During the term of this Agreement and pursuant to Arbortext's payment obligations in **Section 6, Charges**, Blueberry shall provide Arbortext with internal software support and maintenance for Blueberry Software for the purpose of Arbortext's provision of support to Arbortext Customers and resellers. All items delivered by Blueberry in providing such support, including error corrections and software updates, shall be deemed part of the Blueberry Software and subject to the terms of this Agreement. Blueberry shall support the Blueberry Software by (i) providing Arbortext with improvements to the Blueberry Software released as software updates in the form of major and minor releases; (ii) using its best efforts on a priority basis to correct software errors reported by Arbortext in a reasonable period of time; (iii) providing Arbortext with access to Blueberry's technical support and development engineering groups for telephone

assistance during Blueberry business and technical support hours, and by e-mail, surface mail or fax.

(f) **Provision of Source Code**

Upon signing this Agreement, Blueberry will provide Arbortext with complete source code for the Blueberry Software and shall provide update copies of the source code on a quarterly basis and no later than one (1) month after a new release of Blueberry's retail version of the Blueberry Software.

6. CHARGES

6.1 Royalties And Other Fees

Royalties and other fees payable by Arbortext, including fees for Developed Software, additional consulting and training services are specified in **Exhibit C**. Royalties are due and payable to Blueberry for Blueberry Software delivered by Arbortext to both existing Arbortext Customers, whether provided on an upgrade or other basis, and to new Arbortext Customers. All payments shall be denominated in US dollars.

6.2 Taxes

All royalties and fees are exclusive of all federal, state, municipal or other governmental sales, use, VAT or like taxes, tariffs, custom duties and importation fees. Arbortext is responsible for timely payment of all such fees and duties which Arbortext is required to withhold, collect or pay upon licensing or delivery of the Blueberry Software, Arbortext Products or other services provided under this Agreement.

6.3 Records and Reports

Arbortext shall keep complete and accurate records to document the number of Blueberry Software programs licensed and such other records relating to installation to permit verification of royalty fees due Blueberry. Within thirty (30) days after each calendar quarter Arbortext shall provide Blueberry with a written sales report, in a format mutually agreed to between the parties, that contains the following information for the reporting quarter: a) the number of copies of Blueberry Software sold during the reporting period, broken down by month, listed on a cumulative basis; and b) an accounting of the royalty fees due for such copies and any credits applicable for pre-paid licenses. Arbortext's records shall be open to examination and copying by Blueberry or its independent auditors upon reasonable notice.

7. BLUEBERRY ENGINEERING SERVICES

7.1 Services Provided: Blueberry shall make available to Arbortext engineering services to create Developed Software and other deliverables specific to Arbortext to assist Arbortext with incorporation and implementation of the Blueberry Software into Arbortext Products. At the non-recurring engineering charges and rates specified in **Exhibit C**, Blueberry will provide the services, Developed Software and deliverables as specified in a statement of work (SOW), provided that each SOW references this Agreement and is executed by authorized representatives of Arbortext and Blueberry. Each SOW will specify the nature of the services, deliverables, schedule, price, payment terms and other applicable information.

7.2 Ownership of Developed Software and Deliverables: All Developed Software and other deliverables created by Blueberry specifically for Arbortext under an SOW, or as part of 5.2.(e) or any other part of this Agreement, as well as Blueberry Software and Blueberry Technology and any modifications to them, are the exclusive property and are copyrighted solely to Blueberry. Blueberry is not obligated by any part of this agreement to perform works made for hire. Blueberry Technology shall remain the exclusive property of Blueberry and Arbortext shall have no ownership interest therein. Arbortext shall have a non-exclusive right to use and distribute the Blueberry Technology to the extent embedded in the Developed Software consistent with the purposes and license terms of this Agreement.

7.3 Services Warranty: Blueberry warrants that the services provided hereunder will be performed in a workmanlike manner in conformance with all applicable professional standards and that Developed Software and other deliverables shall meet the specifications established in the SOW. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. OWNERSHIP AND PROPRIETARY RIGHTS

8.1 Blueberry Proprietary Rights: Blueberry and/or its suppliers retain all right, title and interest in and to the Blueberry Software and any of its update release versions, all Blueberry Technology and all patent, copyright, trade secret and other intellectual property rights in each of the foregoing items. Arbortext shall have no title or right therein except as licensee in performance of its obligations hereunder. If Blueberry incorporates or embeds any third party software into

Blueberry Software or workproduct for use with the Arbortext Products, Blueberry represents and warrants to Arbortext that Blueberry has sufficient rights to incorporate such third party software and that Blueberry's agreements with such third parties impose no obligations on Arbortext other than those stated in this Agreement.

8.2 Arbortext Proprietary Rights: Arbortext and/or its suppliers retain all right, title and interest in and to Arbortext Products and all other Arbortext personal property used in any work product that Arbortext may furnish for use with the Blueberry Software that is independently developed by Arbortext, and all patent, copyright, trade secret and other intellectual property rights therein. If Arbortext incorporates or embeds any third party software into Arbortext Products or workproduct for use with the Blueberry Software, Arbortext represents and warrants to Blueberry that Arbortext has sufficient rights to incorporate such third party software.

9. WARRANTY

9.1 Blueberry warrants that it owns or has the right to license the Blueberry Software and to enter this Agreement and that the Blueberry Software will not infringe the patent rights, trade secrets, copyrights or other intellectual property rights of others.

9.2 Blueberry warrants to Arbortext that for a period of ninety (90) days from Arbortext's receipt of the Blueberry Software that a) the Blueberry Software, unless modified by other than Blueberry, will perform the functions described in its documentation when installed and operated on a supported system platform; and b) the Blueberry Software is year 2000 compliant and will function without error or interruption related to date data, specifically relating to more than one century and leap year calculations, and will process calendar dates using a four-digit year format. Blueberry's responsibility under this warranty is to use best efforts to correct documented errors in the Blueberry Software that are reported to it, or if such errors cannot be corrected after best efforts, replace any defective Blueberry Software with a product of equivalent functionality.

9.3 Blueberry's warranty is not transferable and does not apply insofar as a) the Blueberry Software is subjected to misuse, neglect or accident; b) claims result from acts or omissions caused by persons other than Blueberry, material or software not provided by Blueberry, or from Arbortext or third party modifications to the Blueberry Software; or c) the Blueberry Software used by Arbortext does not include all releases available from Blueberry that successfully integrate with the Arbortext Products.

9.4 The Blueberry Software is warranted only to Arbortext, and Arbortext shall not extend any warranties for or on behalf of Blueberry or Blueberry licensors to Arbortext Customers, resellers or any other third parties.

THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED. BLUEBERRY MAKES NO REPRESENTATIONS WITH RESPECT TO THE PROGRAMS, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

10. INDEMNIFICATION

10.1 **General Indemnification:** Each party will indemnify and save harmless the other, its employees, agents and representatives against any liabilities, damages, costs, fees and expenses incurred as a result of any breach by the indemnifying party of the terms of this Agreement.

10.2 **Infringement Indemnification by Blueberry:** Blueberry will indemnify and save harmless Arbortext, its employees, agents and Customers against any demands, suits or proceedings brought against Arbortext to the extent they arise out of a claim that Arbortext's use, marketing and support of the Blueberry Software as delivered to Arbortext within the scope of this Agreement infringe a patent or copyright provided that: a) Arbortext notifies Blueberry in writing within thirty (30) days of the date Arbortext first becomes aware of a claim; b) Blueberry has sole control over the choice of the settlement, compromise, negotiation and defense of any such claim; and c) Arbortext gives Blueberry all reasonably available information, assistance and authority, at Blueberry's reasonable expense, to enable Blueberry to do so. In the event the Blueberry Software are held to infringe, Blueberry shall have the option, at its expense, to a) modify the Blueberry Software to be noninfringing; b) obtain for Arbortext the right to continued use of the Blueberry Software; c) substitute other substantially equivalent software; or d) if none of the foregoing remedies are commercially feasible, terminate this Agreement upon written notice to Arbortext. THE FOREGOING STATES ARBORTEXT'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO CLAIMS OF INFRINGEMENT.

10.3 **Infringement Indemnification by Arbortext:** Arbortext will indemnify and save harmless Blueberry, its

employees, agents and representatives against any demands, suits or proceedings brought against Blueberry to the extent they arise out of a claim that Arbortext's or Arbortext Customer's use of the Programs in conjunction or combination with other software infringes a patent or copyright, and where use with such other software gives rise to the infringement claim, provided that: a) Blueberry notifies Arbortext in writing within thirty (30) days of the date Blueberry first becomes aware of a claim; b) Arbortext has sole control over the choice of the settlement, compromise, negotiation and defense of any such claim; and c) Blueberry gives Arbortext all reasonably available information, assistance and authority, at Arbortext's reasonable expense, to enable Arbortext to do so. THE FOREGOING STATES ARBORTEXT'S ENTIRE AND EXCLUSIVE OBLIGATION TO BLUEBERRY WITH RESPECT TO CLAIMS OF INFRINGEMENT.

11. LIMITATION OF LIABILITY

The remedies hereunder are exclusive. No action arising out of or in connection with this Agreement may be brought by Arbortext or Blueberry more than twelve (12) months after the occurrence of the event giving rise to the cause of action. IN NO EVENT SHALL BLUEBERRY OR ARBORTEXT BE LIABLE FOR SPECIAL, INCIDENTAL, TORT OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, LOSS OF REVENUES OR PROFITS OR LOSS OF BUSINESS, INCREASED EXPENSES OF OPERATION, COST OF CAPITAL, OR THE CLAIMS OF THIRD PARTIES INCLUDING CUSTOMERS OF ARBORTEXT, EVEN IF BLUEBERRY OR ARBORTEXT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. CONFIDENTIAL INFORMATION

Neither party shall disclose to any third party and shall cause its employees and agents to refrain from disclosing to any third party any confidential information of the other. For purposes of this Agreement, all information made available in written form and marked with the legend "Confidential" or an equivalent conspicuous legend, and all oral communications designated as confidential and within fifteen (15) days thereafter reduced to writing and marked as "Confidential," disclosed by either party in connection with this Agreement shall be deemed Confidential Information, except information which:

- (a) is or becomes part of the public domain through no fault of recipient;
- (b) was known to a recipient prior to this Agreement;
- (c) is rightfully received by a recipient from a third party without a duty of confidentiality; or
- (d) is independently developed by recipient.

Promptly following the expiration or any termination of this Agreement, the recipient will return to the disclosing party all Confidential Information then in its possession, and all copies thereof, provided that Arbortext may retain that Confidential Information necessary for it to fulfill its obligations under any Arbortext Customer license or services agreement with regards to the Blueberry Software.

13. DELIVERY AND ACCEPTANCE

13.1 Blueberry will develop and deliver to Arbortext the Developed Software and associated documentation required to incorporate the Blueberry Software into the Arbortext Products according to the specification, schedule and charges set forth in **Exhibit C**.

13.2 Arbortext shall have thirty (30) business days following delivery of the Developed Software to test its acceptability. The Developed Software shall be accepted upon written notification of acceptance by Arbortext. Arbortext may reject the Developed Software based on its failure to substantially perform as described in **Exhibit A** and associated documentation. If Arbortext does not accept the Developed Software, then Arbortext shall provide Blueberry with written notice describing the reasons for its rejection, and Blueberry shall then have thirty (30) business days to correct or modify the Developed Software and resubmit it for acceptance.

14. TERM AND TERMINATION

14.1 **Term:** This Agreement shall become effective on the date it is signed by both parties and shall remain in effect for three years, unless otherwise terminated by either party pursuant to this **Section 14**. However, unless terminated by another provision of this Agreement, the Agreement shall automatically renew year to year, on the anniversary of its effective date, unless either party indicates its desire to terminate it by written notice two years or more prior to its anniversary date. This requirement for at least two year notice applies not only in the case of the Agreement extending beyond the initial three year period, but also if either party desires the Agreement to terminate at the end of the initial three year term.

14.2 **Termination for Cause:** Either party may terminate this Agreement upon written notice to the other party in any of

the following events: a) the other party materially breaches this Agreement in a manner which can be cured, and such breach remains uncured for thirty (30) days following written notice of breach by the non-breaching party; b) the other party materially breaches this Agreement in a manner which cannot be cured; c) Arbortext fails to make a payment hereunder within thirty (30) days after written notice that it is past due; d) Blueberry fails to provide source code and maintenance of it as specified in this Agreement or provide services or other deliverables as specified in a SOW hereunder.

14.3 Termination for Insolvency: Either party may immediately terminate this Agreement upon written notice in the event of the liquidation or insolvency of the other party; the appointment of a receiver or similar officer for the other party; an assignment by the other party for the benefit of creditors; the filing of a petition in bankruptcy for or against the other party under any bankruptcy or debtor's law for its relief or reorganization.

In the event of the sale of Blueberry or other disposition of an interest in it equal to fifty percent (50%) or more or a substantial change in the existing management of Blueberry, Blueberry shall promptly notify Arbortext in writing.

14.4 Effect of Expiration or Termination: In the event of expiration or termination of this Agreement:

(a) all outstanding royalty and non-royalty unpaid charges and fees not in dispute and due to Blueberry shall immediately become payable by Arbortext;

(b) valid Arbortext Customer licenses shall not be affected and shall continue in full force and effect, so long as there is no breach thereof.

(c) Arbortext shall cease sale and distribution of Arbortext Products that contain Blueberry Software to new customers, notwithstanding the provisions of **14.5, Survival**.

(d) Blueberry shall no longer be required to support Blueberry Software, nor provide updates of source code, notwithstanding the provisions of **14.5, Survival**.

(e) Arbortext may continue to access Blueberry source code, solely for the purpose of supporting existing customers who have purchased Arbortext Product containing Blueberry Software prior to the expiration or termination of the Agreement. Its obligations to Blueberry regarding updating Blueberry with changed source code, and other such obligations pertaining to source code, will continue in force.

14.5 Survival: The provisions of Sections 2.4, Source License, 6 (Charges), 9 (Warranty), 10 (Indemnification), 11 (Limitation of Liability), 12 (Confidential Information), and the provisions of Sections 5 shall survive and continue to bind the parties.

15. GENERAL PROVISIONS

15.1 Assignment: Neither party shall assign, transfer or sell any of its rights, or delegate any of its responsibilities under this Agreement without the other's prior written consent, which shall not be unreasonably withheld.

15.2 Notices: All notices and other communications provided for herein shall be in writing and shall be deemed to have been given on the date of delivery if delivered by a recognized overnight delivery service or if sent by Registered or Certified Mail in a prepaid envelope addressed to the other party.

Notices to Arbortext:

Contact Name: Chief Financial Officer
Arbortext, Inc.
Address: 1000 Victors Way
Ann Arbor, MI 48108 USA
Phone: 1 - 734 - 997 - 0200
Fax: 1 - 734 - 997- 0201

Notices to Blueberry:

Chief Financial Officer
Blueberry Software
7151 Wilton Avenue, Suite 201
Sebastopol, CA 95472 USA
1 - 707 - 829 - 5443
1 - 707 - 829 - 5380

15.3 **No Solicitation:** Neither party shall, for twelve (12) months from the effective date of this Agreement, either itself or on behalf of third parties, knowingly solicit or aid in the solicitation of any of the other party's personnel or agents to accept employment with it or with any other person or organization, without the prior written consent of the other party.

15.4 **No Remuneration:** Neither party has remunerated nor will remunerate in cash or in kind any director, officer, employee or other representative of the other party.

15.5 **Compliance With Law:** In performing this Agreement Arbortext warrants that it shall comply with all applicable laws and regulations within the Territory in which Arbortext markets and distributes the Blueberry Software.

15.6 **Independent Contractors:** Arbortext is an independent contractor and shall not be considered to be an agent or representative of Blueberry. Blueberry is an independent contractor and shall not be considered to be an agent or representative of Arbortext. It is agreed that neither party has any authority to negotiate on behalf of or bind the other with respect to any matter hereunder. Use of the term "partner" in this Agreement is in the marketing sense; the parties are not partners under the legal definition of that term.

15.7 **Force Majeure:** Except for the payment of money, neither party will be liable to the other for any failure to perform or delay in the performance of its obligations caused by circumstances beyond its reasonable control.

15.8 **Dispute Resolution:** The parties will first endeavor to informally resolve all disputes between them prior to resorting to arbitration as described in this Section. In the event that the parties are unable to informally resolve any material dispute or claim arising out of or in relation to this Agreement, or the interpretation, making, performance, breach or termination thereof, such dispute or claim shall be finally settled by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association as presently in force and by one (1) arbitrator appointed in accordance with such rules. Judgment on the award rendered may be entered in any court having jurisdiction thereof. The parties may apply to any court of competent jurisdiction for temporary or permanent relief, without breach of this provision and without any abridgment of the powers of the arbitrator.

15.9 **Severability:** If any portion of this Agreement is invalid or unenforceable, the balance of this Agreement shall remain in effect, and if any provision is inapplicable to any person or circumstance it shall nevertheless remain applicable to all other persons and circumstances.

15.10 **U.S. Export Control Statement:** Arbortext agrees that it will not re-export the Blueberry Software, directly or indirectly, to any country designated by U.S. law as unacceptable. The list of such countries can be obtained from the commercial officer at any U.S. consulate or embassy.

15.11 **Governing Law:** This Agreement will be governed in all respects by the laws of the state of Michigan, USA, without giving effect to principles of conflicts of law.

15.12 **Entire Agreement:** This Agreement and the Exhibits attached to it set forth the entire agreement between the parties with respect to the subject matter hereof. No oral or written statement and no purchase order or other ordering document shall add to or modify the terms of this Agreement unless agreed to in a writing signed by both parties.

FOR BLUEBERRY:



(Signature)

Kevin Dwan

(Printed Name)


partner

(Title)

July 12, 2000

(Date)

FOR ARBORTEXT:



(Signature)

James J. Steffen

(Printed Name)

CEO

(Title)

July 12, 2000

(Date)

003225

Exhibit A

Blueberry Software

Arbortext is authorized to market, distribute and support the Blueberry Software listed below on all hardware platforms on which Blueberry makes them available:

- Blueberry filters which are included in Blueberry's retail products (Filtrix), including current extensions and extensions in any future development.

Supported Platforms:

- Blueberry Software shall be initially available for the Windows 95/98/NT platform. Potential platforms and operating systems for 2001 may be Sun Solaris 2.7, IBM AIX, HP/UX 10.20, Compaq Tru64 and Unix 4.0.
- On Windows, the modules will be in .DLL form; on Unix, the modules will be in the form of .SOs
- There shall be no charge to Arbortext for availability on the above listed platforms, with the exception that Compaq Tru64, Unix 4.0, and HP platforms may require an additional non-recurring engineering charge as specified in **Exhibit C**.
- Blueberry will use its best efforts to provide Office 2000 ("OUTWW8") filters for MS Word at no expense to Arbortext by March 31, 2001.

Exhibit B

Arbortext Products

Arbortext is authorized to market, distribute and support the Blueberry Software when it is incorporated in any Arbortext Products that Arbortext creates utilizing Blueberry code, which at present include:

1. Interchange option for Epic Editor, fixed license
2. Interchange option for Epic Editor, concurrent license
3. Interchange option for Epic E-content Server, server license
4. Onword (anticipated Q3 or Q4 2000 release)
5. Onframe (possible Q3 or Q4 2000 release)

Exhibit C

Royalties and Fee Schedule

1. ROYALTIES

In accordance with the royalty payment provision of this Agreement set forth in **Section 6.1, Royalties and Other Fees**, Arbortext agrees to pay Blueberry royalties based on the following table:

<u>Cumulative Covered Arbortext Product Sales</u>	<u>Royalty Rate</u>
\$ 0 - 466,667	15%
\$ 466,668 - 1,166,667	10%
\$ greater than 1,166,667	5%

Arbortext Covered Products shall be those software products licensed by Arbortext, as further described in **Exhibit B**, which incorporate the Blueberry Software licensed under this Agreement. Covered Arbortext Products shall not include Arbortext software products that do not include Blueberry Software. If Blueberry Software is offered to current or past users of Arbortext Products, or any users other than new users, at some charge, then revenue from such sales will be included in the computation of Arbortext Product Sales. Arbortext shall not provide Blueberry Software to others without payment of royalty, except upon the advance written approval of Blueberry.

Royalties due Blueberry shall be paid quarterly as follows:

Royalty payments shall be made quarterly in the amount that cumulative royalties earned or guaranteed exceed cumulative amounts previously paid. Arbortext agrees to guaranty minimum royalty payments of \$70,000 in the first year and \$30,000 in each of the second and third years, pro-rata quarterly during each year, and at the end of each quarter to pay the difference if cumulative amounts already paid do not exceed the cumulative amounts guaranteed.

Payments will be made no more than 30 days following the end of a quarter, and will be accompanied by a royalty statement as described in **6.3, Records and Reports**.

2. ENGINEERING SERVICES AND DEVELOPED SOFTWARE

Blueberry shall develop and provide to Arbortext the following engineering services and Developed Software subject to the delivery and acceptance terms of this Agreement:

- Payment of the \$11,000 balance of work performed, billed on June 16, 2000, will be made upon execution of this Agreement
- Work product in accord with the Statement of Work (SOW) detail set forth in recent e-mail correspondence
- Delivery of Compaq Tru64, HP-UX 10.20, and Unix 4.0 binaries may require additional engineering effort on systems beyond those available at Blueberry's site. If Arbortext requires these binaries and this is the case, Blueberry will notify Arbortext and prepare a plan to deliver the Software on these systems, proposing a charge.

3. SOFTWARE SUPPORT

In consideration of the above royalties and charges for engineering services, Blueberry shall provide Arbortext with software support and update releases as described in this Agreement at no additional charge for the duration of this Agreement.

4. ADDITIONAL ENGINEERING AND CONSULTING SERVICES

Fees for additional Blueberry services may be priced on a fixed-fee or hourly basis depending upon the nature of the work. Hourly Fees shall be Blueberry's standard rates in effect at the time the work is proposed.

5. TRAINING

Fees for Blueberry Training is priced on a standard course tuition or custom basis depending upon the nature of the training. Standard tuition fees shall be those in effect at the time the training is proposed.