

Application Development & Software License Agreement

This Application Development & Software License Agreement ("Agreement") is made and entered into as of August 1, 2000 (the "Effective Date") by and between MRO.com, Inc., a Delaware corporation with a principal place of business at 100 Crosby Drive, Bedford, Massachusetts 01730 ("MRO"), and Arbortext, Inc., a Delaware corporation with a principal place of business at 1000 Victors Way, Ann Arbor, Michigan 48108 ("ATI"), with reference to the following:

BACKGROUND

Whereas, ATI has designed and developed and licenses its proprietary EPIC and eCatalog computer software programs (the "ATI Programs") which are further defined in Section 1.5 below, and is experienced in the design and development of customized software. MRO wishes to license the ATI Programs from ATI for incorporation into an MRO-branded content management product ("MRO.com Content Manager");

Whereas, MRO wishes to engage ATI to create the MRO.com Content Manager by extending the functionality of the ATI Programs and by integrating said extensions and the ATI Programs with MRO's INTERMAT product;

Whereas, MRO intends to sub-license the MRO.com Content Manager to its end user customers as well as use the MRO.com Content Manager for internal use; and

Whereas, ATI would like to be retained to provide MRO with the foregoing goods and services on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, MRO and ATI agree as follows:

1. Definitions.

Defined terms, indicated by the use of initial capitalization, will have the meaning set forth below or, if no definition is provided below, will have the meaning ascribed to them in context herein.

- 1.1 "MRO.com Field" means multi-vendor, aggregated marketplace of MRO content, including any single-vendor marketplaces (e-Commerce websites) MRO creates for its customers, otherwise known as MRO.com branded marketplaces for maintenance and repair content.
- 1.2 "MRO.com Materials" means all software programs, algorithms, modules and code, in both object and source code form, and all other data, material and information of any type, nature and variety provided by MRO to ATI for integration with, inclusion in or incorporation into any Deliverable hereunder.

- 1.3 "Confidential Information" means: all information made available by either 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.
- 1.4 "MRO.com Content Manager" means the application developed or otherwise made by ATI in performing Services hereunder; MRO shall be entitled to package and offer the MRO.com Content Manager, including the associated ATI Programs, for sub-licensing to its customers without payment of additional fees to ATI, other than as set forth herein.
- 1.5 "ATI Programs" means the computer programs set forth in the attached Exhibit B that ATI has developed or that ATI has acquired from a third party with which the MRO.com Content Manager will inter-operate, including any manuals and technical documentation relating thereto that are generally provided to licensees or authorized users thereof.
- 1.6 "ATI Tools" means any previously existing ATI templates, files, algorithms, modules, data, process, technique, program, computer software, computer code, work product and all other previously existing ATI material and information of any type, nature and variety and related documentation used by ATI in creating the MRO.com Content Manager.
- 1.7 "Improvements" means any improvements, modifications and enhancements pertaining to the ATI Programs that are created, developed, conceived, reduced to practice or otherwise made by ATI in performing Services hereunder.
- 1.8 "Intellectual Property Rights" means any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship throughout the world, including but not limited to copyrights and moral rights (moral rights means any right to claim authorship of a work, any right to object to any distortion or another modification of a work, and any similar right, existing under the law of any country in the world, or under treaty, (b) trademark and trade name rights and similar rights, (c) trade secret rights, and (d) patents, designs, algorithms and other industrial property rights.
- 1.9 "Third Party Tools" means any tools or software elements licensed or acquired, or to be licensed or acquired, from a third party for use in connection with or to be incorporated into any Deliverable hereunder.
- 1.10 "INTERMAT Product" means the MRO's catalog product described more fully in Exhibit C.
- 1.11 "MRO Web Site User" means any person who uses one of the MRO.com websites or any website built with MRO.com technology that has been developed to acquire information about or to procure maintenance and repair parts, including persons who enter the MRO web site as suppliers or buyers of such parts.

2 The Services; Personnel; Client Deliverables.

2.1 The Services. ATI agrees to provide to MRO the services described in Exhibit A attached hereto (the "Services"). The Services may include, among other services, writing custom code and incorporating Third Party Tools into Deliverables, provided, however, that Third Party Tools, if chargeable to MRO as a Deliverable pursuant to Article 5.5., may be incorporated into a Deliverable only with MRO's prior written approval given after MRO has been advised by ATI of all terms, conditions and restrictions applicable to MRO's use of the Third Party Tools. ATI will not perform any services without the prior authorization of MRO and agrees that MRO will not be obligated to compensate ATI for any unauthorized services.

2.2 Support and Maintenance. ATI shall provide the support and maintenance of the Deliverables set forth in Exhibit D.

2.3 Access. ATI acknowledges and agrees that the Services to be provided to MRO hereunder are of a unique and special character and, as a result, represents, warrants and covenants that any such Services will be performed by employees or subcontractors of ATI possessing the requisite skill, experience and knowledge to perform the Services in a professional and workmanlike manner in accordance with the standards and customs of software developers generally. During the term of this Agreement, MRO will be provided access, at no additional charge, to object code for the MRO.com Content Manager and the ATI Programs, and related documentation and other tangible materials, developed or prepared by ATI in performing Services hereunder as reasonably requested by MRO. During the term of this Agreement, at MRO's reasonable request, ATI will confer with MRO's designated representative via telephone, e-mail or other reasonable method and report the status of the Services provided hereunder, including without limitation all tasks completed and problems encountered in performing the Services. ATI agrees to advise MRO's designated representative promptly of any event or problem that might delay the delivery of any Deliverable or the provision of any Services.

2.4 MRO.com Materials. MRO will provide ATI with any requisite MRO.com Materials and all specifications, requirements and information relating thereto and all specifications, requirements and information relating to the MRO.com Content Manager and any Deliverable in a timely fashion so as not to interfere with or delay ATI's performance of any Services hereunder.

2.5 Change of Scope. MRO may, upon written notice to ATI, request a change to the scope or schedule of the Services under a Work Order. ATI shall promptly determine the cost and/or schedule impact, if any, resulting from the requested change, and notify MRO of its determination. In the event that the requested changes do not materially impact the existing cost or schedule for the Services, then ATI shall perform the requested changes at no additional charge to MRO; provided, however, if a series of work orders or changes requested by MRO in the aggregate materially impact the existing cost or schedule, ATI shall be entitled to an equitable adjustment to the Work Order, such adjustment to be negotiated in good faith by the parties. Where a change requested by MRO materially

impacts the existing cost or schedule, ATI shall prepare a proposed amendment to the Work Order setting forth: (a) a description of the changes in the Services and Work Product; (b) an estimate of the additional time and resources required to perform the requested changes; and (c) an estimate of the additional fees and other expenses that ATI will charge to provide the requested changes. MRO shall review such proposed amendment to the Work Order and, subject to agreement on costs, MRO shall execute it and return it to ATI. MRO shall not be liable for any charges incurred by ATI, and ATI shall not be obliged to perform the requested changes, until the amendment to the Work Order has been executed by both parties.

3 Deliverables; Terms of Delivery; Acceptance.

3.1 Deliverables; Terms of Delivery. In connection with its performance of Services hereunder, ATI will provide to MRO the tangible items and materials set forth in Exhibit A (collectively, the "Deliverables") on or before the corresponding scheduled delivery dates for such Deliverables set forth in Exhibit A (collectively, the "Milestones"). The Deliverable having the latest Milestone set forth in Exhibit A is sometimes referred to herein as the "Final Integration." Prior to delivery to MRO, each Deliverable will be thoroughly reviewed and tested by ATI and all defects, errors, bugs, or other problems identified by such testing will be corrected by ATI. Delivery will be made by ATI to MRO as specified in Exhibit A.

3.2 Acceptance of Deliverables by MRO. MRO will have thirty (30) days after its receipt of a Deliverable in which to complete its testing and analysis of the Deliverable to determine compliance with the specifications set forth in Exhibit A hereto, and send written notice to ATI (e-mail notice will suffice for this purpose) of MRO's acceptance or rejection of the Deliverable, and, if rejection, the reasons for such rejection (a "Rejection Notice") and identification of each instance in which the Deliverable(s) fail(s) to meet the specifications in Exhibit A. If MRO fails to send the written notice within the requisite period, then the Deliverable will be deemed to be accepted by MRO. Upon receipt of a Rejection Notice, ATI will have thirty (30) days to correct the defects or problems identified in the Rejection Notice and resubmit the Deliverable for approval to MRO, who, in accordance with the first sentence of this Section, will again have thirty (30) days in which to complete its testing and analysis of such Deliverable and provide written notice of its acceptance or rejection of the Deliverable. MRO may terminate this Agreement immediately upon written notice to ATI if: (a) ATI fails to correct and resubmit any rejected Deliverable in accordance with this Section; or (b) after receiving two (2) Rejection Notices, ATI fails to resubmit a revised version of the Deliverable in accordance with this Section that cures or corrects the defects or problems identified by MRO in the Rejection Notices.

4 Compensation; Expenses; Taxes; Terms Of Payment.

4.1 Compensation. In consideration of ATI's performance of its obligations hereunder, MRO will compensate ATI for performance of the Services in accordance with Exhibit A. MRO will pay to ATI the fees set forth in Exhibit E on the specified dates or upon occurrence of the specified events set forth therein, whichever is later. MRO will pay all such fees in

U.S. dollars by check or wire transfer upon invoice therefor within thirty (30) days of the specified date of invoice or the occurrence of the specified event. Additional consulting services may be purchased by MRO from ATI at the rate of \$900 per day for the period ending March 31, 2001 and \$1000 per day for the period ending December 31, 2001. Thereafter, the rate per day (8 hours) shall be by mutual agreement.

- 4.2 Expenses. MRO will reimburse ATI for all reasonable out-of-pocket travel and living expenses for ATI services people travelling to MRO's facility approved in advance by MRO and actually incurred by ATI in connection with the performance of Services hereunder. ATI shall pay all out of pocket expenses for engineering staff related to ATI Program development. Except as expressly stated in the preceding sentence, ATI will bear all expenses arising from the performance of its obligations under this Agreement unless the parties agree otherwise in a writing signed by an authorized representative of MRO.
- 4.3 Taxes. MRO will be responsible for and agrees to pay, any applicable taxes and governmental charges, including without limitation import or export duties, value-added, sales, use, privileges, excise and other taxes now or hereafter enacted, which may be levied by any government in connection with the Services rendered under this Agreement, except for taxes based on ATI's income.

5 Proprietary Rights; Intellectual Property; Grant of Licenses; Exclusivity.

- 5.1 MRO's Ownership Rights. Except as provided in Section 5.1, MRO will retain all ownership rights, title and interests in and to the MRO.com Materials, and ATI will have no rights therein, other than the limited right to use MRO.com Materials for the purposes expressly set forth in this Agreement. MRO is granted by ATI all ownership rights, title and interests in and to MRO.com Content Manager developed by ATI for MRO and incorporated in the Deliverables, including without limitation any Intellectual Property Rights of any kind therein, except for any ATI Programs or Tools or Third Party Tools contained therein. Except as provided in Section 5.2, ATI hereby assigns, conveys, and otherwise transfers to MRO and its successors and assigns, all right, title and interest worldwide in and to the MRO.com Content Manager incorporated in any Deliverable, except for any ATI Programs or Tools or Third Party Tools contained therein. To the extent applicable under U.S. copyright law, the MRO.com Content Manager will be deemed a work made for hire. MRO shall have no ownership rights or title in the ATI Programs, Improvements to ATI Programs, ATI Tools and Third Party Tools, and shall have no rights in them other than the limited license rights to use and sub-license them as granted in Section 5.3.
- 5.2 Restrictions on MRO Ownership. Notwithstanding any provision of this Agreement, MRO will not own and will not receive any title in or to the following: (i) the ATI Programs; (ii) any Improvements to ATI Programs; (iii) the trade names, trademarks, service marks, and other brand identifiers of ATI incorporated into the Deliverables; (iv) any ATI Tools; and (v) any Third Party Tools.

- 5.3 **Grant of License to ATI Programs.** This Agreement contemplates that ATI will use the ATI Tools and any Third Party Tools to develop the MRO.com Content Manager and link it to the ATI Programs as more fully described in Exhibit B. Subject to the payment of the Software License Fees and the renewable Annual Software Subscription Fees as initially set forth in Exhibit E, ATI hereby grants to MRO a non-exclusive, non-transferable, worldwide right, subject to the terms of this Agreement, (a) to use and sublicense the ATI Programs to its customers solely in conjunction with the MRO.com Content Manager and while operating strictly within the MRO.com Field, where any such sublicenses are granted on a perpetual basis; and (b) to develop interfaces between the ATI Programs and other computer programs solely for use in conjunction with the INTERMAT Product and while operating strictly within the MRO.com Field; any distribution of ATI Programs shall be accomplished under a sublicense agreement between MRO and MRO's Customer under the same proprietary rights limitations as MRO uses with respect to its own proprietary software. Any sublicense agreement between MRO and an MRO Customer may be through MRO's standard signature license, attached hereto as Exhibit F, or such other license executed by MRO and MRO Customer that is in material conformance with MRO's end-user license and is consistent with the license restrictions and MRO's rights and obligations under this Agreement. MRO'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, so long as MRO Customer is required to consent to the terms of such license by opening the MRO Product package or clicking a button to initiate installation after an opportunity to view the license terms and conditions. MRO will promptly notify ATI of any violation of a license agreement and shall enforce the terms thereof with at least the same degree of diligence used in enforcing similar agreements governing end users of MRO's own products. Such license agreements shall also state that ATI is a third party beneficiary under such agreements with respect to provisions relating to use of their software in the MRO Programs, and that such provisions are also enforceable by ATI. In the event of any conflict between the terms of this Agreement and Exhibit F, the terms of this Agreement shall prevail
- 5.4 **Support and Maintenance.** ATI shall provide support and maintenance of the MRO.com Content Manager and ATI Programs (collectively the "Supported Software") to MRO on an annual basis, subject to: (a) payment annually in advance of the Annual Software Subscription Fee as initially set forth in Exhibit E and further defined in Section 8 hereof, and (b) ATI's support policies and practices described in the then current "*ATI Technical Product Support Guide*," as set forth in Exhibit D. Maintenance consists of (i) e-mail and telephone support during normal business hours (U.S. Eastern Time); (ii) software releases as available for general distribution; and (iii) reports regarding error corrections and other information pertinent to use of the Deliverables. Maintenance will be provided for the current release of the Supported Software, the most recent previous release, and any other release for one year after its replacement by a subsequent release
- 5.5 **Third Party Content and Tools.** MRO will be responsible for obtaining and paying for any necessary licenses to use third-party content included in the MRO.com Materials provided to ATI. ATI will make commercially reasonable efforts, at no additional charge, to assist

MRO in the procurement of appropriate licenses and releases for Third Party Tools, although MRO will remain responsible for paying any such license or release fees.

- 5.6 Exclusivity. ATI agrees that until October 1, 2001, ATI will not enter into any sales or OEM relationship or contract to perform any services to develop any software similar to MRO.com Content Manager with any of the five (5) MRO.com competitors listed below, where an MRO.com Competitor is defined as any person, web-site, or company that is in the business of aggregating industrial Maintenance and Repair content from multiple suppliers for the purpose of transacting e-Commerce over the Internet. MRO shall have the right to delete competitors and replace them with alternate competitors at any time. The initial MRO.com Competitors are (1) W.W. Grainger or indirectly W.W. Grainger through Requisite Technology, (2) Procurenent, (3) Internet Capital Group partner companies, (4) Equalfooting.com, (5) Iprocure (Datastream) and (6) TPN Register.

Both parties acknowledge that Arbortext has other reseller, OEM and systems integration partners that may sell to such accounts without ATI's support or knowledge; however, ATI will take no action to encourage such business.

In addition, ATI will not target MRO.com Competitors not on the above list and solicit their business for products similar to the MRO.com Content Manager. However, in the normal course of business ATI shall not be restricted from selling any of its products and services to such competitors. In the mutual interest of both ATI and MRO.com, ATI agrees that as it becomes aware of any potential sales opportunity to such competitors that may be construed as competitive with MRO.com, ATI will approach MRO.com to discuss the potential for a teaming or other partnering relationship for any such sales opportunity.

- 5.7 Limited Usage. It is the intention of the parties that MRO will sublicense the MRO.com Content Manager to its third party customers solely for their use in the MRO.com Field. Should MRO become aware of (1) the desire of such a third party customer to use, or (2) the actual use of the MRO.com Content Manager in an application outside of the MRO.com Field, MRO will inform that customer that the customer is subject to additional license and support fees for any such non-MRO.com Field application. Such additional fees shall be divided in an equitable manner between MRO.com and ATI.

6 Confidentiality; Source Code Escrow.

- 6.1 Confidential Information. Each party will not disclose Confidential Information of the other to any third party, or use Confidential Information for any purpose other than performing its obligations hereunder, without the other party's prior written consent. Each party will handle all Confidential Information of the other in the same manner that it handles its own most confidential information and will, in any event, take all steps reasonably necessary to preserve the confidentiality of Confidential Information, including without limitation adopting appropriate confidentiality policies, including appropriate confidentiality terms in agreements with all contractors, and maintaining Confidential Information in a manner designed to assure that it will not be used or disclosed improperly. Notwithstanding the above, the parties will not be restricted in their use of information or

material that (i) is already or otherwise becomes publicly known through no act or omission of the other party or a third party; (ii) is lawfully received by the other party from third parties subject to no restriction of confidentiality; or (iii) has been independently developed by the other party without use of the Confidential Information. Upon either party's request, the other party will promptly return to it all copies (or destroy such copies, in accordance with Section 8.4) and originals of its Confidential Information.

- 6.2 **ATI Programs.** Except as expressly provided in this Agreement, MRO will not disclose to any third party or use any ATI Programs or Improvements (except as expressly licensed herein) without ATI's prior written consent. MRO will have only object code for ATI Programs. MRO will have both source and object code for the MRO.com Content Manager, exclusive of ATI Tools incorporated within it. MRO will handle the object code of any ATI Programs and Improvements in the same manner that it handles its own Confidential Information and will, in any event, take all steps reasonably necessary to preserve the confidentiality of such code, including without limitation adopting appropriate confidentiality policies, including appropriate confidentiality terms in agreements with all contractors, and maintaining such object code in a manner designed to assure that it will not be used or disclosed improperly.
- 6.3 **Source Code Escrow.** Within ninety (90) days of the delivery of the MRO.com Content Manager or the date of any request by MRO, ATI will deposit the source code for any ATI Programs with a recognized and reputable escrow agent (the "Escrow Agent"), subject to the terms and conditions set forth in this Section 6.3. Thereafter, ATI will deposit the source code for any Improvement with the Escrow Agent within approximately thirty (30) days of the creation or reduction to practice of the Improvement or the date of any request by MRO, subject to the terms and conditions set forth in this Section 6.3. ATI will enter into a commercially reasonable written agreement with the Escrow Agent relating to the Escrow Agent's possession of deposited source code that will conform in all respects with the terms and conditions of this Section 6.3 (the "Escrow Agreement"). The Escrow Agreement will be maintained in effect at all times during the term of this Agreement and during the term of any agreement by ATI to provide support services to MRO relating to the MRO.com Content Manager.

6.3.1 Events of Release of Source Code. MRO will be entitled to request delivery of, and receive within thirty (30) days of such request, the deposited source code of the ATI Programs and any Improvements upon the occurrence of any of the following events during any period of time that ATI is obligated to provide support services to MRO relating to the Custom Code: (i) the dissolution of ATI or the permanent cessation of ATI's business; (ii) ATI becoming insolvent, making an assignment for the benefit of creditors, having a receiver appointed to manage its affairs, or being adjudicated a bankrupt under the laws of the United States; or (iii) ATI's inability, failure or unwillingness to provide support services that conform in all material respects to the requirements of this Agreement, which inability, failure or unwillingness is undisputed by ATI and continues for a period of at least thirty (30) days following MRO's written notice to ATI thereof.

6.3.2 Limitation on Use of Deposited Source Code. In the event any deposited source code is delivered to MRO in accordance with Section 6.3, MRO will have a royalty-free license to internally use the deposited source code solely for the purpose of providing support services.

6.3.3 Payment of Escrow Fees. MRO will be responsible for and agrees to pay any and all out of pocket fees incurred in connection with depositing and maintaining the deposited source code with the Escrow Agent in accordance with the terms of the Escrow Agreement.

7 Representations, Warranties And Indemnities.

- 7.1 **ATI Warranties.** ATI warrants and represents that the MRO.com Content Manager and Third Party Tools will not: (a) infringe any U.S. patent or U.S. copyright of any third party; or (b) contain any viruses, Trojan horses, trap doors, back doors, worms, time bombs, or other computer programming routines, except for ATI authorization codes, that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information. ATI further warrants and represents that the MRO.com Content Manager will operate substantially in accordance with the specifications contained in the documentation provided therewith and with the functional specifications developed in accordance with Exhibit A for a period of ninety (90) days from the Final Integration. ATI further warrants and represents that the Services will be performed in a professional and workmanlike manner in accordance with industry standards. ATI warranties do not apply insofar as (a) the ATI Programs are subject to misuse, neglect or accident; (b) claims result from actions or omissions caused by persons other than ATI, material or software not provided by ATI, or from MRO or third party modifications to the ATI Programs; and (c) the ATI Programs used by MRO do not include all releases available from ATI. MRO accepts responsibility for selection of the ATI Programs, their use and the results obtained therefrom, including establishing adequate backup to prevent the loss of data in the event of a malfunction of the ATI Programs.
- 7.2 **MRO Warranties.** MRO warrants and represents that the MRO.com Materials will not: (a) infringe on the Intellectual Property Rights of any third party; (b) violate any law, statute, ordinance or regulation; or (c) contain any viruses, Trojan horses, trap doors, back doors, worms, time bombs, or other computer programming routines that are intended to damage, detrimentally interfere with, provide access to, surreptitiously intercept or expropriate any system, data or personal information. MRO further warrants and represents that the MRO.com Materials will operate substantially in accordance with the specifications contained in the documentation provided therewith and with the functional specifications developed in accordance with Exhibit A for a period of ninety (90) days from the Final Integration.
- 7.3 **Date Calculation.** ATI warrants that any Deliverable and ATI Program will: (a) include year 2000 date conversion and compatibility capabilities including, but not limited to: century and correct leap year recognition; calculations which accommodate same century and multi-century formulas and date values; correct sort ordering; and interface values that reflect the century; (b) manage and manipulate data involving dates, including single century formulas, multi-century formulas and correct leap year formulas, and will not cause

an abnormal abort within the application or result in the generation of incorrect values or invalid outputs including such duties; (c) provide that all date related user interface functionalities and data fields include the indication of the correct century; and (d) provide that all date-related system to system or application to application data interface functionalities will include the indication of the correct century.

- 7.4 **Disclaimer of Warranties.** EXCEPT AS SPECIFICALLY SET FORTH HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, ARBORTEXT DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING BY STATUTE, COURSE OF DEALING, CUSTOM OR USAGE, TRADE PRACTICE OR OTHERWISE AND SPECIFICALLY DISCLAIMS ALL SUCH WARRANTIES.
- 7.5 **ATI's Indemnity.** ATI will indemnify, defend and hold MRO harmless from and against any allegations, claims or causes of action (whether threatened or pending), losses, costs, or expenses (including reasonable attorney's fees), damages, judgments, losses or liabilities arising from or relating to any conduct or alleged conduct that breaches or, if proven, would breach the representations and warranties of ATI set forth in this Agreement; provided that MRO notifies ATI promptly of any claim as to which indemnification will be sought and that MRO provides ATI with all reasonable cooperation, at ATI's expense, in the defense and settlement of such claim.
- 7.6 **MRO's Indemnity.** MRO will indemnify, defend and hold ATI harmless from and against any allegations, claims or causes of action (whether threatened or pending), losses, costs, or expenses (including reasonable attorney's fees), damages, judgments, losses or liabilities arising from or relating to any conduct or alleged conduct that breaches or, if proven, would breach the representations and warranties of MRO set forth in this Agreement; provided that ATI notifies MRO promptly of any claim as to which indemnification will be sought and that ATI provides MRO with all reasonable cooperation, at MRO's expense, in the defense and settlement of such claim.

8 Termination and Extension of Term.

- 8.1 **Term.** The Agreement shall commence on the Effective Date and will continue in full force and effect for an initial term of one (1) year, unless terminated earlier as provided herein. Thereafter, subject to MRO's payment of the Annual Software Subscription Fees set forth in Exhibit E, this Agreement shall automatically renew for two successive one (1) year renewal terms.
- 8.2 **Extension of term.** Commencing on the third anniversary of this Agreement, MRO shall have the option to extend this Agreement for up to four additional extension terms of one year each for an annual renewal fee of \$250,000. Thereafter, any extension shall be by mutual consent. MRO shall have the unilateral option to terminate this Agreement prior to the end of the initial one year term or any renewal term by providing sixty (60) days advanced notice. In the event this Agreement is not extended, then (1) MRO shall cease to

have the right to sublicense any portion of the ATI Programs to its customers not already sublicensed; (2) the sublicenses of customers who have previously sublicensed the MRO.com Content Manager and the associated ATI Programs shall not be effected by any termination of this Agreement; and (3) MRO's internal use license may be extended at MRO's option at a charge of \$10,000 per month. In any event, ATI support and maintenance shall cease pursuant to Article 9.3 if this Agreement is terminated.

9 Termination for Cause.

- 9.1 Either party may terminate this Agreement at any time upon a material breach, including non-payment, of the other party, if such breach (to the extent curable) remains uncured for a period of thirty (30) days following written notice to the breaching party. In addition, each party will have the right to terminate this Agreement, effective immediately, upon written notice to the other party, if: (i) the other party files a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership or liquidation for the benefit of creditors; (ii) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership or liquidation for the benefit of creditors; (iii) the other party makes a general assignment of its assets for the benefit of creditors; or (iv) the other party becomes insolvent, suspends its business or dissolves.
- 9.2 Termination for Non-Performance or Delay. In the event of any delay in excess of thirty (30) days in the delivery of any Deliverable, MRO will have the right to terminate this Agreement immediately upon written notice to ATI.
- 9.3 Effect of Termination. In the event of any expiration or termination of this Agreement, each party will deliver to the other party or, at such other party's option, will destroy all documents, disks, copies and other materials containing, representing or derived from the Confidential Information, including without limitation erasing or destroying all such information stored or running in computer memory or in any other data storage device. An officer of the party returning or destroying such information will certify to the other party in writing that such information has been so returned or destroyed. In the event of any expiration or termination of this Agreement prior to MRO's acceptance of the Final Integration, MRO shall pay for any work performed up to the time of termination and will have the right, in addition to all of its other rights, to require ATI to deliver to MRO all work in progress, including without limitation all originals and copies thereof. Without limiting MRO's right to seek equitable or legal remedies for breach or other misconduct by ATI, payments for fees and expenses incurred in connection with the performance of authorized services up to the date of expiration or termination, plus payment of all Annual Software Subscription Fees due hereunder and required to secure the license to the ATI Programs, will be deemed payment in full for all obligations of MRO under this Agreement, including full payments for all software code, documentation, notes and all other materials and work relating to the Deliverables and the assignment or licenses of rights hereunder as of the date of termination. Upon effective date of termination of this Agreement, ATI shall have no further obligations to provide support and maintenance service of any kind.

9.4 Survival. In addition to such other provisions which by their nature are intended to survive the expiration or termination of this Agreement, the provisions of Sections 5.1, 5.2, 6.1, 6.2, 7, 9.3, 10 and 11 will survive any expiration or termination of this Agreement.

10 Limitation on Liability.

NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND WHATSOEVER, INCLUDING WITHOUT LIMITATION DAMAGES RESULTING FROM INTERRUPTION OF BUSINESS OR LOSS OF ANTICIPATED PROFITS, REVENUES, DATA OR BENEFITS, ARISING OUT OF OR RELATING TO THIS AGREEMENT EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE FORM (E.G., CONTRACT, TORT, WARRANTY OR OTHERWISE) OF ANY LEGAL OR EQUITABLE ACTION BROUGHT AGAINST THE PARTY. THE REMEDIES OF MRO HEREUNDER ARE EXCLUSIVE AND ATI'S TOTAL LIABILITY FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, SHALL NOT EXCEED THE ACTUAL FEES PAID BY MRO TO ATI DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE INITIAL EVENT RESULTING IN THE CAUSE OF ACTION. NO ACTION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT MAY BE BROUGHT BY EITHER PARTY MORE THAN TWELVE (12) MONTHS AFTER THE OCCURRENCE OF THE EVENT GIVING RISE TO THE CAUSE OF ACTION.

11 General Provisions.

11.1 Governing Law; Language. This Agreement will be governed by, and construed and enforced in accordance with, the laws of The Commonwealth of Massachusetts, without regard to its conflict of law principles. Any dispute arising out of or relating to this Agreement will be prosecuted in a court of competent subject matter jurisdiction located in Massachusetts. The parties hereby consent to the personal jurisdiction of such courts over them, stipulate to the convenience, fairness and efficiency of such courts, and covenant not to assert any objection to proceeding in such courts based on any alleged inconvenience, unfairness or inefficiency of such courts.

11.2 Notices. Except as provided otherwise herein, all notices required or permitted under this Agreement will be sent to the address first set forth above marked to the attention of the signatory of this Agreement for the party, or to such other address or person as a party may designate in writing from time to time, by personal delivery or by reputable international private courier with established tracking capability (such as FedEx, Airborne or UPS), postage pre-paid, marked for next business day delivery to the party to be notified. Notices sent in conformity with the preceding sentence will be deemed to have been received when personally delivered or, in the event of delivery by overnight courier, two (2) business days after delivery to the courier or on the date of actual delivery as demonstrated by the tracking records of the courier, whichever is earlier.

- 11.3 Designated Person. The parties agree that all materials exchanged between the parties with regard to development activities hereunder will be communicated between single designated persons, or a single alternate designated person for each party. Each party will have the right to change its designated persons from time to time and to so notify the other in writing of such change. Unless otherwise notified of a change in writing, the designated person and alternate designated person for MRO are Gary Freeman, VP of Technology and Jack Young, Exec VP of Products/Technology respectively, while the designated person and alternate designated person for ATI are Chris Moffett, Director of Professional Services, and John Dreystadt, Director of Engineering, respectively.
- 11.4 Entire Agreement. This Agreement, together with the attached Exhibits which are incorporated by reference as though fully set forth herein, contains the entire understanding and agreement between the parties with respect to the subject matter hereof, supersedes all prior oral or written understandings and agreements relating thereto, and may not be altered, modified or waived in whole or in part, except in writing, signed by duly authorized representative of the parties.
- 11.5 Severability. If any provision of this Agreement will be held by a court of competent jurisdiction to be contrary to any law, the remaining provisions will remain in full force and effect as if said provision never existed.
- 11.6 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; provided, however, that either party may assign this Agreement to any of its subsidiaries or affiliates, or in connection with a merger, acquisition or sale of all or substantially all of its assets without the prior written consent of the other party. This Agreement will inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 11.7 Construction. The captions used herein are intended for convenience of reference only, and will not modify or affect in any manner the meaning or interpretation of any of the provisions of this Agreement. As used herein, the singular form of names and pronouns will include the plural form, and vice versa, and any pronouns will include the corresponding masculine, feminine, and neuter forms. The words "hereof," "herein," and "hereunder," and words of similar import, when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement. References in this Agreement to Sections, Exhibits and Schedules are intended to refer to Sections of and Exhibits and Schedules to this Agreement unless otherwise specifically stated.
- 11.8 Waiver and Amendments. No waiver, alteration, modification or cancellation of any of the provision of this Agreement will be binding or effective unless made in a writing that refers specifically to the provision or provisions waived, altered, modified or cancelled and that is signed by an authorized representative of the party against whom enforcement of the waiver, alteration, modification or cancellation is sought. The failure of a party at any time to enforce or require performance of any provision of this Agreement will not in any

manner affect that party's right to later enforce or require performance of such provision. No invoice or other writing or communication sent by one party to the other may vary the terms of this Agreement, and any term thereof that is inconsistent with or additional to the terms of this Agreement will not be binding, unless agreed to in writing by both parties.

11.9 Agency; Independent Contractor. The parties are separate and independent legal entities. ATI is performing services for MRO as an independent contractor, not as an employee of MRO, and no employment relationship is created by this Agreement. ATI will retain independent professional status throughout this Agreement and will use its own discretion in performing the tasks assigned. Nothing contained in this Agreement will be deemed to constitute either ATI or MRO as an agent, representative, partner, joint venturer or employee of the other party for any purpose. Neither party has the authority to bind the other or to incur any liability on behalf of the other, nor to direct the employees of the other.

11.10 Publicity. Within sixty (60) days of the execution of this Agreement, the parties shall cooperate to issue a public notice or news release concerning this Agreement and the transactions contemplated hereby, the content of such notice or release to be mutually agreed to by the parties prior to such release.

IN WITNESS HEREOF, and intending to be legally bound, the authorized representatives of the parties have executed this Agreement below as of the Effective Date.

MRO.COM, INC

ARBORTEXT, INC.

By: _____
(Sign)

By: _____
(Sign)

Garg Freeman

(Print)

James J. Sakan

(Print)

VP Advanced Technologies

(Title)

CEO

(Title)