

MODEL AGREEMENT FOR DISCUSSION ONLY
SOURCE CODE ESCROW AGREEMENT

THIS AGREEMENT is made the day of , 20__,

BETWEEN:

{Name of Licensor/Distributor},
a corporation formed under
the laws of ,

("Licensor")

- and -

{Name of Licensee},
a corporation formed under
the laws of ,

("Licensee")

- and -

THE SOURCE CODE ESCROW COMPANY LTD.,
a company formed under the
laws of the Province of Ontario,

("SCEC").

WHEREAS:

Licensor has advised SCEC that it develops, modifies and enhances certain application software programs and has licensed Licensee to use such programs pursuant to an agreement (the "License Agreement") dated , 20__ between Licensor and Licensee;

Licensor and Licensee have agreed to make certain arrangements for the protection of any rights that Licensee has or may acquire in the use of the software programs;

the above statements are made by Licensor and Licensee and not by SCEC;

Licensor and Licensee have requested SCEC to act as escrow agent and SCEC has accepted;

NOW THEREFORE this Agreement witnesses that in consideration of this Agreement and for other good and valuable consideration, the parties agree as follows:

1. Definitions:

In this Agreement, unless the context or subject matter is inconsistent, the following terms shall have the following meanings:

- (a) "Agreement" means this agreement, any supplemental or ancillary instrument and any amendment in accordance with the terms of this Agreement, including all schedules attached;
- (b) "business day" means any day that is not a Saturday, a Sunday or an Ontario statutory holiday;
- (c) "Documentation" means the supporting documentation in paper or other suitable fixed form developed for the Software;
- (d) "Event of Default" is defined in section 6;
- (e) "License Agreement" means the agreement between Licensor and Licensee referred to in the recitals;
- (f) "Materials" means a copy of the most current version of the Source Code and Documentation deposited with and held by SCEC pursuant to this Agreement;
- (g) "Restricted Access Area" means an enclosure secured by a lock, access to which is restricted to authorized representatives of SCEC;
- (h) "Software" means the licensed software programs set out in Schedule A attached; and
- (i) "Source Code" means a complete copy of the source code version of the Software appropriately labeled to indicate the version or release, in both (i) machine-readable form on machine-readable medium suitable for long-term storage and compatible with the Licensee's computer system; and (ii) human-readable form with annotations on paper suitable for long term storage.

2. Deposit and Updating of Source Code

(1) Within 60 days after the date of execution of this Agreement and after 2 business days prior notice of delivery to SCEC, Licensor shall deposit the Materials with SCEC. Licensor shall provide to SCEC from time to time, after 2 business days prior notice to SCEC, modifications or updates to the Materials so that SCEC shall have in its possession, as soon as practicably available, the Source Code and Documentation for the most current version of the Software. All Materials deposited under this Agreement shall be labeled by Licensor to clearly indicate the Licensor, Licensee, this Agreement and the identity and release number (or equivalent) of the Software. Within 10 business days after the receipt of the Materials, SCEC shall give Licensee written notice of such receipt. For greater certainty, SCEC has no obligation to ensure that Licensor deposits the Materials pursuant to this section.

(2) If SCEC has received an updated version of the Materials pursuant to section 2(1), then, at Licensor's expense, SCEC shall return to Licensor the previously held version of the Materials within 10 business days after receipt.

(3) Concurrently with the deposit of the Materials pursuant to section 2(1), Licensor shall deliver to each of Licensee and SCEC a verification certificate that represents and warrants that the Materials delivered contain the Source Code and Documentation for the most current version of the Software at that time.

3. Verification

(1) Licensee may, at any time, request the Licensor to verify that the Materials are consistent with the most current version of the Software by giving 5 business days prior written notice to Licensor and SCEC. Such notice shall specify (a) the date and time (on a business day and during normal business hours) when the verification is to be conducted and (b) the location where the verification is to take place. Subject to section 3(2), at the date, time and location specified in the notice or as may be agreed to by the parties, SCEC shall deliver the Materials to Licensee. In the presence of Licensor, Licensee may perform (or at its option require the Licensor to perform) such tasks and verification procedures as Licensee may deem necessary to enable Licensee to determine that the Source Code when compiled and executed performs consistently with the most current version of the Software. Upon completion of the verification, Licensor and Licensee shall return the Materials to SCEC and ensure that all physical and computer copies of the Materials which were created pursuant to the verification are destroyed and purged.

(2) All SCEC's fees, expenses and disbursements related to such verification shall be borne by Licensee and, at the option of SCEC, may be required to be paid in advance of such verification.

4. Terms of Agreement

This Agreement shall commence on the date above and shall terminate pursuant to sections 5, 7, 8 or 10.

5. Remuneration

(1) Licensee shall pay to SCEC in respect of the performance of its duties, fees at the rates set out in Schedule B attached. All such fees may be increased by SCEC upon 30 days prior written notice to Licensee. Licensee shall also pay SCEC's expenses and disbursements in connection with the performance of its duties under this Agreement. Licensee shall pay all such fees, expenses and disbursements within 30 days of the date of an invoice from SCEC. Any amount outstanding after such 30 day period shall accrue interest, calculated daily, at SCEC's banker's annual prime interest rate plus 3%.

(2) If such fees, expenses and disbursements referred to in section 5(1) are not paid within 30 days after SCEC sends written notice to Licensor and Licensee that such fees, expenses or disbursements are overdue, then this Agreement shall terminate forthwith and SCEC shall be entitled to return the Materials to Licensor. Notwithstanding the foregoing, SCEC may require the payment in full of any fees, expenses, disbursements and other amounts owing to it under this Agreement prior to the return of the Materials to Licensor.

6. Default of Licensor

(1) An Event of Default under this Agreement shall be deemed to have occurred upon the occurrence of any one or more of the following:

(a) if Licensor makes an assignment for the benefit of creditors or if a petition in bankruptcy is filed against Licensor and such petition is not dismissed within 60 days, or if a receiver is appointed for Licensor whose appointment is not vacated within 60 days, and as a result of any of the above, the personnel of Licensor are unable or unwilling to execute their normal business routines or Licensor is unable or unwilling to fulfill its material obligations under the License Agreement; or

(b) if any natural disaster, accident, crime, or other event of any nature occurs to the Licensor that renders the personnel of Licensor unable to execute their normal business routines, or renders Licensor unable to fulfill its material obligations under the License Agreement; or

(c) if Licensor ceases to carry on business in respect of the Software.

7. Obligations Upon Event of Default

(1) Licensee shall promptly give written notice concurrently to SCEC and Licensor of the occurrence of an Event of Default set forth in section 6 (the "Notice of Default"), which notice shall specify the nature of such Event of Default. In addition, Licensee shall provide to SCEC an affidavit executed by the President or Secretary of Licensee stating that Licensee has provided the Notice of Default to Licensor pursuant to this section and in accordance with section 13.

(2) Within 30 days after receipt by SCEC of the Notice of Default and the affidavit pursuant to section 7(1), Licensor may dispute the Notice of Default by filing with SCEC an affidavit executed by the President or Secretary of Licensor stating that no such default has occurred or that the default has been cured. Concurrently, Licensor shall send a copy of such affidavit to Licensee. If SCEC receives such affidavit within the 30 day period, then it shall maintain possession of the Materials pursuant to this Agreement until SCEC is directed to release the Materials by a joint written direction from Licensor and Licensee or by an order of a court of competent jurisdiction.

(3) If Licensor gives SCEC written confirmation of the Notice of Default or if Licensor does not dispute the Notice of Default pursuant to section 7(2), then this Agreement shall terminate forthwith and SCEC shall be entitled to deliver the Materials to Licensee. Notwithstanding the foregoing, SCEC may require the payment in full of any fees, expenses, disbursements and other amounts owing to it under this Agreement prior to the delivery of the Materials to Licensee.

8. Obligations Upon Termination of License Agreement

(1) Upon the termination or expiration of the License Agreement, Licensor or Licensee shall give written notice of such termination or expiration to SCEC. If Licensor gives such notice, then 30 days after receipt by SCEC of such notice and an affidavit executed by the President or Secretary of Licensor stating that the Licensor has provided the notice, this Agreement shall terminate and SCEC shall be entitled to return the Materials to Licensor. If Licensee gives such notice, this Agreement shall terminate immediately upon the giving of such notice and SCEC shall be entitled to return the Materials to Licensor. Notwithstanding the above, SCEC may require the payment in full of any fees, expenses, disbursements and other amounts owing to it under this Agreement prior to the return of the Materials to Licensor.

(2) Within 30 days of receipt by SCEC of the notice and an affidavit from Licensor pursuant to section 8(1), Licensee may dispute such notice by filing with SCEC an affidavit executed by the President or Secretary of Licensee stating that the License Agreement has not terminated or expired. Concurrently, Licensee shall send a copy of such affidavit to Licensor. In the event that SCEC receives such an affidavit with the 30 day period, then SCEC shall maintain possession of the Materials pursuant to this Agreement until directed to release the Materials by a joint written direction from Licensor and Licensee or by an order of a court of competent jurisdiction.

9. Concerning SCEC

(1) SCEC shall store the Materials as received under section 2 in a Restricted Access Area. SCEC may, in its absolute discretion, appoint an agent to store the Materials. Licensor and Licensee agree and acknowledge that, other than storing the Materials in a Restricted Access Area, SCEC makes no representations or warranties as to conditions of storage of the Materials, including without limitation, the humidity, temperature or climate controls of the Restricted Access Area. Licensor and Licensee shall be liable for any damage to Materials arising from or caused by or in any other way connected with the absence of humidity, temperature, climate controls or other factors in the Restricted Access Area.

(2) SCEC is under no obligation to examine any Materials received under this Agreement and is not liable if the Materials are not genuine, complete or authentic. Nothing in this Agreement shall be construed by any person, including Licensor and Licensee, as a representation, warranty or statement by SCEC about the genuineness, authenticity or completeness of, or the sufficiency or validity of title to, the Materials.

(3) SCEC may retain such independent counsel or other advisors as it may reasonably require for the purpose of discharging or determining its duties, obligations and rights under this Agreement, and may act and rely on the advice or opinion so obtained. Licensor shall pay any reasonable fees, expenses or disbursements for any such counsel or other advisors.

(4) In the exercise of its rights, duties and obligations, SCEC may, if it is acting in good faith, rely on the accuracy of any written instruction or document required by or delivered in connection with this Agreement ("Document"), and shall be protected in relying upon such Documents. SCEC may, in its absolute discretion, require reasonable evidence of the due execution of any Document before relying on it.

(5) SCEC shall not by reason of signing this Agreement assume any responsibility or liability for any transaction or agreement between Licensee and Licensor other than the performance of its obligations under this Agreement.

(6) The parties acknowledge and agree that SCEC is not engaged in the business of insuring the Materials or the property of Licensor or Licensee, nor is SCEC required under this Agreement to insure the Materials or the property of Licensor or Licensee. SCEC's cumulative liability in any calendar year for any claims or costs, including any legal or advisor fees, of whatever kind and nature (collectively, "Claims") made against or incurred by SCEC in a calendar year, including without limitation, Claims arising as a direct or indirect result of any fault, negligence or gross negligence of SCEC, its agents or employees or any breach, including a breach of warranty or condition or a fundamental breach, of this Agreement by SCEC, that any person, including Licensor and Licensee, may assert against SCEC, shall be limited to the fees

paid to SCEC under this Agreement in such calendar year. In no event shall SCEC be liable for any indirect, consequential, special or exemplary damages incurred by any person, including Licensor and Licensee, including without limitation, loss of profit, loss of business, loss of data or other forms of economic loss.

(7) Licensor and Licensee shall, jointly and severally, indemnify and save harmless SCEC, from and against any and all Claims which may at any time be asserted against SCEC arising from any act or omission or error of SCEC under this Agreement

(8) This section 9 shall survive any termination of this Agreement for the benefit of SCEC.

10. Resignation and Removal of SCEC

(1) SCEC may resign as escrow agent or Licensor and Licensee, jointly, may remove SCEC as escrow agent by giving 30 days prior written notice to the other parties, as the case may be. A successor escrow agent may be appointed by written agreement of Licensee and Licensor, and in such case a copy of such agreement shall be provided to SCEC within 10 days of its execution. Upon the effective date of resignation or removal of SCEC, this Agreement shall terminate and SCEC shall be entitled to transfer the Materials to the successor escrow agent appointed, or failing such an appointment, to Licensor. Notwithstanding the foregoing, SCEC may require the payment in full of any fees, expenses, disbursements and other amounts owing to it under this Agreement prior to the transfer of the Materials.

11. Non-Disclosure by SCEC

(1) SCEC acknowledges that the Licensor has advised it that the Materials are the valuable, proprietary and confidential information of Licensor and agrees to utilize reasonable measures to retain the same in confidence. Except as expressly provided for in this Agreement, SCEC agrees that it will not make available the Materials to any third party either directly or indirectly in any manner without the prior written consent of Licensor, except as may be required by a court of competent jurisdiction.

12. Non-Disclosure by Licensee

(1) Licensee acknowledges that Licensor has advised it that the Materials are the valuable, proprietary and confidential information of Licensor. Licensee agrees to utilize reasonable measures to retain the same in confidence during any verification procedures conducted pursuant to section 3. Licensee agrees to use the Materials solely for its own use and for no other purposes and only at its own premises. Licensee further agrees not to copy or otherwise make available the Materials to any third party except as may be required to enable Licensee to obtain maintenance for the Software. Licensee shall secure from any party to whom such disclosure may be made a covenant that it will not disclose the Materials or make use of them for any purposes except for the maintenance of the Software.

13. Notices

(1) Any notice required or permitted to be given by one party to another pursuant to this Agreement shall be in writing and shall be given by personal delivery or sent by first class mail, or by facsimile, addressed to the party as follows:

Licensor:

Licensee:

SCEC:

The Source Code Escrow Company Ltd.
Suite 401
70 The Esplanade
Toronto, Ontario
M5E 1R2

Attention: President
Facsimile: (416) 603-6160

or such other address or facsimile number as one party may advise each of the others at any time, by delivery, prepaid registered mail or by facsimile. Any notice shall be deemed to be received when delivered or, if mailed, 5 days after the date of mailing thereof or if sent by facsimile, on the first business day following the date on which it was transmitted and receipt was indicated.

14. General

(1) The rights and obligations under this Agreement shall be binding and enure to the benefit of the successors, permitted assigns and legal representatives of the parties.

(2) This Agreement shall not be assigned by any party without the prior written consent of the other parties.

(3) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

(4) If any of the provisions of this Agreement shall be held invalid by a court of competent jurisdiction, the remaining provisions nevertheless shall remain in full force and effect; provided, however, that if any of sections 9(1), 9(2), 9(6) or 9(7), but for which SCEC would not have entered into this Agreement, is held invalid, SCEC may terminate this Agreement immediately.

(5) This Agreement constitutes the entire agreement between the parties and supersedes all existing and prior agreements, understandings and negotiations relating to its subject matter and there are no warranties, representations, or agreements among the parties in connection with the subject matter in this Agreement except as specifically set forth and referred to in this Agreement.

(6) This Agreement may be executed in several counterparts, each of which as executed shall be deemed to be an original and together shall constitute one and the same agreement.

(7) Time shall be of the essence of this Agreement.

IN WITNESS WHEREOF the parties have duly executed this Agreement.

[LICENSOR]

[LICENSEE]

Per: _____

Per: _____

THE SOURCE CODE ESCROW COMPANY LTD.

Per: _____

The Source Code Escrow Company Ltd.

CURRENT SCHEDULE OF FEES

STANDARD ESCROW AGREEMENT

INITIAL FEE	\$1,200.00
ANNUAL FEE, in advance	\$ 700.00 (for 1 cubic foot of storage)
UPDATE FEE	No charge for one update per year (non-cumulative) \$75.00 per update in excess of one per year
VERIFICATION FEE	\$125.00 per hour (one representative) (one free hour per year)
EXTRA STORAGE FEE	\$500.00 for each additional 1 cubic foot

GENERAL NOTES APPLICABLE TO THIS AGREEMENT

The fees shown above are in Canadian dollars and do not include those for special services.

All out-of pocket expenses (including, without limitation, travel, courier, long distance telephone and facsimile, delivery, legal fees and special disbursements) will be charged in addition to the fees listed.

HST and any other taxes, duties or governmental levies shall be charged in addition to the above fees.

Fees and disbursements are normally invoiced on an annual basis in advance. Interim invoices may be rendered for fees and disbursements, depending on the amount involved.

Payment is due within 30 days of the invoice date; interest, where applicable will be charged on unpaid balances.