

## SOURCE CODE ESCROW AGREEMENT

This Source Code Escrow Agreement (the "Agreement") is made effective the \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_ by and between \_\_\_\_\_ (hereinafter referred to as "Lessee") with its principal place of business located at \_\_\_\_\_, and Charter Escrow, Inc. (hereinafter referred to as "Escrow Agent") with its principal place of business located at 3300 Oak Lawn Avenue, Suite 500, LB 20, Dallas, Texas 75219, and Internet CAD.com, Inc. (hereinafter referred to as "Lessor") with its principal place of business located at 10880 Cassandra Way, Dallas, Texas 75228.

### I. RECITALS

**WHEREAS**, Lessor and Lessee have entered into a Software Lease Agreement to lease iTools Place and Route Software (hereinafter referred to as the "Software") from Lessor; and

**WHEREAS**, Lessee has requested that the Source Code for the Software be placed in escrow to be released to Lessee for use by Lessee upon the occurrence of certain events as set forth herein.

**NOW THEREFORE**, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

### II. APPOINTMENT OF ESCROW AGENT

1. Charter Escrow, Inc. is hereby appointed and accepts appointment to act as Escrow Agent under this Agreement. Any fees and expenses of Escrow Agent in connection with its duties hereunder shall be paid by Lessor. Escrow Agent's agreed Schedule of Fees and Services for the term of this Agreement are set forth on Exhibit A attached hereto and incorporated fully herein.
2. All service fees for the initial escrow deposit shall be due in full upon execution of this Agreement. Annual renewal fees and any other service fees shall be due in full within thirty (30) days from receipt of invoice. If invoice fees are not paid within the stated period and Lessor has failed to cure payment after thirty (30) days' written notice by Escrow Agent, Escrow Agent may terminate this Agreement. In the event this Agreement terminates due to non-payment, then the escrowed Source Code shall forthwith be released to Lessor.

### **III. DEPOSIT OF ESCROW**

1. Following the execution of this Agreement and the payment of all setup and deposit fees to Escrow Agent by Lessor, Escrow Agent shall open a Deposit Account for Lessor. The opening of the account means that Escrow Agent shall establish an account ledger in the name of the Lessor and that Lessor shall receive renewal notices as provided in Paragraph V(1). Unless and until Lessor makes an initial deposit of escrow with Escrow Agent, Escrow Agent shall have no obligation to Lessor except as defined in this Section.
2. Within fifteen (15) days after execution of the Software Lease Agreement, Lessor shall deliver to Escrow Agent to be placed in escrow hereunder one (1) copy of the Source Code for the Software.
3. Lessor has the obligation to maintain the escrowed Source Code current and updated. Within thirty (30) days after Lessor has released a major revision or upgrade of the Software covered by the Software Lease Agreement, Lessor shall deliver to the Escrow Agent, to be placed in escrow hereunder, the Source Code for such revised Software, and Escrow Agent shall release to Lessor in exchange for such revised Source Code all outdated, obsolete or previously escrowed Source Code information. The Source Code held in escrow under this Agreement, as well as all major revisions, shall sometimes hereinafter be referred to as the "Escrow Materials." Escrow Agent shall notify Lessee of substitution or replacement of the Escrow Materials within ten (10) days after receipt of the same by Lessor.
4. Either Lessor or Lessee, accompanied by an employee of Escrow Agent, shall be entitled to inspect the physical status and condition of the Escrow Materials upon reasonable notice and during reasonable business hours, provided that Escrow Materials may not be changed by either Lessor or Lessee during such inspection, except as provided otherwise herein. If Lessee finds that the Escrow materials are deficient, Lessor will rectify immediately.

### **IV. RELEASE AND DELIVERY OF ESCROW MATERIALS**

1. Lessee may request by written notice to Escrow Agent that Escrow Agent deliver the Escrow Materials to Lessee if, and only if, one or more of the following conditions have occurred:
  - (a) ICAD, Inc. and namely William Swartz Jr. and Carl Sechen cease to exist to support and service the iTools Software Products.
2. Upon receipt of notice from Lessee pursuant to Section IV above, accompanied by an appropriate Escrow Release Fee of \$150.00, Escrow Agent shall, within twenty (20) days after receipt of such notice, deliver the Escrow Materials to Lessee unless within such twenty (20) day period Lessor delivers to Escrow Agent written denial that any

of the conditions set forth above in Section III have occurred. Lessee must also deliver the notice pursuant to Section IV to Lessor simultaneously with the delivery to the Escrow Agent in order for the twenty (20) day period to begin. If Escrow Agent receives such denial within such twenty (20) day period, Lessee's entitlement to receive the Escrow Materials under this Agreement shall be resolved by arbitration pursuant to Section IX herein, and Escrow Agent shall retain possession of the Escrow Materials subject to a determination by the arbitrator in such arbitration. The prevailing party in such arbitration shall be entitled to recover from the other party all arbitration fees, costs, disbursements and reasonable attorneys' fees.

#### **V. NO WARRANTY**

1. The Escrow Materials are provided on an "as is" basis. Lessor disclaims any express or implied warranty of merchantability or fitness for a particular purpose. Lessor warrants however that the Escrow Materials deposited with Escrow Agent under the conditions of this Agreement are complete and accurate copies of the Source Code on a computer magnetic media used by Lessor in creating and operating the Software covered by the Software Lease Agreement.

#### **VI. TERM**

1. This Agreement shall remain in effect for a term of one (1) year from the date of execution and shall be renewable upon mutual agreement of all parties hereto provided that Escrow Agent receives its specified renewal fee. In the event the renewal fee is not received within thirty (30) days from the expiration of this Agreement, Escrow Agent shall so notify Lessor and Lessee in writing. However, should the Software Lease Agreement terminate for any reason prior to the expiration of a one (1) year period, or if this Agreement is not renewed, Lessor shall not be required to make any upgrade or update deposits of Escrow Materials and Escrow Agent shall forthwith return all Escrow Materials to Lessor.

#### **VII. RESPONSIBILITIES AND LIABILITIES OF ESCROW AGENT**

1. Escrow Agent shall not be liable under this Agreement with respect to the condition or the contents of the Escrow Materials except as set forth in Section IV above, or for any action taken or omitted in good faith and in the exercise of Escrow Agent's reasonable good judgment, or in reliance upon the advice of the Escrow Agent's counsel, or for any other cause except willful misconduct or conduct found to be negligent, or conduct in disregard of the terms of this Agreement. Escrow Agent shall be obligated for the performance of such duties as are specifically set forth in this Agreement, and may rely upon and shall be protected in relying upon any order or instrument reasonably believed by it to be genuine and to have signed or represented by the proper party or parties. Lessor and Lessee shall jointly and separately indemnify and hold Escrow Agent harmless of and from any claims, actions, suits or damages, whether in contract or in tort, any loss, liability or expense imposed or

incurred by Escrow Agent, including penalties, attorneys' fees, court costs and related expenses, as a result of or in connection with the rendering of its services under this Agreement, provided such Escrow Agent is not adjudged by a court of competent jurisdiction to have acted grossly negligent, willfully, or in bad faith.

### **VIII. NOTICES**

1. Lessor and Lessee shall designate to Escrow Agent the name of one individual who shall receive notices from Escrow Agent (or any other notice set forth herein) and act on behalf of Lessor and Lessee respectively with regard to the obligations set forth in this Agreement. Lessor and Lessee shall immediately notify each other and Escrow Agent of any change in designated individual or address. All notices to Lessor, Lessee or Escrow Agent, required or permitted hereunder shall be given in writing and shall be deemed effectively given upon delivery by certified mail, return receipt requested, or by courier, signature receipt required as stipulated in Exhibit "B" attached hereto and incorporated herein.
2. Any party may change its respective address by ten (10) days' written notice given to the other parties in the manner set forth in this Section.

### **IX. ARBITRATION**

**ANY DISPUTE ARISING OUT OF THIS AGREEMENT SHALL BE RESOLVED AND DETERMINED BY ARBITRATION UNDER THE THEN CURRENT RULES OF THE AMERICAN ARBITRATION ASSOCIATION. THE ARBITRATION PROCEEDINGS SHALL BE HELD IN DALLAS COUNTY, TEXAS. ALL QUESTIONS OF LAW SHALL BE DECIDED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. TO THE EXTENT POSSIBLE, THE PARTIES SHALL UTILIZE THE SIMPLIFIED RULES OF ARBITRATION AS SET FORTH BY THE AMERICAN ARBITRATION ASSOCIATION.**

### **X. MISCELLANEOUS**

1. Escrow Agent may act in reliance upon any written instruction, instrument or signature believed to be genuine and may assume that any person giving any written notice, request, advice or instruction in connection with or relating to this Agreement has been duly authorized to do so. Escrow Agent is not responsible for failure to fulfill its obligations under this Agreement due to causes beyond its control.
2. This Agreement has been executed and is performable in Dallas County, Texas and is to be governed by, and construed in accordance with, the laws of the State of Texas.
3. This Agreement constitutes the entire Agreement between the parties concerning the subject matter hereof, and will supersede all previous communications,

representatives, understandings and agreements, either oral or written, between the parties.

4. If any provision of this Agreement is held by any court to be invalid or unenforceable, that provision will be severed from this Agreement and any remaining provisions will continue in full force.
5. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and assigns. This Agreement may be amended or modified at any time, or from time to time only in writing executed by all the parties hereto.
6. Lessor and Lessee acknowledge that this Agreement is an "agreement supplementary to" the Lease Agreement as provided in section 365(N) of Title II, United States code (The "Bankruptcy Code"). Lessor acknowledges that if Lessor as a debtor in possession or a trustee in bankruptcy in a case under the bankruptcy code rejects the Lease Agreement of this Escrow Agreement, Lessee may elect to retain its rights under the Lease Agreement and this Escrow Agreement as provided in section 365(N) of the bankruptcy code. Upon written request of Lessee to Lessor or the bankruptcy trustee, Lessor or such bankruptcy trustee shall not interfere with the rights of Lessee as provided in the Lease Agreement and this Escrow Agreement, including the right of Lessee to obtain the Escrow material from the Escrow agent and to use such Escrow material as set forth herein.

#### **XI. FEES**

1. All escrow service fees as stipulated herein will be due in full at the time of the request for service. Renewal Fees as stipulated herein will be due in full upon the receipt of invoice unless otherwise specified by the invoice. For the purpose of annual renewal fees, the effective date of this Agreement will be the anniversary date. Invoice Fees must be paid within sixty (60) days of receipt of invoice or Escrow Agent may terminate this Agreement. If payment is not timely received by Escrow Agent, Escrow Agent shall have the right to accrue and collect interest at the rate of one and a half percent per month (18% per annum) from the date of invoice for all late payments.
2. Escrow Agent's service fees and annual renewal fees are set forth on the Schedule of Fees attached hereto marked "Exhibit A" and incorporated fully herein, except as otherwise agreed. For any increase in Escrow Agent's standard fees, Escrow Agent shall notify Lessor and Lessee at least ninety (90) days prior to any renewal of this Agreement. For any service not listed on the Schedule of Fees, Escrow Agent shall provide a quote prior to rendering such service.

**LESSOR: Internet CAD.com, Inc.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**LESSEE:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**ESCROW AGENT: CHARTER ESCROW, INC.**

By: \_\_\_\_\_

Title: \_\_\_\_\_