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what is software escrow

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What Is Software Escrow?

Software escrow means deposit of the software's source code into an account held by a third party escrow agent (SES). Escrow is typically requested by a party licensing software (the "licensee"), to ensure maintenance of the software. The software source code is released to the licensee if the licensor files for bankruptcy or otherwise fails to maintain and update the software as promised in the software license agreement.

What Is Software Source Code?

Source code is the software's programming code represented in a particular programming language that humans can write and understand.

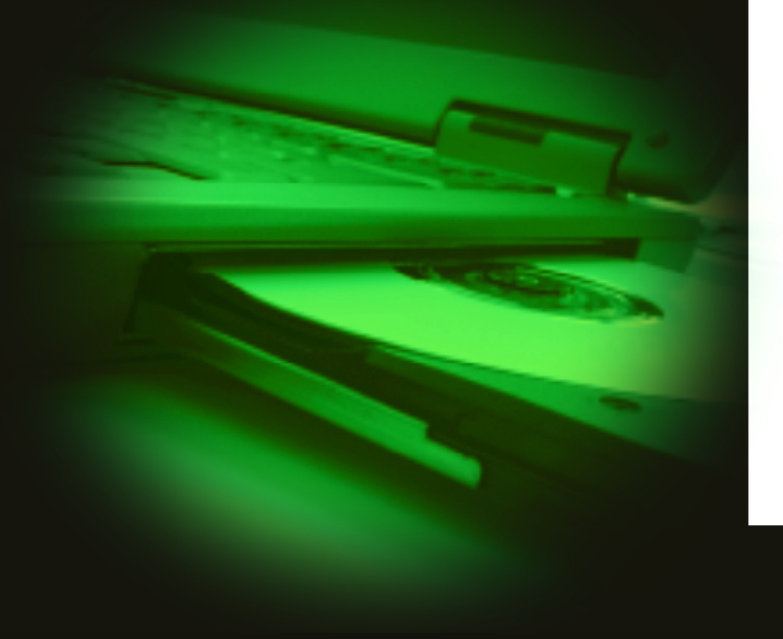
Escrow Agreement

The software escrow agreement is a three party contract that governs the procedures and terms of the escrow process between the licensor, licensee and escrow provider. Usually, the software license agreement will contain a clause that states that the parties agree to escrow and will execute a separate agreement to cover those terms. As this agreement involves three parties, the negotiations can be more difficult than usual.

The party that chooses and pays the agent should negotiate its terms with the agent prior to bringing the third party into the negotiations.

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Agreement Types

- Web Escrow Agreements
- ASP Escrow Agreements
- Distributor Escrow Agreements
- Product Design and Information Escrow Agreements
- Holding Agreements
- Individual Licensee (bespoke software for one customer)
- Multi Licensee (standard software with multiple customers)
- Key Encryption Agreements

Procedures

The agreement should outline the procedures for the deposit and handling of the code by the licensor and agent, including what will be deposited (updates, customisations, etc.) and how often the deposits should occur. How the escrow provider is to receive the code, test the code (Basic or Complete Validation Testing), and confirmation of storage facilities and accreditations should also be addressed.

The agreement must also define the procedures for release of the code after an event that's recognised as triggering its release. These procedures should include notice to the parties, deadlines for response and dispute resolution procedures, opportunity to seek court order, and so on.

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Trigger Events - Release of the Code

The agreement should state what events result in release of the code to the licensee. These may include:

· The licensor filing for bankruptcy

· The licensor breaching the license agreement

· The licensor failing to provide maintenance as agreed

· The licensor sells the IPR and the new licensor will not continue with the existing Escrow arrangement (60 days).

· The licensor should always try to limit the release events solely to failure to provide maintenance. If any of the other events above occur and the licensor continues to provide maintenance as agreed, there is no reason to justify release of the source code and release may cause substantial damage to the licensor in this event.

Licensor Warranties

The agreement may state that the licensor warrants that the source code deposited is the correct code and that, as deposited, it will correctly compile into the software which is further tested under a Basic Validation Test.

Conclusion

If you are a licensor, software escrow will be a necessary part of your business requested by licensees when negotiating contracts. If you're a licensee purchasing expensive and vital software to be maintained and used over a long period, escrow is vital part of your Disaster Recovery and Business Continuity Planning giving you piece of mind that you can continue using the software if one of the above trigger events occurred.

I hope the above information gives you a clear insight into the benefits and importance of Software Escrow, if you require any further advice please do not hesitate to contact us on 01625 260620 or via email to enquiries@s-e-suk.co.uk