



SWEAG
SOFTWARE ESCROW AG



01

WHAT IS SOFTWARE ESCROW

Software escrow is the deposit for safekeeping of software source codes, preferably together with their development documents. Software escrow offers security for the long-term availability of technical know-how. By contrast to the deposit of software solely to ensure its physical safety, for instance with a bank or in a safe deposit, specialized software escrow also takes the safety requirements into account that the law requires.



02 REASONS FOR A SWEAG SOFTWARE ESCROW

02.1 GENERALLY

The security requirements of the contracting parties in an IT project vary in kind. The manufacturer wants to protect his technology and core know-how, and the user, in order to protect his investment, requires security of the long-term availability of this knowledge. Software escrow provided by SWEAG takes the requirements of both parties fully into account.

02.2 NON-PERFORMANCE BY MANUFACTURER

In a takeover or merger, a software product may no longer have a strategic importance for the acquiring company and be left to wither or die. If the software manufacturer's business is shut down by bankruptcy or for any other reason, or if the developer dies, there is no longer any guarantee of the requisite support and essential access to codes and data – especially when the software is put in a bank or safe-deposit – and the fate of copyright becomes uncertain. When SWEAG obtains fiduciary ownership of the objects entrusted to it, it can also hand these over to the user if the software manufacturer becomes bankrupt. The user can then use the code as specified in the relevant agreement.

02.3 PROJECT FAILURES

Massive delays in delivery, the failure of software to perform as specified, failure to perform maintenance duties, or a product that reaches its so-called „end-of-life“ state may all impair or endanger the further use of the software. The client can overcome these problems only by access to its source code.

02.4 CONTRACTUAL REQUIREMENTS

Software manufacturers increasingly face clients and distributors who demand security. In particular, the general purchasing conditions of major clients, such as government agencies, the Swiss Information Technology Conference (SIK), Swisscom, and other major corporations and organizations now demand the release of the source code, and its securing by adequate arrangements for its lodgment and secure storage, if certain circumstances arise. Understandably, especially in the case of a reusable or standardized product, the software manufacturer also wants to protect his intellectual property and is unwilling to hand over the source code. But by making use of



SWEAG's services he can still, easily and quickly, meet such demands by his clients, either by a deposit made to measure for a given client, or by the deposit of his standard product for the benefit of a numerically indeterminate clientele that can be expanded at any time. The professional quality of such a deposit bears testimony to the software manufacturer's trustworthiness.

03 BENEFITS

03.1 USERS

Software users make substantial investments in software, hardware, staff training, and recruitment. As a result they become heavily dependent on the manufacturer. As a rule, however, they still have no access to the source code. Software users, therefore, face an uncertain future if maintenance and servicing duties fail to be performed, if a business shuts down, if it is taken over, or if the software supplier becomes bankrupt. Access to the source code and programming documents is the only key to the further productive use of the software.

AS SOFTWARE USER YOU HAVE

- invested heavily in your IT solution
- an interest in the longer-term availability and use of your software

AS SOFTWARE USER YOU WANT

- to be independent of your software supplier's fate (bankruptcy, termination of business, death, etc.) and of his continued ability to perform his services
- to ensure that the source code essential for software maintenance remains available

OUR ANSWER

- an escrow solution subject to conditions that meet your particular requirements

YOUR BENEFITS

- safeguarding software maintenance by immediate access to the source code when specified release events occur
- protection against access to the source code by the bankrupt estate or heirs



03.2 MANUFACTURERS

Software manufacturers increasingly face a demand by clients and distributors for security. By taking advantage of SWEAG's services they can easily and quickly meet this demand without disclosure of the source code, either by a made-to-measure deposit for a given client or by depositing the manufacturer's standard product for the benefit of a numerically indeterminate clientele that can be expanded at any time.

AS SOFTWARE MANUFACTURER YOU HAVE

- invested capital and know-how in the software you have developed
- to meet more stringent requirements by customers for source-code access

AS SOFTWARE MANUFACTURER YOU WANT

- to protect your intellectual property
- to meet your clients' security requirements easily and quickly
- to improve your perceived trustworthiness as software supplier

OUR ANSWER

- made-to-measure storage of the source code for each client
- multiple deposit of your standard products for a clientele that can be expanded at any time

YOUR BENEFITS

- greater trust by your clients because of neutral, professional storage of the source code
- simple standard procedures
- protection of your intellectual property
- observance of ISO 9001 standards

03.3 SYSTEM INTEGRATORS

A **system integrator** benefits doubly from SWEAG's services. As general contractor he has to provide guarantees for his software subcontractors' products. Without access to the source codes of programs he negligently runs risks. At the same time, his clients also have similar requirements as the software manufacturer, but in their case because of the nature of the business and especially on account of the greater value of their interests.



AS PRIME IT CONTRACTOR YOU HAVE

- bear full responsibility for your subcontractors' services
- have major clients with particularly high long-term security requirements

AS PRIME IT CONTRACTOR YOU WANT

- to be able, if necessary, to access your subcontractor's source code
- to offer your clients the long-term benefits of their IT investments

OUR ANSWER

- a made-to-measure escrow solution for prime contractors and their major clients

YOUR BENEFITS

- implementation of the IT solution is not endangered by a subcontractor's non-performance of his duties
- creation of a strategic position of success

04 SWEAG'S SERVICES

04.1 OVERVIEW

Safe and neutral storage of:

- software source codes (including updates)
- development documentation (plans, protocols, etc)
- system documentation (technical and application-based instructions, program descriptions)
- other documents and contracts that need to be kept safe and secure

Release of the deposited object if a given trigger event occurs:

- non-performance by a contracting party (death, bankruptcy, termination of business activities, etc)
- inadequate performance of contractual provisions (e.g. licence, maintenance)
- in other pre-defined case-specific scenarios

Other services:

- provision of made-to-measure escrow agreements
- expert legal advice in all escrow matters
- check by independent experts of the object lodged in escrow
- convening of arbitration panels in cases of conflict on the release of objects lodged in escrow



04.2 INDIVIDUAL DEPOSIT

Manufacturer and user sign a (three-party) escrow agreement with SWEAG. SWEAG takes a data medium with the source code and the programming documentation of the licensed software into safe custody, obtains a fiduciary ownership in it, and releases it to the user or manufacturer in accordance with the contractual provisions for its release.

04.3 MULTIPLE DEPOSIT

The manufacturer of a standardized software signs an escrow agreement with SWEAG that defines the contractual conditions on which it may meet a release claim by authorized users listed in an expandable schedule of such users. He hands over a copy of the source code to SWEAG to hold in safe custody as fiduciary owner. SWEAG releases the object lodged in escrow to users if a contractual trigger event for release occurs.

04.4 CODE CHECKS

As a rule, a check of the object lodged in escrow is feasible and necessary only if the source code could be used and compiled in a test or production environment. We therefore offer our help in the operational procedures for code checking, either on the manufacturer's or the user's premises, and for the subsequent transport of the object to the lodgment site.

05

FEES

Escrow fees are made up of an initialization fee, an annual escrow fee based on the value of the object and, in the case of a multiple deposit, of an annual fee based on the number of authorized beneficiaries. We also provide client-specific additional services on a time-and-material basis.



06 ABOUT US

Since 1992, SWEAG Software Escrow Ltd has been Switzerland's leading software-escrow agent. Numerous major Swiss and foreign companies in banking, pharmaceuticals, insurance, etc, and well-known software manufacturers and system integrators are some of our satisfied clients. Federal, cantonal, and municipal agencies put their trust in us. We also provide simple, made-to-measure solutions for small and medium-sized firms. Our products and the associated escrow agreements have been structured in cooperation with specialized IT-lawyers and have proved their worth in legal challenges to release procedures. The physical security of all objects placed in escrow is provided by safes that meet the EN3 European standard safety specifications.



SWEAG
SOFTWARE ESCROW AG

Rofluhstrasse 91
CH-8702 Zollikon

phone +41 (0)44 396 62 11
fax +41 (0)44 396 62 10
sweag@escrow.ch
www.escrow.ch

