

Comments

to the Stockholm Chamber of Commerce (SCC) Escrow Model Agreement 2014

These comments are meant to facilitate the use of the SCC Escrow Model Agreement 2014. They explain certain issues and provisions but are not to be considered as being part of the specific Escrow Agreements.

Introduction

About changes and adjustments

The Licensor (LR) and the Licensee (LE), hereafter referred to as the Parties, should adjust the SCC Escrow Model Agreement 2014 (the Model Agreement) according to the circumstances in each specific case. Any changes or adjustments can be made in the provisions covering the relationship between the Parties. However, any changes or adjustments of the provisions covering the rights, obligations or liabilities of the SCC may not be made by the Parties and will be rejected by the SCC (also see Clause 13 below).

Instructions

Instructions (in italics) in the Model Agreement are not intended to make part of the provisions of the Model Agreement, nor of the specific Escrow Agreement.

The Provisions

Clause 1 Definitions

The Product should be defined in the standardised Escrow Agreement form, "Escrow Agreement, SCC Escrow Model Agreement 2014".

Documentation may be more closely defined in the standardised Escrow Agreement form, "Escrow Agreement, SCC Escrow Model Agreement 2014". If adequate, manuals, technical specifications and other documents supporting the development of the software may be included.

It may be of interest for the LE that a full version of the software is held in escrow.

When escrow shall be carried out

The number of days, from the signing of the Escrow Agreement, for the LR to place the Material in escrow shall be set out.

Media of machine readable form

Unless the Parties agree otherwise in the Escrow Agreement, the Material placed in escrow shall be stored on a DVD.

Verification

SCC cannot verify the accuracy of the Material deposited. Such verification should be made by the Parties before the Material is placed in escrow, unless otherwise agreed between the Parties.

The Package

In order to ensure the Parties that the content of a released package is identical to the deposited, SCC may not open the package. According to Clause 2, the package should be sealed (e.g. with use of tape) so it cannot be opened and resealed without leaving tracks thereof. No specific stamps or sealing wax is required.

Costs

The Parties may want to regulate who should carry the costs for copying and packaging the deposit.

Clause 2 Deposit of Material



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Clause 3 Updates

PLEASE NOTE

SCC has many packages held in escrow without knowledge of each and every business relationship in question. Since every business is unique, these comments are only information about questions that could be considered by the parties when using SCC's escrow services, and is not to be seen as recommendations or legal advice of any kind.

When updated source code shall be placed in escrow

The parties shall state the number of days within which escrow of updated source code shall be carried out. It should be noted that existing material will remain in escrow subject to the current price list. The parties may later agree on that existing escrow shall be replaced by a new.

Sanctions

It is often important for the LE that all updates are deposited in accordance with the Escrow Agreement. The LR's obligation to follow these rules may be sanctioned and included in the Escrow Agreement. For the avoidance of doubt it should be noted that such agreement between the LR and the LE lies outside of the scope of the Model Agreement.

Clause 6 LE's Limited License

License Agreement Conformity

The terms and conditions for the LE's right to use the Product as well as the Source Code, the right to make changes and sub-license shall be agreed between the LR and the LE outside of the escrow arrangement. This means that the Escrow Agreement shall imply no change in this aspect. In order for the escrow arrangement to be relevant, the LR and the LE may want to agree on a right for the LE to make changes in the Source Code, at least for the purpose of rectifying errors. Such right may be exclusive for the LE or include a right for the LE to render third party services for such changes. The LR should consider if there is a need to agree on certain confidentiality provisions if a third party is allowed to access the Source Code.

Clause 8 Events of Release

The Parties may agree on other release events than those set out in the Model Agreement.

Clause 10 Release of Material

If the LE claims release of the Material in escrow based on § 8 c), SCC shall notify the LR. Unless the Parties agree that the Escrow Agreement should be terminated and the Material should be released to either the LR or the LE, the following will apply:

Principal rule

The Principal rule is that the LE requests that the Material should be released to the LE according to one of the events of release stated in Clause 9 (b). SCC informs the LR of such request. If the LR opposes the request in a statement to SCC, the LE has 30 days from

the day of that statement to send a request for arbitration.

Alternative rule

According to the alternative rule (see Clause 10 in italics), the Parties may decide that the LE can deposit a Security Amount at the bank. SCC will in such case always release the Material to the LE. If the LR opposes the release, the LR has 30 days from the day of Statement to request for arbitration. The LR is entitled to the Security Amount (as compensation for LE's use of the Material) if the arbitration procedure shows that the LE did not have the right to the Material in accordance with the Escrow Agreement. The alternative rule is rarely used in SCC Escrow Services.

The Security Amount

The Parties may in certain cases want to agree in the change agreement on instructions to the bank on how the message to SCC, regarding the deposited Security Amount, should be made. Such instructions may be enclosed in the Escrow Agreement.

Clause 11 Termination of the Agreement

The Parties can agree on an unlimited period of validity of the Escrow Agreement.

Clause 12 Fees

All fees for using the SCC Escrow service should be paid by the LE and follow the Price List, which is available at SCC's website, www.chamber.se. Please note that the LR and the LE are jointly and severally responsible for all fees under the Escrow Agreement. Failure by the LE to pay any fee means that the LE will lose its right to claim and receive the Material in escrow.

Clause 13 Liability of the Escrow Agent

This Section contains limitations regarding SCC's liability as Escrow Agent. The reason for these limitations are that SCC never has information or control of the complex business relation between the Parties. SCC does not have the possibility to conclude a risk calculation in each case and has therefore decided to act as Escrow Agent to set fees only under these provisions of liability limitation.

Clause 16 Disputes and Applicable Law

In reference to Clause 14, the Escrow Agreement should always be covered by Swedish law. Any dispute settled by arbitration should be in accordance with the Swedish Arbitration Act, and not in accordance with the SCC Rules of Arbitration.

Clause 19 Contact Details

In order to facilitate the process of escrow, all information about the Parties should be inserted before the Escrow Agreement is sent to SCC for signing.



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