



7 TIPS

**TO GET THE BEST VALUE FROM
YOUR SOFTWARE ESCROW AGREEMENT**





This informative guide has been produced by The Escrow Company

With over two decades of software escrow experience, the founders of The Escrow Company envisioned a company that would cater to the growing global adoption of SaaS-hosted services which would require a higher level of resilience.

Founded as Escrow London a decade ago and recently rebranded as The Escrow Company, we are a globally recognized software escrow company headquartered in London, UK. Our North American entity, The Escrow Company, is based in Atlanta, and our Australian business operates out of Sydney.

Whether you choose to work with The Escrow Company, or another provider, this guide offers essential insights to help you negotiate effectively and secure the most value from your software escrow agreement.



WHAT IS SOFTWARE ESCROW?



Before we get started, it's important to learn what software escrow is...

Software escrow is a contractual arrangement that ensures the protection and continuity of critical software applications, IP and technology. It involves the depositing of the source code, documentation, and other key assets of a software solution with a trusted third party, known as the escrow agent.

This arrangement acts as a safeguard for customers and users of the software in the event of certain predefined and mutually agreed circumstances with another party. Situations such as a software vendor's bankruptcy or the vendor's inability to maintain and support the software. Software escrow helps mitigate these risks associated with the dependency on proprietary software by ensuring that access to the source code and related assets are available. Enabling organizations to continue using and managing the software, even if the vendor is no longer able to fulfil its outsourced supplier obligations.

**Also
known as**

**Source Code
Escrow**

**SaaS
Escrow**

**Technology
escrow**



Most software escrow agreements are tri-partite (which means three parties), made up of the following:

1

Depositor or Owner

The company who has developed the software or service and generally owns the intellectual property in service.

2

Beneficiary or Licensee

The party who has been granted a license to use the software service as the end user, customer or party of the depositor.

3

Software Escrow Agent

The company appointed to manage the software escrow agreement and to hold the Deposit Materials in trust.



**Before diving in,
here's a glossary of
some commonly used
terms in software
escrow agreements...**

Deposit Materials & Escrow Materials

Deposit Materials or **Escrow Materials** are the digital assets that may be deposited within the framework of a software escrow agreement. This can be made up of things such as source code, deployment scripts, documentation, files and databases.

Access Credentials

Access Credentials would be used within certain SaaS Escrow agreements where the Depositor would be required to deposit the administrative level access credentials to the cloud hosting provider subscription (such as AWS) where the system is hosted.

Third Party Cloud Vendor

Third Party Cloud Vendor refers to the cloud hosting provider such as AWS, Microsoft Azure, Google Cloud, or Oracle.

Git Repositories

Git Repositories is usually where software developer's source code is stored. Some examples of Git providers are GitHub, Bitbucket and GitLab.

SFTP

SFTP refers to the use of Secure File Transfer Protocol (SFTP) for secure transferring and storing files on a remote server.



First, it's essential to understand the components that make up the software escrow fee. Typically, software escrow agents categorise their fees into three main types:

Setup

This fee includes the initial setup of the agreement, the technical arrangements for the software vendor to submit the deposit materials, and, in some cases, such as with The Escrow Company, non-standard legal fees.

Annual Fee

This covers the yearly management of the software escrow agreement. This would usually include reporting, such as a File Integrity Test, which verifies that the initial deposit has been received, is accessible and is free from viruses.

Verification Services

Most software escrow agents provide verification services to ensure that the supplied Deposit Materials are functional and can be compiled or deployed to a cloud environment. These services offer a high level of assurance regarding the usability of the Deposit Materials if an escrow trigger occurs.



[Visit our website to learn more about our pricing ..](#)

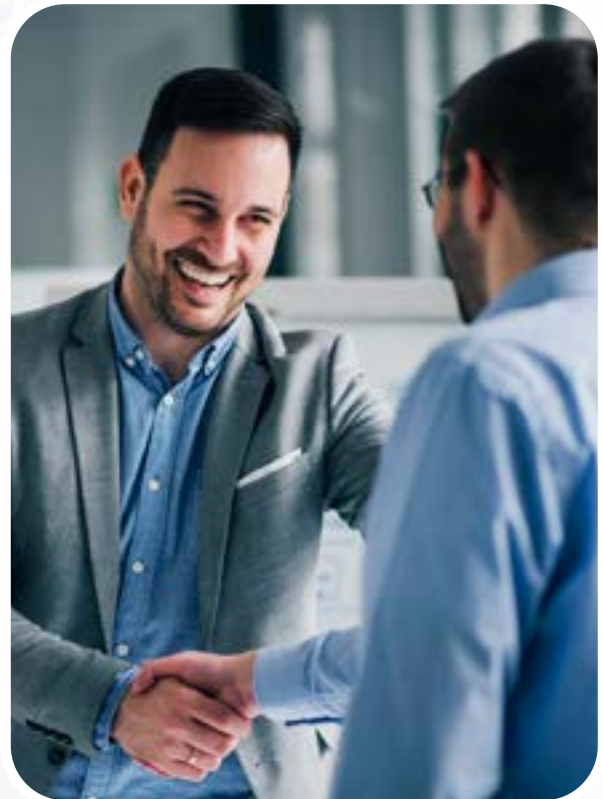




To secure the best deal from your chosen software escrow agent, it's important to be transparent about your expectations and budget. An experienced account manager can offer pragmatic advice on how to minimise costs.

Some services might be excessive and not offer significant additional protection. You can also reduce costs by committing to a longer-term arrangement with upfront payment, such as paying for three years in advance at a discounted annual rate.

Public Sector – Some software escrow agents offer reduced pricing for public sector clients through government-approved frameworks like G-Cloud (UK) or the NSW procurement platform (Australia).





There are software escrow services available where only source code is required.

Some escrow agents offer a simplified, low-cost self-service alternative that allows the software vendor to independently set up the agreement and add clients as beneficiaries.

The Escrow Company provides such a solution with our Express Escrow option. Through the Express Escrow portal, the software vendor initiates the escrow agreement by selecting the jurisdiction (UK, USA, EU, or Australia), confirming the standard terms and conditions, and paying with a credit card. The vendor can then add their clients as beneficiaries to the escrow arrangement, binding them to the agreement.

Express Escrow Pricing Plans

Unlimited Plan

\$995 /year

- Legally Binding Single Beneficiary Agreement
- USA, UK, EU, AU Jurisdiction
- No Setup Fee
- Unlimited Git Repositories
- Professional liability / E&O coverage included as standard

Setup Escrow

Multi Beneficiary Plan

\$1995 /year

- Legally Binding Multi Beneficiary Agreement
- Includes initial 5 Beneficiaries
- USA, UK, EU, AU Jurisdiction
- No Setup Fee
- Unlimited Git Repositories
- Professional liability / E&O coverage included as standard

Setup Escrow

[Learn more about
Express Escrow ..](#)





Before entering negotiations with a software escrow agent, it's essential to clearly outline your requirements for the software escrow service and your expectations from each party involved and the actions to be taken if the agreement is triggered.



SaaS Escrow vs Software Escrow

On-premise software and SaaS applications require differing things when considering continuity of service. On-premise software is typically hosted internally by the beneficiary's organisation who is responsible for uptime, performance and data storage. If the software vendor fails, the application remains accessible. Conversely, a SaaS application is hosted by the vendor, of which a failure could result in the beneficiary losing access to both the system and their data, as well as impacting any connected systems.

Software Escrow and SaaS Escrow are both mechanisms designed to ensure business continuity and mitigate risks, though they cater to different types of software deployments. The SaaS hosted model allows for different mechanisms for continuity such as accessing the production environment via escrow, in addition to any source materials.



Software Escrow

1 Purpose

Reducing supply chain risks for an end user by providing access to the software's source code if the software vendor can no longer support it.

2 Deposit Materials

Typically involves the deposit of source code, documentation, and other critical materials deposited that would be used to maintain the software product.

3 Trigger Events

Common triggers include the developer's insolvency, bankruptcy, or failure to maintain the software.

Service Level of the software escrow agent

Consider the level of service & support you will need from the software escrow agent if the service was to be invoked. With a traditional software escrow solution including source code, the deposit materials will be released to the beneficiary. For enhanced support and continuity, consider bolting on access credentials to the third party cloud environment or selecting a managed continuity level of service, where the escrow agent can provide an ongoing provision of service on your behalf.



Single vs Multi Beneficiary Agreement

A Single Beneficiary agreement involves three parties: the depositor, the beneficiary, and the software escrow agent. This dedicated agreement allows both the depositor and beneficiary to amend terms, such as release events, to their mutual satisfaction.

In contrast, a multi beneficiary agreement is a master agreement between the depositor and the escrow agent. The depositor can amend the terms to create a master agreement suitable for all future beneficiaries. Each beneficiary joins the service agreement by signing a beneficiary schedule binding them to the master terms and conditions.



This approach is efficient for software vendors with multiple clients using the same software, as it consolidates the escrow process under a single contract. At the same cost as a multi beneficiary agreement, The Escrow Company also offers a non-signing multi beneficiary agreement. Under this model, beneficiaries are registered by the depositor without the beneficiary signing the agreement themselves.

It's important to discuss the limitations and implications of these agreements with an Escrow Company account executive.

[Download Free
Software Escrow Agreements](#)





Deposit Materials

Clearly specify what should be included in the deposit materials. Typically, this will encompass some or all of the following:

- Source code
- Object code
- Deployment scripts
- Databases and/or files
- Access credentials to the production cloud environment
- Documentation, including environment architecture diagrams
- List of dependencies

Frequency Of Deposits

Software escrow used to depend on the software vendor making manual deposits on physical media or via SFTP. It was common practice for software escrow agents to cap or charge based on the number of deposits each year.

Automated deposits are now common amongst most tier-1 software escrow agents. These automate the deposit process from the software vendor's git repositories, ensuring that the software vendor complies with their deposit obligations under the agreement and provides comfort to the beneficiary that the most recent set of source code and deposit materials are up to date.

For software vendors unable to support automated deposits from Git repositories, SFTP is often utilized as a secure electronic alternative. SFTP deposits can also be automated on a scheduled basis with scripts or CI/CD processes.

To get the best value with your software escrow agreement, ensure that the number of deposits are uncapped to avoid any surprises from hidden fees.

The Escrow Company provides unlimited deposits from unlimited repositories.



Do you need historical data, databases or application data to fully recover and make use of the software solution?

With SaaS escrow, often a key consideration is accessing data. When negotiating your software escrow agreement, ensure that your annual fee includes coverage for the required deposit materials to be included as part of the agreement. The Escrow Company includes a minimum of 1TB allowance of storage as standard which covers most of our clients' data storage requirements. This allowance is scalable as needed.

Other software escrow agents include only some or limited storage which may not be sufficient. This could result in additional hidden fees.





A software escrow agreement can be compared to insurance: you hope to never need it, but you're glad to have it when the need arises.

But how can you ensure that the deposit materials are actually usable following a release event, considering the potential risks, business process impact, and regulatory compliance requirements?

To protect your investment in the solution, mitigate business risks, and meet compliance requirements, verification testing is an essential part of the escrow process. Verification services ensure that the deposit materials are complete and usable. This guarantees that all necessary components present in the tested version are held in escrow and can be used as intended if they ever need to be released.

For companies with regulatory obligations related to operational resilience and stressed exit testing and planning, software escrow verification enhances your business continuity posture. It provides a mechanism to test your strategy and evidence to support your compliance.

Typically, the verification exercise involves a software escrow consultant working with and observing the software vendor as they compile and/or deploy the software to an operating environment, or the escrow agent testing the deployment process, such as with The Escrow Company's SaaS Managed Continuity service. For Access Credentials, testing will confirm that the supplied credentials can access the cloud environment hosting the software.



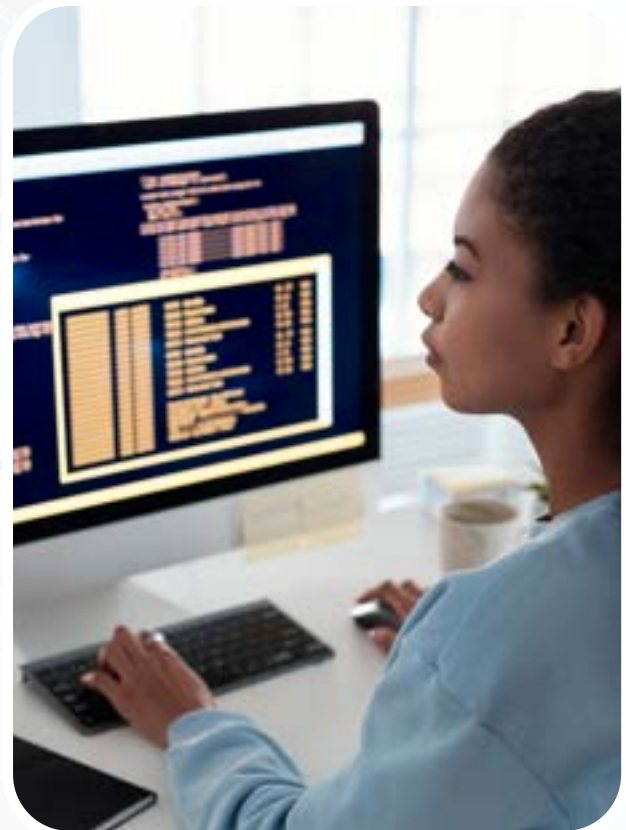
Verification testing constitutes a significant portion of the costs involved in delivering software escrow.

Particularly with software products that are frequently updated or upgraded, testing is crucial for the success of software escrow agreements.

It's essential to evaluate what will be tested, how the testing will be conducted, the frequency of testing, the number of testing days allocated (and whether this is sufficient), possible constraints around the verification process and the type of verification report you will receive.

Consider the timing of verification based on the criticality of the software to your business, your available budget and software development plans.

To ensure usability after a release event and considering the frequent updates to modern SaaS products, we recommend verifying solutions upon each major release.





Not all software escrow services are created equal.

Software escrow services are built on trust, so it's crucial to contract with a reliable and reputable company that has a long-standing presence and will be available when needed. Research multiple providers to compare their offerings, reputation and pricing. Look for case studies, testimonials, and client logos to ensure they are trusted by other software vendors, corporations and government entities.



Insurance

When contracting with a software escrow agent, ensure they have robust insurance policies covering the relevant jurisdiction. The expected insurance policies include Professional Liability or Errors & Omissions Insurance, Public Liability, and General Business Insurance. Given the high cost of insurance for software escrow agents, it's important to confirm what level of cover they have and that your chosen agent hasn't cut corners to reduce expenses. More details on insurance and costs will be discussed in the liability section.



Global Presence & Residency

In today's global business landscape, it is common to have clients or software vendors across various countries. Opting for a software vendor with a global employee base ensures that your software escrow agent can provide resources regardless of time zone. While some software escrow agents might cut costs by outsourcing support and sales to developing countries, The Escrow Company maintains its teams in three primary hubs: the USA, United Kingdom, and Australia. This approach guarantees consistent and reliable service.



Accreditations

Check to ensure that the software escrow agent has up to date accreditations including ISO 27001 for Information Security as a bare minimum.

The Escrow Company maintains ISO 27001:2022 for data security and ISO 270017:2015 for cloud hosting information security.



Proven Experience

As a customer, you seek guidance and advice from specialists with extensive experience in establishing, negotiating, and operating software escrow agreements, providing you with the confidence needed for such a critical and sensitive arrangement. The Escrow Company account managers have completed formal technical and sales education. Our technical consultants hold AWS Certified Solutions Architect accreditations and other professional technical accreditations, ensuring they are well-equipped to support your needs. We also have various publicly available customer case studies including real life trigger events.



Technical skills

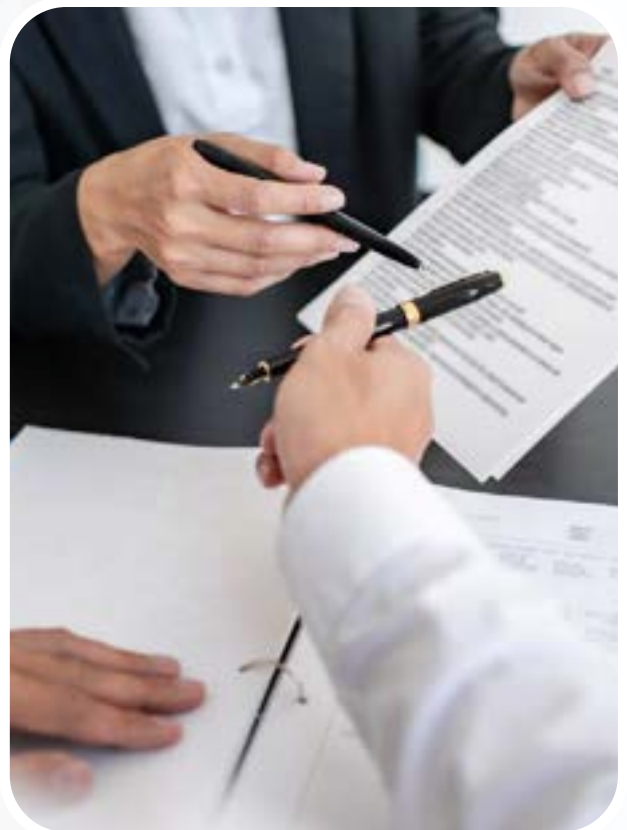
Ensuring that the escrow agent has the skills to meet your specific continuity requirements is a key consideration when conducting vendor analysis. This is especially important for more complex or modern needs related to SaaS, and business continuity.



Every software escrow agent offers an agreement template as a foundation for negotiations.

It's common for companies to request amendments to the escrow terms and conditions such as the release events to suit the beneficiary and depositor.

Non-standard legal fees can significantly inflate the cost of a software escrow agreement. At The Escrow Company, we include the cost of legal reviews for non-standard terms within our setup fee. In contrast, some software escrow agents charge additional fees for non-standard terms beyond the initial setup fee, so it's crucial to have a clear understanding of your total investment.



**Visit our website to view our software
escrow agreement templates**





Hidden Fees

Be mindful of any hidden fees that might not be immediately apparent. These could include charges for legal services, non-standard agreements, additional storage, third-party cloud vendor hosting costs, more frequent deposits, extra verification time, release fees, additional liability, or early contract termination. Always request a detailed breakdown of all costs before engaging with your preferred software escrow agent. At The Escrow Company, we strive for maximum transparency regarding fees. Our pricing is published on our website and clearly explained throughout the process.



Price increases

Before engaging with a software escrow agent, it's crucial to understand potential price increases after the first year. Some agents may raise fees by up to 10% annually, which can lead to budgeting challenges and unnecessary stress. To avoid this, seek software escrow agents who can agree to fix their fees for a certain period, providing better cost certainty.

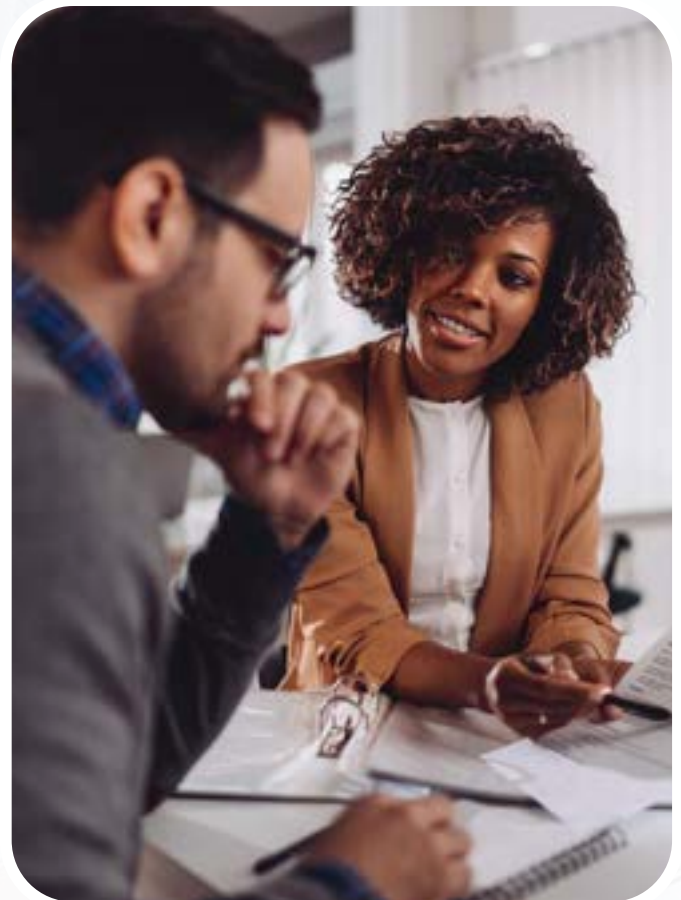


Seek independent legal advice

Negotiating a software escrow agreement can be challenging due to the interests of three parties involved. It's advisable to consult with a legal professional to review the agreement. They can help identify potential issues and ensure the contract is legally sound and protects your interests. We recommend engaging an experienced lawyer with extensive knowledge in negotiating software license and software escrow agreements.



The liability section within a software escrow agreement is often a point of concern for both depositors and beneficiaries. Liability accepted by software escrow agents can vary significantly, from the value of the annual fees up to a cap of \$2m. Some software escrow agents charge a hefty additional fee to increase their liability.



The Escrow Company includes a standard liability cap of \$2m making it one of the highest liability caps in the market.



Conclusion

Maximize the value of your software escrow arrangement by following these seven insider tips, ensuring it meets your company's needs while protecting your investment and intellectual property.

Why The Escrow Company

Founded as Escrow London a decade ago and recently rebranded as The Escrow Company, we are a globally recognized software escrow provider. We operate in three key regions: Atlanta, USA; London, UK; and Sydney, Australia.

We've dedicated significant resources to pioneering innovations that modernize software escrow for SaaS solutions. The Escrow Company offers a variety of SaaS continuity escrow solutions tailored for applications hosted on AWS, Microsoft Azure, and Google Cloud. Our clientele spans a diverse array of countries and industries, including major banks, central banks, insurance companies, technology firms, logistics, retail and government.

To learn more about The Escrow Company services visit our website:

www.escrowcompany.co

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