



## **National Software Escrow, Inc.**

When Your Most Valuable Asset is Information

### **Free Escrow Report**

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## What is a Software Escrow and why is it needed?

A Software Escrow Arrangement is an agreement that protects both parties in a License Agreement. Its purpose is to provide a Licensee with access to a Technology Vendor's intellectual property (e.g. source code) in the event that a specific release event agreed upon by the Parties actually occurs.

This works by having a Technology Vendor deposit their intellectual property with an agent of an escrow account, who will then, store it in a secure location. If a release event occurs, the agent will then release the intellectual property to the Licensee.

The account is similar to that of taking out an insurance policy in order to safeguard the rights a party has to a licensed program.

## What type of Escrow Arrangement is right for me?

### *Are you a Technology Vendor licensing software to one Licensee?*

If so, most trusted, third-party Escrow Providers can address this by offering a "Single Beneficiary" Agreement, thus saving you time and money associated with having an attorney draft one for you. This type of Agreement is often identified as a 3-party Agreement since it is executed by the Technology Vendor, the Licensee ("Beneficiary") and the Escrow Agent.

### *Are you a Technology Vendor licensing software to multiple Licensees?*

If so, you may elect to establish unique Single Beneficiary Agreements for each and every Licensee. An alternative approach is to establish a Master Escrow Agreement for ALL of your Licensees. Most trusted, third-party Escrow Providers can address this by offering a "Multi-Beneficiary" Agreement. This type of Agreement is often identified as a 2-party Agreement since it is executed by the Technology Vendor and the Escrow Agent; however, it permits the enrollment

of multiple Licensees to the one, universal Agreement.

### *Are you a Licensee with an investment to secure?*

If so, you may elect to establish Single Vendor Agreements for each and every Vendor. An alternative approach is to establish a Master Escrow Agreement for ALL of your Vendors. Most trusted, third-party Escrow Providers can address this by offering a "Multi-Vendor" Agreement. This type of Agreement is often identified as a 2-party Agreement since it is executed by the Licensee and the Escrow Agent; however, it permits the enrollment of multiple Vendors to the one, universal Agreement.

## What can be deposited into escrow?

The answer is directly related to what the Technology Vendor and Licensee agree as to their definition of "Deposit Materials". In an Escrow Agreement, "Deposit Materials" will be that portion of a Technology Vendor's intellectual property that will not be provided to the Licensee; however, the Licensee wishes to safeguard.

Although the majority of Escrow Agreements involve the deposit of source code(s), other deposits may consist of:

- Hardware designs – paper, electronic
- Development plateaus
- Encryption keys

## Defining release events

Establishing a Technology Escrow Agreement provides the Licensee with access to the Technology Vendor's intellectual property in the event that a specific release event agreed upon by the Technology Vendor and Licensee occurs.

What are possible release events? The answer depends on the events that a Licensee is concerned about. Licensees are generally concerned about events that will result in the Technology Vendor failing to meet its warranty and maintenance obligations (e.g., insolvency, general assignment for

the benefit of creditors, wind-up or business liquidation); however, truth be told, there are numerous release events that a Technology Vendor and Licensee can agree upon.

## Physical vs. Electronic storage of Escrow Materials

Most trusted, third-party providers of Technology Escrow Services will support both “Physical” and “Electronic” deliveries/formats of Deposit Materials.

“Physical Delivery” means deposit by any non-electronic delivery manner such as courier, courier service, postal service, mail service, hand-delivery, or any physical delivery in which data stored on tangible medium exchanges possession from one entity to another entity. Formats for a Physical Delivery can be optical disc storage (CD-ROM, Compact Disc (CD), Digital Video Disc (DVD), etc.), removable storage, hard drive, portable storage, memory card, memory stick, or any other tangible computer-readable medium.

“Electronic Delivery” means deposit by electronic transfer such as electronic mail (email), File Transfer Protocol (FTP), or any other electronic transfer that communicates data from one storage location to another storage location. Formats for Electronic Delivery include any file format that can be stored on a computer-readable medium.

## Submitting a Notice of Default

What if an agreed-upon release event has allegedly occurred? What is the Licensee to do? The answer depends upon the terms and conditions defined within the Escrow Agreement. The Escrow Agreement should not only document the specific release event(s), but also the processes/procedures required of the Licensee to submit a Notice of Default, thus requesting that the Deposit Materials be released from escrow.

Escrow Agreements offered by trusted, third-party Escrow Providers will document the submission of a Notice of Default; along with procedures permitting the Technology Vendor to issue written notice disputing that a release event has allegedly occurred.

## About National Software Escrow, Inc.

Whether you are a Technology Vendor with an idea to sell and protect or a Licensee with an investment to secure, National Software Escrow, Inc. has in place the facility and legal structure to provide a secure, cost-effective escrow arrangement which ensures the protection and peace-of-mind both parties require.

Presently, we offer the following Escrow Arrangements:

- Single Beneficiary
- Multi-Beneficiary
- Multi-Vendor

Our Agreements are carefully researched, sophisticated legal instruments that will protect the rights, interests and investments of all parties.

We appreciate the fact that when selecting a ‘Service’, you are in fact, selecting a ‘Promise’. We promise:

- Experience
- Unparalleled Service
- The Protection of the Escrowed Materials
- Simple, easy-to-understand Fee Schedule

Since 1986, over **2,000** companies worldwide have placed their trust in our Services.

To learn more about our Services, please call us Toll Free at (877) 628-7638 or visit us at [www.nationalsoftwareescrow.com](http://www.nationalsoftwareescrow.com).

We look forward to serving your Software Escrow needs.

Cordially,

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