



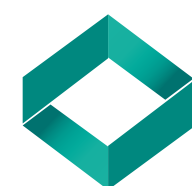
Introduction to Software Escrow: A Guide

Everything you need to know to get started with software escrow as part of service level and license agreements



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Introduction

If you're a software developer or publisher who's been in business for any number of years, you have likely already come across a prospective client that was pretty insistent on the inclusion of a software escrow agreement as part of their license terms.

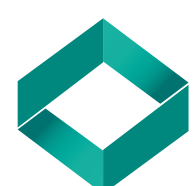
Eager to close the deal you've been negotiating laboriously for weeks or months, you may have found yourself trying to figure out how to give your client what they want while making sure you find the most effective and cost-efficient way to do it.

If, on the other hand, you're a company looking to gain a competitive advantage by using new technology and automating your business processes, you may be outsourcing the development of a software application to an emerging software developer or publisher. And if, say, that company is not quite established or profitable yet, you may be considering minimizing the risk for your own company with a software escrow agreement.

Or, perhaps, you need to meet certain legal requirements by demonstrating due care and due diligence.

Whichever camp you fall into, and whatever your motivations for entering a software escrow agreement may be, this guide covers everything you need to know to get started with software or source code escrow.

Before diving into the mechanics of a software escrow, we will take a look at some of the ways in which software escrow services can help protect your company. We will also consider some important factors to look out for when choosing the right software escrow agent, examine what deposit materials can and should be escrowed, and detail some actionable steps towards implementing a software escrow agreement that works for you (and not the other way around).

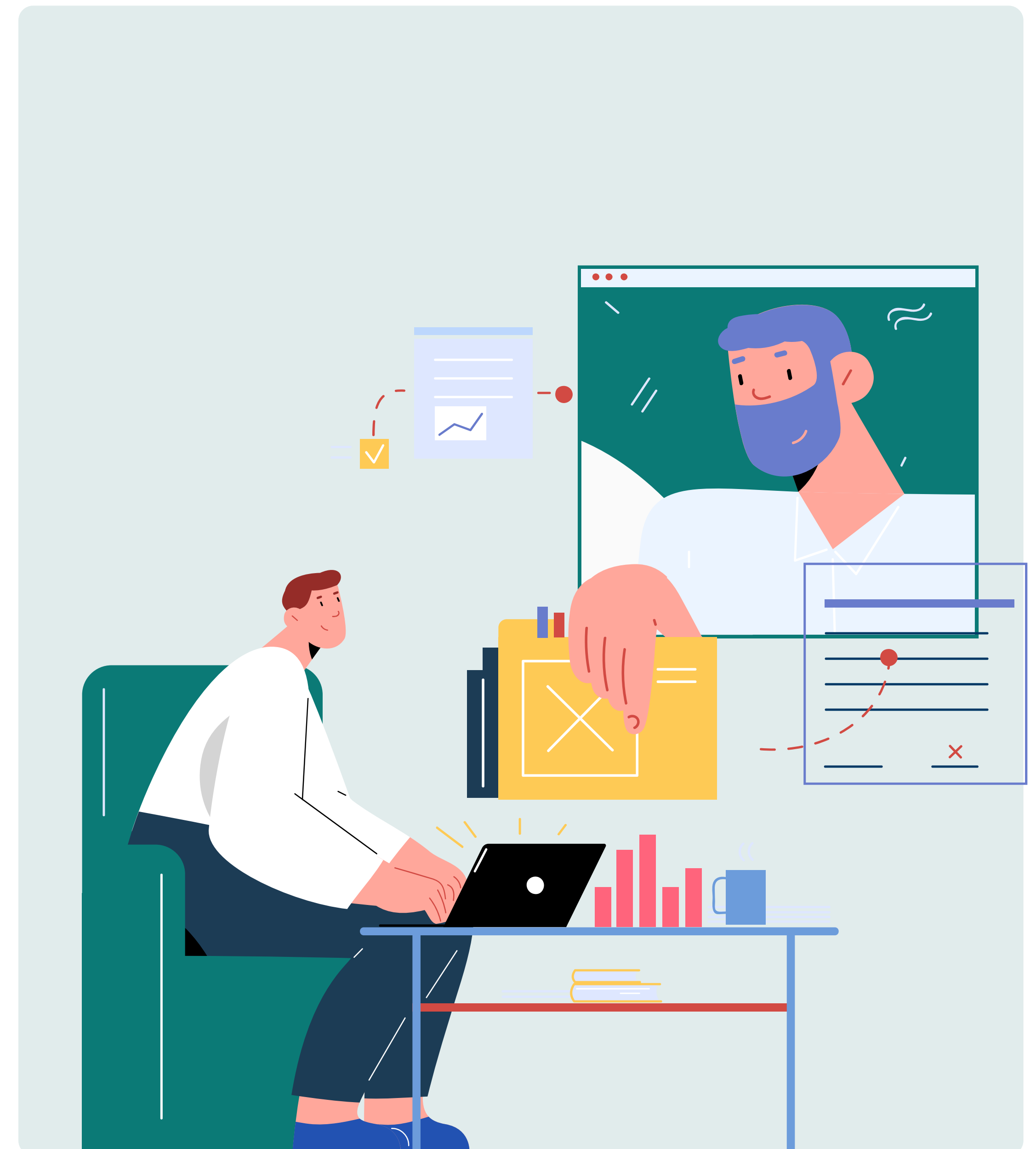


About Codekeeper

Codekeeper was founded in 2013 in The Hague, Netherlands by people from the technology industry. It made no sense to us that software escrow was not directly integrated into modern software development workflows, so we set out to build a new generation of software escrow that meets the needs of agile companies, combining traditional legal security with modern technology workflows.

Software escrow is comparable to your home insurance:

You need it, but fortunately, it's rarely called upon. At Codekeeper, we believe that every organization should have access to cost-efficient insurance for its mission-critical systems. This is why we created a software escrow solution that is simple to set up and use, fully automated and integrated into developer workflows, and last but not least, transparent and fair with pricing.



Over the past seven years, we have earned the trust of thousands of great organizations from all over the world thanks to our cutting-edge technology and market-leading pricing.

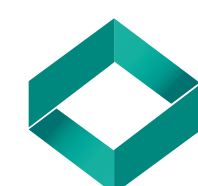
Renowned global brands like Intuit, GE, Pepsico, Nestlé, P&G, Daimler, and many others rely on Codekeeper to ensure their mission-critical systems remain unaffected throughout any circumstance. Protecting the data clients entrust with Codekeeper is our first priority.

We use the strictest physical, procedural, and technical safeguards to preserve the highest level of integrity and security of your information, and we regularly back up your data to prevent loss and aid in recovery.

Our plans start as low as **\$59** per month, with a start-up fee of only **\$199**. This includes an arsenal of features such as free escrow agreements, unlimited continuous deposits, beneficiary confirmations, and more.



[EXPLORE OUR PLANS](#)



CHAPTER 1

What is software escrow and when is it used?

What is software escrow and when is it used?

Software escrow is an agreement set up between a software developer or publisher (aka “Depositor” or “Licensor”), their client who is purchasing the software license (aka “Beneficiary” or “Licensee”), and a trusted, neutral third party such as Codekeeper (“Escrow Agent”). In particular, software escrow puts a contractual obligation on the depositor to store — with a trusted escrow agent — all source code, as well as data, build instructions, third-party tools, and any other materials that would enable the beneficiary to update or maintain their software application.

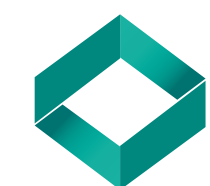
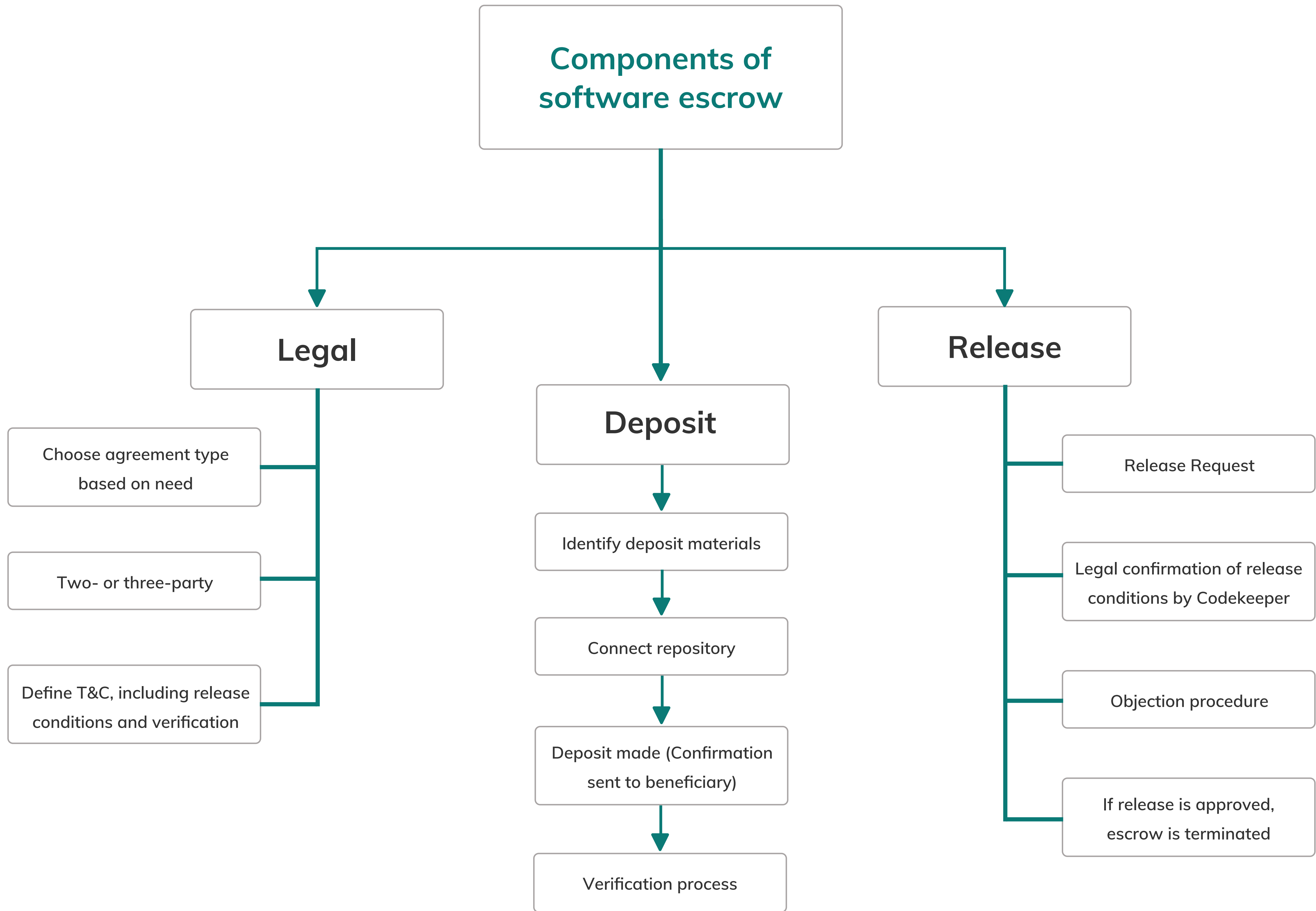
It is most often used when a company wants to protect its software from unexpected events, such as their software developer discontinuing maintenance and support of the software, running out of business, or breaching their contract in any other way.

If any of these (or other) predetermined events occur (each, a “Release Condition”), the escrowed materials (i.e., source code, credentials, instructions, etc.) are then made available (released) to the beneficiary so they can ensure their operations go on uninterrupted.

Please note that obtaining software escrow does not apply to off-the-shelf, packaged software purchases.

Figure 1 on the following page shows the main aspects of a software escrow agreement — selecting the right type of agreement, making a deposit of agreed-upon materials, verification, and finally the release process.





CHAPTER 2

What's the difference between source code escrow and software escrow?

What's the difference between source code escrow and software escrow?

“Software escrow” and “source code escrow” are terms that are used interchangeably. This is the most common type of escrow, and it is designed to store not only source code but also build instructions and any other important documentation that would allow a licensee to update and maintain a mission-critical software application.

Though software or source code escrow is most commonly employed for traditional on-site software licenses, it can also be used for development agreements, software acquisition agreements, and any other transactions involving software.

However, as software shifts away from the traditional on-site licensing model, SaaS and other cloud escrows are becoming increasingly more important.

For all intents and purposes, SaaS escrow is quite similar to a regular software escrow; however, it is tailored to the unique needs of Software-as-a-Service (SaaS), which often require a more robust solution to obtain a required level of protection. Much like software escrow, it contains code, virtual machines, data, and any other components necessary to ensure a SaaS product remains viable.

By establishing a SaaS escrow agreement, a company that subscribes to a SaaS application protects itself from a potential sudden loss of access to critical SaaS services—whether temporary or long-term—and secures direct access to a running copy of the software and their own customer data in case release conditions are met.

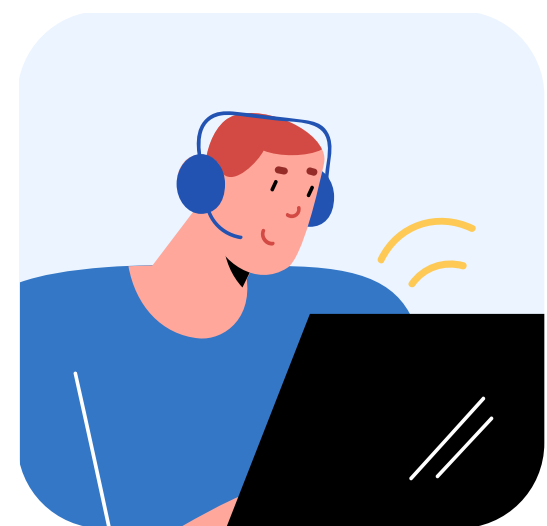


CHAPTER 3

**What are some
benefits of escrowing
software?**

What are some benefits of escrowing software?

Comprehensive software escrow services protect the interests of technology developers, as well as the businesses that purchase their products or subscribe to their services. This chapter covers some of the benefits that a well-executed software escrow agreement can bring to both developers or publishers (licensors) and beneficiaries (licensees).



Benefits for software vendors and publishers

- Offering software escrow provided by a trustworthy escrow agent gives you leverage in agreement negotiations. It's for this reason that software escrow is often referred to as “the great sales enabler”.

- If your business is a newcomer in the market, software escrow helps you establish credibility among your clients and prospects while positioning yourself on par with bigger, established competitors.
- You establish confidence with your licensees by addressing their concerns upfront.
- You increase security by safely storing source code and other data in a single, consolidated location with a trusted third party rather than across multiple places for various beneficiaries and licensees.
- Software escrow helps you protect your intellectual property rights and avoid courts and litigation.





Benefits for licensees or beneficiaries

If your software asset is key to business continuity and cannot be quickly or cheaply replaced, software escrow reduces or eliminates the chance that **interruption or damage** to your business could occur.

It does so by protecting you from unpredictable events, such as your software supplier:

- going out of business or entering bankruptcy proceedings;
- becoming unable to support your mission-critical software (i.e., **discontinuing maintenance and support**);
- getting acquired by another entity which fails to accept any or all contractual obligations that the original supplier had;



TIP

If you're looking for more actionable tips on how to minimize business risk for your company, check out [this article on enterprise risk management](#) on Codekeeper blog.

- breaching your contract in any other way.

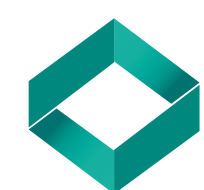
Software escrow gives you the **documented legal right to update** and maintain essential parts of your software application. And this, in turn, ensures you are able to mitigate your own concerns regarding the software vendor's capabilities as part of a larger **risk management** process, which may also include meeting certain legal requirements by demonstrating **due diligence** and **due care**.



If you're unsure whether you need a software escrow agreement, start by considering the risk:

- If my software provider goes out of business, what happens to my company's critical systems and processes that depend on their software?
- If my software provider fails to provide support or updates for whatever reason, what would be the effect on my company, my employees, and my clients? If losing access to up-to-date, mission-critical software would impact your revenue, productivity, customer service, or safety, you have your answer.

The reputation, size or perceived viability of your software supplier does not offer any assurance that any of the above scenarios will not occur.



CHAPTER 4

Why is having access to source code so important?

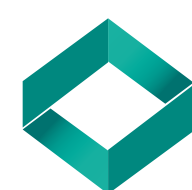
Why is having access to source code so important?

In the case of typical off-the-shelf software, only object code (i.e., executable code) is licensed out to the end-user. In commercial licensing deals, however, the licensee may have a legitimate interest in both object code and source code as an assurance that their mission-critical systems will remain functional.

Accessing source code allows the licensee to see how the software is processing data or performing functions, and can even allow the licensee to change the operation of the software if necessary. In that sense, source code is the DNA of a software application.

It is code that is written in a programming language that is readable (and modifiable) by developers, and without it, developers can't debug or upgrade software applications. In other words, they can't ensure a software application will continue working as intended, which can have a direct negative effect on important business functions and the viability of a company.

So if, for instance, a software vendor goes out of business, without modifiable source code, the software is as good as dead. Depending on how critical the software is to your business, the effects of losing access to the source code can be nothing short of devastating.

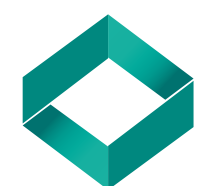


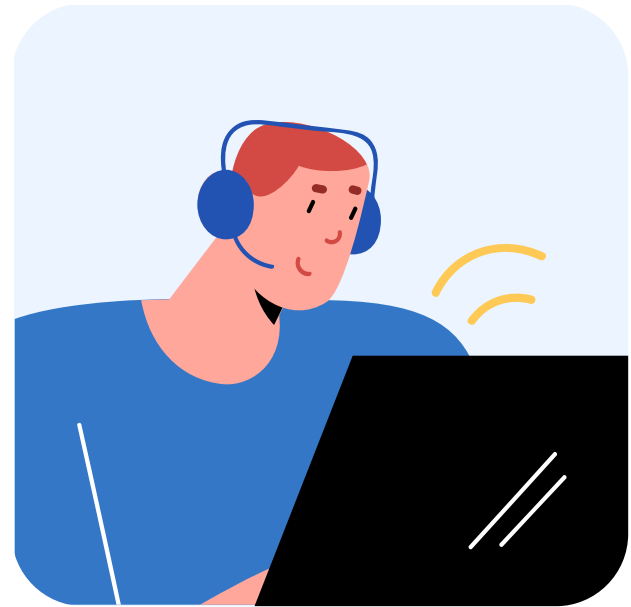
CHAPTER 5

What are the responsibilities of each party to the agreement?

What are the responsibilities of each party to the agreement?

Software escrow agreements vary depending on the technical requirements of Licensor and Licensee, as well as the escrow agent's scope of services, including verification services. However, the core responsibilities of the parties to a software escrow agreement are more or less consistent across the board.





Licensor

- Makes initial deposit of source code and other deposit materials.
- Releases agreed-upon updates to deposit materials, including source code, on a predetermined schedule for the duration of the agreement.
- Provides warranties and support regarding the deposit materials.



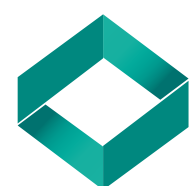
Licensee

- Monitors compliance between the Depositor and Agent during the term.
- Requests additional verification services for deposit materials from the escrow agent.



Escrow Agent

- Receives deposit materials and confirms receipt to licensee.
- Provides additional verification services upon request.
- Holds and controls deposit material until release conditions are met or until the agreement expires, whichever comes first.



CHAPTER 6

How do I choose the right escrow agent?

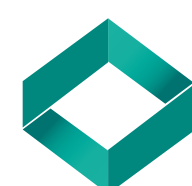
How do I choose the right escrow agent?

The traditional way of establishing software escrow doesn't fit the fast-moving software industry of today.

Traditional software escrow solutions were not designed for the agile software development methods that we see in SaaS environments today, where software is updated on an ongoing basis. A more traditional source code escrow service was originally intended for a traditional software product, which is different from today's software in many ways, but most significantly in that it is downloaded to hardware and updated on a periodic, scheduled basis — typically once or twice a year. This frequency was enough back in the day because the actual source code only really changed once to twice a year. So if a beneficiary was eligible for an escrow release, they were likely to get the most recent source code.

This approach is not only much slower but also significantly more expensive. And this is especially true when a traditional escrow provider takes on SaaS companies as clients, who by nature have greater needs in terms of ongoing updates.

- **Manual and outdated deposits:** Traditional escrows require expensive manual deposits at extra costs and they take longer to process.
- **Recovery problems for beneficiaries:** Incompatible code versions, missing or incompatible data sets, and long release procedures that can take months.
- **Expensive lawyer-driven process:** Waiting for expensive lawyers to draw up papers, sometimes inexperienced with technology.

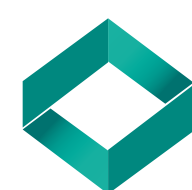


This continuous update of deposit materials not only removes the unnecessary burden of making manual deposits, but it also ensures that your materials are always up-to-date and accessible — while simultaneously helping you streamline your workflow and save time.

Codekeeper ensures that our clients have reliably up-to-date source code deposits, but it also includes official escrow agreements, release terms, beneficiary management, data escrow, verification, and an arsenal of other services. Such a modern solution is more likely to be a good fit for modern software companies.

The Codekeeper Software Escrow Solution

- › **Automated and up-to-date deposits:** Codekeeper integrates directly with developer workflows. Deposits are encrypted and fully automated.
- › **Quick Recovery:** Quick recovery if there's a release event. Release procedures are processed 24/7/365, with redeployment support available.
- › **End-to-end concierge support - no lawyer fees:** We offer complete, high-quality support each step of the way.

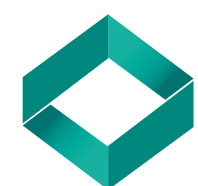
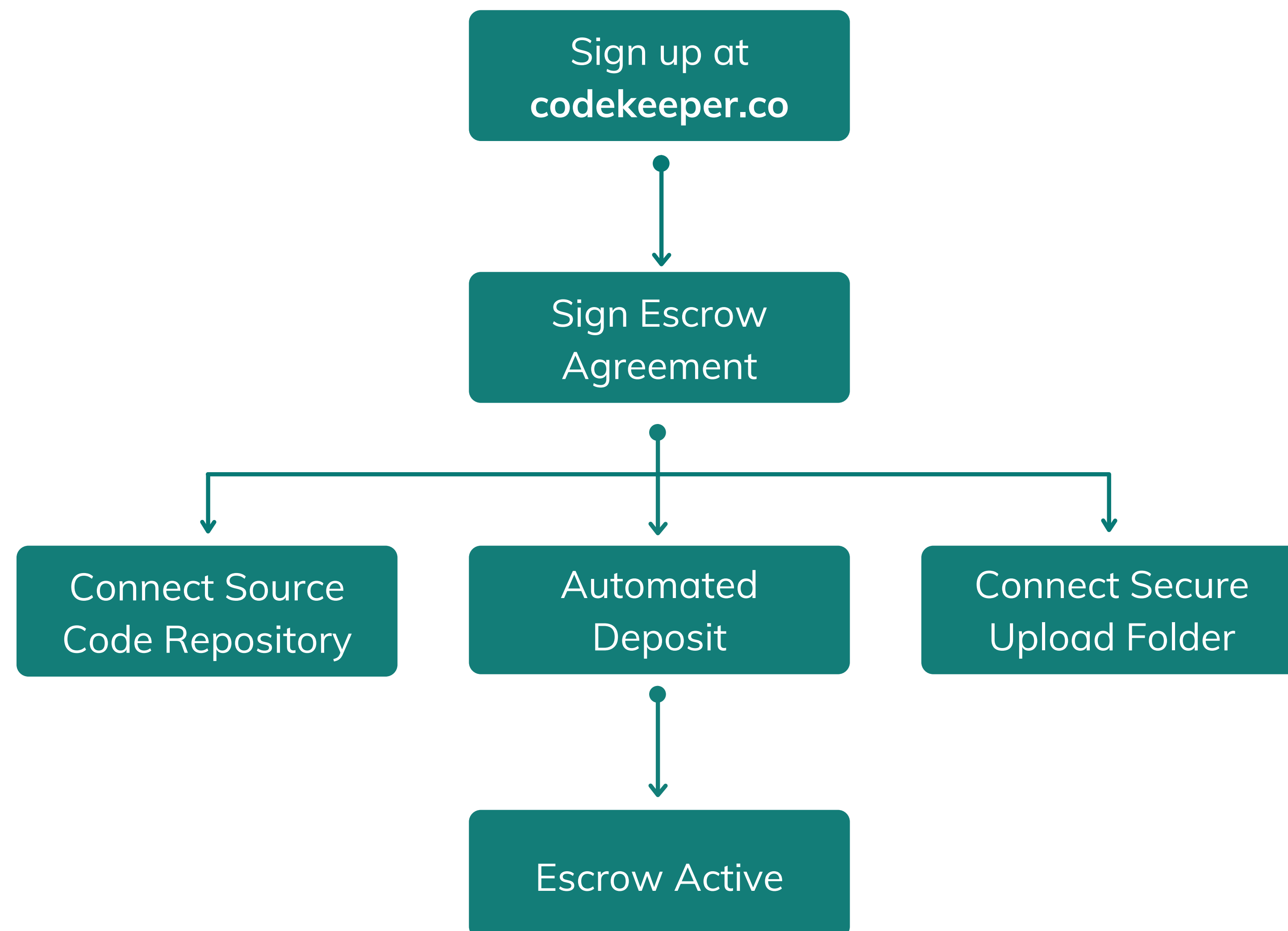


CHAPTER 7

How does the Codekeeper software escrow solution work?

How does the Codekeeper software escrow solution work?

Codekeeper makes adding code to repositories simple. With an intuitive user interface, setting up a software escrow is a simple process:



Signup

The first step to getting started with source code escrow is setting up your account on Codekeeper.

From the Codekeeper [pricing page](#), click the “Get Started” button under your plan of choice. You will be redirected to the signup flow, where you will be asked to enter your information in order to create an account.

Create an account

Enter your name and email address to get started.
or Log in.

Full name

Email

I agree to the [Terms & Conditions](#).

Sign up

or

 Sign Up With Google



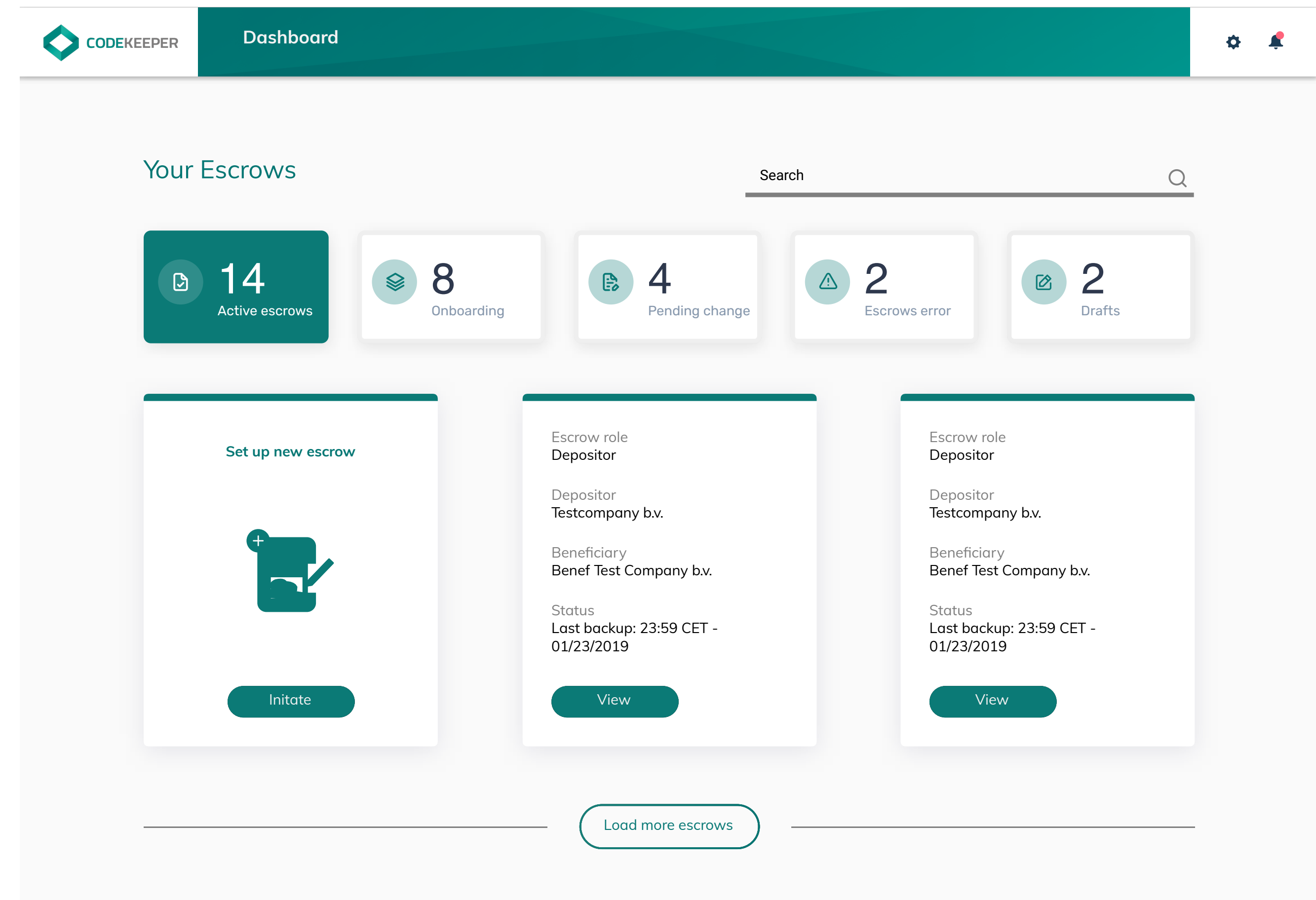
Setup

Setting up an escrow with Codekeeper is easy and intuitive, but you can also request free setup assistance from an experienced specialist if needed.

There is one centralized dashboard for all your escrows, even if you have hundreds of them. At the top, you'll find some general metrics that give you insights into the status of your escrows.

The rest of the page contains information about all of your escrow agreements and the latest activity, as well as links to get help if needed.

The dashboard integrates directly with your existing developer workflows on Github and other platforms, which means the information is updated at least once every day.



To get started with a new escrow agreement, simply navigate to the “Set up new escrow” card and click on the “Initiate” button.

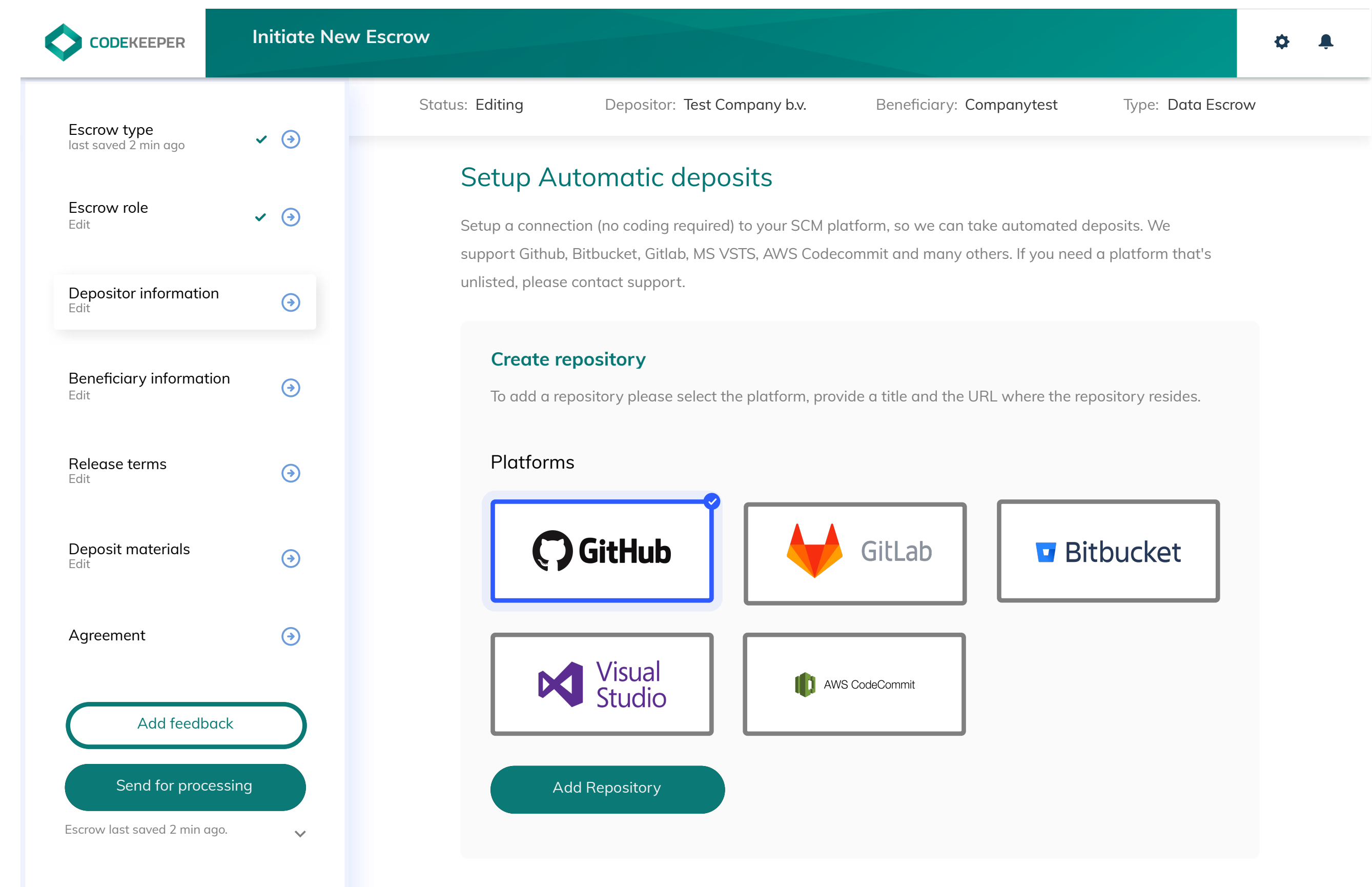


Connect Repositories or Secure Upload Folder

The person in charge of handling software escrow management for your organization does not need to know code in order to successfully manage your escrow agreements.

We have a user-friendly, step-by-step process that allows you to set up automatic deposits by connecting your SCM platform, whether you use Github, Bitbucket Gitlab, MS VSTS, AWS Codecommit, or some other platform.

Source code deposits in your secure vaults are end-to-end encrypted and fully automated, which means you can forget about manual deposits and rest assured that you are always in compliance.



If you prefer manual upload, our secure upload folder system allows you to deposit your source code and other materials, the easy and fast way.

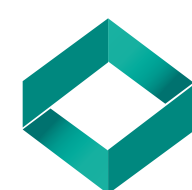
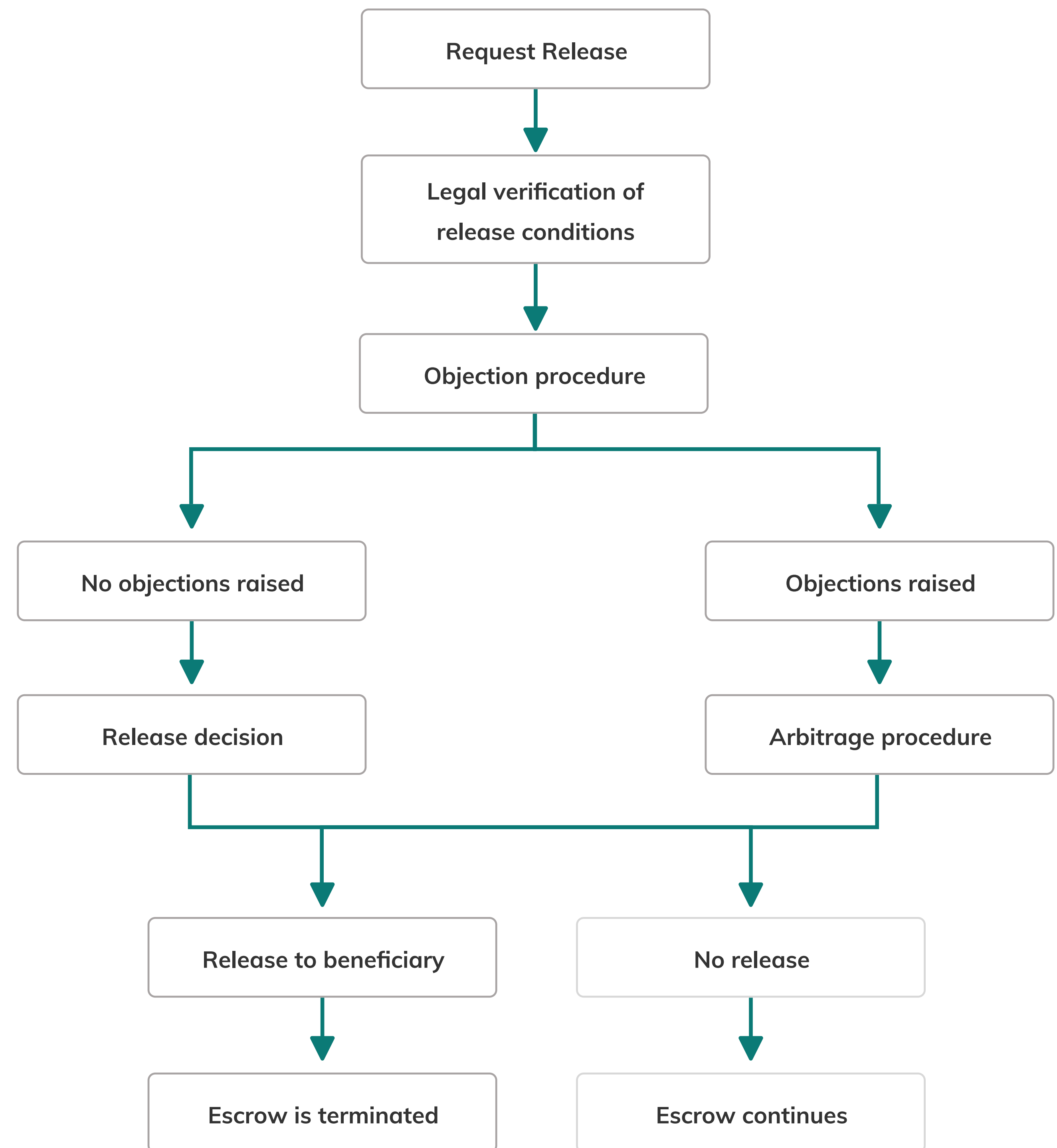


Depositing Application Data

In addition to source code, you can deposit other data in Codekeeper repositories. And much like with source code deposits, you can store data either manually or by setting up automatic data deposits.

Release Triggers

Specify for each beneficiary which secure vault (repository) deposits they should receive and under which conditions they should be released. Manage



Managing License Beneficiaries

Should you want to **add more beneficiaries** to your secure vaults (repositories), you can do so at the click of a button at any time. If, for instance, you start on the Developer plan, you can upgrade to the Team plan or Business Plan as your software escrow needs grow. Simply [send us](#) your new requirements by email; we will validate the necessary configuration and send you a custom offer to ensure you're only ever paying for what you really need.

Once you provide the necessary information, each of your license beneficiaries can access their own dashboard, containing only their own repository information.

This means each of your clients retains source code **privacy**, while you maintain the convenience of keeping all your source code and data with one trustworthy escrow agent and working from a single dashboard.



Beneficiary

You are:
Receiver of the contents of the escrow when a release event triggers



14

Active escrows



TIP

Learn more about Codekeeper's [pricing options](#). Find the perfect escrow plan for your software development and licensing needs.



Escrow Active

Your new software escrow is successfully activated. You can edit the details and manage other escrows as a depositor or beneficiary. Easily add your licensees as the beneficiaries of the deposited source code in escrow and keep them up to date. If you are the licensor you can add suppliers and initiate new escrows with a few clicks. Confirmations are automated, so you can forget about paperwork.

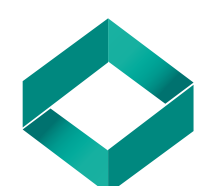
Escrow role
Depositor

Depositor
Testcompany b.v.

Beneficiary
Benef Test Company b.v.

Status
Last backup: 23:59 CET -
01/23/2019

[View](#)

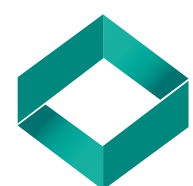


Conclusion

As reliance on technology — and software applications, in particular — increases, businesses face growing pressure to protect their mission-critical systems and other intellectual property assets as part of their overall risk management strategy.

Software escrow is an important tool for minimizing your company's risk and ensuring business continuity should a vendor go out of business, fail to provide maintenance, or otherwise breach your agreement. Whether the asset is an on-premises piece of business-critical software or an outsourced Software-as-a-Service (SaaS) application, a well-executed software escrow agreement protects the interests of software developers as well as the companies that purchase their products or subscribe to their services.

But software escrowing can be complex in nature and requires careful structuring of release conditions, payment responsibilities, and other services as necessary. Modern software escrow providers are stepping up to this challenge by providing technological solutions built around software developers' agile workflows and their end-users' concerns regarding risk. By choosing the right escrow agent, such as Codekeeper, to guide you through this complex process, you can ensure you get more value and a higher standard of service at a much lower price.



Discover more resources

Get the information you need to get started with software and source code escrow.

[GET RESOURCES](#)

OR

Protect your software and data

Find the perfect escrow plan for your software development and licensing needs and start today.

[SEE OUR PRICING](#)

