



**Intellect Enterprises**  
SOFTWARE ESCROW,  
SOURCE CODE VALIDATION  
& COPYRIGHT DEPOSIT SERVICE



Intellect Enterprises is a wholly owned subsidiary of Intellect, the UK trade association for the IT, telecoms and electronics industries. Our services are the result of combining over 30 years experience of acting as a custodian for critical assets with innovative and water-tight contracts prepared by our partner legal advisers, Beachcroft LLP, and validation services through our testing partners, SQS Group Ltd. For further information visit [www.intellectenterprises.co.uk](http://www.intellectenterprises.co.uk)



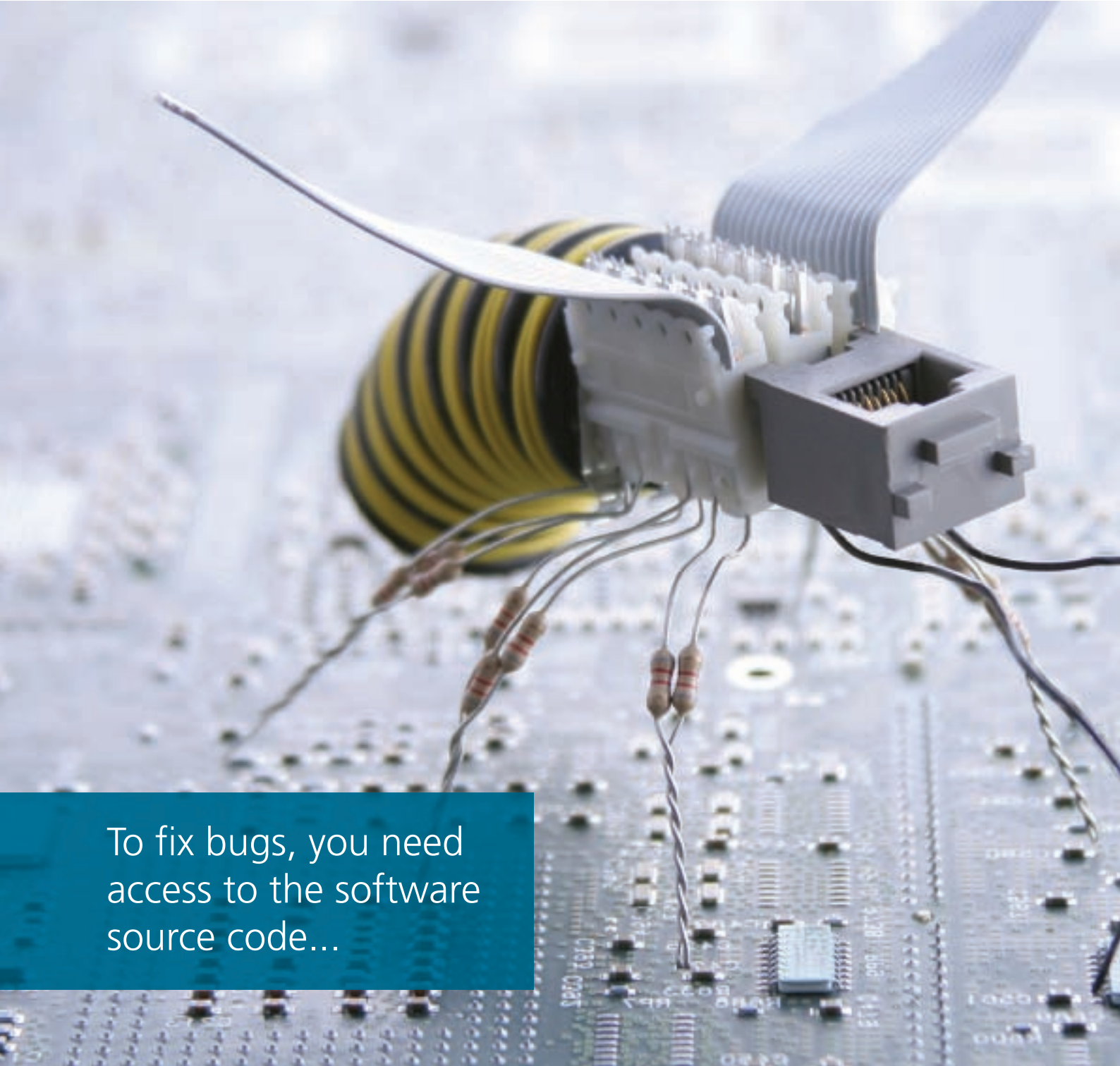
Beachcroft LLP is a leading national commercial law firm with over 150 partners and 1,400 staff, focusing on technology as one of its four main market sectors. As a full-service law firm, Beachcroft LLP meets the domestic and international needs of clients ranging from start-up businesses to industry giants in telecommunications and IT. For further information visit [www.beachcroft.co.uk](http://www.beachcroft.co.uk)



Founded in Cologne, Germany, in 1982, SQS Group (SQS) has around 1,450 employees worldwide and is the largest independent provider of software testing and quality management services. This position and its expertise stem from more than 5,000 successfully completed projects over more than 27 years with clients including Barclays, BP, Credit Suisse, Daimler and Deutsche Bank. In the UK, SQS is the leading independent provider of System & Software Testing and Quality Management services, using proven methods to make a quantifiable difference to any project and offer customers a 'best in class' service. For further information visit [www.sqs-uk.com](http://www.sqs-uk.com)

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To fix bugs, you need access to the software source code...



Technology has revolutionised the world we live in. Computer software is capable of speeding up processes, improving quality, and enabling products and services to be delivered more quickly and cost effectively. Software has become the engine of industry.

#### But our reliance on computer software presents risks...

Because of the pace of change and the cost of advancing and improving computer systems, most businesses now rely on third parties to supply and maintain their software systems. However, this reliance on third parties involves risk that needs careful management, particularly if the third party is responsible for the operation of mission-critical technology. Unfortunately, the economic downturn has exacerbated these risks.

Software escrow provides a solution.

#### Our unique Intellect Enterprises Software Escrow Service combines flexibility, simplicity, and cost effectiveness.

We have combined our 30 years+ experience of acting as a custodian for critical assets with innovative and water-tight contracts prepared by our partner legal advisers, Beachcroft LLP. The source code validation service provided by SQS, the IT testing and quality assurance organisation, validates the quality and suitability of the escrow materials deposited in escrow. This experience, legal expertise and quality focus creates an escrow service which, we believe, cannot be matched.

### What is software escrow?

A software escrow contract is a legally binding contract under which:

- a party responsible for software maintenance (referred to as the 'software owner') for a company or individual (referred to as the 'end user') agrees to deposit the software source code with a trusted third party (or escrow agent);
- the escrow agent agrees to keep the source code safe, secure, and confidential; and
- if an agreed 'release event' takes place (typically the insolvency of the software owner), the escrow agent agrees to give the source code to the end user so they can maintain and support the software themselves.

## Why use software escrow?

Because of bug fixes, new releases, and software development.

### Bug fixes

All software has bugs. Specially written software tends to have a lot of bugs. These bugs are unpredictable and can affect a software application in many different ways; sometimes they can crash the software completely, rendering it useless. As a result, when end users buy software they also need to buy maintenance and support service from the software owner, to ensure that any future bugs will be fixed.

To fix bugs, you need access to the software source code.

### New releases

As part of most maintenance and support contracts, an end user is also entitled to updates and new releases related to their software. These updates and new releases often contain standard 'bug fixes' as well as improvements to the software's functionality and performance.

To create an update or a new release, you need access to the source code.

### Software development

As well as arranging a software licence and maintenance contract, sometimes an end user will also engage the software owner to develop the software on an ongoing basis, constantly tailoring it to the end user's requirements.

To undertake software development, you need access to the source code.

## Why don't software owners simply give the source code to the end user?

Most software owners are unwilling to give the source code to end users; in fact, these codes are often trade secrets, because they reveal the inner workings of the software. This means someone with the source code could easily copy or adapt some or all of the software.

While all is well between the software owner and the end user, the end user does not need the source code. However, if the software owner becomes incapable of doing their job or defaults from their obligations for some reason, the end user will be unable to get bugs fixed, take advantage of new releases, or continue to update and develop the software. In these circumstances, the end user needs to be able to access the source code. Otherwise, the software may grind to a halt, causing substantial losses to the end user.

A software escrow arrangement is an insurance policy against this contingency, and forms a vital component of a business continuity and disaster recovery plan.



## Benefits of software escrow to the software owner and end user

### “I’m an end user – so why should I bother with software escrow?”

- The costs of finding replacement software could be prohibitive.
- The time it takes to find replacement software could damage or even destroy your business or organisation.
- Without software escrow, you could be gambling everything on the reliability of the software owner.
- You may be legally obliged to use software escrow.
- It means you’ll be able to fix, maintain, and/or develop the software in-house if things go wrong.
- It’s an insurance policy against default by the software owner.
- It’s an essential part of your business or organisation’s risk management.

### “I’m a software vendor - so why should I bother with software escrow?”

- It will reassure potential customers that you are safe to do business with.
- Your end users demand it.
- It protects you from the need to hand over your source code to the end user in advance, so confidentiality is maintained and there is no risk that your end users will try to take over the software management and maintenance.
- It will add value to your product, as software protected by software escrow is worth more, since prudent end users will not accept the risks of ‘uninsured’ software contracts.

### “What can be protected by software escrow?”

- Standard and bespoke software products.
- Applications that run internally, or are run externally by a service provider.
- Bespoke software products under development.
- Websites that are being developed or maintained by an external supplier.

## Why should I choose Intellect Enterprises?

Intellect Enterprises is owned by Intellect, the UK's leading trade body for the software and IT services industry. Collectively, we have been offering software escrow to the industry for over 30 years.

- **Legal protection:** the simplicity of our contracts makes them highly attractive to both software vendors and end users; however, we don't compromise on the 'legals'. Our service meets all government requirements and is backed by Beachcroft LLP, one of the UK's leading law firms.
- **Flexibility:** we allow our customers a degree of customisation at no extra cost. Our Flexible terms of business let you choose from a selection of pre-written clauses incorporating a range of additional release events and licence rights. If it is agreed by all parties concerned, we can also vary our standard terms so you can add, remove or alter provisions to suit your specific requirements.
- **Simplicity:** Intellect Enterprises Software Escrow and Copyright Deposit Service is user friendly, practical, and simple; helping all parties to initiate the service quickly and easily, with as little administrative delay as possible.
- **Value:** members of Intellect can make savings of over 70% on our service when compared to other service providers, and non-members can make savings of approximately 30%.
- **Security:** our security systems are second to none. Your source code will be stored in vaults 100ft under ground, each equipped with advanced air conditioning units to control temperature and humidity, and the latest technology in fire suppression. The premises are also protected by permanently monitored intruder alarm systems. If you wish, we can also provide 'two site' storage for even greater security.

## Details of our Software Escrow Service

### Our Flexible Terms of Business

Running a software escrow service for over 30 years has taught us that, with software escrow, one size does not always fit all. As a result, we are the first software escrow provider to create and offer a service that you can easily and affordably tailor to meet your specific requirements, picking and choosing from a range of pre-written clauses, which are listed in our terms of business. To activate the clauses you want, you simply tick the relevant boxes in our flexible order form.

It's a straightforward way to gain extra flexibility for no extra cost.

Our Flexible terms of business offer you two areas where you can make your own choices.

1. **Release events:** a release event is a trigger that results in the source code being released to an end user; for example, if the software owner becomes insolvent. You can choose which release events are appropriate for your business or organisation, and include them in your contract. More details can be found on page 10.
2. **Release licences:** as an end user, it is one thing to receive the source code, but it's quite another to understand what rights you have in respect of it. Sometimes the maintenance contract between a software owner and an end user fails to mention the release licence, or fails to give the end user the rights they need. With our release licence options, you can ensure that the contract specifies all the rights you need. More details can be found on page 10.



A wooden mannequin arm and hand are shown in a flexed position, with the hand resting on the surface. The arm is made of light-colored wood and has several joints, including the shoulder, elbow, and wrist. The hand is also made of wood and has a realistic shape. The background is a plain, light color.

It's a straightforward way  
to gain extra flexibility.

## Release events

You can choose to nominate any of these events to release the source code to the end user:

- **Assignment release:** if the software owner's right to the source code deposited with us is assigned to a new owner, and the new owner fails to offer the end user similar escrow protection (within a given timeframe).
- **Competitive takeover release:** if one of the end user's direct competitors acquires control of the software owner's business.
- **Incapacity release:** if the software owner is no longer capable of providing support, whether or not they are in breach of their support contract.
- **Insolvency release:** if the software owner goes out of business.
- **Material breach release:** if the software owner commits a material breach of the maintenance contract and the end user (lawfully) has to terminate the maintenance contract.
- **Merger release:** if there is any change in the ownership of the software company because of a merger.

## Release licences

If the source code does have to be released, our terms of business ensure that the software owner grants the end user a non-exclusive perpetual personal licence to use the source code for the sole purpose of maintaining and supporting the software. However, if you wish, you can add these extra licence rights into your contract by ticking the relevant boxes on the flexible order form.

- **Development licence:** The software owner grants the end user a non-exclusive perpetual personal licence to use the source code in order to develop the software.
- **Group company licence:** The software owner grants the end user a non-exclusive perpetual 'Group Company Licence' which would allow the end user and any member of their group to use the source code to maintain, support and (if selected) develop the software.

## Our Copyright Deposit Service

Our Copyright Deposit Service protects original material such as software applications, websites, product designs, artwork, original music scores and fashion designs in order to help establish the ownership of the material. It can be used in the prosecution or defence of copyright infringement claims.

These contracts, unlike software escrow, are made between two parties (Intellect Enterprises and the copyright owner). As well as the original material we will hold rough drafts and plans showing how it evolved, details of ownership and evidence of authorship.

The value of copyright material as proof of originality depends on the quality of the evidence deposited with it, so our order form lists exactly what needs to be provided with the copyright material.

We will give the order form a reference number, stamp it with the date and time, and place a copy of the stamped form with the deposited material, returning the original to the Copyright Owner.



# A guide to our Software Escrow and Copyright Deposit contracts

Arranging a software escrow or copyright deposit contract couldn't be easier. Simply follow the steps over the next few pages or call us on 020 7331 2195 and we'll talk you through it.

Intellect Enterprises offers a range of different contracts which meet almost every possible escrow requirement, so you can select the one that best suits your needs. The information over the next few pages sets out your options and gives you some pointers to help you decide which contract is suitable for you.

However, if you have any special requirements and would like us to tailor one of our existing contracts to meet them, or to create a completely new contract for you, we will be happy to do so.

T 020 7331 2195

E [escrow@intellectenterprises.co.uk](mailto:escrow@intellectenterprises.co.uk)

W [www.intellectenterprises.co.uk](http://www.intellectenterprises.co.uk)

## Contract: Insolvency single

**Choose this contract if:** there is currently just one end user and they simply need protection against the software owner's insolvency.

### How does it work?

- The software owner gives us the source code.
- We keep it safe.
- We release it to the end user if the software owner goes out of business.
- It is an annual three-party contract between the software owner, the end user and Intellect Enterprises.

### What do I need to do next?

- Contact our Escrow Team on T **020 7331 2195** or E **escrow@intellectenterprises.co.uk** to ask for an Insolvency order form and our Insolvency terms of business.
- Complete the **Insolvency order form** and sign it. It incorporates our **Insolvency terms of business**.
- Once you've completed the order form, please send it to us, along with the terms of business and the source code. We will assign a unique reference number to the contract and send signed copies back to each party. When we countersign the order form, the contract starts.
- You can add new end users at any time by completing further order forms; you'll find more details on your order form.

## Contract: Insolvency multiple

**Choose this contract if:** there are multiple end users, but they simply need protection against the software owner's solvency.

### How does it work?

- The software owner gives us the source code.
- We keep it safe.
- We release it to all the end users if the software owner goes out of business.
- It is an annual three-party contract between the software owner, the end user, and Intellect Enterprises. Adding another end user has the effect of creating a new three-party contract. So, 10 end users will lead to the creation of 10 three-party contracts (each with a different end user).

### What do I need to do next?

- Contact our Escrow Team on T **020 7331 2195** or E **escrow@intellectenterprises.co.uk** to ask for an Insolvency order form and our Insolvency terms of business.
- Complete the **Insolvency order form** and sign it. It incorporates our **Insolvency terms of business**.
- Once you've completed the order form, please send it to us, along with the terms of business and the source code. We will assign a unique reference number to the contract and send signed copies back to each party. When we countersign the order form, the contract starts.
- You can add new end users at any time by completing further order forms; you'll find more details on your order form.

## Contract: Flexible single

**Choose this contract if:** there is just one user (at present) and the end user wants more protection than offered by an Insolvency single including more options on release events and/or the licence that the user gets in the event of release.

### How does it work?

- The software owner and end user decide which 'release events' and 'release licences' will apply by completing the order form. For more information on release events and release licences go to **Flexible terms of business** on page 08.
- The software owner gives the source code to us.
- We keep the source code safe.
- We release the source code to the user if a release event takes place.
- The software owner grants the end user the release licence if a release event takes place.
- It's an annual three party contract between the software owner, the end user and Intellect Enterprises.

### What do I need to do next?

- Contact the Escrow Team on T **020 7331 2195** or E **escrow@intellectenterprises.co.uk** to ask for a Flexible order form and our Flexible terms of business.
- Discuss and agree which 'release events' and 'release licences' will be applicable to the escrow contract.
- Complete the **Flexible order form**, identifying the release events and release licences, and sign it. The order form incorporates the **Flexible terms of business**.
- Once you've completed the order form, please send it to us, along with the terms of business and the source code. We will assign a unique reference number to the contract and send signed copies back to each party. When we countersign the order form, the contract starts.
- You can add new users at any time by completing further order forms; you'll find more details on your order form.

## Contract: Flexible multiple

**Choose this contract if:** there are multiple end users who want more protection than offered by an Insolvency single including more options on release events and/or the licence that the user gets in the event of release.

### How does it work?

- Same as Flexible single, except that the source code is released to multiple users if the owner goes out of business.
- It is an annual three-party contract between the software owner, the end user, and Intellect Enterprises. Adding another user has the effect of creating a new three-party contract. So, 10 users will lead to the creation of 10 three-party contracts (each with a different end user).

### What do I need to do next?

- Contact the Escrow Team on T **020 7331 2195** or E **escrow@intellectenterprises.co.uk** to ask for a Flexible order form and our Flexible terms of business.
- Discuss and agree which 'release events' and 'release licences' will be applicable to the escrow contract.
- Complete the **Flexible order form**, identifying the release events and release licences, and sign it. The order form incorporates the **Flexible terms of business**.
- Once you've completed the order form, please send it to us, along with the terms of business and the source code. We will assign a unique reference number to the contract and send signed copies back to each party. When we countersign the order form, the contract starts.
- You can add new users at any time by completing further order forms; you'll find more details on your order form.

## Contract: Staggered (single or multiple)

**Choose this contract if:** you are software distributor or reseller (who may also be a systems integrator or an IT outsourcing provider) supplying to the end user and maintaining software that is owned by a third party.

### How does it work?

- The software owner gives us the source code.
- We keep the source code safe.
- We release the source code to the software distributor if the software owner goes out of business.
- We release the source code to the end user if the software distributor goes out of business or fails to maintain the software and the software owner does not take-over the software distributor's obligations to maintain the software.
- We release the source code to the software distributor if the owner goes out of business.
- It is an annual four-party contract between the software owner, the software distributor, the end user and Intellect Enterprises.

### What do I need to do next?

- Contact the Escrow Team on T **020 7331 2195** or E **escrow@intellectenterprises.co.uk** to ask for a Staggered order form and our Staggered terms of business.
- Complete the **Staggered order form** and sign it. It incorporates our **Staggered terms of business**.
- Once you've completed the order form, please send it to us, along with the terms of business and the source code. We will assign a unique reference number to the contract and send signed copies back to each party. When we countersign the order form, the contract starts.
- You can add new users at any time by completing further order forms; you'll find more details on your order form.

## Contract: Copyright deposit service

**Choose this contract if:** you are a developer and you want to take steps to show that the intellectual property you are developing was indeed developed by yourself. This may assist with a future action against a copyright infringer, or a future defence of copyright infringement against a third party.

### How does it work?

- The developer deposits its intellectual property with us, along with supporting evidence.
- We date and time stamp the order form and return it to the developer.
- This is not an escrow contract. There are only two parties to the contract: Intellect Enterprises and the developer.

### What do I need to do next?

- Contact the Escrow Team on T **020 7331 2195** or E **escrow@intellectenterprises.co.uk** to ask for a Copyright deposit order form and Copyright deposit terms of business.
- Complete the **Copyright order form** and sign it.
- Once the order form has been completed, please send it to us, along with the deposit.
- We will date stamp the order form and return a copy to you.
- When the order form is countersigned by us, a contract comes into existence.

## Contract: Tailored or Bespoke

**Choose this contract if:** you have special requirements.

### How does it work?

- Amendments to any of the above contracts, or an entirely bespoke contract to meet special requirements.

### What do I need to do next?

- Contact the escrow team on T **020 7331 2195** or E [escrow@intellectenterprises.co.uk](mailto:escrow@intellectenterprises.co.uk)

## Increasing the Limit of Liability

**Choose this option if:** you need to increase the limit of Intellect Enterprises' liability to the software owner or end user from the standard limit of £250,000.

### How does it work?

- Intellect Enterprises can increase the limit of their liability to the software owner or end user for any breach of contract, negligence, misrepresentation or breach of confidence for all of our standard contracts.

### What do I need to do next?

- Contact the escrow team on T **020 7331 2195** or E [escrow@intellectenterprises.co.uk](mailto:escrow@intellectenterprises.co.uk)



Find out more, contact  
the escrow team on  
T 020 7331 2195

## Our Source Code Validation Service

### “Why do I need source code validation?”

If a 'release event' occurs and the source code is released, the end user needs to be sure that it is useable. Source code validation ensures that the source code, plus any other supporting material which has been deposited into escrow, will produce the software that the end user expects.

Validation gives the end user confidence and peace of mind, and assures the value of the escrow agreement. Intellect has selected SQS, Europe's largest independent provider of software testing and quality management services, as its partner to provide an independent and trusted source code validation service.

### “I'm an end user – how does validation benefit me?”

- It confirms exactly what has been deposited with the escrow agent.
- It ensures that the source code and any other supporting materials are present and will be usable in the case of a release event.
- It lists which third party software, libraries and tools the end user will need in order to support the source code, and what skills they will need in order to use the materials.

### “I'm a software owner – how does validation benefit me?”

- It gives your end users reassurance, peace of mind and confidence in your escrow agreements.
- It supports your software sales process.
- It improves the maintainability of your software and ensures that any re-use of the code complies with its licence.

### “How does escrow validation work?”


Intellect and SQS provide a number of source code validation solutions, so you can choose the one that manages the level of business risk appropriate for your software and circumstances. Each level of risk demands a greater number of validation activities, from verifying that the escrow contents are readable and virus free to building the end user software and/or identifying what open source licences are used in the source code.

## Escrow validation service levels

We offer a variety of service levels to meet your validation needs. The work is carried out at different locations, including the premises of both the software owner and the end user, as well as within SQS's secure environment, and the integrity of the escrow agreement is maintained at all times.

The diagram below shows the different service levels available:

Validation activities						
	Content scanning*	Software build	Software install	Software execution	Code quality	License compliance
Bronze	✓	Source code visible			Highlights	Highlights
Silver	✓	Observe	Observe	Smoke test	Basic	Basic
Gold	✓	Perform	Perform	User Acceptance Testing (UAT)	Basic	Basic
Platinum	✓	Perform	Perform	User Acceptance Testing (UAT)	Complete	Complete



Reduced business risk

\*Ensures contents are readable, virus free and that files can be decompressed and unencrypted.

The information over the next few pages shows what is included in each level of service:

Level	Description
<b>Bronze</b>	<p>Entry-level validation to ensure that the materials deposited in escrow:</p> <ul style="list-style-type: none"><li>• are readable</li><li>• are virus free</li><li>• are unencrypted (or that encryption keys and passwords are correct)</li><li>• can be uncompressed if files are compressed</li><li>• include instructions for compiling the source files</li><li>• contains valid source code</li></ul> <p>A report includes:</p> <ul style="list-style-type: none"><li>• a summary of the contents deposited in escrow</li><li>• the results for each of the areas listed above</li><li>• a summary of the tools needed to build the end user software</li><li>• preliminary highlights of code quality and licence usage in the source code</li></ul>
<b>Silver</b>	<p>All the Bronze services plus extra services, performed at the software owner's site, to observe and check that the escrow materials can be built into the end product that the end user receives from the software owner. A report details:</p> <ul style="list-style-type: none"><li>• the applications and third-party tools needed to build the software; this allows the end user to plan how to acquire or secure these in the case of a release event</li><li>• the files produced by the build process and how they compare to the software the end user receives</li><li>• the process required to install a working version of the application</li><li>• the results of a high level application smoke test specified by the end user and performed by SQS</li><li>• additional analysis of licence compliance</li></ul>

Level	Description
<p><b>Gold</b></p>	<p>All the Bronze and Silver services, plus extra services to replicate the build process in an independent and secure SQS-hosted environment and install a working version of the application in either the SQS environment or the end user’s site. The environment used to build and install the application can also be retained and deposited in escrow. A report details:</p> <ul style="list-style-type: none"> <li>• any differences noted between the build process in the independent environment and the process at the software owner’s premises</li> <li>• the process required to install a working version of the applications</li> <li>• the results of the User Acceptance Tests performed by the end user and SQS</li> <li>• additional analysis of source code quality for code maintainability, security and performance</li> </ul>
<p><b>Platinum</b></p>	<p>All the Bronze, Silver and Gold services, plus enhancement services provided by SQS to analyse further the materials deposited in escrow:</p> <p><b>Licence Compliance Management (LCM)</b> analysis, which will:</p> <ul style="list-style-type: none"> <li>• determine what open source and other code re-use occurs in the materials deposited and the licences used by this code</li> <li>• validate IP ownership warranties</li> <li>• ensure that all code complies with the Open Source policy and licence obligations</li> </ul> <p><b>Code Quality Management (CQM)</b> analysis, which will undertake static code quality analysis to validate the code against SQS’s proprietary coding standards database. This ensures:</p> <ul style="list-style-type: none"> <li>• code maintainability and sustainability</li> <li>• security</li> <li>• performance</li> </ul>





Established in 1996,  
BigHand has been at  
the forefront of voice  
technology for over  
10 years...



## Case study

Intellect Enterprises & SQS Software Escrow & Source Code Validation Solutions provides peace of mind for BigHand's customers

### Background

Established in 1996, BigHand has been at the forefront of voice technology for over 10 years. With a reputation for excellence and innovation, BigHand has worked hard to become the legal market leader and now supplies digital dictation software across the UK and Ireland, North America, Australasia, Europe and South Africa.

A Sunday Times Tech Track 100 company backed by LDC, the private equity division of the Lloyds TSB Group, BigHand is one of the fastest growing software companies in the world. Globally, over 800 firms and companies use their software, and a recent survey revealed that over 50% of the top 250 UK law firms using digital dictation have implemented BigHand software.

BigHand is a next-generation voice productivity package that pushes the boundaries of digital dictation workflow technology. It has won multiple awards over its 10-year history and was voted 'Mobile Product of the Year 2008' at the CNet Business Technology Awards for the system's BlackBerry edition.

### The challenge

As part of its complete digital dictation solution and dedication to customer needs, BigHand wanted to ensure that its customers could take advantage of a pre-packaged and independently validated software agreement. This would allow BigHand's customers to fulfil part of their IT governance obligations as quickly and cost effectively as possible.

### Our solution

Intellect Enterprises and SQS were able to tailor an escrow solution that met BigHand's requirements exactly. BigHand decided to opt for Intellect Enterprises' Insolvency Terms of Business, which are written by a leading commercial law firm.

BigHand knew that it was important for its customers that the materials it was depositing in escrow had been checked to ensure they could be used to produce the BigHand Digital Dictation product CD.

With help and input from BigHand's application development team, SQS carried out a Silver source code validation service, including an independent build of the BigHand Digital Dictation application from the materials deposited in escrow. This reassures BigHand customers that, if a release event occurred, they would have access to the complete source code needed to build the Digital Dictation software.

SQS's Silver service included:

- determining and validating the applications, files and third-party tools needed to build the application
- a complete build of the application with the above tools, in an independently verified environment
- validation that the resulting files matched the contents of the BigHand Digital Dictation product CD
- a detailed report summarising the results of the validation and the additional tools needed to build the software

“The escrow and validation solution that Intellect Enterprises and SQS provide is an efficient and cost-effective way for us to ensure BigHand customers get the legal peace of mind they need, and differentiates us from competitors who don't offer that level of investment security.”

Simon Lewis, CTO, BigHand

#### **How our service benefited BigHand and their customers:**

- BigHand's customers are assured of access to the source code if there is a release event
- BigHand can win more customers by including a cost-effective escrow agreement from Intellect as part of its Digital Dictation solution
- the validation process and report from SQS reassure customers that BigHand's escrow materials are complete and fit for purpose
- thanks to the report, BigHand's customers know from the start which third party applications and tools they will need to rebuild the entire application if there is a release event
- SQS's recommendations meant that additional files and tools were deposited in escrow, creating extra protection for BigHand's customers



## Frequently asked questions

### Is the Intellect Enterprises escrow service approved for government contracts?

Our escrow service meets the requirements of the new Government Framework Agreement and is backed by one of the UK's leading law firms. Intellect members who are involved with public sector contracts have been using our escrow service over the past 10 years.

### Does Intellect Enterprises carry out tests to determine whether the source code is useable?

Under our Insolvency terms of business and Flexible terms of business we do not carry out testing. However, we do offer a source code validation testing service. See pages 12-13 for our range of validations options.

### Why should I test the source code?

If a "release event" occurs and the source code is released, the end user needs to be sure that it really is useable. Escrow validation ensures that the source code, plus any other supporting material which has been deposited into escrow, will produce the software that the end user expects.

Testing the source code as part of validation gives the end user confidence and peace of mind, and assures the value of the escrow agreement.

### Can the escrow contract be transferred?

Yes, with the consent of all the parties involved. For further details, please contact our Escrow Team on 020 7331 2195.

### What can an end user do with the source code once it has been released?

The end user is entitled to use the source code only to maintain their software application. They may not copy it, remove copyright notices, sub-licence it to other people, use it to create a product or offer a service to another company. However, the end user can be granted other rights. For further options, see our Flexible terms of business.

### If the software owner breaches their maintenance obligations, will the source code be released?

Yes, but only if you have included this potential release event by ticking the relevant box in our Flexible terms of business.

### What triggers a release event of the source code?

For insolvency contracts the software owner's insolvency triggers release. In the flexible contracts you can choose your release events from a range of options.

### Where is the source code stored?

The source code is stored in a secure media storage facility, away from our Intellect Enterprise offices. To ensure the code's safety, the vaults are equipped with advanced air conditioning units to control the temperature and humidity, as well as the latest technology in fire suppression. The premises are also protected by permanently monitored intruder alarm systems.

## Frequently asked questions (continued)

### Can the terms of business be changed to meet my customer's requirements?

Yes, for a small fee we can customise the Insolvency and Flexible terms of business.

### Is Intellect Enterprises software escrow available to non-Intellect members?

Yes. Our service is available to all companies, not just Intellect members.

### When is Software Escrow not appropriate?

Intellect Enterprises is committed to giving you and your clients the best possible value and service. As a result, we are prepared to turn away business if we do not think our software escrow service is the appropriate solution.

In recent times 'software escrow' has become a buzz phrase in software contracts. However, as the market has expanded, software escrow has at times been oversold.

In certain circumstances, software escrow is not appropriate (either wholly or partially). For example:

- if the software in question is relatively low value, and simply changing to another similar software application would be economical and convenient. In this case, the cost of simply switching suppliers would probably be much less than the cost of the end user attempting to rebuild or support the software with the source code.
- if the end user is using hosted software (including application service providers, or ASPs). Where an end user receives 'software as a service' or accesses the software remotely (eg, via the internet through a web-browser), it could be extremely complicated to bring software maintenance in-house. This would mean switching from a hosted model to a local model, which would involve investments in technical infrastructure, as well as reconfiguring (and potentially re-writing) the software. As a general rule, hosted software access fees tend to be lower than local software licence fees, so this situation is also included in the low value/easy to switch situation described in the point above.
- if there is complex system integration, managed service, or outsourcing contracts where one party (the prime contractor) takes responsibility for developing, implementing, and managing a software solution that covers a wide range of third-party software applications. In these cases the third parties are rarely willing to deposit their source code in escrow; if they do agree, they will probably request a Staggered Contract (see page 14). Unless all the third parties deposit their source code, the end user will receive little or no benefit from the service. Even 50% of the total number of source code would deliver just 1% of the value to the end user. Also, even if all the third parties have agreed to deposit their source code, the end user needs to balance the costs of attempting to manage multiple software applications against the cost of re-tendering the services and appointing a new supplier.

An end user may take the view that software escrow 'is worth asking for, even if it is not entirely appropriate'. We disagree. If end users are paying the fees themselves, they may be wasting money. If the software owner is paying the fees then the end user will be paying indirectly through licence fees or maintenance fees.

## How to transfer to Intellect Enterprises Software Escrow

If you already use an escrow service and want to take advantage of all the extra benefits of Intellect Enterprises software escrow, including savings of up to 70%, then why not switch to our fully managed service at no extra cost? Intellect Enterprises will take responsibility for terminating your existing contracts and transferring end users at agreed intervals.

Just call us on T **020 7331 2195** or fill out the relevant sections in the escrow order form. One of our team will be delighted to contact you and arrange the transfer.

## How to order Intellect Enterprises Software Escrow

1. Choose one of the terms of business. These terms list the details of the contract between Intellect Enterprises, the end user and the software owner, so if you want to make any changes to the Terms you need to arrange this before signing the order form.
2. Complete the escrow order form and send it to us with a copy of your source code.

We will respond within three working days. If we accept your order, we will then draw up a binding contract with you.

We look forward to doing business with you and should you need any further information, please contact us at [E\\_escrow@intellectenterprises.co.uk](mailto:E_escrow@intellectenterprises.co.uk)



## Testimonials

“Intellect Enterprises’ Escrow service is fundamental to ediTRACK’s success in providing software as a service (SaaS) applications in the Retail and Insurance markets.”

**David Neale, Head of Sales, ediTRACK**

“Intellect Enterprises provide an invaluable service that is central to our business: they provide our clients with the peace of mind they require in this turbulent economic time.”

**James Cotton, eBusiness Director, CMO COMPLIANCE**

“Microdec have been members of Intellect for many years and have always found their Software Escrow Service to be prompt and professional, which is essential when dealing with our clients.”

**Mark Bowyer, Business Development & Marketing Director, Microdec Plc**

“Sollis were requested by a key customer to Escrow their software as part of the completion phase of a major project. Following an extensive investigation of the solutions available, Sollis chose Intellect as their Escrow partner. The main reasons for choosing Intellect were:

Flexible approach - eg, the ability to upgrade from single to multiple user agreements or to have a customised agreement if required; Simplicity of the process; Price, particularly when discounts for members were taken into account; and a ‘soft sell’ approach. The whole process was completed in less than one week.

In addition to the many other benefits we get from our membership Intellect’s Escrow service has proved to be a cost effective and easy to use process which has more than met both ours and our customer’s expectations. I would strongly recommend the service to other SMEs and the cost savings involved, compared to other solutions, will on their own go a long way to paying back the membership fees.”

**Jeremy Rolls, Business Development Director, Sollis**

“We are very pleased with Intellect Enterprises’ software escrow service, which is simple to operate and competitive.”

**Mark Chapman, Managing Director, StaffPlan**

“Intellect Enterprises software escrow service has proved invaluable. It is simple to use, professionally run and with the added benefit of being one of the most cost effective on the market - delivering genuine value to both us and our customers.”

**Robert Suttie, Informavores**



Intellect Enterprises  
Russell Square House  
10-12 Russell Square  
London  
WC1B 5EE

T 020 7331 2195  
F 020 7331 2040  
E [escrow@intellectenterprises.co.uk](mailto:escrow@intellectenterprises.co.uk)  
W [www.intellectenterprises.co.uk](http://www.intellectenterprises.co.uk)



**intellect**  
ENTERPRISES LTD

Intellect Enterprises  
Russell Square House  
10-12 Russell Square  
London  
WC1B 5EE

T 020 7331 2195  
F 020 7331 2040  
E [escrow@intellectenterprises.co.uk](mailto:escrow@intellectenterprises.co.uk)  
W [www.intellectenterprises.co.uk](http://www.intellectenterprises.co.uk)

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