



هيئة الاتصالات والفضاء والتقنية
Communications, Space &
Technology Commission



Software Escrow Guideline

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01- Introduction

The Communications, Space & Technology Commission is responsible for regulating the communications and information technology sectors in the Kingdom of Saudi Arabia in accordance with law of the Communications and Information Technology issued by Cabinet Resolution No. 592 dated 01/11/1443 AH, and approved by Royal Decree No. M/106 dated 02/11/1443 AH. CST issues regulatory frameworks, rules, restrictions, procedures and licenses based on market developments, technologies and services in accordance with its powers from time to time to help improve markets and raise the maturity of services provided to final beneficiaries. In accordance with its law amended by Cabinet Resolution No. (133) dated 12/05/1424 AH, which entrusted it to perform regulatory tasks for the information technology sector as it stipulates that the CST shall implement approved policies, plans and programs for the development of information technology and establishes appropriate procedures therefor. Accordingly, CST has developed the Software Escrow Guideline, which aims to ensure business continuity for beneficiaries in addition to increasing beneficiaries' confidence in local software developing companies. The guidelines include an explanation of the concept of software Escrow and guides that can be followed by software Escrow service providers. This guideline is intended as a reference guide and does not replace any regulations, procedures, standards, rules, instructions, or directives issued by CST or other relevant government entities under a regulatory decision. Under no circumstances does it serve as a reference for any procedures or legal responsibilities applicable to the individuals or parties concerned.



02- Scope of the Guideline

This document may benefit any natural or legal person engaged in the software industry in the Kingdom of Saudi Arabia or benefiting from it, including those seeking software escrow services or acting as a software escrow agent.



03- Definitions

The terms and expressions defined by the act and its executive bylaw have the same meanings when used in this guideline. The following terms and expressions shall have the meanings indicated next to them as follows, unless the context requires otherwise:

3-1 ▶ Computer Software or Digital Applications

A set of commands and instructions expressed in any language, symbol or sign, and which take any form. They can be used directly or indirectly in a computer to perform a function or achieve a result, whether these commands are in their original form or in any other form in which they appear through the computer, which includes the set of documents and exhibits attached and related to the computer program. This software can be cloud-based, accessed over a network, installed on computers or tablets, or embedded, such as in connected vehicles, medical devices, or more.

3-2 ▶ Software Escrow Account

A process in which two parties agree to participate in a transaction, by using an agreed upon independent third party as a guarantor (Software Escrow Agent) to hold assets, including source code and supporting documentation, which are transferred until the parties' obligations are fulfilled.

3-3 ▶ Software Escrow Agent

An independent legal person, a “third party”, that provides safe preservation services for the source code of software, applications, or working methods and algorithms used and all their technical documents, while ensuring that they work properly in accordance with the terms and conditions specified in the escrow agreement.

3-4 ▶ Software Escrow Agreement

An agreement concluded between the software developer and beneficiary, which contains a set of terms and conditions for ensuring the preservation and delivery of programs, source code, documents and technical documentation, and methods and methods of work. So that the beneficiary has access to the source code of the program in light of the conditions specified therein.

3-5 ▶ Software Developer

The software developer, which makes the initial deposit of the source code and other deposit materials, and provides the escrow agent with all Escrows necessary to verify the code, software, and technology provided, in addition to the deposit of encryption keys in the event that any part of the deposit materials is encrypted, and any updates in accordance with the software escrow agreement.

3-6 ▶ Source Code

The written commands and instructions in a programming language that make up any computer software.

3-7 ▶ Beneficiary

The party that requests escrow services from the software escrow agent, and agrees to its terms and conditions, in light of the scope of the required services specified in the Software Escrow agreement or agreement.



04- Advantages of Software Escrow Services

01 ____

Protection of computer software and digital applications, as well as the interests of the software developer, the beneficiary, and the companies that purchase the developer's products or subscribe to their services.

02 ____

Providing a competitive advantage to the escrow agent and the software developer during negotiations with beneficiaries, as the agreement is considered one of the enablers for sales.

03 ____

Enhancing the credibility of the software developer with beneficiaries and positioning them on equal footing with leading companies and larger competitors.

04 ____

Enabling the enforcement and protection of intellectual property rights.

05 ____

Ensuring business continuity and reducing the risk of disruption or harm to the beneficiary, whether due to bankruptcy, discontinuation of technical support, or other reasons.

06 ____

Ensuring the legal right to update and maintain the core components of digital applications or software, which may also include meeting certain legal requirements by demonstrating due diligence.



05 - How Software Escrow Works

Software escrow system operates, as illustrated in Figure 1, by establishing a tripartite agreement between the beneficiary, the software developer, and the escrow agent. Under this agreement, the software developer identifies the materials to be deposited (deposit materials) with the escrow agent, which may include computer software, source code, and all related technical documents and documentation. The escrow agent, acting as a neutral third party, is responsible for securely holding the software and ensuring its reliability and functionality. The agent will release the software to the beneficiary only under specific conditions outlined in the agreement.

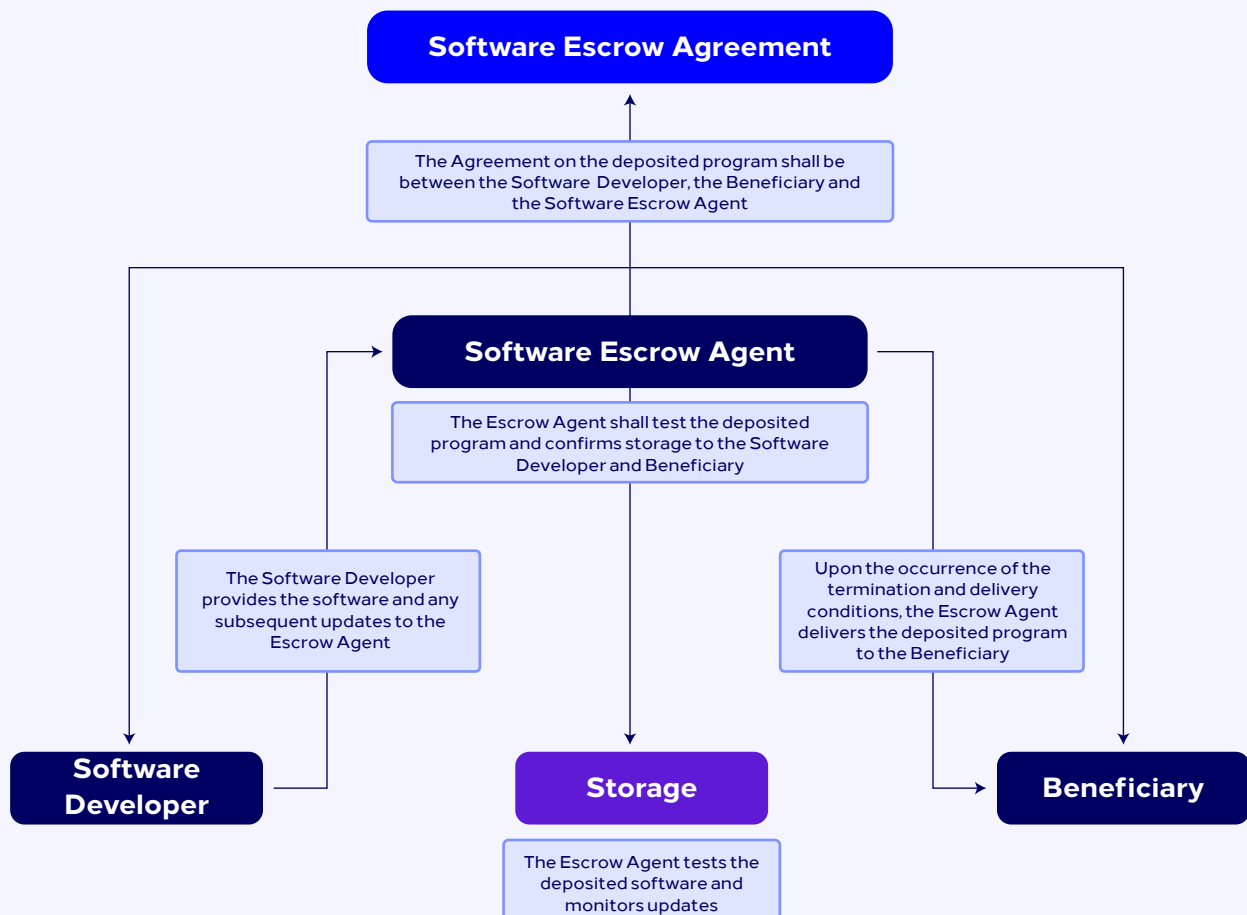


Figure 1: Software Escrow system block diagram

► 5.1 - Key Software Escrow Activities

Figure 2 illustrates the main activities of the software escrow process, which consist of five (5) key activities: starting with the signing of the agreement, followed by the delivery of the software and source code, its verification and periodic updates, and ending with the release mechanism to the beneficiary. These activities contribute to protecting and enhancing the reliability of software solutions.

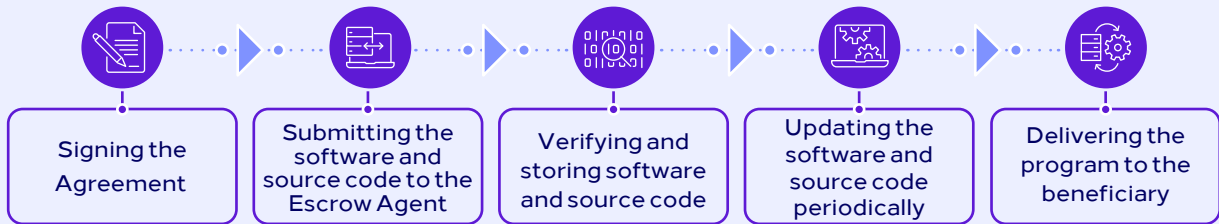


Figure 2: Diagram of Software Escrow Activities

5-1-1 Signing a Software Escrow agreement with the Software Escrow Agent

The beneficiary and the software developer communicate with the escrow agent to agree on the key terms of the escrow, such as the purpose of the agreement, the technical materials included, the release conditions, and the agreement fees, followed by the signing of the agreement.

5-1-2 Submitting the computer software and source code and the rest of the technical materials to the Escrow Agent

After signing the agreement, the software developer delivers the software, source code, documentation, and any other supporting technical materials to the escrow agent through the delivery methods specified in Section 5-3 of this document.

5-1-3 Verifying and saving the computer software and source code securely

After the software is deposited, the escrow agent tests it to verify its integrity and operability in accordance with the terms agreed upon by the software developer and the beneficiary, and then securely stores it.

5-1-4 Updating the software deposited under Escrow

The software developer periodically provides updates of the deposited software to the escrow agent in accordance with the agreement.

5-1-5 Delivering the deposited program to the beneficiaries

If a release condition is met, the escrow agent delivers the deposited software to the beneficiary. However, if the agreement ends without the occurrence of a release condition, the software, source code, and technical materials are either returned to the software developer or destroyed, in accordance with the terms of the agreement.

► 5.2 - Summary of roles and responsibilities of relevant parties

Activity/ Role	Escrow Agent	Beneficiary	Software Developer
Signing the Agreement	Drafting the draft agreement and sharing it with the beneficiary and the software developer	Reviewing and signing the agreement	Reviewing and signing the agreement
Submitting the Source Code to the Escrow Agent	Receiving the source code from the software developer and confirming receipt to the beneficiary and the software developer	-	Sharing source code and supporting documentation with the escrow agent
Verifying and storing source code	Confirming that verification and testing operations are carried out according to the escrow agreement and sharing the results with the beneficiary and the software developer	Reviewing and confirming the results of verification and testing operations according to the escrow agreement	Providing any necessary information during the verification and testing process
Updating the source code periodically	Receiving the source code and notify the beneficiary of receipt	-	Sharing updates to the source code as per the escrow agreement
Delivering the program to the beneficiary	Verifying the delivery and termination conditions according to the escrow agreement and delivering the source code and technical materials to the beneficiary if applicable	Notifying the escrow agent and the software developer if the beneficiary wishes to receive the source code and technical materials when the delivery and termination conditions are met	-

► 5.3 - Mechanism for Transferring and Delivering Software

The software developer transfers and delivers the agreed-upon software, source code, and supporting technical documentation specified in the agreement either via the internet using specialized applications that support secure delivery, or through offline methods such as postal service or manual handover.



06 - Mechanism for Ensuring and Preserving the Deposited Program

The escrow agent makes sure that the deposited software and source code is correct, complete, and can be rebuilt in the working environment. For this reason, the escrow agent can perform many verifications and testing activities for the software as agreed upon with the beneficiary, which can include but not be limited to the following:

- Reviewing the deposited source code and ensure that the source code is accessible and free of any viruses.
- Comparing the deposited source code with what is stipulated in the Escrow agreement and ensure that all correct files are delivered in the deposited materials.
- Reviewing program documents and ensuring the comprehensiveness of the documents.
- Conducting software testing including assembly testing, functionality testing, escrow testing, performance testing, and simulated release testing.



07 - Examples of Termination and Delivery Conditions

The occurrence of a termination and delivery condition entitles the beneficiary to receive the technical materials agreed upon (software and others) in the agreement. The following are some examples of termination and delivery conditions used in escrow agreements:



The software developer has stopped maintaining the program for the beneficiary if he commits to maintenance.



The software developer has stopped working on the program.



Low level of quality of the developed program.



The software developer defaults or goes bankrupt.



Buying or merging the developed company by a competitor of the beneficiary.



08 - Role of the Software Developer

- 8-1 ▶ Performing full and functional submission and deposit of all proprietary technologies and other materials covered by the agreement, including copies of the software, all related information, codes, and documents, along with a detailed technical description of each, to support the beneficiary's request and assist the escrow agent in fulfilling the required services.
- 8-2 ▶ Authorizing and appointing one or more individuals to manage the account with the escrow agent during the term of the agreement or agreement, specifying their role, personal details, and contact information.
- 8-3 ▶ Ensuring that all materials deposited with the escrow agent are updated according to the schedule attached to the agreement or in line with the updates made by the software developer to the software and its technical solutions.
- 8-4 ▶ Approving the escrow agent to perform any level of verification chosen or specified by the beneficiary.
- 8-5 ▶ Legally acknowledging ownership of all depositable materials submitted to the escrow agent under the agreement, and confirm that such materials are free from any third-party legal claims or obligations as of the date of deposit.
- 8-6 ▶ Notifying the escrow agent and the beneficiary of any liens or encumbrances established after the deposit, provided that such liens or encumbrances do not restrict, prohibit, or alter the rights of the escrow agent and the beneficiary as set forth in the agreement.
- 8-7 ▶ Ensuring that the escrow agent's use of the deposit materials or any other materials provided for the purpose of performing verification services is lawful and does not infringe on the rights of any third parties.
- 8-8 ▶ Agreeing to cooperate with the escrow agent by providing technical personnel and the necessary technical resources for verification services whenever reasonably required, provided that such services do not materially interfere with the software developer's operations.
- 8-9 ▶ Providing clear information to the beneficiary and the escrow agent regarding all matters related to the software, source code, and other technical materials, such as the development timeline and associated updates.



09- Role of the Beneficiary

- 9-1 ▶ Acknowledging that they requested verification services from the escrow agent, and agrees to use the escrow agent in accordance with the terms and conditions of the escrow agreement.
- 9-2 ▶ Appointing one or more individuals to manage their account with the escrow agent, with the right to monitor compliance between the software developer and the escrow agent.
- 9-3 ▶ Ensuring that any materials submitted to the escrow agent do not violate the rights of any other party.



10 - Role of the Software Escrow Agent

- 10-1 ▶ Agreeing to provide the services requested by the software developer or the beneficiary and commit to the terms and conditions set forth in the agreement. The escrow agent has the right to partially or fully refuse to perform the service if all required information is not provided at any time, subject to notifying the party that requested the software escrow service.
- 10-2 ▶ Exerting necessary care when receiving deposit materials under the escrow agreement and performing the services specified therein, in particular verifying the materials submitted thereto, and all information and technical documents related to them and conducting tests that ensure the effective use of the Escrow agreement.
- 10-3 ▶ Providing a suitable digital environment for the deposited materials that is compatible with them, and comply with the security, reliability, data protection, and privacy standards in force within the Kingdom as a minimum requirement.

- 10-4 ▶ Conducting full usability testing to ensure uploaded materials and updates work properly.
- 10-5 ▶ Submitting a detailed report to the parties explaining the storage environment for the deposited materials, the steps that were implemented to test those materials, and the problems encountered during the testing and deposit process.
- 10-6 ▶ Storing and protecting all deposit materials either in physical or electronic vaults that are owned and directly controlled by the escrow agent.
- 10-7 ▶ Reserving the right not to implement the beneficiary's instructions in the event that those instructions violate the terms and conditions of the escrow agreement.
- 10-8 ▶ Delivering all deposited materials to the beneficiary upon the fulfillment of the required delivery terms and conditions.
- 10-9 ▶ If the beneficiary provides written notice to the escrow agent to deliver all deposited materials to the software developer upon the fulfillment of the agreement's purpose, neither party to the agreement shall have the right to hold the escrow agent liable in the event the agent destroys all deposited materials in their possession after the expiration of the destruction period specified in the agreement.
- 10-10 ▶ Protecting the confidentiality of the deposited materials and not making them available or disclosing them or disclosing the terms of their escrow agreement to any other party.
- 10-11 ▶ Concluding agreements for the provision of Escrow services, whether bilateral agreements between the Escrow agent and the beneficiary or tripartite agreements according to each case.
- 10-12 ▶ Notifying the beneficiary without undue delay, of any security or reliability incidents – including data breaches – that they become aware of and that affect or are likely to affect the beneficiary's content or data.
- 10-13 ▶ Providing clear and transparent information to beneficiaries to help them make decisions regarding information related to the product or service, information related to price, or information related to data protection.
- 10-14 ▶ The escrow agent does not add services or make any changes to the services provided to the beneficiaries except after obtaining their prior express approval. Any additional fees charged for services not approved by the beneficiary will be returned. Such as additional testing and filing services that incur other fees.



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