

# **ISTQB**

## **Affiliate and Non Disclosure Agreement**

Version 2009 – 3

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International Software Testing Qualifications Board

This Agreement is made on \_\_\_\_\_ between the International Software Testing Qualification Board hereinafter referred to as ISTQB and \_\_\_\_\_, hereinafter referred to as “Affiliate, I or me.”

## 1. Services to be performed

I agree to serve on the ISTQB as an Affiliate. In that capacity, I will perform various roles related to the ISTQB's goals, including, if elected, serving as a member of ISTQB working groups or an officer of the ISTQB.

As an Affiliate I agree to recognize and abide by the ISTQB's Constitutions, Policies, rules, and regulations.

### Definition:

**Affiliate** Any individual who agrees to work with or for the ISTQB.

## 2. Term of Agreement

This Agreement is effective for the length of my term as an Affiliate of the ISTQB unless either party terminates the Agreement in accordance with the provisions set for in the "Terminating the Agreement" section.

## 3. Intellectual Property Ownership

### 3.1 Object

#### 3.1.1. Assignment of Intellectual Property Rights

The Affiliate shall assign to ISTQB all its Intellectual Property Rights, Titles and Interests in any work, patentable inventions and discoveries, ideas, improvements, know-how, trade secrets, confidential information and other intellectual property elements he/she has created or developed specifically for ISTQB.

#### 3.1.2. Moral Rights Waiver

The Affiliate shall expressly waive all his/her moral rights and other similar rights on previous works, patentable inventions and discoveries, ideas, improvements, know-how, trade secrets, confidential information and other intellectual property elements he/she has created or developed specifically for ISTQB.

#### 3.1.3. Nature of the Rights Conferred

The Intellectual Property Rights, Titles and Interests conferred by the Affiliate upon ISTQB pursuant to this Agreement shall include the following rights, without limitation:

- a) the right to use;
- b) the right to modify, including the right to improve, translate and re-write into another language or in another manner;

- c) the right to adapt;
- d) the right to integrate and incorporate into any existing or future work;
- e) the right to exploit;
- f) the right to grant licences and sub-licences;
- g) the right to perform;
- h) the right to distribute and cause the distribution;
- i) the right to broadcast;
- j) the right to communicate to the public by telecommunication;
- k) the right to perform in public;
- l) the right to reproduce;
- m) the right to transfer to another environment (hardware, software, computer, electronic, Web, multimedia or other);
- n) the right to register all Intellectual Property Rights, Titles and Interests;
- o) the right to institute legal proceedings, continue legal proceedings and defend oneself against legal proceedings in order to assert or defend all or part of the rights conferred pursuant to this Agreement;
- p) the right to collect all income, royalties, damages, claims, amounts awarded pursuant to a judgment and payments; and
- q) the right to sell, give, assign or otherwise transfer.

#### 3.1.4. Duration of the Rights Conferred

The Intellectual Property Rights, Titles and Interests conferred by the Affiliate upon ISTQB pursuant to this Agreement shall remain in effect for the entire period of protection afforded at law.

#### 3.1.5. Geographical Scope of the Rights Conferred

The Intellectual Property Rights, Titles and Interests conferred by the Affiliate upon ISTQB pursuant to this Agreement shall be valid world-wide.

## 3.2 Specific provisions

### 3.2.1. Intellectual Property

#### 3.2.1.1 Definitions

For purposes of this Agreement “**Intellectual Property Right, Title and Interest**” shall include, without limitation, any intellectual property right, title and interest, including any derivative right, moral right and personal right, in and to the following:

- a) any work, invention, trademark, industrial design, integrated circuit topography, confidential information or trade secret, as the case may be;
- b) any certificate which registers, grants or acknowledges ownership or interests in any of the intellectual rights in question; and
- c) any request for the registration, granting or acknowledgement of ownership or interests in any of the intellectual property rights in question.

#### 3.2.1.2 Specific undertakings of the Affiliate

The Affiliate undertakes as follows in favour of ISTQB:

- a) it shall not, directly or indirectly, contest, usurp or infringe any of the Intellectual Property Rights, Titles and Interests contemplated in this Agreement, nor shall it participate in or facilitate the commission of such acts;
- b) it shall not claim any right or interest in or to the income or profits eventually arising from the activities of ISTQB.

### 3.2.1.3 Specific undertakings of ISTQB

ISTQB recognize that the Affiliate may incorporate certain skills, products, inventions, trade secrets, business methods and other intellectual property owned or controlled by them. The Agreement shall not diminish or interfere with the Affiliate's right or their ability to enjoy the use of such intellectual property.

### 3.2.2 Representations and Warranties of the Contributor

The Affiliate represents and warrants as follows in respect of work products created or developed specifically for ISTQB:

- a) its Intellectual Property Rights, Titles and Interests are not contested, in whole or in part, by anyone whomsoever at the time of signing of this Agreement;
- b) it is the only one responsible for the validity of its Intellectual Property Rights, Titles and Interests;
- c) it is not a party to any agreement which is likely to affect the Affiliate's Intellectual Property Rights, Titles and Interests.

## 3.3 General provisions

Unless otherwise stated in this Agreement, the following provisions shall apply.

### 3.3.1 "Force Majeure"

Neither Party shall be considered to be in default pursuant to this Agreement if the fulfillment of all or part of its obligations is delayed or prevented due to "force majeure". "Force majeure" is an external unforeseeable and irresistible event, making it absolutely impossible to fulfill an obligation.

### 3.3.2 Severability

If all or part of any section, paragraph or provision of this Agreement is held invalid or unenforceable, it shall not have any effect whatsoever on any other section, paragraph or provision of this Agreement, nor on the remainder of the said section, paragraph or provision, unless otherwise expressly provided for in this Agreement.

### 3.3.3 No Waiver

Under no circumstances shall the failure, negligence or tardiness of a Party as regards the exercise of a right or a recourse provided for in this Agreement be considered to be a waiver of such right or recourse.

### 3.3.4 Cumulative Rights

All rights set forth in this Agreement shall be cumulative and not alternative. The waiver of a

right shall not be interpreted as the waiver of any other right.

### 3.3.5 Entire Agreement

This Agreement constitutes the entire understanding between the Parties. Declarations, representations, promises or conditions other than those set forth in this Agreement shall not be construed in any way so as to contradict, modify or affect the provisions of this Agreement.

### 3.3.6 Amendments

This Agreement shall not be amended or modified except by another written document duly signed by all the Parties.

### 3.3.7 No Right to Transfer

Neither of the Parties may, in any manner whatsoever, assign, transfer or convey its rights in this Agreement to any third party, without the prior written consent of the other Party.

### 3.3.8 Counterparts

Each counterpart of this Agreement shall be considered to be an original when duly initialled and signed by all the Parties.

## 4. Confidentiality and Non Disclosure

### 4.1 Confidential information

I acknowledge and agree that during the term of my affiliation with the ISTQB, I will learn, obtain, acquire, and become aware of (herein 'acquire') information and items, and may in the future acquire non-public information and items, relating to or concerning ISTQB or any of its affiliates. I further acknowledge and agree that all such information and items described in the foregoing sentence that I acquire during the term of affiliation is private and confidential and that it is exclusively owned and controlled by ISTQB (herein collectively referred to as 'Confidential Information').

### 4.2 Agreement not to disclose

I expressly agree that I shall not, except

- to my attorney or accountant,
- as otherwise required of me by law,
- in order for me to perform the services required of me with respect to my affiliation,
- as authorized by ISTQB in writing or
- if previously disclosed publicly by or on behalf of the party about whom the Confidential Information pertains

directly or indirectly, verbally or otherwise, both during and after the term of my affiliation with ISTQB (with a maximum period of 5 years – see article 4.7), publish disseminate, disclose or cause to be published, disseminated or disclosed (herein 'disclosure') any Confidential Information to any person, firm or entity whatsoever, including, but not limited to,

newspapers, periodicals, magazines, publications, television stations, radio stations, publishers, electronic communications (such as Weblogs, email, or discussion lists), voice conversations or messages, and any other enterprise involved in the print or electronic media, including individuals working directly or indirectly for, or on behalf of, any of said entities (herein 'Third Parties').

#### 4.3 Disclosure is wrongful

I acknowledge that any disclosure by me to any Third Party of any Confidential Information shall constitute a breach of the terms of my affiliation, and shall constitute a breach of trust and confidence, and a misappropriation of ISTQB's exclusive property rights.

#### 4.4 Property rights

I acknowledge ISTQB's substantial and valuable property rights and other proprietary interests in ISTQB's exclusive possession, ownership and use of the Confidential Information acquired by me during my affiliation by ISTQB. I agree to return to ISTQB all tangible confidential information in my possession or control upon ISTQB's demand and, in any event, within 3 days of the conclusion of my affiliation.

#### 4.5 Injunctive relief

I acknowledge and agree that any disclosure by me to Third Parties of any confidential information will cause irreparable harm to ISTQB, which damages and injuries will not be measurable or susceptible to calculation. I further acknowledge and agree that any breach or threatened breach of the Agreement due to the unauthorized disclosure or threatened disclosure by me to Third Parties of any confidential information shall entitle ISTQB to obtain an *ex parte* restraining order, preliminary injunction and permanent injunction (herein 'Injunctive Relief') preventing the disclosure, or any further disclosure, of Confidential Information protected by the terms hereof.

#### 4.6 Severability

If any term or provision of this Confidentiality Agreement is inconsistent with any law, statute or regulation, or is invalid or unenforceable for any reason, such a term or provision shall be deemed curtailed and limited to the extent necessary to achieve consistency, validity or enforceability, as the case may be, but such term or provision shall only be so curtailed and limited to the extent necessary to achieve the same, and the balance of this Confidentiality Agreement shall remain in full force and effect.

#### 4.7 Duration of obligations

The confidentiality and non-disclosure obligations and responsibilities of the parties shall survive the termination of this Agreement, for a maximum period of 5 years.

## 5. Conflict of Interest

I understand that the purpose of the ISTQB Conflict of interest policy (latest version available from Governance) is:

- to protect the integrity of ISTQB's decision-making process
- to enable the world to have confidence in our integrity
- to protect the integrity, professionalism and reputation of all board Affiliates

I will make an annual full, written disclosure of interests, relationships and holdings that could potentially result in a conflict of interest. This written disclosure will be kept on file and I will update it as appropriate.

In the course of meetings or activities, I will disclose any interests in a transaction or decision where I (including my business or other non-profit affiliation), my family and/or my significant other, employer or close associates will receive a benefit or gain. After disclosure, I understand that I will be asked to leave the room for the discussion and will not be permitted to vote on the question.

I understand that the policy is meant to be a supplement to good judgment, and I will respect its spirit as well as its wording.

## 6. Indemnification

ISTQB shall indemnify and hold harmless its Affiliates, officers, administrators, agents and employees from and against any and all claims, demands, actions or other forms of liability that arise out of or by reason of any action taken or not taken by the me for the purpose of complying with the provisions of this agreement.

## 7. Terminating the Agreement

With reasonable cause, either party may terminate this Agreement effective immediately by giving written notice of termination for cause. Reasonable cause includes:

- A material violation of this Agreement;
- Failure by Affiliate to participate in ISTQB activities or to perform mutually agreed-upon roles;
- Any act by Affiliate that undermines the credibility or integrity of the ISTQB;
- Any act exposing the other party to liability to others for personal injury or property damage.

In addition, either party may terminate this Agreement without cause at any time with appropriate action by the ISTQB, by given a written notice with a delay of three months.

## 8. Exclusive Agreement

This Agreement is the entire Agreement between the affiliate and the ISTQB.

## 9. Applicable law

The laws of Belgium will govern this Agreement.

## 10. Notices

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

- when delivered personally to the recipient's address as stated on this Agreement;
- upon receipt of a return receipt indicating delivery to recipient;
- when sent by fax to the fax number of the recipient, and receipt thereof is confirmed
- by email, when the recipient sends a return receipt or responds directly to the message

Fax numbers are as follows

- |                     |               |
|---------------------|---------------|
| • For the Affiliate | For the ISTQB |
| • .....             | N/A           |

Email addresses are as follows

- |                     |  |
|---------------------|--|
| • For the Affiliate | For the ISTQB                                      |
| • .....             | <a href="mailto:info@istqb.org">info@istqb.org</a> |

Both parties to this agreement will notify each other of any change in contact details.

## 11. Assignment

The Affiliate may not assign or subcontract any rights or delegate any duties under this Agreement without ISTQB's prior written approval.

## 12. Partnership

This Agreement does not create a partnership relationship. Neither party has authority to enter into contracts on the other's behalf, unless I am currently an officer on the Executive Committee of the ISTQB, or am authorised by the General Assembly.



### 13. Integration

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and there are no terms other than those contained herein. No supplement, modification or termination of this Agreement shall be deemed valid unless executed in writing after the date hereof by the parties hereto.

### 14. Voluntary Agreement

I have entered into this Agreement freely and voluntarily, and acknowledge that I either consulted with independent counsel before entering into this Agreement, or had the opportunity to do so, but elected not to.

### 15. Signatures

This Agreement is executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**Affiliate**

Signature \_\_\_\_\_

Print Name \_\_\_\_\_

**for ISTQB**



Signature \_\_\_\_\_

Print Name Yaron Tsubery - President

**for ISTQB**

Signature \_\_\_\_\_

Print Name \_\_\_\_\_