

ISTQB Affiliate and Non Disclosure Agreement

Version 2013-1

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 (see Appendix A at the end of this document) is to encourage transparency in our decision making:

- 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

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
info@istqb.org |
|------------------------------|---|

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 Mr Gualtiero Bazzana

for ISTQB

Signature



Print Name Mr Geoff Thompson

Appendix A

APPENDIX A

ISTQB Conflict of Interest Policy

Version –2013-1

International Software Testing Qualifications Board

1. Purpose

The purpose of the conflict of interest policy is to encourage transparency in our decision making which will protect the interests of ISTQB when contemplating entering into a transaction or arrangement that might benefit the private interest of an affiliate of ISTQB or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable local laws governing conflict of interest applicable to non-profit and Charitable organizations.

Conflict of Interest in ISTQB depends entirely on individual honesty and trust, in most instances any non-declaration of conflict of interest should be seen as a mistake by the individual rather than a deliberate act. Repetitive abuse of this policy would need to be escalated to the ISTQB Executive for a solution.

The standard of behaviour of ISTQB affiliates should scrupulously avoid any conflict of interest between:

1.1 Internal Relationships:

Relationships with ISTQB entities that may cause a conflict of interest:

- Relationships with other ISTQB entities either financial or not, regarding examinations, professional, and business interests of other board affiliates and home board affiliates.
- Commercial relationships with other ISTQB individual affiliates, affiliates and exam boards.

1.2 External relationships:

Relationships with non ISTQB entities that may cause a conflict of interest:

- Relationships with non ISTQB entities e.g. relationships with other exam schemes: whether testing related or not.
- Relationships with persons working in any way to oversee ISTQB exams working for any company sponsoring examinations or persons taking examinations.
- Individual affiliate's personal friend or co-worker who applies to join a Member Board or Working Group over which the candidate has some authority.

This includes avoiding actual conflicts of interest as well as perceptions of conflicts of interest.

2. Definitions

Affiliate

Any individual who is an ISTQB representative (incl. Exam Board representatives), or belongs to its Member Boards, Governing Board and Working Parties.

Interested Person

Any affiliate of ISTQB, its Member Boards, Governing Board and Working Parties, who has a direct or indirect financial interest, as defined below, is an interested person.

ISTQB entities

ISTQB Board, ISTQB Member Boards, ISTQB Working Parties and recognised ISTQB Exam Providers are ISTQB entities.

Financial

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

1. An ownership or investment interest in any entity with which ISTQB has a transaction or arrangement
2. A compensation arrangement with ISTQB or with any entity or individual with which ISTQB has a transaction or arrangement, or
3. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which ISTQB is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are considered substantial.

A financial interest is not necessarily a conflict of interest. Under Section 1.1, a person who has a financial interest may have a conflict of interest only if the ISTQB, Governing Board or meeting/working party decides that a conflict of interest exists.

3. Procedures

3.1 Duty to Disclose

In connection with any actual or possible conflict of interest, an interested person must at any time disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the other affiliates of the ISTQB with the Governing Board having delegated powers to consider the proposed transaction or arrangement.

3.2 Determining Whether a Conflict of Interest Exists

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee affiliates shall decide if a conflict of interest exists.

Should a decision not be possible the meeting or committee can escalate the decision to the Governing Board and from there to the ISTQB, during this time the interested party cannot rejoin the meeting or committee.

3.3 Procedures for Addressing the Conflict of Interest

1. A conflict of interest will be presented by the affected person at the ISTQB, Governing Board or meeting/working party. After the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
2. The chairperson of the ISTQB, Governing Board or meeting/working party shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
3. After exercising due diligence, the ISTQB, Governing Board or meeting/working party shall determine whether ISTQB can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
4. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the ISTQB, Governing Board or

meeting/working party shall determine by a majority vote of the disinterested individual affiliates whether the transaction or arrangement is in ISTQB's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

4. Violations of the Conflicts of Interest Policy

1. If the ISTQB, Governing Board or meeting/working party has reasonable cause to believe an affiliate has failed to disclose actual or possible conflicts of interest, it shall inform the affiliate of the basis for such belief and afford the affiliate an opportunity to explain the alleged failure to disclose.
2. If, after hearing the affiliate's response and after making further investigation as warranted by the circumstances, the ISTQB, Governing Board or meeting/working party determines the affiliate has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

5. Records of Proceedings

The minutes of the ISTQB, Governing Board and all meetings/working party with board delegated powers shall contain:

1. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.
2. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

6. Compensation

1. A voting ISTQB entity who receives compensation, directly or indirectly, from ISTQB for services is precluded from voting on matters pertaining to that affiliate's compensation.
2. No voting ISTQB entity whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from ISTQB, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

7. Trust

In this exercise Trust is King, all disclosures will be accepted as true. Therefore evidence of deliberate non-disclosure (or of incomplete disclosure) of conflict-of-interest will be considered a very serious breach of trust and will be presented to the ISTQB to agree suitable action.