

INDEPENDENT SOFTWARE VENDOR SYSTEMS INTERFACE TERMS AND CONDITIONS

THESE TERMS AND CONDITIONS ARE BINDING AND ENFORCEABLE AGAINST ALL INDEPENDENT SOFTWARE VENDORS (ISVs) WHOSE SYSTEMS INTERFACE WITH SARS SYSTEM OR ANY PART THEREOF (THE SARS e-FILING WEBSITE).

IF THE ISV DOES NOT AGREE TO THESE TERMS AND CONDITIONS IT MUST TERMINATE THE INTERFACE WITH AND/ OR DE-LINK YOUR SYSTEM FROM THE SARS e-FILING WEBSITE, AS FURTHER INTERFACE OR LINK WILL AUTOMATICALLY BIND THE ISV TO THESE TERMS AND CONDITIONS.

1. DEFINITIONS AND INTERPRETATION

1.1. **"Authorisation"** means the granting, by SARS to an ISV, of the right to enable the ISV's System, through the Interface, to communicate with, and to export and import Data to and from the SARS Systems;

1.2. **"Confidential information"** means:-

1.2.1. In relation to SARS:- any information or Data which is contemplated under the secrecy provisions contemplated in any Act, administered by South African Revenue Service, by its nature or content is identifiable as confidential and/or proprietary to SARS and/or any third party, or which is provided or disclosed in confidence; and which SARS or any person acting on its behalf may disclose or provide to SARS or which may come to the knowledge of SARS by whatsoever means, including all information relating to SARS's current and existing strategic objectives, information relating to the SARS Systems and all Intellectual Property therein, SARS's business activities, business relationships, and products, SARS's technical, scientific, commercial, financial and market information and trade secrets, SARS's data concerning its architectural information, demonstrations, processes and machinery, all agreements to which SARS or its clients is / are a party; and information relating to the clients, customers and facilities of SARS, but specifically excluding information or data which –

1.2.1.1. is lawfully in the public domain at the time of disclosure thereof;

1.2.1.2. subsequently becomes lawfully part of the public domain by publication or otherwise;

1.2.1.3. becomes available from a source, other than one of the Parties, which is lawfully entitled without any restriction on disclosure to disclose such Confidential Information; or

1.2.1.4. is disclosed pursuant to a requirement or request by operation of law, regulation or court order.

1.2.2. In relation to the ISV:- any information or Data which, by its nature or content is identifiable as confidential and/or proprietary to the ISV and/or any third party, or which is provided or disclosed in confidence; and which the ISV or any person acting on its behalf may disclose or provide to the ISV or which may come to the knowledge of the ISV by whatsoever means, including all information relating to the ISV's current and existing strategic objectives, information relating to the ISV Systems and all Intellectual Property therein, ISV's business activities, business relationships, and products, ISV's technical, scientific, commercial, financial and market information and trade secrets, ISV's data concerning its architectural information, demonstrations, processes and machinery, all agreements to which the ISV or its clients is / are a party; and information relating to the clients, customers and facilities of the ISV, but specifically excluding information or data which –

1.2.2.1. is lawfully in the public domain at the time of disclosure thereof;

1.2.2.2. subsequently becomes lawfully part of the public domain by publication or otherwise;

1.2.2.3. becomes available from a source, other than one of the Parties, which is lawfully entitled without any restriction on disclosure to disclose such Confidential Information; or

1.2.3. is disclosed pursuant to a requirement or request by operation of law, regulation or court order

1.3. "**Data**" means any data as defined in the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), and any other applicable legislation, and specifically

includes Personal Information as defined in section 1 of Protection of Personal Information Act No. 4 of 2013, as well as any data relating to taxpayers, personal information, supplied, stored, collected, collated, accessed, retained or processed by a Party, irrespective of the media or form;

- 1.4. "**Destructive Elements**" means any "back door", "time bomb", "time lock", "trojan horse", "worm", "drop dead device", "virus" or other computer software routine, code or device intended or designed to: (a) permit access to or the use of any software, firmware, hardware and peripherals, wide area network, or local area network by an unauthorised person; or (b) disable, damage, erase, disrupt or impair in any way the operation of any software, firmware, hardware and peripherals, wide area network, or local area network, including by the elapsing of a period of time, exceeding an authorised number of copies, advancement to a particular date or other numeral; or (c) damage, erase or corrupt data, storage media, programmes, equipment or communications or otherwise interfere with operations of any software, firmware, hardware and peripherals, wide area network, or local area network; and/or (e) any other form of destructive coding and/or device, including those which result in aesthetical disruptions or distortions;
- 1.5. "**ECT Act**" means the Electronic Communications and Transactions Act No. 25 of 2002;
- 1.6. "**e-Filer**" means a subscriber to the e-Filing services, including taxpayers and tax practitioners duly authorised and mandated to act on behalf of taxpayers and Users;
- 1.7. "**e-Filing services**" means the electronic services provided by SARS to e-Filers in respect of the submission and processing of tax returns, the posting and delivery of tax assessments and the provision of ancillary services associated with the payment of monies due by e-Filers to SARS;
- 1.8. "**Interface**" means an electronic crossing point developed between the ISV's System and the SARS System to facilitate and/or enable the export and import Data to and from the SARS System;
- 1.9. "**the ISV**" means an Independent Software Vendor and its successors in title and permitted assigns;

- 1.10. **"ISV's System"** means ISV computer systems (which include software, equipment, payment gateway, services) or parts thereof;
- 1.11. **"SARS e-Filing system"** means the SARS web-based electronic interactive tax return filing and assessment notification system, as it is developed and updated from time to time
- 1.12. **"SARS e-Filing website"** means the SARS e-Filing website located at <http://www.sarsefiling.co.za/> and includes any part or element thereof;
- 1.13. **"SARS Systems"** means SARS computer systems (which include software, equipment, payment gateway, services) including the SARS e-Filing System or parts thereof;
- 1.14. **"SARS"** means the South African Revenue Service;
- 1.15. **"Software"** means the ISV's computer software developed by, and/or licensed to the ISV and which the ISV requires to interface with the SARS Systems;
- 1.16. **"Terms and Conditions"** means these ISV Systems Interface Terms and Conditions;
- 1.17. **"User"** means any person who enters or uses the SARS e-Filing website and includes an e-Filer, notwithstanding the fact that such a person only visited the home page of the SARS e-Filing website;

2. GENERAL

- 2.1. SARS grants the ISV the right to have its System, through an Interface, to communicate with, and to export and import Data to and from the SARS System;

3. AUTHORISATION

- 3.1. SARS hereby grants Authorisation to the ISV, subject to the terms and conditions contained herein, and subject to the terms and conditions applicable to SARS e-Filing as published by SARS from time to time.

3.2. The ISV recognises and agrees that Authorisation is granted by SARS in SARS's sole discretion and on the condition that the ISV shall at all times adhere to: (i) generally, these Terms and Conditions, and (ii) the terms and conditions applicable to SARS e-Filing as published by SARS from time to time, and (iii) the following specific requirements –

3.2.1. compliance by the ISV with the SARS acceptance testing requirements, which will be communicated to the ISV on acceptance of the Interface by SARS. Activation of the Interface is subject to SARS's prior written approval after completion of the acceptance testing;

3.2.2. compliance by the ISV with all technical protocols, policies and procedures which may be published by SARS on the e-Filing website and / or communicated by SARS to the ISV, which may be amended by SARS from time to time;

3.2.3. compliance by the ISV with the SARS's Data integrity, formatting, security and confidentiality requirements which may be published by SARS on the e-Filing website and/or communicated by SARS to the ISV, and which may be amended by SARS from time to time;

3.2.4. any project plans, for the purpose of these Terms and Conditions, as may be agreed between the ISV and SARS from time to time; and

3.2.5. SARS, in its sole discretion, may introduce new templates and/or may make changes to the existing templates and it is the obligation of the ISV to make such adjustments as required to its Software and/or the Interface in order for the ISV to retain the Authorisation.

3.3. Subject to compliance with the requirements set forth in clause 3.2 above as well as the restrictions contained in clause 3.4 below, the ISV shall be entitled to the following benefits of Authorisation:

3.3.1. the ISV may develop the Interface in accordance with the specifications provided by SARS, to enable the ISV and its clients to submit Data directly to SARS;

3.3.2. the ISV may, subject to clauses 3.4.3 and 3.4.4, license and market the Software and the Interface to its clients on the basis that the Software is capable of interfacing directly with the SARS Systems.

3.4. The ISV agrees that Authorisation is granted subject to the following conditions –

3.4.1. the ISV must ensure that the Interface meets the specifications as determined by SARS in order for the ISV and its clients to receive Data from or submit Data to SARS in the format prescribed by SARS;

3.4.2. The ISV must achieve the following minimum volumes/ targets from the date of the granting of the Authorisation in terms hereof, in respect of each serviced tax type:

3.4.2.1. 1000 (one thousand) in the first 12 (twelve) months;

3.4.2.2. 5000 (five thousand) after 24 (twenty four) months; and

3.4.2.3. 10000 (ten thousand) after 36 (thirty six) months.

3.4.3. SARS may, at its sole discretion and after consultation with the ISV, withdraw the Authorisation and terminate the Interface with the ISV's System in the event that the ISV fails to achieve the above target and SARS deems it not cost efficient to retain and maintain the Interface. SARS will exercise its discretion in a just and fair manner and will not exercise its discretion unreasonably, to the exclusion of any ISV. In exercising this discretion, same standards will apply to all ISVs.

3.4.4. the granting of the Authorisation is not an endorsement by SARS of the ISV, its services, the Interface or a recommendation to current or potential clients of the ISV to use the ISV's services. The ISV must not use or market the Authorisation as an endorsement of the ISV's products or services;

3.4.5. no changes or modifications to the Interface or the manner in which the Software interfaces with the SARS Systems shall be permitted without prior appropriate testing and written approval thereof by SARS;

3.4.6. save as provided for in clause 3.3, the ISV shall not be entitled to any other benefits on being granted Authorisation;

- 3.4.7. the ISV shall ensure that in developing utilising the Interface, it shall not infringe upon the Intellectual Property rights of SARS and/or its suppliers or any other third parties;
- 3.4.8. the ISV shall adhere to these Terms and Conditions and the SARS e-Filing terms and conditions as amended and published by SARS from time to time;
- 3.4.9. the ISV shall ensure its clients, at all times, are made aware of and undertake to be bound by these Terms and Conditions and the SARS e-Filing terms and conditions as published by SARS from time to time;
- 3.4.10. nothing herein contained shall absolve the ISV or its clients from any statutory obligation, including submitting of tax returns and Data timeously and/or in the format prescribed from time to time.

4. WARRANTIES

- 4.1. The SARS Systems and any related documentation are provided "as is", without warranty of any kind. SARS disclaims all warranties, express or implied, including, but not limited to, implied warranties of design, merchantability, or fitness for a particular purpose. SARS does not warrant that the functions contained in the SARS Systems or documentation shall meet the ISV and/or its client's requirements, or that the operation of the SARS Systems shall be error-free, complete, or that defects in the SARS Systems and/or documentation shall be corrected;
- 4.2. The ISV warrants that as of the date of implementation of the Interface it is in full compliance with, and throughout the duration of the Authorisation shall remain in full compliance with all applicable laws relating to taxation in the Republic of South Africa;
- 4.3. The ISV represents and warrants that it shall, for the duration of the Authorisation: (i) use and adopt any standards and processes required by these Terms and Conditions; and (ii) meet, and throughout the duration of the Authorisation continue to meet, SARS's applicable security requirements as amended and advised to the ISV from time to time;
- 4.4. The ISV represents and warrants that it shall at all times: (i) ensure that it complies with the requirements set forth in clause 3; and (ii) take all reasonable and necessary steps to ensure that the Interface developed by it shall be free of Destructive Elements; and

4.5. The ISV warrants that it is and shall remain, for the duration of the Authorisation, fully cognisant of and compliant with any relevant legislative or regulatory requirements and/or rulings or codes of practice of any competent authority or industry body having jurisdiction over the subject matter of these Terms and Conditions.

5. INTELLECTUAL PROPERT RIGHTS AND DOMAIN NAME USE

5.1. All intellectual property rights in all materials and content made available through the SARS e-Filing website are owned by SARS or a third party, or alternatively SARS is the lawful user thereof, and are protected by both South African and international intellectual property right laws. The ISV agrees not to do anything that may infringe SARS' intellectual property rights in this regard, including but not limited to unauthorised copying, reproduction, retransmission, distribution, dissemination, sale, publication, or other circulation or exploitation of such material and shall comply with all laws applicable to any intellectual property rights (including without limitation trade secrets, copyright, trademarks, registered designs, and patents) in respect of any data, files and/or information accessed, retrieved or stored by the ISV through the ISV's interfacing with SARS Systems.

5.2. The ISV warrants that it will not use the SARS e-Filing website in any way that will infringe any person's intellectual property rights, and that it recognises and uses any content in accordance with SARS' intellectual property rights. The ISV is prohibited from using the trademarks, logos, brand names, domain names or other marks of SARS.

5.3. All intellectual property rights to the SARS System and to the Interface developed by SARS (whether before or after these Terms and Conditions came into effect) shall remain solely and exclusively vested in SARS.

5.4. All intellectual property rights to the ISV's System and to the Interface developed by ISV (whether before or after these Terms and Conditions came into effect) shall remain solely and exclusively vested in the ISV.

6. DATA USE AND PROTECTION

The ISV shall comply with all Data use and Data protection requirements as may be applicable to the Authorisation granted under these Terms and Conditions, as are dictated by the applicable legislative requirements as well as SARS's Data protection and security policies and procedures in force from time to time. Without limitation, SARS

assumes no responsibility for the accuracy, completeness or integrity of the Data which the ISV or its client submits to SARS using the Interface.

7. SECURITY

- 7.1. SARS shall use all reasonable endeavours to secure the content of the SARS e-Filing website and the information provided by and collected from ISV's clients from unauthorised access and/or disclosure;
- 7.2. The ISV may not deliver or attempt to deliver, whether intentionally or negligently, any damaging code, such as computer viruses, to the SARS e-Filing website or the server and computer network that support the SARS e-Filing website.
- 7.3. Notwithstanding criminal prosecution, any person who delivers any damaging code to the SARS e-Filing website, whether intentionally or negligently, shall, without any limitation, indemnify and hold SARS harmless against any and all liability, damages and losses which SARS and/or any third party may suffer as a result of such damaging code.
- 7.4. The ISV may not develop, distribute or use any device to breach or overcome the security system on the SARS e-Filing website and SARS reserves the right to take whatever action SARS deems necessary to preserve the security and reliable operation of the SARS e-Filing website or the server and computer network that support the SARS e-Filing website, including without limitation the right to claim damages from any and all persons responsible for such security failure or breach.
- 7.5. The ISV may not interfere with Data or services in any manner that modifies or destroys the Data or services or otherwise renders the Data or services ineffective (e.g. denial of service attacks).
- 7.6. Any ISV who commits any of the offences detailed in sections 85 to 88 of the ECT Act shall, notwithstanding criminal prosecution, be liable for all resulting liability, loss or damages suffered and/or incurred by SARS and any third party arising from a breach of the provisions of this clause 7 and the ISV hereby indemnifies and holds SARS harmless against all claims, losses and damages arising from a breach of the provisions of this clause 7.

8. CONFIDENTIALITY

8.1. The ISV acknowledges that material and information which has or shall come into its possession in connection with the Authorisation granted to it and to which these Terms and Conditions relate or the implementation thereof, may consist of Confidential Information which, if disclosed to third parties, could be damaging to SARS.

8.2. The ISV agrees and undertakes –

8.2.1. not to use the Confidential Information for any purpose other than in connection with the implementation of the Authorisation;

8.2.2. not to use the Confidential Information, whether directly or indirectly, for its own benefit otherwise than as provided herein;

8.2.3. to treat and safeguard Confidential Information as strictly private and confidential in a manner at least as rigorous as that in which it treats and safeguards its own confidential information;

8.2.4. except as permitted by these Terms and Conditions, not to use, disclose or divulge, directly or indirectly, the Confidential Information in any manner to any third Party for any reason or purpose whatsoever without the prior written consent of SARS which consent may be withheld in the sole and absolute discretion of SARS;

8.2.5. to take all such steps as may be reasonably necessary to prevent Confidential Information from falling into the hands of unauthorised third parties;

8.2.6. to restrict the dissemination of the Confidential Information to only those of its personnel who are actively involved in the development of the Interface, and then only on a "need to know" basis;

8.2.7. to initiate, maintain and monitor appropriate internal security procedures to prevent unauthorised disclosure of Confidential Information;

8.2.8. to take all practical steps, both before and after disclosure, to impress upon its personnel who are given access to Confidential Information the secret and confidential nature thereof.

8.3. The ISV shall protect the Confidential Information in the manner, and with the endeavour, of a reasonable person protecting his or her own Confidential Information. In no event shall the ISV use less than reasonable efforts to protect the confidentiality of the Confidential Information.

8.4. The ISV shall procure that all the ISV staff who are exposed to SARS Confidential Information shall comply with all secrecy and confidentiality obligations with which SARS officials and employees are obliged to comply in terms of the SARS Act, South African tax and all other relevant legislation, and that they shall in particular all accept and adhere to the prescribed Oath / Affirmation of Secrecy annexed hereto.

8.5. This clause 8 is severable from the rest of these Terms and Conditions and shall remain valid and binding on the ISV notwithstanding any termination of the Authorisation.

9. INDEMNIFICATION

The ISV indemnifies and holds SARS harmless from any and all losses arising from, or in connection with any claim or action instituted by or on behalf of the ISV or any third Party pursuant to SARS's use of any Data imported into any SARS System via the Interface or other software developed or introduced by the ISV in terms of or in connection with the Authorisation granted under this Terms and Conditions. Such indemnity extends also to any alleged infringement of any Intellectual Property rights of any third Party pursuant to such use.

10. LIMITATION OF LIABILITY

Under no circumstances shall SARS, nor any other person or entity involved in the creation, production, or delivery of the SARS Systems be liable for any losses or damages of any nature whatsoever incurred by the ISV and/or its clients, including any lost revenue or profits or any incidental, indirect, special, punitive, or consequential damages, that result from the use or inability to use the SARS Systems and/or the Interface and / or related products or documentation, even if SARS has been advised of the possibility of such losses or damages.

11. CHANGES AND AMENDMENTS

11.1. SARS expressly reserves the right, in its sole and absolute discretion, to do any of the following, at any time without prior notice to the ISV:

11.1.1. change these Terms and Conditions;

11.1.2. change the content and/or services available from the SARS e-Filing website;

11.1.3. discontinue any aspect of the SARS e-Filing website or e-Filing service(s) available from the SARS e-Filing website; and/or

11.1.4. change the software and hardware required to access and use the SARS e-Filing website.

11.2. Any new version of the Terms and Conditions will be displayed on the SARS e-Filing website together with the date on which the new version of the Terms and Conditions will become or became effective. It is the ISV's obligation to visit the SARS e-Filing website on a regular basis in order to determine whether any amendments have been made to the Terms and Conditions. By accessing and interfacing with the SARS e-Filing website, the ISV will be bound by the latest version of the Terms and Conditions, as published on the SARS e-Filing website.

12. TERMINATION

SARS will have the right to terminate the Authorisation of the ISV at its sole discretion in the event that the ISV:

12.1. breaches any of the provisions relating to Confidentiality; Data Use, Protection and Security; Intellectual Property; and Warranties;

12.2. fails to adhere to specifications as determined by SARS; and

12.3. fails to achieve the SARS targets in respect of volumes as set out in clause 3.4.2.

ANNEXURE



South African Revenue Service
Suid-Afrikaanse Inkomstediens
Uphiko lwezimali Ezingenayo eNingizimu Afrika
Tirelomatlotlo ya Afrika-Borwa

OATH / AFFIRMATION OF SECREC
Version: 09/201

I, (Full names and surname).....

Date of birth..... Identity number..... Persal. No(if applicable).....
hereby swear/solemnly declare* that I:

- (a) have read and am familiar with the applicable secrecy and confidentiality provisions of Chapter 6 of the Tax Administration Act, 2011 and section 4 of the Customs and Excise Act, 1964;
(b) in carrying out the provisions of any Act or portions thereof administered by the Commissioner for SARS under the SARS Act, 1997 (hereafter referred to as the "tax Acts") or any other law in terms of which I have access to taxpayer information or SARS confidential information, as defined in section 1 of the Tax Administration Act or information relating to any any person, firm or business as contemplated in section 4(3) of the Customs and Excise Act (hereafter referred to as "trader information") , will-
(i) preserve the secrecy of taxpayer information and not disclose taxpayer information to a person who is not a SARS official; and
(ii) not disclose SARS confidential information to a person who is not a SARS official, or to a SARS official who is not authorised to have access to the information,
(iii) not disclose trader information that may come to my knowledge in the performance of any duty or power under the provisions of any tax Acts, except to the extent that disclosure is permitted by law;
(c) understand that I must take this oath / make this affirmation before commencing duties or exercising any powers under the tax Acts as a result of which I have access to taxpayer information or trader information or SARS confidential information unless this oath / affirmation is a renewal of a previous oath taken / affirmation made by me;
(d) in executing my duties for and/or on behalf of SARS will preserve and aid in preserving secrecy with regard to all matters or information of any nature that may come to my knowledge in the performance of any duty or power under the provisions of the tax Acts,
(e) understand that I may not disclose or allow access in any manner, including electronic or otherwise, to any unauthorised person, the taxpayer information or trader information or SARS confidential information to which I have access or that has or may come to my knowledge as a result of the performance of any duty or power under the tax Acts or any other law in terms of which I have access to such information in my capacity as a current or former -
(i) employee of the South African Revenue Service (SARS);
(ii) consultant or contractor engaged or contracted by SARS;
(iii) person employed or subcontractor engaged or contracted by a person contemplated in (e)(ii); or
(iv) office holder, employee, consultant or contractor of a person referred to in section 70 of the Tax Administration Act who performs any function referred to in that section,
except to the extent that disclosure is permitted by law;
(f) to the extent that I am a person referred to in paragraph (e) above, have read and am familiar with the SARS Internal Information Security Systems Life Cycle Policy and the SARS Information Life Cycle Security Policy, and will only copy, transport, disseminate or email any data which constitutes taxpayer information or trader information or SARS confidential information, in accordance with such policies.
(g) accept that it is my obligation to determine whether any amendments have been made to the law referred to in paragraph (a) or policies referred to in paragraph (f) and that it is my obligation to familiarise myself on a regular basis with the latest amendments to these laws or approved versions of these policies; and
(h) am fully aware of the serious consequences that may follow on any breach or contravention of the abovementioned provisions and instructions and that I may be-
(i) criminally prosecuted for commencing duties or exercising any powers under the tax Acts before taking the prescribed oath or affirmation;
(ii) criminally prosecuted for any unlawful disclosure of taxpayer information, trader information or SARS confidential information;
(iii) subject to internal disciplinary action or damages for breach of contract; and
(iv) civilly liable for any claim of damages arising from the unlawful disclosure of information subject to secrecy.

Signature.....
(Must be signed in the presence of a Justice of the Peace, Magistrate or Commissioner of Oaths)

Date..... Place.....

- 1. I certify that prior to my administering the prescribed oath/affirmation*, I put the following questions to the deponent and wrote down his/her answers thereto in his/her presence:
(a) Do you know and understand the contents of the above statement? Answer.....
(b) Do you have any objection to taking the prescribed oath/affirmation? Answer.....
(c) Do you regard the prescribed oath/affirmation as binding on your conscience? Answer.....

2. I certify that the deponent acknowledges that he/she* knows and understands the contents of this statement which was sworn to/affirmed* and signed by the deponent in my presence.

Signed: Justice of the Peace/Magistrate/Commissioner of Oaths*.....

Full first names and surname:

Designation / Rank:

Date..... Place.....

* Delete whichever is not applicable