## ANNEX 2.4 to Part II

## ITU GENERAL CONDITIONS FOR CONTRACTS

**1 Legal Status**

1.1 The Contractor shall be considered as having the legal status of an independent contractor vis-à-vis ITU. The Contractor’s personnel and sub-contractors shall not be considered in any respect as being the employees or agents of ITU.

1.2 Under no circumstances may the Contractor, its personnel and/or sub-contractors claim any of the privileges, immunities and facilities enjoyed by ITU, in order to obtain any exemption from, or reimbursement for, costs related to any taxes, duties, fees or levies whatsoever, which may be imposed upon them in connection with the Contract or otherwise, or to be immune from any claim or judicial process arising out of the performance of the Contract, for which the Contractor shall assume full responsibility, or brought against them on any other grounds.

**2 Source of Instructions**

Unless agreed upon in writing and in advance with ITU, the Contractor shall neither seek nor accept instructions from any authority external to ITU in connection with the performance of the Contract. The Contractor shall refrain from any action which may adversely affect ITU and shall fulfill its commitments with the fullest regard to the interests of ITU.

**3 Contractor’s Responsibility for its Employees**

The Contractor shall be responsible for the professional and technical competence of its employees and will select, for work under the Contract, reliable individuals who will perform effectively in the implementation of the Contract, respect the applicable laws, regulations, rules and ordinances promulgated by the competent authorities, as well as the local customs, and conform to a high standard of moral and ethical conduct.

**4 Removal of Employees**

Upon written request of ITU stating the reasons therefore, the Contractor shall remove any member of its personnel and/or that of its sub-contractor(s) and shall replace, if necessary, such member by another one acceptable to ITU. The Contractor shall submit to ITU sufficiently in advance the curriculum vitae of the person it envisages to newly designate, who shall meet the standard requirements stated in Article 3 above, for ITU’s consideration and approval, which shall not be unreasonably withheld or delayed by the latter. Costs and additional expenses resulting from such removal of any member of the Contractor’s personnel and/or that of its sub-contractor(s) and his replacement shall be at the Contractor’s own expense. Such removal shall not be considered as termination in part or in whole of the Contract between ITU and the Contractor.

**5 Assignment**

The Contractor shall not assign, transfer, pledge or make other disposition of the Contract or any part thereof, or any of the Contractor’s rights, claims or obligations under the Contract except with the prior written consent of ITU.

**6 Sub-contracting**

In the event the Contractor requires the services of sub-contractors, the Contractor shall obtain the prior written approval and clearance of ITU for all sub-contractors. The approval by ITU of a sub-contractor shall not relieve the Contractor of any of its obligations under the Contract. The terms of any sub-contract shall be subject to and in conformity with the provisions of the Contract between ITU and the Contractor.

**7 ITU Officials not to Benefit**

The Contractor warrants that no official of ITU has received or will be offered by the Contractor any direct or indirect benefit arising from the Contract or the award thereof. The Contractor agrees that breach of this provision is a breach of an essential term of the Contract.

**8 Non-employment of Respective Personnel**

Neither ITU nor the Contractor shall, during the period of one year following the end of the provision of services or goods under the Contract by the Contractor, either employ or consider employment of any member of the personnel of the other Party without the prior written approval of the latter.

**9 Indemnification**

The Contractor shall indemnify, hold and save harmless, and defend, at its own expense, ITU, its officials, agents, servants and employees from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of the Contractor, or the Contractors’ employees, officers, agents or subcontractors, in the performance of the Contract. This provision shall extend, *inter alia*, to claims and liability in the nature of workmen’s compensation, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the Contractor, its employees, officers, agents, servants or sub-contractors. The obligations under this Article do not lapse upon termination of the Contract.

**10 Bankruptcy**

The Contract shall automatically terminate if the Contractor files a petition in bankruptcy or is adjudicated bankrupt or insolvent, or makes an assignment for the benefit of creditors, or an arrangement pursuant to any bankruptcy law, or in the event of any realization or execution on the Contractor's assets.

**11 Severability**

Each provision of the Contract constitutes a separate right or obligation. If any provision of the Contract is deleted, varied or declared unenforceable, that provision will be severed and the remainder of the Contract will continue in force regardless. The failure of a Party to enforce an obligation does not constitute a waiver of that provision.

**12 Insurance and Liabilities to Third Parties**

12.1 The Contractor shall provide and thereafter maintain insurance against all risks in respect of its property and any equipment used for the execution of the Contract or any good to be delivered to ITU.

12.2 The Contractor shall provide and thereafter maintain all appropriate workmen’s compensation insurance, or its equivalent, with respect to its employees to cover claims injury or death in connection with the Contract.

12.3 The Contractor shall also provide and thereafter maintain liability insurance in an adequate amount to cover third party claims for death or bodily injury, or loss of or damage to property, arising from or in connection with the provision of services under the Contract or the operation of any vehicles, boats, airplanes or other equipment owned or leased by the Contractor or its agents, servants, employees or sub-contractors performing work or services in connection with the Contract.

12.4 Except for the workmen’s compensation insurance, the insurance policies under this Article shall:

i) name ITU as additional insured;

ii) include a waiver of subrogation of the Contractor’s rights to insurance carrier against ITU; and

iii) provide that ITU shall receive thirty (30) days’ written notice from the insurers prior to any cancellation or change of coverage.

12.5 The Contractor shall, upon request, provide ITU with satisfactory evidence of the insurance required under this Article.

**13 Encumbrances/Liens**

The Contractor shall not cause or permit any lien, attachment or other encumbrances by any person to be placed on file or to remain on file in any public office or on file with ITU against any monies due or to become due for any work done or materials furnished under the Contract, or by reason of any other claim or demand against the Contractor.

**14 Title to Equipment**

Title to any equipment and supplies that may be furnished by ITU shall rest with ITU and any such equipment shall be returned to ITU at the conclusion of the Contract or when no longer needed by the Contractor. Such equipment, when returned to ITU, shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear. The Contractor shall be liable to compensate ITU for equipment determined to be damaged or degraded beyond normal wear and tear.

**15 Copyright, Patents and Other Proprietary Rights**

15.1 Except as otherwise expressly provided in writing in the Contract, ITU shall be entitled to all intellectual property and other proprietary rights including, but not limited to, patents, copyrights, and trademarks, with regard to products, processes, inventions, ideas, know-how, or documents and other materials which the Contractor has developed for ITU under Contract and which bear a direct relation to or are produced or prepared or collected in consequence of, or during the course of, the performance of the Contract, and the Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for ITU.

15.2 To the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the Contractor: (i) that pre-existed the performance by the Contractor of its obligations under the Contract, or (ii) that the Contractor may develop or acquire, or may have developed or acquired, independently of the performance or its obligations under the Contract, ITU does not and shall not claim any ownership interest thereto, and the Contractor grants to ITU a perpetual license to use such intellectual property or proprietary rights.

15.3 At the request of ITU, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such rights and transferring or licensing them to ITU in compliance with the requirements of the applicable law of the Contract.

15.4 Subject to the foregoing provisions, all maps, drawings, photographs, mosaics, plans, reports, estimates, recommendations, documents, and all other data compiled by or received by the Contractor under the Contract shall be the property of ITU, shall be made available for use or inspection by ITU at reasonable time and in reasonable places, shall be treated as confidential, and shall be delivered only to ITU authorized officials on completion of the work under the Contract.

**16 Use of Name, Emblem, Acronym or Official Seal of ITU**

The Contractor shall not advertise or otherwise make public the fact that it is a Contractor with ITU, nor shall the Contractor, in any manner whatsoever use the name, emblem, acronym or official seal of the ITU, or any acronym of the name of ITU in connection with its business or otherwise.

**17 Confidential Nature of Documents, Information and Other Data**

17.1 Documents, information and other data that is considered proprietary by either Party and that is delivered or disclosed by one Party (“Discloser”) to the other Party (‘Recipient”) during the course of performance of the Contract, and that is designated as confidential (“Information”), shall be held in confidence by that Party and shall be handled as follows:

17.2 The Recipient of such information shall:

17.2.1. use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser’s Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate; and,

17.2.2. use the Discloser’s Information solely for the purposes for which it was disclosed.

17.3 Provided that the Recipient has a written agreement with the following persons or entities requiring them to treat the information confidential in accordance with the Contract and this Article 17, the Recipient may disclose Information to:

17.3.1. any other party with the Discloser’s prior consent; and,

17.3.2. the Recipient’s employees, officials, representatives and agents who have a need to know such information for purposes of performing obligations under the Contract, and employees, officials, representatives and agents of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know such information for purposes of performing obligations under the Contract, provided that, for these purposes a controlled legal entity means:

(i) a corporate entity which the Recipient owns or otherwise controls, whether directly or indirectly, over fifty percent (50%) of voting shares thereof; or,

(ii) any entity over which the Recipient exercises effective managerial control; or,

(iii) for ITU, a governing organ, or subsidiary organ of ITU established in accordance with the Constitution and Convention of ITU.

17.4 The Contractor may disclose Information to the extent required by law, provided that, subject to and without any waiver of the of the privileges and immunities of ITU, the Contractor will give ITU sufficient prior notice of a request for disclosure of Information in order to allow ITU to have a reasonable opportunity to take protective measures or such other actions as may be appropriate before such disclosure is made.

17.5 ITU may disclose Information to the extent as required pursuant to the Constitution and Convention of ITU, the rules, decisions, resolutions, and recommendations of its governing organs, or rules promulgated by the Secretary-General.

17.6 These obligations and restrictions of confidentiality shall be effective during the term of the Contract, including any extension thereof, and, unless otherwise provided in the Contract, shall remain effective following any termination of the Contract.

**18 Privileges, Immunities and Facilities**

Nothing in or related to the Contract shall constitute a waiver, express or implied, of any of the privileges, immunities and facilities, which ITU enjoys by virtue of the international agreements and national laws applicable to it.

Section 9 of the 1947 Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations exempts ITU from all direct taxes, except charges for public utility services, as well as customs duties and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental authority refuses to recognize the ITU exemption from such taxes, duties or charges, the Supplier shall immediately consult with ITU to determine a mutually acceptable procedure. Accordingly, the Supplier authorizes ITU to deduct from the Supplier’s invoice any amount representing such taxes, duties or charges, unless the Supplier has consulted with ITU before the payment thereof and ITU has, in each instance, specifically authorized the Supplier to pay such taxes, duties or charges under protest. In that event, the Supplier shall provide ITU with written evidence that payment of such taxes, duties or charges has been made and authorized.

**19 Force Majeure and Other Changes in Conditions**

19.1 In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the Contractor shall give notice and full particulars in writing to ITU, of such occurrence or change if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. The Contractor shall also notify ITU of any other changes in conditions or the occurrence of any event that interferes or threatens to interfere with its performance of this Contract. On receipt of the notice required under this Article, or upon being directly affected in its fulfillment of its obligation under the Contract by an event constituting Force majeure, ITU shall take such action as, in its sole discretion it considers to be appropriate or necessary in the circumstances, including the granting to the Contractor of a reasonable extension of time in which to perform its obligations under the Contract.

19.2 If the Contractor is rendered permanently unable, wholly, or in part, by reason of force majeure to perform its obligations and meet its responsibilities under this Contract, ITU shall have the right to suspend or terminate this Contract on the same terms and conditions as are provided for in Article 20 below, except that the period of notice shall be seven (7) days instead of thirty (30) days.

19.3 Force majeure as used in this Article means acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force, which are beyond the control of either Party, and which neither Party, exercising due care, is able to overcome.

19.4 The Contractor acknowledges and agrees that, with respect to any obligations under the Contract that the Contractor must perform in or for any areas in which ITU is engaged in, preparing to engage in, or disengaging from humanitarian or similar operations, any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas or to any incidents of civil unrest occurring in such areas shall not, in and of itself, constitute force majeure under the Contract.

**20 Termination**

20.1 Either party may terminate this Contract for cause, in whole or in part, upon thirty (30) days notice, in writing, to the other party. The initiation of arbitral proceedings in accordance with Article 21 below shall not be deemed a termination of this Contract.

20.2 ITU may terminate forthwith this Contract at any time should the mandate or the funding of the Mission/Bureau or Program be curtailed or terminated, in which case the Contractor shall be reimbursed by ITU for all reasonable costs incurred by the Contractor prior to receipt of the notice of termination.

20.3 In the event of any termination by ITU under this Article, no payment shall be due from ITU to the Contractor except for work and services satisfactorily performed in conformity with the express terms of this Contract.

20.4 Should the Contractor be adjudged bankrupt, or be liquidated or become insolvent, or should the Contractor make an assignment for the benefit of its creditors, or should a Receiver be appointed on account of the insolvency of the Contractor, ITU may, without prejudice to any other right or remedy it may have under the terms of these conditions, terminate this Contract forthwith. The Contractor shall immediately inform ITU of the occurrence of any of the above events.

**21 Settlement of Disputes and Governing Law**

Any dispute between the Parties arising from or in connection with this Contract shall be settled directly and amicably by them through mutual negotiations. In case of failure of such negotiations, the dispute shall be settled by a sole arbitrator to be nominated at the request of either of the Parties by the Court of Arbitration of the International Chamber of Commerce of Paris. The place of arbitration shall be Geneva. The language of arbitration shall be English. The arbitration shall be carried out in accordance with the Rules of Arbitration of the International Chamber of Commerce, as at present in force. Besides, and only supplementary to, the provisions of this Contract, the applicable law shall be the Swiss substantive law, with the exception of Article 190 of the Swiss Federal Law on private international law of 8 December 1987. The arbitrator’s ruling shall be binding and final upon the Parties hereto and any recourse to any court or tribunal against the arbitrator’s ruling shall be excluded.

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| **Statement of compliance of ITU General Conditions of Contracts** | | |
| **Article** | **Comply (tick box)** | **Non-compliance (clearly state reasons and propose amendment)** |
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