

INTERNATIONAL TELECOMMUNICATION UNION



ITU General Conditions of Contract for the Provision of Services and Goods

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1. Legal status of the parties

1.1. The Contractor shall be considered as having the legal status of an independent contractor vis-à-vis ITU. The Contractor's representatives, personnel and sub-contractors shall not be considered in any respect as being the employees or agents of ITU, and the Contractor shall be solely responsible for all claims arising out of or relating to its engagement of such persons or entities.

1.2. Under no circumstances may the Contractor, its representatives, 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. Non-exclusivity

Unless otherwise specified in the Contract, ITU shall have no obligation to purchase any minimum quantities of goods or services from the Contractor, and ITU shall have no limitation on its right to obtain goods or services of the same kind, quality and quantity described in the Contract, from any other source at any time.

3. 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 its obligations under the Contract. Should any authority external to ITU seek to impose any instructions concerning or restrictions on the Contractor's performance under the Contract, the Contractor shall promptly notify ITU and provide all reasonable assistance required by ITU. The Contractor shall refrain from any action which may adversely affect the interests of ITU and shall fulfill its commitments with the fullest regard to the interests of ITU.

4. Contractor's responsibility for its employees

To the extent that the Contract involves the provision of any services to ITU by the Contractor's officials, employees, agents, servants, subcontractors and other representatives (collectively, the Contractor's "personnel"), the following provisions shall apply:

4.1. The Contractor shall be responsible for the professional and technical competence of the personnel and will select, for work under the Contract, reliable individuals who will perform effectively in the implementation of the Contract, respect the local 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.

4.2. Such Contractor Personnel shall be professionally qualified and, if required to work with officials or staff of ITU, shall be able to do so effectively. The qualifications of any personnel whom the Contractor may assign or may propose to assign to perform any obligations under the Contract shall be substantially the same, or better, as the qualifications of any personnel originally proposed by the Contractor.

4.3 At the sole discretion of ITU:

- 4.3.1. the qualifications of personnel proposed by the Contractor (e.g., a curriculum vitae) may be reviewed by ITU prior to such personnel's performing any obligations under the Contract;
- 4.3.2. any personnel proposed by the Contractor to perform obligations under the Contract may be interviewed by qualified staff or officials of ITU prior to such personnel's performing any obligations under the Contract; and
- 4.3.3. in cases in which, pursuant to **Section 4.3.1 or 4.3.2**, above, the ITU has reviewed the qualifications of such Contractor's personnel, the ITU may reasonably refuse to accept any such personnel.

4.4. Without prejudice to the above and written request of ITU stating the reasons therefore, the Contractor shall remove any member of its personnel 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 this Section, 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, in and of itself, as termination in part or in whole of the Contract between ITU and the Contractor, and ITU shall not bear any liability in respect of such withdrawn or replaced personnel. If a request for the withdrawal or replacement of the Contractor's personnel is not based upon a default by or failure on the part of the Contractor to perform its obligations in accordance with the Contract, the misconduct of the personnel, or the inability of such personnel to reasonably work together with ITU officials and staff, then the Contractor shall not be liable by reason of any such request for the withdrawal or replacement of the Contractor's personnel for any delay in the performance by the Contractor of its obligations under the Contract that is substantially the result of such personnel's being withdrawn or replaced.

4.5. Nothing in this Section shall be construed to create any obligations on the part of ITU with respect to Contractor's personnel assigned to perform work under the Contract, and such personnel shall remain the sole responsibility of the Contractor.

4.6. In cases where the Contractor is required to perform any obligations to premises or other property of ITU, the Contractor shall be responsible for requiring that all personnel assigned to perform such obligations:

- 4.6.1. undergo and comply with security screening requirements made known to the Contractor by ITU, including, but not limited to, a review of any criminal history;
- 4.6.2. when within the ITU premises or on ITU property, display such identification as may be approved and furnished by ITU security officials, and that upon the withdrawal or

replacement of any such personnel or upon termination or completion of the Contract, such personnel shall immediately return any such identification to ITU.

4.7. All operations of the Contractor, including, without, limitation, storage of equipment, materials, supplies and parts, within ITU premises or on ITU property shall be confined to areas authorized or approved by ITU. The Contractor's personnel shall not enter or pass through and shall not store or dispose of any of its equipment or materials in any areas within ITU premises or on ITU property without appropriate authorization from ITU.

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. Subcontracting

In the event the Contractor requires the services of sub-contractors to perform any obligations under the Contract, the Contractor shall obtain the prior written approval and clearance of ITU for all such sub-contractors. ITU shall be entitled, in its sole discretion, to review the qualifications of any subcontractors and to reject any proposed subcontractor that ITU reasonably considers is not qualified to perform obligations under the Contract. Any such rejections or request for removal shall not, in and of itself, entitle the Contractor to claim any delays in the performance, or to assert any excuses for the non-performance, of any of its obligations under the Contract, including those performed by its subcontractors. 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.

7. ITU officials not to benefit

The Contractor warrants that no official, representative, employee or other agent of ITU has received or will be offered by the Contractor any direct or indirect benefit arising from the Contract or any other contract with ITU or the award thereof, or for any other purpose intended to gain an advantage for the Contractor. 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 completion of all Contractor's obligations, either employ or consider employment of any member of the personnel of the other Party without the prior written approval of the latter.

9. Observance of the law

The Contractor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the Contract.

10. Contractor warranties concerning performance

10.1. In addition to and without limiting any other warranties, remedies or rights of ITU stated in or arising under the Contract, the Contractor warrants and represents that:

- 10.1.1 it has the legal right and authority to enter into the Contract and to observe and perform fully its obligations set forth therein, and that its performance will not conflict with or violate any commitment, agreement, or understanding it has or will have to or with any third party;
- 10.1.2. it shall perform its obligations in good faith and in the best interest of ITU, in accordance with the highest professional standards, and that its performance of obligations under the Contract will meet the specifications, timeframes and related requirements set forth therein;
- 10.1.3. it has obtained and shall maintain, in full force and effect, all authorizations, licenses, certificates, permits, and insurance necessary or required, as the case may be, to perform its obligations;
- 10.1.4 in performing its obligations under the Contract, the Contractor will not violate any applicable laws, regulations nor will infringe, violate or misappropriate any copyright, patent, trade secret, trademark or other intellectual property or proprietary right held by any third party.

10.2. If the Contractor's performance does not meet the requirements referred to in the Contract and these General Conditions, the Contractor will, promptly and at its own expense, correct all defects and non-conformities.

10.3. If any defect or failure in the performance of the Contractor cannot be rectified by remedial measures within the reasonable period set by ITU, the Contractor will be considered to be in default and in addition to exercising any suspension or termination rights set forth in the Contract, ITU shall have the right to independently replace or repair the Services and the Contractor will be obligated to reimburse ITU for all the additional costs so incurred, including by deduction or otherwise, against future amounts owed by ITU to the Contractor.

11. Contractor warranties concerning labor

11.1. The Contractor represents and warrants to ITU that, during the term of this Contract, the Contractor will abide by, observe and comply with in all respects all laws, statutes, rules, regulations and legal requirements applicable in respect of the Contractor personnel.

11.2. Without limiting the generality of the foregoing, the Contractor represents and warrants to ITU that, at all times and in all circumstances relevant to the performance of the Contract, and in respect of the Contractor Personnel, the Contractor will abide by, observe and comply with the following principles concerning rights which are subject of the relevant international labor standards of the International Labor Organization:

- 11.2.1. the right of workers, without distinction, to establish or join organizations of their own choosing, to be protected against anti-union discrimination and to bargain collectively;
- 11.2.2. prohibition of forced or compulsory labor in all its forms;
- 11.2.3. equal remuneration for men and women for work of equal value;
- 11.2.4. equality of opportunity and treatment in respect of employment and occupation without discrimination on grounds of race, color, sex, religion, political opinion, national extraction or social origin and such other ground as may be recognized under the national law of the country or countries where the performance, in whole or in part, of the contract takes place;
- 11.2.5. prohibition of the employment of children below fourteen (14) years of age or, if higher than fourteen (14), the minimum age of employment permitted by the law of the country or countries where the performance, in whole or in part, of the contract takes place, or the age of the end of compulsory schooling in that country or countries, whichever is higher;
- 11.2.6. prohibition of the employment of persons under the age of eighteen (18) for work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of such persons under the age of eighteen (18);
- 11.2.7. payment of wages in legal tender, at regular intervals, in full and directly to the workers concerned;
- 11.2.8. provision of wages, hours of work and other conditions of work, including social security, at least as favorable as those established by collective agreement, arbitration award or applicable laws or regulations for work of the same character in the trade or industry concerned in the area where work is carried out; and
- 11.2.9. adequate safety and health standards in the workplace(s) where work is carried out.

12. Indemnification

12.1. 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, proceedings, claims, demands, losses and liability of any nature or kind brought by a third party against ITU, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising out or relating to:

- 12.1.1. allegations or claims that the possession of or use by ITU of any patented device, any copyrighted material, or any other goods, property or services provided or licensed to ITU under the terms of the Contract, in whole or in part, constitutes an infringement of any patent, copyright, trademark, or other intellectual property right of any third party; and,

12.1.2. acts or omissions of the Contractor, or the Contractors' representatives, employees, officers, agents, servants or subcontractors, in the performance of the Contract.

12.2. The indemnity set forth in **Section 12.1.1**, above, shall not apply to a claim of infringement resulting from the Contractor's compliance with specific written instructions by ITU directing a change in the specifications for the goods, property, materials, equipment or supplies to be or used, or directing a manner of performance of the Contract or requiring the use of specifications not normally used by the Contractor.

12.3. ITU shall advise the Contractor about any such suits, proceedings, claims, demands, losses or liability within a reasonable period of time after having received actual notice thereof. The Contractor shall have sole control of the defense of any such suit, proceeding, claim or demand and of all negotiations in connection with the settlement or compromise thereof, except with respect to the assertion or defense of the privileges, immunities and facilities of ITU or any matter relating thereto, for which only ITU itself is authorized to assert and maintain. ITU shall have the right, at its own expense, to be represented in any such suit, proceeding, claim or demand by independent counsel of its own choosing.

12.4. In the event the use of any goods, property or services provided or licensed to the ITU by the Contractor, in whole or in part, in any suit or proceeding, is for any reason enjoined, temporarily or permanently, or is found to infringe any patent, copyright, trademark or other intellectual property right, or in the event of a settlement, is enjoined, limited or otherwise interfered with, then the Contractor, at its sole cost and expense, shall, promptly, either:

- 12.4.1. procure for ITU the unrestricted right to continue using such goods or services provided to ITU;
- 12.4.2. replace or modify the goods or services provided to ITU, or part thereof, with the equivalent or better goods or services, or part thereof, that is non-infringing; or
- 12.4.3. refund to ITU the full price paid by ITU for the right to have or use such goods, property or services, or part thereof.

12.5. The obligations under this Section do not lapse upon termination or completion of the Contract.

13. Insurance and liability

13.1. The Contractor shall pay ITU promptly for all loss, destruction, or damage to the property of ITU caused by the Contractor's personnel or by any of its subcontractors or anyone else directly or indirectly employed by the Contractor or any of its subcontractors in the performance of the Contract.

13.2. Prior to commencement of performance of any other obligations under the Contract, the Contractor shall provide and thereafter maintain for the entire term of the Contract, for any extension thereof, and for a period following any termination of the Contract, insurance reasonably adequate to deal with losses, and more specifically:

13.2.1. 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;

13.2.2. workmen's compensation insurance, or its equivalent, or employer's liability insurance, or its equivalent, with respect to its employees sufficient to cover all claims for injury, death and disability, or any other benefits required to be paid by law, in connection with the performance of the Contract;

13.2.3 liability insurance in an adequate amount to cover any and all third party claims, including but not limited to, claims for death or bodily injury, products and completed operations liability, or loss of or damage to property, arising from or in connection with the Contractor's performance under the Contract, including, but not limited to, liability arising out of or in connection with the acts or omissions of the Contractor, its personnel, agents, servants or sub-contractors during the performance of the Contract, of any vehicles, boats, airplanes or other transportation vehicles or other equipment, whether or not owned by the Contractor; and,

13.2.4 such other insurance as may be agreed upon in writing between ITU and the Contractor.

13.3. Except for the workmen's compensation insurance, the insurance policies under **this Section 13** shall:

13.3.1. name ITU as additional insured;

13.3.2. include a waiver of subrogation of the Contractor's rights to insurance carrier against ITU; and,

13.3.3. provide that ITU shall receive at least a thirty (30) calendar days written notice from the Contractor's insurance carrier prior to any cancellation or change of coverage.

13.4. The Contractor's liability policies shall also cover subcontractors and all defense costs and shall contain a standard "cross liability" clause.

13.5. The Contractor shall maintain the insurance taken out under the Contract with reputable insurers that are in good financial standing and that are acceptable to ITU. Prior to the commencement of any obligations under the Contract, the Contractor shall provide ITU with evidence, in the form of certificate of insurance or such other form as ITU may reasonably require, that demonstrates that the Contractor has taken out insurance in accordance with the requirements of the Contract. ITU reserves the right, upon written notice to the Contractor, to obtain copies of any insurance policies or insurance program descriptions required to be maintained by the Contractor under the Contract. Notwithstanding the provisions of **Section 13.3**, above, the Contractor shall promptly notify the ITU concerning any cancellation or material change of insurance coverage required under the Contract.

13.6. The Contractor acknowledges and agrees that neither the requirement for taking out and maintaining insurance as set forth in the Contract nor the amount of any such insurance, including, but

not limited to, any deductible or retention relating thereto, shall in any way be construed as limiting the Contractor's liability arising under or relating to the Contract.

14. Encumbrances and liens

The Contractor shall not cause or permit any lien, attachment or any 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 that may become due for any work done or against any goods supplied or materials furnished under the Contract, or by reason of any other claim or demand against the Contractor.

15. Title to equipment and supplies furnished by ITU

Title to any equipment and supplies that may be furnished by ITU to the Contractor for the performance of any obligations under the Contract shall rest with ITU and any such equipment and supplies, if any, shall be returned to ITU at the conclusion of the Contract or when no longer needed by the Contractor. Such equipment and supplies, 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 the actual costs of any equipment lost, damaged or degraded beyond normal wear and tear.

16. Copyright, patents and other proprietary rights

16.1. 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 the 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.

16.2. 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 worldwide, perpetual, royalty-free license to use such intellectual property or proprietary rights.

16.3. 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.

16.4. 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.

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 it designates as confidential (“Information”), shall be held in confidence by that Party and shall be handled as follows:

17.2. The Recipient 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 **Section 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:

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

17.3.2.2. any entity over which the Recipient exercises effective managerial control; or,

17.3.2.3. for ITU, a governing organ, or subsidiary organ of ITU established in accordance with the Constitution, the Convention of ITU or any decisions of the ITU Plenipotentiary Conference or of the ITU Council.

17.4. The Contractor may disclose Information to the extent required by law, provided that, subject to and without any waiver 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. Provisions applicable for the purchase of goods

To the extent that the Contract involves any purchase of goods, whether in whole or in part, and unless specifically stated otherwise in the Contract, the following conditions shall apply to any purchases of such goods:

18.1 Delivery, inspection and acceptance of goods

Unless otherwise specified in the Contract, the Contractor shall be solely liable for making all transport arrangements and for payment of freight and insurance costs for the shipment and delivery of the goods in accordance with the requirements of the Contract. No partial shipment shall be accepted by ITU unless previously agreed to by ITU in writing. Risk of loss or damage to the goods shall be borne solely by the Contractor until physical delivery of the goods to ITU or the beneficiary has been completed as stipulated in this Contract. Delivery of the goods shall not be deemed in and of itself as constituting acceptance of the goods. All goods delivered are subject to inspection by ITU or ITU's designated agent(s) at their final destination, and ITU may refuse acceptance of any goods which are not delivered in accordance with the Contract and these General Conditions. ITU may condition the acceptance of goods upon the successful completion of acceptance tests as may be specified in the Contract or otherwise agreed in writing by the Parties. All reasonable facilities and assistance shall be furnished to ITU or its designated inspection agents at no charge therefor. Neither the carrying out of any inspections of the goods nor any failure to undertake any such inspections shall relieve the Contractor of any of its warranties or the performance of any obligations under the Contract.

18.2. Packaging, transportation and freight of the goods

The Contractor shall package the goods for delivery in accordance with the highest standards of export packaging for the type and quantities and modes of transport of the goods. The goods shall be packed and marked in a proper manner and shipped in accordance with the instructions appearing in this Contract or, otherwise, in accordance with the generally accepted commercial standards of packaging for the type of goods specified herein and in accordance with any requirements imposed by applicable law or by the transporters and manufacturers of the goods. Unless otherwise specified in the Contract, the Contractor shall have no right to any return of the packing materials. The original transport documents (e.g. Bill of Lading, Air Waybill, postal-certificate, tax invoice etc.) are to be sent by airmail to the consignees named on the order form, together with a detailed list of the contents of each case or package. Duplicates of these documents with a reference to the Contract are to be sent to ITU, Procurement Division, Place des Nations, CH-1211 Geneva 20, Switzerland, PROC@itu.int immediately and without waiting for the preparation of invoices.

18.3. Warranty of goods

Unless otherwise specified in the Contract, in addition to and without limiting any other warranties, remedies or rights of ITU stated in or arising under the Contract, the Contractor warrants and represents that:

- 18.3.1. The goods, including all packaging and packing thereof, conform to the specifications of the Contract, are fit for the purposes for which such goods are ordinarily used and for any purposes expressly made known in writing in the Contract, and are of even quality, free from faults and defects in design, material, manufacture and workmanship;
- 18.3.2. The goods are new and unused and are of the quality, quantity and description required by the Contract, including when subjected to conditions prevailing in the place of final destination;
- 18.3.2. If the Contractor is not the original manufacturer of the goods, the Contractor shall provide ITU with the benefit of all manufacturers' warranties in addition to any other warranties required to be provided under the Contract;
- 18.3.3. The goods are free from any right of claim by any third party, including claims of infringement of any intellectual property rights, including, but not limited to, patents, copyright and trade secrets.

All such warranties shall remain effective for a period of at least two (2) years following acceptance of goods, or as otherwise defined in this Contract. During the warranty period, upon written notification to the Contractor by ITU, the Contractor shall, promptly and at its own expense, correct all defects and non-conformities. If the defects and non-conformities cannot be corrected, the Contractor shall, at Contractor's cost and at the choice of ITU, either replace the defective goods of the same or better quality or remove the defective goods and fully reimburse ITU for the purchase price paid for the defective goods.

18.4. Rejection of goods

Notwithstanding any other rights of, or remedies available to ITU under the Contract, in case any of the goods are defective or otherwise do not conform to the specifications or other requirements of the Contract, ITU, at its sole option, may reject or refuse to accept the goods, and within thirty (30) calendar days following receipt of notice from ITU of such rejection or refusal to accept the goods, the Contractor shall, in the sole option of ITU:

- 18.4.1. Provide a full refund upon return of the goods, or a partial refund upon a return of a portion of the goods by ITU; or
- 18.4.2. repair the goods in a manner that would enable the goods to conform to the specifications or other requirements of the Contract; or
- 18.4.3. replace the goods with goods of equal or better quality; and

18.4.5. pay all costs relating to the repair or return of the defective goods as well as the costs relating to the storage of any such defective goods and for the delivery of any replacement goods to ITU.

In the event that ITU elects to return any of the goods for the reasons specified in this Section, ITU may procure the goods from any third source. In addition to and without prejudice to any other rights or remedies to which ITU may be entitled under the Contract, including, but not limited to, the right to terminate the Contract, the Contractor shall be liable for any additional cost beyond the balance of the Contract price resulting from any such procurement, including, inter alia, the costs for engaging in such procurement, and ITU shall be entitled to compensation from the Contractor for any reasonable expenses incurred for preserving and storing the goods for the Contractor's account. A termination of the Contract by ITU in accordance with this Section shall not give rise to any claim against ITU for compensation for any damages, expenses, costs or losses incurred by the Contractor.

18.5. Title

The Contractor warrants and represents that the goods delivered under the Contract are unencumbered by any third party's title or other property rights, including, but not limited to, any liens or security interests. Unless otherwise expressly provided in the Contract, title in and to the goods shall pass from the Contractor to ITU upon delivery of the goods and their acceptance by ITU in accordance with the requirements of the Contract.

18.6. Export licensing

The Contractor shall be responsible for obtaining any export license required with respect to the goods, products, or technologies, including software, sold, delivered, licensed or otherwise provided to ITU under the Contract. The Contractor shall procure any such export license in an expeditious manner. Subject to and without any waiver of the privileges and immunities of ITU, ITU shall lend the Contractor all reasonable assistance required for obtaining any such export license. Should any Governmental entity refuse, delay or hinder the Contractor's ability to obtain any such export license, the Contractor shall promptly consult with ITU to enable ITU to take appropriate measures to resolve the matter.

19. Publicity and use of the 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 ITU in connection with its business or otherwise.

20. Audit and investigations

20.1. Each invoice paid by ITU shall be subject to a post-payment audit by auditors, whether internal or external, of ITU or the United Nations or by other authorized and qualified agents of ITU or the United Nations at any time during the term of the Contract and for a period of three (3) years following the expiration or prior termination of the Contract. ITU shall be entitled to a refund from the Contractor for any amounts shown by such audits to have been paid by ITU other than in accordance with the terms and conditions of the Contract.

20.2. ITU may conduct investigations relating to any aspect of the Contract or the award thereof, the obligations performed under the Contract, and the operations of the Contractor generally relating to performance of the Contract at any time during the term of the Contract and for a period of three (3) years following the expiration or prior termination of the Contract.

20.3. The Contractor shall provide its full and timely cooperation with any such inspections, post-payment audits or investigations. Such cooperation shall include, but shall not be limited to, the Contractor's obligation to make available its personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions and to grant to ITU access to the Contractor's premises at reasonable times and on reasonable conditions in connection with such access to the Contractor's personnel and relevant documentation. The Contractor shall require its agents, including, but not limited to, the Contractor's attorneys, accountants or other advisers, to reasonably cooperate with any inspections, post-payment audits or investigations carried out by ITU or the United Nations hereunder.

21. Termination

21.1. Either party may terminate this Contract for cause, in whole or in part, upon thirty (30) calendar days' notice, in writing, to the other party. The initiation of arbitral proceedings in accordance with **Section 29** below shall not be deemed a termination of this Contract.

21.2. ITU may terminate forthwith this Contract at any time by providing written notice to the Contractor in any case which the mandate of ITU applicable to the performance of the Contract or the funding of ITU applicable to the Contract is curtailed or terminated, whether in whole or in part. In such a case the Contractor shall be reimbursed by ITU for all reasonable costs incurred by the Contractor prior to receipt of the notice of termination. In addition, unless otherwise provided by the Contract, ITU may terminate the Contract without cause upon sixty (60) calendar days' written notice to the Contractor.

21.3. 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, or the Contractor offers a settlement in lieu of bankruptcy or receivership, or should ITU reasonably determine that the Contractor has become subject to a materially adverse change in its financial condition that threatens to substantially affect the ability of the Contractor to perform any of its obligations under the Contract, then ITU may terminate this Contract forthwith. The Contractor shall immediately inform ITU of the occurrence of any of the above events.

21.4. In the event of any termination of the Contract, ITU shall be entitled to obtain reasonable written accountings from the Contractor concerning all obligations performed or pending in accordance with the Contract. 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, and only if such work or services were ordered, requested or otherwise provided prior to the Contractor's receipt of notice of termination from ITU or prior to the Contractor's tendering of notice of termination to ITU.

21.5. In the event of any termination of the Contract, the Contractor shall, except as directed by ITU in the notice of termination or otherwise in writing:

- 21.5.1. take immediate steps to bring the performance of any obligations under the Contract to a close in a prompt and orderly manner, and in doing so, reduce expenses to a minimum;
- 21.5.2. refrain from undertaking any further or additional commitments under the Contract as of and following the date of receipt of the notice of termination;
- 21.5.3. place no further subcontracts or orders for materials, services, or facilities, except as ITU and the Contractor agree in writing;
- 21.5.4. terminate all subcontracts or orders to the extent they relate to the Contract;
- 21.5.5. transfer title and deliver to ITU the fabricated or unfabricated parts, work in process, completed work, supplies and other material produced or acquired for Contract;
- 21.5.6. deliver all completed or partially completed plans, drawings, information and other property that, if the Contract had been completed, would be required to be furnished to ITU thereunder;
- 21.5.7. complete performance of the work not terminated, if any;
- 21.5.8. take any other action that may be necessary, or that ITU may direct in writing, for the minimization of losses and for the protection and preservation of any property, whether tangible or intangible, related to the Contract that is in the possession of the Contractor and in which ITU has or may be reasonably expected to acquire an interest.

21.6. The provisions of this Section are without prejudice to any other rights or remedies of ITU under the Contract or otherwise.

22. Force majeure; other changes in conditions

22.1. 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 Section, or upon being directly affected in its fulfilment 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.

22.2. 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 **Section 21** above, except that the period of notice shall be seven (7) calendar days instead of thirty (30) calendar days.

22.3. Force majeure as used in this Section means any unforeseeable and irresistible act of nature, any act of 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.

22.4. 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.

23. Modifications

23.1. Only the Head of the Procurement Division of ITU or such other contracting authority as made known to the Contractor in writing, possesses the authority to agree on behalf of ITU to any modification of or change in the Contract, to a waiver of any of its provisions or to any additional contractual relationship of any kind with the Contractor. Accordingly, no modification or change in the Contract shall be valid and enforceable against ITU unless provided by a valid written amendment to the Contract signed by the Contractor and the Head of the Procurement Division of ITU or such other contracting authority.

23.2. If the Contract shall be extended for additional periods in accordance with the terms and conditions of the Contract, the terms and conditions applicable to any such extended term of the Contract shall be the same terms and conditions as set forth in the Contract, unless the Parties shall have agreed otherwise pursuant to a valid amendment concluded in accordance with **Section 23.1** above.

23.3. The terms or conditions of any supplemental undertakings, licenses, or other forms of agreement concerning the subject matter of the Contract shall not be valid and enforceable against ITU nor in any way shall constitute an agreement by ITU thereto unless any such undertakings, licenses or other forms are the subject of a valid amendment concluded in accordance with **Section 23.1**, above.

24. 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.

25. Non-waiver of rights

The failure by either Party to exercise any rights available to it, whether under the Contract or otherwise, shall not be deemed for any purposes to constitute a waiver by the other Party of any such right or any remedy associated therewith, and shall not relieve the Parties of any of their obligations under the Contract.

26. Mines

The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiaries or affiliated entities (if any) is engaged in the sale or manufacture of anti-personnel mines or components utilized in the manufacture of anti-personnel mines.

27. Anti-terrorism

The Contractor agrees to undertake all reasonable efforts to ensure that none of the funds received from ITU under this Contract are used to provide support to individuals or entities that: (i) are associated with terrorism, as included in the list maintained by the Security Council Committee established pursuant to Resolution 1267 (1999) and 1989 (2011); or (ii) are the subject of sanctions or other enforcement measures promulgated by the United Nations Security Council.

28. Essential terms

The Contractor acknowledges and agrees that each of the provisions in **Sections 3, 4, 5, 6, 7, 9, 10, 11, 17, 26, 27** hereof constitutes an essential term of the Contract and that any breach of any of these provisions by the Contractor shall entitle ITU, in addition to and without limiting any other remedies or rights, to terminate the Contract immediately upon notice to the Contractor, without ITU bearing any liability for termination charges or any other liability of any kind.

29. Settlement of disputes and governing law

The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of the Contract or the breach, termination, or invalidity thereof. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the procedure agreed between the Parties in writing. In the 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 (ICC). 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. The applicable substantive law shall be Swiss law. The arbitrator's ruling shall be binding and final upon the Parties and any recourse against this ruling to any court or tribunal shall be excluded.

30. Privileges, immunities and facilities

30.1. 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.

30.2. Section 9 of the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations adopted by the General Assembly of the United Nations on 21 November 1947 provides, inter alia, that ITU is exempt from all direct taxes, except charges for public utility services, and is exempt from customs restrictions, 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 exemptions of ITU from such taxes, restrictions, duties, or charges, the Contractor shall immediately consult with ITU to determine a mutually acceptable procedure. The Contractor authorizes ITU to deduct from the Contractor's invoices any amount representing such taxes, duties or charges, unless the Contractor has consulted with ITU before the payment thereof and ITU has, in each instance, specifically authorized the Contractor to pay such taxes, duties, or charges under written protest. In that event, the Contractor shall provide ITU with written evidence that payment of such taxes, duties or charges has been made and

appropriately authorized, and ITU shall reimburse the Contractor for any such taxes, duties, or charges so authorized by ITU and paid by the Contractor under written protest.

