

AGREEMENT

between

THE PORTUGUESE REPUBLIC

and

THE INTERNATIONAL TELECOMMUNICATION UNION

relating to

**THE HOLDING, ORGANIZATION AND FINANCING
OF THE 4th WORLD TELECOMMUNICATION POLICY FORUM
OF THE
INTERNATIONAL TELECOMMUNICATION UNION**

and

RELATED MEETINGS

(Lisbon, 20 to 24 April 2009)

PREAMBLE

- A WHEREAS, Resolution 2 (Rev. Marrakesh, 2002) of the Plenipotentiary Conference resolves that the world telecommunication policy forum, as established by Resolution 2 (Kyoto, 1994) shall be maintained in order to discuss and exchange views and information on telecommunications policy and regulatory matters;
- B WHEREAS, pursuant to Decision 9 (Antalya, 2006), the Plenipotentiary Conference decided to convene the fourth World Telecommunication Policy Forum in Geneva, in the first quarter of 2009;
- C WHEREAS, Article 3.2.1 of the Memorandum of Understanding signed on 8 December 2007 between the Government of the Portuguese Republic and the International Telecommunication Union identifies the “organization of forums, workshops or conferences in Portugal on issues of strategic importance for the telecommunications sector” as one of the areas of cooperation between the signatories;
- D WHEREAS, the Portuguese Republic has invited ITU to hold the fourth World Telecommunication Policy Forum (hereinafter referred to as "WTPF-09") in Lisbon from 22 to 24 April 2009 and the information session related thereto (hereinafter referred to as the “Information Session”) in Lisbon on 21 April 2009 and, if need be, the final meeting of the WTPF-09 informal Group of Experts (hereinafter referred to as the “IGoE”) in Lisbon on 20 April 2009 (WTPF-09, the Information Session and the IGoE being collectively referred to as the “Events”);
- E WHEREAS, the required majority of the Member States of the ITU Council have declared themselves in favour of the Events being held at the aforesaid place and on the aforesaid dates; and
- F WHEREAS the Portuguese Republic intends in that connection to abide by the provisions of the International Telecommunication Union Constitution and Convention (Geneva, 1992), as amended by subsequent Plenipotentiary Conferences (Kyoto, 1994, Minneapolis, 1998, Marrakesh, 2002 and Antalya, 2006) and the applicable resolutions and decisions of the Plenipotentiary Conference and the Council, in particular:
1. Resolution 2 (Rev. Marrakesh, 2002) of the Plenipotentiary Conference relating to the World Telecommunication Policy Forum;
 2. Decision 9 (Antalya, 2006) of the Plenipotentiary Conference relating to the fourth World Telecommunication Policy Forum;
 3. Resolution 5 (Kyoto, 1994) of the Plenipotentiary Conference, relating to invitations to hold conferences and meetings of the Union away from Geneva;
 4. Resolution 83 of the Council, as amended, concerning the organization, financing and liquidation of the accounts of conferences and meetings of the Union;
 5. Decision 304 of the Council on the participation of the delegations of Member States of the Union in conferences and meetings of the Union;
 6. Resolution 1004 of the Council concerning privileges, immunities and facilities related to activities of the Union;

7. Resolution 99 (Rev. Antalya, 2006) of the Plenipotentiary Conference on the status of Palestine in the International Telecommunication Union; and
8. Resolution 6 (Kyoto, 1994) of the Plenipotentiary Conference and Resolution 741 of the Council, on the conditions governing the attendance of liberation organizations at the International Telecommunication Union meetings,

NOW THEREFORE the Portuguese Republic, hereinafter referred to as the “Portuguese Party”, and the International Telecommunication Union (ITU), hereinafter referred to collectively as the "Parties", hereby agree as follows:

ARTICLE I

Definitions

- 1.1 For the purposes of the present Agreement, the term "Events participant" shall be understood to mean any delegate, member of a delegation, representative of Sector Members concerned or observer invited to the Events by the Secretary-General of ITU (hereinafter referred to as the “Secretary-General”), including any observer pursuant to Resolution 99 (Rev. Antalya, 2006), Resolution 6 (Kyoto, 1994) and Council Resolution 741.
- 1.2 For the purposes of the present Agreement, the term "ITU official" shall be understood to mean any elected official of ITU taking part in the Events, any ITU official or staff member assigned to the Events or any official specifically recruited by ITU for the Events, in accordance with ITU staffing table.

ARTICLE II

Site and dates of the Events

- 2.1 WTPF-09, the Information Session and the IGoE shall be held at the “Lisboa Congress Centre”, Praça das Indústrias, 1300-307 Lisboa, Portugal (hereinafter referred to as the “Congress Centre”).
- 2.2 The official opening of WTPF-09 shall take place on 22 April 2009, and WTPF-09 shall complete its work on 24 April 2009.
- 2.3 The IGoE shall take place, as appropriate, on 20 April 2009 and the Information Session shall take place on 21 April 2009.
- 2.4 Specific conditions related to the precise dates during which the premises, facilities, services and local staff to be provided by the Portuguese Party (see Article VII below) must be made available and fully operational are specified in Annexes 2, 3 and 4 respectively to this Agreement.

ARTICLE III

Invitations and admission

- 3.1 Invitations to take part in WTPF-09 shall be sent by the Secretary-General to ITU Member States. The Secretary-General shall also issue invitations to Sector Members and to those organizations and entities that may participate in WTPF-09 as observers.
- 3.2 Invitations to take part in the IGoE and the Information Session shall also be sent by the Secretary-General.
- 3.3 The Portuguese Party, in its capacity as host country, shall authorize Events participants and all ITU officials taking part in the work of the Events to enter Portugal and remain within the country for the entire duration of their duties or mission in connection with the Events. This authorization shall also apply to their accompanying spouses and minor children.
- 3.4 To that end, the Portuguese Party shall take all appropriate measures with a view to issuing the necessary visas and entry permits, where required, to all duly pre-registered Events participants and ITU officials free of charge (applicable only to visas requested in a Portuguese Embassy or Consulate), as speedily as possible and not later than two (2) weeks before the opening dates of the Events, provided application for the visa is made at least five (5) weeks before the opening of the Events; if the application is made later, the matter will be given a priority status. The Portuguese Party shall endeavour to have visas and entry permits being delivered at relevant points of entry in Portugal to duly registered Events participants and ITU officials who were unable to obtain them prior to their arrival.
- 3.5 In order to accelerate issuance of visas, forty-five (45) days before the Events and thereafter on a weekly basis, ITU shall provide the Portuguese Party with a list of all Events pre-registered participants and ITU officials.

ARTICLE IV

Privileges and immunities

- 4.1 Within the framework of the present Agreement and its implementation, the Portuguese Party shall apply, *mutatis mutandis*, in respect of the Events the provisions of the Convention on the Privileges and Immunities of the United Nations as approved by the United Nations General Assembly on 13 February 1946 (hereinafter referred to as the "1946 Convention"), to which Portugal has been a Party since 14 October 1998 (see also Council Resolution 1004, confirming its earlier Resolution 193). In particular, delegates and members of a delegation shall, for the duration of the Events and for a period of ten (10) days before it/they begin(s) and five (5) days after it/they end(s), enjoy the privileges, immunities and facilities established under Article IV of the 1946 Convention. In addition, ITU officials shall, for the duration of the Events and for a period of ten (10) days before it/they begin(s) and five (5) days after it/they end(s), enjoy the privileges, immunities and facilities established under Articles V and VII of the 1946 Convention.
- 4.2 Observers from the United Nations, specialized agencies and the International Atomic Energy Agency shall enjoy the privileges and immunities established under Articles V and VII of the 1946 Convention.

- 4.3 Other observers referred to in paragraph 1.1 above shall enjoy immunity from legal process with respect to words spoken or written and any act performed by them in connection with their participation in the Events.
- 4.4 The staff provided to ITU by the Portuguese Party pursuant to Articles VI and VII of this Agreement and section 3 of Annex 2 to this Agreement shall be placed under the direction and supervision of the Secretary-General. The personnel shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the Events.
- 4.5 ITU, its property and assets, by whomever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. It is understood that no waiver of immunity shall extend to any measure of execution. For the purpose of the 1946 Convention, the Events premises referred to in Article II of this Agreement shall be deemed to constitute premises of ITU in the sense of section 3 of the 1946 Convention, and access thereto shall be subject to the authority and control of ITU, in close cooperation with the Portuguese Party. The premises shall be inviolable for the duration of the Events, including the preparatory and closing stages. The property and assets of ITU, by whomever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action. Furthermore, all documents belonging to ITU or held by it shall be inviolable.
- 4.6 The Parties shall cooperate at all times to facilitate the proper administration of justice, secure respect for the laws and regulations of Portugal and prevent any abuse in connection with the privileges, immunities and facilities provided for under this Agreement, bearing in mind these are granted not for the personal benefit of the individuals but to ensure the efficient and independent exercise of their functions in connection with the Events and ITU.

ARTICLE V

Financial arrangements

- 5.1 In accordance with Resolution 5 (Kyoto, 1994), the Portuguese Party shall defray any additional expenses directly or indirectly involved by reason of the Events being held in Lisbon (see Annex 1 to this Agreement) rather than at ITU headquarters. Such expenses consist in particular, without prejudice to the provisions of Article VII below, of the following:
- a. The daily subsistence allowances paid to ITU officials pursuant to the relevant provisions of the Staff Regulations and Staff Rules of ITU and the supplementary service orders issued in connection therewith;
 - b. Travel expenses (including any additional insurance premiums) and terminal expenses (including visas if necessary) for ITU officials in accordance with the relevant provisions of the Staff Regulations and Staff Rules of ITU and the supplementary service orders issued in connection therewith;
 - c. The cost of transport and insurance charges from ITU headquarters to the Congress Centre of all equipment, materials and documents necessary for the proper functioning of the Events secretariat.

These expenses shall be recorded in special accounts kept by the General Secretariat of ITU, which shall manage the necessary funds in accordance with the relevant provisions of ITU's Financial Regulations and Rules. The accounts shall be kept in Swiss francs.

- 5.2 For purposes of the implementation of paragraph 5.1 above, a special account shall be opened by ITU in Geneva. Not later than two (2) weeks following the entry into force of this Agreement, the Portuguese Party shall deposit into this special account a sum in Swiss francs equivalent to one hundred (100) per cent of the estimated expenses referred to in paragraph 5.1 above, as indicated in Annex 1 to this Agreement.
- 5.3 The Portuguese Party shall also defray expenses relating to any receptions or other events that it organizes in conjunction with WTPF-09 as well as to interpretation in Portuguese language, including remuneration of Portuguese interpreters recruited by ITU.
- 5.4 Any other expenses incurred by ITU or chargeable to it that are directly associated with the activities of the Events, including the remuneration of all ITU officials and the repair of any damage or injury done to the Events premises, persons or property and due to ITU officials' gross negligence or wilful misconduct, shall be the responsibility of ITU and shall not be reimbursed by the Portuguese Party.
- 5.5 Subject to the provisions of paragraph 5.4 above, ITU shall not be held responsible for any damage, injury or risk to the Events premises, persons or property.
- 5.6 As soon as possible, and not later than six (6) months after the close of WTPF-09, ITU shall prepare for the Portuguese Party a statement of account indicating the sums paid by the Portuguese Party to ITU or on behalf of ITU, and the amounts paid by ITU for facilities and services chargeable to the Portuguese Party. The balance shall be settled in Swiss francs by the Portuguese Party or by the Union, as the case may be, not later than three (3) months after the statement of account has been received. The Portuguese Party shall have the right to seek and obtain justification for any amounts contained in the statement.

ARTICLE VI

Security and safety measures

- 6.1 The Portuguese Party shall provide, at its own expense, security and safety measures adequate to ensure the efficient functioning of the Events in an atmosphere of security and tranquillity free from interference of any kind (see Annex 4 to this Agreement). Security and safety within the Events premises shall be under the authority and control of ITU, in close collaboration with the Portuguese Party. The Portuguese Party shall provide ITU with security/safety personnel and equipment, at no charge to ITU, which are necessary to ensure the appropriate level of security and safety inside the Events premises. Security and safety outside the Events premises shall be the sole responsibility of the Portuguese Party. The perimeters of these two security zones shall be clearly defined by the Parties at the time the premises are handed over to ITU.
- 6.2 With the close and continuing collaboration of the Portuguese Party, ITU will produce a confidential Events Security Plan (hereinafter referred to as the "Security Plan"). The Security Plan will detail security and safety measures specific to the Events, to the participants and to the location. This document will be issued on a need-to-know basis. The first issue will be not later than five (5) months before the opening dates of the Events. The document will be revised as the Events near, as persons and resources are allocated, and as

risks are identified and addressed. Issue of the completed and comprehensive document will be not later than three (3) months before the opening dates of the Events.

- 6.3 As soon as possible, and at least five (5) months prior to the opening dates of the Events, the Portuguese Party shall designate one (1) senior liaison officer to be in charge of security, who shall work in close collaboration with ITU's Security and Safety Coordinator, to ensure that the Security Plan is comprehensive and smoothly coordinated.

ARTICLE VII

Premises, facilities, services and local staff

to be provided by the Portuguese Party

- 7.1 The Portuguese Party shall provide ITU, free of charge, with the premises, facilities, services and local staff indicated in Annex 2 to this Agreement, as well as with the IT infrastructure, equipment and services indicated in Annex 3 to this Agreement. If any material, supplies and/or equipment provided by the Portuguese Party does not conform to that identified in Annexes 2 and 3 to this Agreement, ITU reserves the right to acquire or rent such material, supplies and/or equipment; any related costs shall be borne by the Portuguese Party. Unless otherwise agreed upon by the Parties (see Article XI of this Agreement), relevant areas of the Events premises shall remain at the disposal of ITU officials and staff provided to ITU by the Portuguese Party as follows:
- a. From 13 to 15 April 2009 inclusive: 8h00 to 20h00;
 - b. On 16 April 2009: 8h00 to 24h00;
 - c. From 17 April to 25 April 2009 (lunch time) : 24 hours a day.
- 7.2 Events participants shall have access to relevant areas of the Events premises at any time of the day or night, from 19 to 24 April 2009. Such access may also be extended to other persons, subject to prior agreement between the competent Portuguese authorities and ITU. If necessary, the Parties to the present Agreement shall decide on the specific conditions applicable to such access.
- 7.3 The materials, equipment, publications and documents belonging to ITU and required for the proper functioning of the Events shall be imported into and exported from Portugal exempt from all import and customs duties, taxes, prohibitions and restrictions of any kind. The Portuguese Party shall promptly issue to ITU or its agents all import and export permits necessary for this purpose and shall facilitate, including by giving necessary instructions, any administrative procedure related to such importations and exportations.
- 7.4 The Portuguese Party shall ensure that adequate accommodation in hotels or residences close to the Congress Centre is available at reasonable commercial rates for Events participants.

ARTICLE VIII

Travel and transport arrangements

The Secretary-General shall make all necessary arrangements for the travel of ITU officials taking part in the work of the Events and for the transport to the site of the Events of all the materials and

equipment required for the proper functioning of the Events secretariat in accordance with the Staff Regulations and Staff Rules of ITU, the supplementary service orders issued in connection therewith and the relevant decisions of the Council in that regard (see Annex 5 to this Agreement).

ARTICLE IX

Arrangements with respect to media relations

- 9.1 All official relations with the media (radio and television, electronic media, newspapers and other publications, etc.) with regard to the preparation, conduct and follow-up of the Events (including accreditation), as well as all official communication activities undertaken for the Events, shall be the responsibility of the Secretary-General or his designated representative, in cooperation with the competent authorities designated by the Portuguese Party.
- 9.2 The Secretary-General or his designated representative shall exercise this responsibility in accordance with the practice generally followed for other conferences, assemblies and meetings of ITU.
- 9.3 In its relations with the media, the Portuguese Party agrees not to interfere in matters relating to substantive issues, including the structure or content of the Events, which are the sole responsibility of ITU.
- 9.4 The Portuguese Party shall allow the temporary importation, tax free and duty free, of all equipment, including technical equipment, accompanying accredited representatives of information media. It shall issue without delay any necessary import and export permits for this purpose.

ARTICLE X

Cancellation, postponement or change of venue of WTPF-09 and/or the Information Session or the IGoE

- 10.1 In the event of the cancellation, postponement or change of venue of WTPF-09 and/or the Information Session or the IGoE as the result of a decision by ITU, ITU's responsibility to the Portuguese Party shall be limited to expenses, whether committed or already paid, in respect of items needed for the organization and preparation of WTPF-09 and/or the Information Session or the IGoE, to the extent that such expenses no longer serve any useful purpose and provided that they were essential and cannot be cancelled or reduced.
- 10.2 If, prior to or during WTPF-09 and/or the Information Session or the IGoE, the Portuguese Party is no longer in a position to host WTPF-09 and/or the Information Session or the IGoE or permit it/them to take place on the dates scheduled, or requests that the venue of WTPF-09 and/or the Information Session or the IGoE be changed, the Portuguese Party's responsibility to ITU shall be limited to the expenses deriving from that decision, in particular all expenses already committed or paid by ITU in respect of items needed for WTPF-09 and/or the Information Session or the IGoE, to the extent that such expenses no longer serve any useful purpose and provided that they were essential and cannot be cancelled or reduced. Any expenditure which may be incurred by ITU for the rental of premises other than those specified in Article II of this Agreement for the holding of the Events shall likewise be defrayed by the Portuguese Party.

- 10.3 In the event of a case of *force majeure* causing or likely to cause the cancellation, postponement, interruption or change of venue of WTPF-09 and/or the Information Session or the IGoE, the Parties undertake to enter into negotiations within five (5) days after the receipt by either of the Parties of written notification that the case of *force majeure* has occurred, in order to reach agreement on the practical, financial and legal consequences of such case of *force majeure*. Unless the Parties establish otherwise in writing, such agreement shall be concluded within seven (7) days after the beginning of the negotiations and in accordance with Article XV below. Should the Parties fail to reach an agreement, the dispute shall be settled in accordance with the provisions of Article XII below.

ARTICLE XI

Implementation of the present Agreement

Arrangements for the implementation of the present Agreement shall be agreed between the Secretary-General or his designated representative and the competent authorities of the Portuguese Party or the liaison officer designated by them.

ARTICLE XII

Settlement of disputes

- 12.1 Any dispute between the Parties arising out of or in connection with the present Agreement which cannot be settled amicably by negotiation between the Parties or by any other mutually agreed means within six (6) months of the date of notification of the dispute shall be referred to a board of three (3) arbitrators (hereinafter referred to as the "Board"). One of the arbitrators shall be appointed by the Secretary-General, and another by the Portuguese Party. The two arbitrators thus appointed shall in turn appoint a third arbitrator to be chairman of the Board. Should either Party fail to appoint its arbitrator within one (1) month after notification by the other Party of the name of its arbitrator, or should the two arbitrators so appointed fail to appoint a chairman within two (2) months of the second arbitrator being appointed, the arbitrator not yet appointed (or the chairman, as applicable) shall be appointed by the President of the International Court of Justice.
- 12.2 The language of arbitration shall be English.
- 12.3 Unless otherwise stipulated by the Parties in writing, the Parties agree that the Board shall be free to decide on the procedures to be followed and to allocate the costs relating to the arbitration between the Parties.
- 12.4 The Parties to the present Agreement agree that the Board's decision shall be final and binding upon them, and that no appeal of the decision may be brought before any national court or tribunal.
- 12.5 Any dispute that involves a question governed by the 1946 Convention shall be dealt with in accordance with section 30 of that Convention.

ARTICLE XIII

Liability

- 13.1 The Portuguese Party shall be responsible for dealing with any action, claim or other demand brought against ITU or its officials arising out of:
- a) Injury to persons or damage to or loss of property on the premises referred to in Article II above that are provided by or placed under the control of the Portuguese Party, other than damage for which ITU is responsible pursuant to paragraph 5.4 above;
 - b) Injury to persons or damage to or loss of property caused by, or incurred in using, the transport services referred to in Annex 2 to this Agreement;
 - c) The employment for the Events of staff provided by the Portuguese Party under the present Agreement, including any actions or claims of any kind whatsoever brought by such staff.
- 13.2 The Portuguese Party shall indemnify and hold harmless ITU and its officials in respect of any such action, claim or other demand.

ARTICLE XIV

Use of names, abbreviations, titles, logos and flags

- 14.1 The name, abbreviation, logo and flag of ITU shall be used exclusively by ITU and shall not be used by the Portuguese Party or by the WTPF-09 organizing committee or its partners or official suppliers, as applicable, without the prior written consent of the Secretary-General or his representative duly authorized to act in the matter.
- 14.2 ITU shall retain all intellectual property rights to the name, abbreviation, title and logo of WTPF-09, which may not be used, subject to paragraph 14.3 below, without the prior written consent of the Secretary-General or his representative duly authorized to act in the matter.
- 14.3 The Portuguese Party or the national entity mandated thereby, shall be authorized to use the name, abbreviation, title and logo of WTPF-09 in connection with the following needs, provided that such use does not create the impression that a commercial business, product or service has been endorsed by ITU.
- a) An information brochure on WTPF-09 and the homepage for an Internet website set up by the Portuguese Party or the national entity mandated thereby, for that purpose;
 - b) Publications whose text has been approved in advance by ITU;
 - c) Publicity materials intended to appear in the local or international media, the content of which has been approved in advance by ITU and whose purpose is to inform potential participants of logistical arrangements for the Events and provide them with other relevant information;
 - d) Press conferences relating to WTPF-09 and such other events as may be necessary in connection with the preparation of WTPF-09.
- 14.4 The Portuguese Party and the national entity mandated thereby shall keep ITU regularly informed concerning any use it/they make(s) of the name, abbreviation, title or logo in the context of paragraph 14.3 above. It/they may not be held responsible for the fraudulent use of the WTPF-09 name, abbreviation, title or logo by an unauthorized third party.

14.5 The Portuguese Party shall notify ITU of the designation of the national entity mandated at the latest one (1) month after the entry into force of the present Agreement.

ARTICLE XV

Amendments

The present Agreement, including its Annexes 1 to 5 which form an integral part thereof, may not be amended except by written agreement between the Parties. Any amendment shall be considered an integral part of the present Agreement.

ARTICLE XVI

Duration

The present Agreement shall remain in force until the final settlement between the Parties, in accordance with the terms and conditions set forth herein, of all organizational, financial and other matter relating to the Event.

ARTICLE XVII

Entry into force

The present Agreement shall enter into force upon the receipt by the Secretary-General of the notification, in writing through diplomatic channels, by the Portuguese Republic conveying the completion of its internal procedures required for that purpose.

IN WITNESS WHEREOF, the undersigned, being duly authorized for that purpose, have signed the present Agreement.

Done in Geneva, on October 2008, in two (2) original authentic copies in the English language and two (2) original copies in the Portuguese language. In case of discrepancy, the authentic copy in the English language shall prevail.

For the Portuguese Republic

For the
International Telecommunication Union

[name]
[title]

Dr Hamadoun I. Touré
Secretary-General