

GENERAL TERMS AND CONDITIONS FOR THE PROCUREMENT OF SERVICES

DEFINITIONS

In these General Terms and Conditions for the Procurement of Services (hereinafter referred to as “General Terms and Conditions”) the following definitions shall apply for the interpretation of contracts and purchase orders:

“IFAD” or “Organisation” means the International Fund for Agricultural Development, represented by the President or his duly authorised representative.

“Contractor” means the supplier of goods or services named in the contract or purchase order, represented by its duly authorised representative to undertake contractual obligations on behalf of the supplier.

“Contract” means the contract relating to the procurement of goods or services between IFAD and the Contractor and includes these General Terms and Conditions.

“Parties” means the Contractor and IFAD collectively, and “Party” means either one of them.

“Purchase Order” (hereinafter referred to as “contract”) means a contract in a standard format relating to the procurement of goods or services between IFAD and the Contractor and includes these General Terms and Conditions.

“Goods” means any goods or related services supplied, or to be supplied, to IFAD by the Contractor (or any of the Contractor’s sub-contractors) pursuant to or in connection with the contract.

“Services” means any service provided, or to be provided, to IFAD by the Contractor (or any of the Contractor’s sub-contractors) pursuant to or in connection with the Contract.

ARTICLE 1 LEGAL STATUS OF THE PARTIES

- (a) Pursuant, *inter alia*, to the Agreement Establishing IFAD and the Convention on the Privileges and Immunities of the Specialized Agencies, IFAD has full juridical personality and enjoys such privileges and immunities as are necessary for the independent fulfillment of its purposes.
- (b) The Contractor shall have the legal status of an independent contractor *vis-à-vis* IFAD, and it shall be fully responsible, in particular, for the acts or omissions of its personnel, agents, or other representatives. Nothing contained in or relating to the Contract shall be construed as establishing or creating between the Parties the relationship of employer and employee or of principal and agent.

The officials, representatives, employees, or subcontractors of each of the Parties shall not be considered in any respect as being the employees or agents of the other Party.

ARTICLE 2 RESPONSIBILITY FOR EMPLOYEES

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

- (a) The Contractor shall be responsible for the professional and technical competence of the personnel it assigns to perform work under the Contract and will select reliable and competent individuals who will be able to effectively perform the obligations under the Contract and who, while doing so, will respect the local laws and customs and conform to a high standard of moral and ethical conduct.
- (b) Such Contractor personnel shall be professionally qualified and, if required to work with officials or staff of IFAD, 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.
- (c) At the option of and in the sole discretion of IFAD:
 - (i) the qualifications of personnel proposed by the Contractor (e.g., curriculum vitae) may be reviewed by IFAD prior to such personnel’s performing any obligations under the Contract;
 - (ii) any personnel proposed by the Contractor to perform obligations under the Contract may be interviewed by qualified staff or officials of IFAD prior to such personnel’s performing any obligations under the Contract; and
 - (iii) in cases in which IFAD has reviewed the qualifications of such Contractor’s personnel, IFAD may reasonably refuse to accept any such personnel.
- (d) Requirements specified in the Contract regarding the number or qualifications of the Contractor’s personnel may change during the course of performance of the Contract. Any such change shall be made only following written notice of such proposed change and upon written agreement

between the Parties regarding such change, subject to the following:

- (i) IFAD may, at any time, request, in writing, the withdrawal or replacement of any of the Contractor's personnel, and such request shall not be unreasonably refused by the Contractor.
- (ii) Any of the Contractor's personnel assigned to perform obligations under the Contract shall not be withdrawn or replaced without the prior written consent of IFAD, which shall not be unreasonably withheld.
- (iii) The withdrawal or replacement of the Contractor's personnel shall be carried out as quickly as possible and in a manner that will not adversely affect the performance of obligations under the Contract.
- (iv) All expenses related to the withdrawal or replacement of the Contractor's personnel shall, in all cases, be borne exclusively by the Contractor.
- (v) Any request by IFAD for the withdrawal or replacement of the Contractor's personnel shall not be considered to be a termination, in whole or in part, of the Contract, and IFAD shall not bear any liability in respect of such withdrawn or replaced personnel.
- (e) Nothing in the Articles above, shall be construed to create any obligations on the part of IFAD with respect to the Contractor's personnel assigned to perform work under the Contract, and such personnel shall remain the sole responsibility of the Contractor.
- (f) The Contractor shall be responsible for requiring that all personnel assigned by it to perform any obligations under the Contract and who may have access to any premises or other property of IFAD shall:
 - (i) undergo or comply with security screening requirements made known to the Contractor by IFAD, including but not limited to, a review of any criminal history;
 - (ii) when within IFAD premises or on IFAD property, display such identification as may be approved and furnished by IFAD 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 IFAD for cancellation.
- (g) Within one working day after learning that any of Contractor's personnel who have access to IFAD

premises have been charged by law enforcement authorities with an offence other than a minor traffic offence, the Contractor shall provide written notice to inform IFAD about the particulars of the charges then known and shall continue to inform IFAD concerning all substantial developments regarding the disposition of such charges.

- (h) All operations of the Contractor, including without limitation, storage of equipment, materials, supplies and parts, within IFAD premises or on IFAD property shall be confined to areas authorized or approved by IFAD. 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 IFAD premises or on IFAD property without appropriate authorization from IFAD.

ARTICLE 3 ASSIGNMENT

- (a) The Contractor may not assign, transfer, pledge or make any other disposition of the Contract, of any part of the Contract, or of any of the rights, claims or obligations under the Contract except as may be provided for in this Contract or with the prior written authorization of IFAD. Any such unauthorized assignment, transfer, pledge or other disposition, or any attempt to do so, shall not be binding on IFAD.
- (b) Any assignment or transfer by the Contractor which is not authorized by IFAD will be void and IFAD reserves the right in such case, without prejudice to other rights or remedies, to terminate the Contract without liability effective upon the Contractor's receipt of notification of termination. Except as permitted with respect to any approved subcontractors, the Contractor shall not delegate any of its obligations under this Contract, except with the prior written consent of IFAD. Any such unauthorized delegation, or attempt to do so, shall not be binding on IFAD.
- (c) The Contractor agrees that IFAD may, at its discretion, assign, transfer, pledge, or make other disposition of this Contract or any part hereof, or any of IFAD's rights or obligations under this Contract upon written notification within a reasonable period of time either prior to or following such assignment, transfer, pledge or subcontracting arrangement.

ARTICLE 4 SUB-CONTRACTING

- (a) In the event that the Contractor requires the services of subcontractors to perform any

obligations under the Contract, and except as may be provided for in the Contract, the Contractor shall obtain the prior written approval of IFAD.

- (b) IFAD shall be entitled, in its sole discretion, to review the qualifications of any subcontractors and to reject any proposed subcontractor that IFAD reasonably considers is not qualified to perform obligations under the Contract. The approval by IFAD of a Subcontractor shall not relieve the Contractor of any of its obligations under the Contract. IFAD shall have the right to require any subcontractor's removal from IFAD premises without having to give any justification therefor. Any such rejection 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, and the Contractor shall be solely responsible for all services and obligations performed by its subcontractors. The terms of any subcontract shall be subject to, and shall be construed in a manner that is fully in accordance with, all of the terms and conditions of the Contract.

ARTICLE 5 EXAMINATION AND ACCEPTANCE

- (a) IFAD reserves the right to examine the equipment, materials and supplies and/or assess the services provided under this Contract, at any time prior to the expiry of this Contract. Without any additional charge, the Contractor shall provide all facilities for the examination and all necessary support to ensure that examinations can be performed in such a manner as not to unduly delay delivery.
- (b) In case of rejection by IFAD of the equipment, materials, supplies and/or services provided, a new review may be carried out by the representatives of both IFAD and the Contractor, if promptly requested by the Contractor and before IFAD exercises any legal remedies. The Contractor shall bear the expenses of such a review.
- (c) If this Contract specifically requires the Contractor to procure equipment, materials or supplies on behalf of IFAD, such procurement shall be of new equipment, materials or supplies unless procurement of used equipment, materials or supplies is approved in advance in writing by IFAD.

ARTICLE 6 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 IFAD upon delivery of the goods and their acceptance by IFAD in accordance with the requirements of the Contract.

ARTICLE 7 EXPORT LICENSING

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

ARTICLE 8 INDEMNIFICATION

- (a) The Contractor shall indemnify, defend, and hold and save harmless, IFAD and its officials, agents and employees, from and against all suits, proceedings, claims, demands, losses and liability of any kind or nature brought by any third party against IFAD, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from, or relating to:
- (i) allegations or claims that the possession of or use by IFAD of any patented device, any copyrighted material, or any other goods, property or services provided or licensed to IFAD 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; or
- (ii) any acts or omissions of the Contractor, or of any subcontractor or anyone directly or indirectly employed by them in the performance of the Contract, which give rise to legal liability to anyone not a party to the Contract, including, without limitation, claims and liability in the nature of a claim for workers' compensation.
- (b) In addition to the indemnity obligations set forth in this Article, the Contractor shall be obligated, at its

sole expense, to defend IFAD and its officials, agents and employees, pursuant to this Article, for any action or omission which might cause liability to IFAD, regardless of whether the suits, proceedings, claims and demands in question actually give rise to or otherwise result in any loss or liability.

- (c) IFAD 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 and shall assert the privileges and immunities of IFAD or any matter relating thereto as appropriate. IFAD 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.
- (d) In the event the use by IFAD of any goods, property or services provided or licensed to IFAD by the Contractor, is found to infringe a third party right, then the Contractor, at its sole cost and expense, shall, promptly, either:
 - (i) procure for IFAD the unrestricted right to continue using such goods or services provided to IFAD;
 - (ii) replace or modify the goods or services provided to IFAD, or part thereof, with the equivalent or better goods or services, or part thereof, that is non-infringing; *or*,
 - (iii) refund to IFAD the full price paid by IFAD for the right to have or use such goods, property or services, or part thereof.
- (e) For the purposes of this Article, the term “third party” shall be deemed to include, *inter alia*, officials, employees and other representatives of the United Nations, IFAD, and other Specialized Agencies participating in the implementation of this Contract as well as any person or entity employed by the Contractor or otherwise performing services for, or supplying goods to, the Contractor.

ARTICLE 9 INSURANCE AND LIABILITY

- (a) The Contractor shall pay IFAD promptly for all loss, destruction, or damage to the property of IFAD 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.
- (b) Unless otherwise provided in the Contract, prior to commencement of performance of any other obligations under the Contract, and subject to any

limits set forth in the Contract, the Contractor shall take out and shall maintain for the entire term of the Contract, for any extension thereof, and for a period following any termination of the Contract reasonably adequate to deal with losses:

- (i) insurance against all risks in respect of its property and any equipment used for the performance of the Contract;
 - (ii) workers’ compensation insurance, or its equivalent, or employer’s liability insurance, or its equivalent, with respect to the Contractor’s personnel 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;
 - (iii) liability insurance in an adequate amount to cover all claims, including, but not limited to, claims for death and bodily injury, products and completed operations liability, loss of or damage to property, and personal and advertising injury, 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, or invitees, or the use, during the performance of the Contract, of any vehicles, boats, airplanes or other transportation vehicles and equipment, whether or not owned by the Contractor; and,
 - (iv) such other insurance as may be agreed upon in writing between IFAD and the Contractor.
- (c) The Contractor’s liability policies shall also cover subcontractors and all defence costs and shall contain a standard “cross liability” clause.
 - (d) The Contractor acknowledges and agrees that IFAD accepts no responsibility for providing life, health, accident, travel or any other insurance coverage which may be necessary or desirable in respect of any personnel performing services for the Contractor in connection with the Contract.
 - (e) Except for the workers’ compensation insurance or any self-insurance programme maintained by the Contractor and approved by IFAD, in its sole discretion, for purposes of fulfilling the Contractor’s requirements for providing insurance under the Contract, the insurance policies required under the Contract shall:
 - (i) include a waiver of subrogation of the Contractor’s insurance carrier’s rights against IFAD;

- (ii) include a provision for response on a primary and non-contributing basis with respect to any other insurance that may be available to IFAD.
- (f) The Contractor shall be responsible to fund all amounts within any policy deductible or retention.
- (g) Except for any self-insurance programme maintained by the Contractor and approved by IFAD for purposes of fulfilling the Contractor's requirements for maintaining insurance under the Contract, 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 IFAD. Prior to the commencement of any obligations under the Contract, the Contractor shall provide IFAD with evidence, in the form of certificate of insurance or such other form as IFAD may reasonably require, that demonstrates that the Contractor has taken out insurance in accordance with the requirements of the Contract.
- (h) IFAD reserves the right, upon written notice to the Contractor, to request copies of any insurance policies or insurance programme descriptions required to be maintained by the Contractor under the Contract. The Contractor shall promptly notify IFAD concerning any cancellation or material change of insurance coverage required under the Contract.
- (i) 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.

ARTICLE 10 EQUIPMENT FURNISHED BY IFAD TO THE CONTRACTOR

Title to any equipment and supplies that may be furnished by IFAD to the Contractor for the performance of any obligations under the Contract shall rest with IFAD, and any such equipment shall be returned to IFAD at the conclusion of the Contract or when no longer needed by the Contractor. Such equipment, when returned to IFAD, shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear, and the Contractor shall be liable to compensate IFAD for the actual costs of any loss of, damage to, or degradation of the equipment that is beyond normal wear and tear.

ARTICLE 11 COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS

- (a) Except as is otherwise expressly provided in writing in the Contract, IFAD 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 IFAD 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. The Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for IFAD.
- (b) 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 of its obligations under the Contract, IFAD does not and shall not claim any ownership interest thereto, and the Contractor grants to IFAD a perpetual licence to use such intellectual property or other proprietary right solely for the purposes of and in accordance with the requirements of the Contract.
- (c) At the request of IFAD, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring or licensing them to IFAD in compliance with the requirements of the applicable law and of the Contract.
- (d) 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 IFAD, shall be made available for use or inspection by IFAD at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to IFAD authorized officials on completion of work under the Contract.

ARTICLE 12 PUBLICITY AND USE OF THE NAME, EMBLEM OR OFFICIAL SEAL OF IFAD

The Contractor shall not advertise or otherwise make public for purposes of commercial advantage or goodwill

that it has a contractual relationship with IFAD, nor shall the Contractor, in any manner whatsoever use the name, emblem or official seal of IFAD, or any abbreviation of the name of IFAD in connection with its business or otherwise without the written permission IFAD.

ARTICLE 13 CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION

- (a) All designs, drawings, specifications, reports, data, computer programmes, and other technical or proprietary information compiled or developed by the Contractor or furnished or disclosed to the Contractor by IFAD under this Contract (“Information”) shall be the property of IFAD and shall be treated as confidential and safeguarded by the Contractor, its employees, agents and representatives. Unless otherwise authorized in writing by IFAD, the Contractor shall use such Information only in the performance of the Contract. Upon completion or termination of the Contract, the Contractor shall return such Information to IFAD.
- (b) 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 IFAD, the Contractor will give IFAD sufficient prior notice of a request for the disclosure of Information in order to allow IFAD to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.
- (c) IFAD reserves the right to publish the Contractor’s name and country of registration, the Contract value and a brief description of the goods or services provided under the Contract. IFAD reserves the right to disclose information to the extent required by its policies or regulations promulgated thereunder.
- (d) A Party shall not be precluded from disclosing Information that (i) is obtained by that Party from a third party without restriction, (ii) is disclosed by the other Party to a third party without any obligation of confidentiality, (iii) is previously known by the Party who has received the Information, or (iv) at any time is developed by the Party completely independently of any disclosures hereunder.
- (e) The Contractor shall be liable for any breach of confidentiality or any indirect disclosure that could vitiate the interests of IFAD. The extent of any such liability shall be directly proportional to the extent of the damage caused.

- (f) 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.

ARTICLE 14 FORCE MAJEURE, OTHER CHANGES IN CONDITIONS

- (a) In the event of and as soon as possible after the occurrence of any cause constituting *force majeure*, the affected Party shall give notice and full particulars in writing to the other Party, of such occurrence or cause if the affected Party is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under the Contract. The affected Party shall also notify the other Party of any other changes in condition or the occurrence of any event which interferes or threatens to interfere with its performance of the Contract. Not more than fifteen (15) days following the provision of such notice of *force majeure* or other changes in condition or occurrence, the affected Party shall also submit a statement to the other Party of estimated expenditures that will likely be incurred for the duration of the change in condition or the event of *force majeure*. On receipt of the notice or notices required hereunder, the Party not affected by the occurrence of a cause constituting *force majeure* shall take such action as it reasonably considers to be appropriate or necessary in the circumstances, including the granting to the affected Party of a reasonable extension of time in which to perform any obligations under the Contract or termination under Article 15. The Contractor shall be liable for any damages resulting from lack of notice of the *force majeure* event.
- (b) If the Contractor is rendered unable, wholly or in part, by reason of *force majeure* to perform its obligations and meet its responsibilities under the Contract, IFAD shall have the right to suspend or terminate the Contract on the same terms and conditions as are provided for in Article 15 “Termination,” except that the period of notice shall be seven (7) days instead of thirty (30) days. In any case, IFAD shall be entitled to consider the Contractor permanently unable to perform its obligations under the Contract in case the Contractor is unable to perform its obligations, wholly or in part, by reason of *force majeure* for any period in excess of ninety (90) days.

- (c) *Force majeure* as used herein means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, or any other acts of a similar nature or force, *provided that* such acts arise from causes beyond the control and without the fault or negligence of the Contractor (or on the part of its personnel, agents, other representatives, or authorized subcontractors), and proves insurmountable in spite of all due diligence. Defects in equipment, material or supplies, or delays in their availability (unless due to *force majeure*), labour disputes, strikes or financial difficulties shall not constitute an event of *force majeure*.

ARTICLE 15 TERMINATION

- (a) Either Party may terminate the 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 18 "Settlement of Disputes, Conciliation and Arbitration", shall not be deemed to be a "cause" for, or otherwise to be in itself, a termination of the Contract.
- (b) For the purposes of this Article, a "cause" may include, without being limited to:
- (i) unforeseen circumstances beyond the control of IFAD;
 - (ii) repeated and/or serious noncompliance with laws and regulations related to social contribution, safety measures, pollution, prevention of injuries in the work place;
 - (iii) serious contractual breaches compromising the normal performance under this Contract;
 - (iv) transfer to third parties, either directly or indirectly through an intermediary, of all or part of the rights and obligations pertaining to the services under this Contract, except for subcontracts duly authorized by IFAD;
 - (v) gross negligence;
 - (vi) unjustified delay in the execution of the services, so as to substantially prejudice the achievement of IFAD's objectives under this Contract;
 - (vii) default in the submission of the bank guarantee as required, if applicable.
- (c) IFAD may terminate the Contract at any time by providing written notice to the Contractor in any case in which IFAD's operations are terminated in accordance with Article 9 Section 4 of the Agreement Establishing IFAD, and if the Contractor ceases to be registered under the laws of an IFAD Member State. In addition each contracting Party may, of its own volition and without being required to pay compensation, terminate the Contract by serving formal written notice to the other Party of sixty (60) days in advance, unless the Contract provides otherwise.
- (d) In the event of any termination of the Contract, upon receipt of notice of termination that has been issued by IFAD, the Contractor shall, except as may be directed by IFAD in the notice of termination or otherwise in writing:
- (i) 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;
 - (ii) refrain from undertaking any further or additional commitments under the Contract as of and following the date of receipt of such notice;
 - (iii) place no further subcontracts or orders for materials, services, or facilities, except as IFAD and the Contractor agree in writing are necessary to complete any portion of the Contract that is not terminated;
 - (iv) terminate all subcontracts or orders to the extent they relate to the portion of the Contract terminated;
 - (v) transfer title and deliver to IFAD the fabricated or un fabricated parts, work in process, completed work, supplies, and other material produced or acquired for the portion of the Contract terminated;
 - (vi) 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 IFAD thereunder;
 - (vii) complete performance of the work not terminated; *and*,
 - (viii) take any other action that may be necessary, or that IFAD 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 IFAD has or may be reasonably expected to acquire an interest.
- (e) In the event of any termination of the Contract, IFAD shall be entitled to obtain reasonable written

accountings from the Contractor concerning all obligations performed or pending in accordance with the Contract. In addition, IFAD shall not be liable to pay the Contractor except for those goods delivered and services provided to IFAD in accordance with the requirements of the Contract, but only if such goods or services were ordered, requested or otherwise provided prior to the Contractor's receipt of notice of termination from IFAD or prior to the Contractor's tendering of notice of termination to IFAD.

- (f) The Contractor shall immediately report any change in its legal status or control to IFAD. IFAD may, without prejudice to any other right or remedy available to it, terminate the Contract forthwith by giving 30 days' notice in the event that:
- (i) the Contractor is adjudged bankrupt, or is liquidated, or becomes insolvent, or applies for a moratorium or stay on any payment or repayment obligations, or applies to be declared insolvent;
 - (ii) the Contractor is granted a moratorium or a stay, or is declared insolvent;
 - (iii) the Contractor makes an assignment for the benefit of one or more of its creditors;
 - (iv) the Contractor offers a settlement in lieu of bankruptcy or receivership; *or*,
 - (v) IFAD reasonably determines 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.
- (g) Except as prohibited by law, the Contractor shall be bound to compensate IFAD for all damages and costs, including, but not limited to, all costs incurred by IFAD in any legal or non-legal proceedings, as a result of any of the events specified in paragraph (f) above, and resulting from or relating to a termination of the Contract, even if the Contractor is adjudged bankrupt, or is granted a moratorium or stay or is declared insolvent. The Contractor shall immediately inform IFAD of the occurrence of any of the events specified in said paragraph, and shall provide IFAD with any information pertinent thereto.
- (h) The provisions of this Article are without prejudice to any other rights or remedies of IFAD under the Contract or otherwise.

ARTICLE 16 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.

ARTICLE 17 NON-EXCLUSIVITY

Unless otherwise specified in the Contract, IFAD shall have no obligation to purchase any minimum quantities of goods or services from the Contractor, and IFAD 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.

ARTICLE 18 SETTLEMENT OF DISPUTES, CONCILIATION AND ARBITRATION

- (a) Any dispute between the Parties concerning the interpretation and implementation of this Contract will be settled amicably through negotiation or, if not settled through negotiation, another agreed mode of settlement, may, if both Parties agree, be submitted to one conciliator. Should the Parties fail to reach agreement on the name of a sole conciliator, each Party shall appoint one conciliator. The conciliation shall be carried out in accordance with the Conciliation Rules of the United Nations Commission on International Trade Law ("UNCITRAL"), as at present in force.
- (b) Any dispute which cannot be settled in accordance with paragraph (a) above within 90 (ninety) days after receipt by one Party of the other Party's written request for such settlement, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. Arbitrations under this provision shall be administered by the International Bureau of the Permanent Court of Arbitration. The number of arbitrators shall be three. The seat of Arbitration shall be Rome, and the language of the arbitration proceedings shall be English.
- (c) Decisions of the arbitral tribunal shall be final and binding on the Parties. The arbitral tribunal shall have no authority to award punitive damages or, unless otherwise expressly provided in this Contract, to award interest in which case such interest shall not be in excess of the United States Federal Reserve Bank of New York Secured Overnight Financing Rate ("SOFR") then prevailing, and any such interest shall be simple interest only.

ARTICLE 19 PRIVILEGES AND IMMUNITIES AND APPLICABLE LAW

Nothing contained in or relating to this Contract shall be deemed a waiver, express or implied, of the privileges and immunities accorded to IFAD under any Treaty, domestic or international law, nor as conferring any privileges or immunities of IFAD on the Contractor or its employees, nor as acceptance by IFAD of the jurisdiction of the courts of any country over disputes arising out of this Contract.

Notwithstanding any specific provision herein, this Contract and any dispute arising therefrom shall be governed by general principles of law to the exclusion of any single national system of law. General principles of law shall be deemed to include the UNIDROIT Principles of International Commercial Contracts 2016.

ARTICLE 20 TAX EXEMPTION

- (a) Pursuant to Article III Section 9 of the Convention on the Privileges and Immunities of the Specialised Agencies approved by the General Assembly of the United Nations on 21 November 1947, IFAD is exempt from all direct taxes, except charges for public utility services, on its assets, income and other property, and also is exempt from customs restrictions, duties and charges of a similar nature in respect of articles imported or exported for its official use.
- (b) In addition, Article IX Sections 15 and 16 of the Headquarters Agreement between Italy and IFAD as ratified by Law 289 on May 23, 1980 also exempts IFAD from the payment of taxes, including Italian VAT.
- (c) Articles 8, 9 and 72 of Decree of the President No. 633/1972 and subsequent amendments, as well as Article 15(10) of EC Directive 77/388, as amended by Directive 91/680 also acknowledges IFAD's exemption from the payment of VAT for the provision of services in EU countries.
- (d) In the event any governmental authority refuses to recognize the exemptions of IFAD from such taxes, restrictions, duties, or charges, the Contractor shall immediately consult with IFAD to determine a mutually acceptable procedure.
- (e) The Contractor shall explicitly specify this tax exemption on each invoice. The Contractor authorizes IFAD to deduct from the Contractor's invoices any amount representing such taxes, duties or charges, unless the Contractor has consulted with IFAD before the payment thereof and IFAD 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 IFAD with written evidence that payment of such taxes, duties or charges has been

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

ARTICLE 21 MODIFICATIONS

- (a) IFAD may at any time by written instructions make changes within the general scope of this Contract and the Contractor shall be obliged to implement such changes in a timely manner. If any such change causes an increase or decrease in the quantities of goods and/or services or the time required for performance of this Contract, an equitable adjustment shall be made in the order price or delivery schedule, or both, and the Contract shall be amended, terminated or reissued accordingly.
- (b) Any claim by the Contractor for adjustment under this Article must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; provided, however, that IFAD may, at its sole discretion, receive and act upon any such claim asserted at any time prior to final payment under this Contract. A dispute arising from failure to agree to any adjustments shall be subject to the provisions of Article 18 "Settlement of Disputes, Conciliation and Arbitration", of this Contract. However, nothing in this Article shall relieve the Contractor from its obligation to proceed with the performance of the Contract as changed.
- (c) No modification of or change in the terms of this Contract shall be valid or enforceable against IFAD unless it is in writing and signed by a duly authorized officer.
- (d) Any modification of this Contract other than the changes provided for under paragraph (a) above shall be effected by an amendment to this Contract to be mutually agreed between the Parties hereto.

ARTICLE 22 AUDITS AND INVESTIGATIONS

- (a) Each invoice paid by IFAD shall be subject to a post-payment audit by auditors, whether internal or external, of IFAD or by other authorized and qualified agents of IFAD at any time during the term of the Contract and for a period of two (2) years following the expiration or prior termination of the Contract. IFAD shall be entitled to a refund from the Contractor for any amounts shown by such audits to have been paid by IFAD other than in accordance with the terms and conditions of the Contract.

- (b) The Contractor acknowledges and agrees that, from time to time, IFAD 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. The right of IFAD to conduct an investigation and the Contractor's obligation to comply with such an investigation shall not lapse upon expiration or prior termination of the Contract.
- (c) The Contractor shall provide its full and timely cooperation with any such inspections, post-payment audits or investigations.
- (d) The contractor shall not commit any of the followings acts that would obstruct an audit or investigation:
 - (i) deliberately destroy, falsify, alter or conceal evidence material to the investigation or make false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice;
 - (ii) threaten, harass or intimidate any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - (iii) perform other acts intended to materially impede the exercise of IFAD's contractual rights of audit or access to information.
- (e) If the Contractor fails to comply with IFAD's request, or otherwise obstructs IFAD's review of the matter, IFAD, in its sole discretion, may take appropriate action against the Contractor.

ARTICLE 23 LIMITATION ON ACTIONS

Except with respect to any indemnification obligations in Article 8, above or as are otherwise set forth in the Contract, any conciliation/arbitral proceedings in accordance with Article 18, above, arising out of the Contract must be commenced within twelve (12) months after the cause of action has accrued.

The Parties further acknowledge and agree that, for these purposes, a cause of action shall accrue when the breach actually occurs, or, in the case of latent defects, when the injured Party knew or should have known all of the essential elements of the cause of action, or in the case of a breach of warranty, when tender of delivery is made, except that, if a warranty extends to future performance of the goods or any process or system and the discovery of the breach consequently must await the time when such goods or other process or system is ready to perform in accordance with the requirements of the

Contract, the cause of action accrues when such time of future performance actually begins.

ARTICLE 24 DATA PROTECTION

(a) In the event any information relating to an identified or identifiable natural person ("Personal Data") are processed by the Contractor in the context of this Agreement, the Contractor shall:

- i) comply with Personal Data laws and regulations, as applicable to the Contractor;
 - ii) take reasonable steps to ensure that Personal Data is accurate, relevant, not excessive, and proportionate to the purposes for which it is processed and that it is done in a fair and transparent manner with respect to the individuals concerned;
 - iii) have in place commercially reasonable technical and organizational security measures to ensure the confidentiality of the Personal Data, to protect the Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access, and which provide a level of security that is commercially reasonable given the risk represented by the processing and the nature of the data to be protected;
 - iv) have in place procedures so that any third party authorized to have access to the Personal Data, including processors, will abide by the Contractor's obligations under this Article and respect and maintain the confidentiality of the Personal Data. Subject to and without any waiver of the privileges and immunities of IFAD, the Contractor will treat Personal Data as confidential and will not disclose it unless access to Personal Data is required for the purposes of meeting legal obligations, in which case, the Contractor will give IFAD sufficient prior notice of a request for the disclosure of information in order to allow IFAD to have a reasonable opportunity to take protective measures if or such other action as may be appropriate before any such disclosure is made;
 - v) identify a contact point to respond to inquiries concerning processing of the Personal Data who will cooperate to respond to any such inquiries within a reasonable timeframe.
- (b) The Contractor will immediately notify IFAD and the individuals to whom the Personal Data pertains in the event it becomes aware of any data breach of its obligations. The Contractor also commits to take reasonable steps to remediate such breach at its expense, and cooperate with any requests regarding the breach.
 - (c) If changes occur to the nature of the Contract, which result in material changes to the way Personal Data is being processed under this Article, the Parties agree to review the matter and sign, if necessary, supplementary

agreements further regulating the control or processing of Personal Data.

ARTICLE 25 ESSENTIAL TERMS

The Contractor acknowledges and agrees that each of the provisions in Articles 26 to 36 hereof constitutes an essential term of this Contract and that any breach of any of these provisions shall entitle IFAD to take immediate measures upon notice to the Contractor, including but not limited to the termination of this Contract or any other contract with IFAD, without any liability for termination charges or any other liability of any kind.

ARTICLE 26 SOURCE OF INSTRUCTIONS

The Contractor shall neither seek nor accept instructions from any authority external to IFAD in connection with the performance of its obligations under the Contract. Should any authority external to IFAD seek to impose any instructions concerning, or restrictions on, the Contractor's performance under the Contract, the Contractor shall promptly notify IFAD and provide all reasonable assistance required by IFAD. The Contractor shall not take any action in respect of the performance of its obligations under the Contract that may adversely affect the interests of IFAD, and the Contractor shall perform its obligations under the Contract with the fullest regard to the interests of the IFAD.

ARTICLE 27 OFFICIALS NOT TO BENEFIT

The Contractor warrants that it has not and shall not offer to any representative, official, employee, or other agent of IFAD any direct or indirect benefit arising from or related to the performance of the contract or of any other contract with IFAD or the award thereof or for any other purpose intended to gain an advantage for the Contractor.

ARTICLE 28 OBSERVANCE OF THE LAW

- (a) The Contractor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the Contract.
- (b) The Contractor shall promptly correct any violations thereof and shall keep IFAD informed of any conflict or problem arising in relation to national authorities. In addition, the Contractor shall maintain compliance with all obligations relating to its registration as a qualified vendor of goods or services to IFAD, as such obligations are set forth in IFAD vendor registration procedures.

ARTICLE 29 UN SUPPLIER CODE OF CONDUCT

The Contractor expressly agrees to abide by the UN Supplier Code of Conduct, which is an integral part of these General Terms and Conditions (available at <https://www.un.org/Depts/ptd/about-us/un-supplier-code-conduct>), and to immediately inform IFAD of any practice inconsistent thereto arising prior to, or during, the execution of the Contract.

ARTICLE 30 LABOUR

The Contractor shall: (i) respect the prohibition of forced or compulsory labour in all its forms; (ii) respect the freely exercised right of workers, without distinction, to organize, to further and defend their interest as well as the protection of those workers who exercise their right to organize; (iii) ensure equality of opportunity and treatment in respect of employment and occupation; and (iv) ensure fair and reasonable conditions of safety, health and welfare.

The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiary or affiliated entities (if any) is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which *inter alia*, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

ARTICLE 31 SEXUAL HARASSMENT AND SEXUAL EXPLOITATION AND ABUSE

- (a) The Contractor expressly agrees to abide by and to perform the Contract in compliance with IFAD's Policy on Preventing and Responding to Sexual Harassment, Sexual Exploitation and Abuse, which is an integral part of these General Terms and Conditions, available at https://www.ifad.org/documents/38711624/40738358/SEA_e_web.pdf/85275c4d-8e3f-4df0-9ed8-cebaacfab128.
- (b) The Contractor shall take all appropriate measures to prevent and prohibit Sexual Harassment and Sexual Exploitation and Abuse on the part of its personnel and subcontractors or anyone else directly or indirectly employed by the Contractor or any of its subcontractors in the performance of the Contract.
- (c) The Contractor shall immediately report to IFAD any incidents of Sexual Harassment and Sexual

Exploitation and Abuse arising out of or in connection with the performance of the Contract or prior to its execution, including convictions, disciplinary measures, sanctions or investigations.

- (d) IFAD may take appropriate measures, including the termination of the Contract, on the basis of proven acts of Sexual Harassment, Sexual Exploitation and Abuse arising out of or in connection with the performance of the Contract.

ARTICLE 32 ENVIRONMENT

The Contractor shall promote environmental friendly policies, including the handling of hazardous materials, waste and air emissions.

ARTICLE 33 TERRORISM

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

ARTICLE 34 MINES

The Contractor warrants and represents 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.

ARTICLE 35 FRAUD AND CORRUPTION

- (a) The Contractor (including its officers, employees and agents) shall adhere to the highest ethical standards during the procurement and execution of the Contract, and will not engage in fraud and corruption.
- (b) If IFAD, in accordance with its investigation and sanctions procedures, substantiates that the Contractor (including the respective officers, employees and agents) engaged in an act of fraud and corruption in competing for, or in executing an IFAD-financed contract, IFAD may:
- (i) issue a reprimand in the form of a formal letter of censure of the entity or individual's behaviour;

- (ii) reject a proposal for award if it determines that the bidder or contractor recommended for has, directly or through an agent, engaged in acts of fraud and corruption competing for the contract in question;
- (iii) declare a firm or individual ineligible, either indefinitely or for a stated period of time, to participate in or be awarded an IFAD-financed contract;
- (iv) cease to make further payments to the Contractor and, as appropriate, request full or partial restitution of sums previously paid by IFAD under the contract; and/or
- (v) refer the matter to appropriate law enforcement authorities.
- (c) The Contractor (including its officers, employees and agents) undertakes to report to IFAD all suspected acts of fraud or corruption of which they have knowledge or become aware. Failure to disclose suspected fraud or corruption will be considered a breach of the Contract and a ground for its termination, and may subject the Contractor to investigation and sanctions processes for violation of the prohibition against fraud and corruption.
- (d) Fraud and corruption are prohibited and include, but are not limited to, acts of corrupt practice, fraudulent practice, collusive practice and coercive practice.
- (e) For the purposes of this paragraph, the following terms shall have the following meanings:
- (i) "corrupt practices" is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to improperly influence the actions of another party;
- (ii) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
- (iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party, to improperly influence the actions of that party.

- (f) The Contractor warrants:
- (i) to have read and understood IFAD's policies and procedures concerning fraud and corruption;
 - (ii) that it has not engaged in any violation of the policies on fraud and corruption described herein;
 - (iii) that it has not misrepresented or concealed any material facts during the procurement or contract negotiation process or performance of the contract;
 - (iv) that neither they, nor any of their director, officers or principal shareholders have been declared ineligible to be awarded IFAD financed contracts or have been convicted of a crime involving fraud or corruption;
 - (v) that none of their directors, officers or principal shareholders have been a director, officer or principal shareholder of any other company or entity that has been declared ineligible to be awarded an IFAD-financed contract or has been convicted of a crime involving fraud or corruption;
 - (vi) that all commissions, agents' fees, facilitating payments or revenue-sharing agreements related to the IFAD-financed contract or consulting agreement have been disclosed;
 - (vii) that they acknowledge that the breach of any of these warranties constitutes a basis for the imposition of any or a combination of the remedial measures described in this Article.
- (g) The imposition of any action to be taken by IFAD pursuant to the provisions referred to in this Article may be public or private, in accordance with the policies of IFAD.
- (b) The Contractor warrants that it is not subject to any sanction or temporary suspension imposed by any International or UN Organization and that none of its affiliates or agents is subject of such sanction or temporary suspension. In instances where the contractor was debarred by other organizations, but such debarment ended prior to the execution of the contract, the contractor shall disclose this fact to IFAD.
 - (c) If at the time of execution of this contract or throughout its duration, the Contractor or any of its affiliates, or agents, is suspended, debarred, or otherwise identified as ineligible by any International Organization or country, the Contractor shall disclose this fact to IFAD.
 - (d) The Contractor recognizes that a breach of these provisions will entitle IFAD to terminate its contract with the Contractor, and that material misrepresentations on its status constitute a fraudulent practice.

ARTICLE 37 COLLABORATION WITH CERTAIN COUNTRIES

- (a) IFAD reserves the right to communicate in writing to the Contractor, countries from which no goods or services shall be purchased directly or indirectly for purposes of delivery, distribution, installation, or use under this Contract following a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.
- (b) These communications shall be deemed a condition of this Contract and be incorporated by the Contractor in any contracts with authorized subcontractors.

ARTICLE 38 CONFLICT OF INTEREST

The Contractor shall provide professional, objective and impartial advice and at all times hold IFAD's interests paramount, act without any consideration for future work, and strictly avoid conflicts with other assignments or its own corporate interests. Contractors have an obligation to disclose any situation of actual, apparent or potential conflict that impacts their capacity to serve the best interest of IFAD, or that may reasonably be perceived as having this effect, and to disclose to IFAD if any staff under contract with IFAD may have an interest of any kind in the contractor's business or any kind of economic ties with the Contractor. Failure to disclose said situations shall be considered a breach of this Contract and a violation of the prohibition against fraud and corruption described in Article 34 and may

ARTICLE 36 DISCLOSURE OF SANCTIONS OR TEMPORARY SUSPENSION

(a) IFAD expressly declares and maintains that it, as an international organization established by treaty among its member states, is not subject to the implementation or recognition of specific national or regional sanctions regimes. Further, IFAD declares and maintains that it is not bound by the decisions of any sanctioning authority, except for its own sanctions and those of the United Nations Security Council. IFAD unilaterally recognizes public debarments imposed by other International Financial Institutions if those debarments meet the requirements for mutual recognition under the Agreement for Mutual Enforcement of Debarment Decisions.

lead to the disqualification of the Contractor, the termination of this Contract and/or other measures as provided herein.

ARTICLE 39 PAYMENT

Unless expressly stipulated otherwise in the Contract, IFAD shall make payment usually by means of a bank remittance:

- (a) Within 30 days of receiving the invoice and any other documents specified in the Contract or within 30 days of the date on which performance of the Contract was satisfactorily completed, whichever is the latest dated one.
- (b) The price of the services shall be as stated in the Contract and may not be increased, except by the express and written agreement of IFAD.
- (c) IFAD shall not pay any charge for late payment unless this has been expressly agreed to in writing.
- (d) Payment shall not be made for services that have not been accepted as provided for in Article 5 of these General Terms and Conditions. Payment by IFAD shall not be deemed to be acceptance of services.
- (e) Payment shall be made in Euros unless otherwise stipulated in the Contract.
- (f) Advance payment shall only be made if expressly authorised by IFAD in the Contract and only where normal commercial practice or the interests of IFAD require so.