

منظمة
الغذية والزراعة
للأمم المتحدة

联合国
粮食及
农业组织

Food and Agriculture
Organization of the
United Nations



Organisation des
Nations Unies pour
l'alimentation et
l'agriculture

Продовольственная и
сельскохозяйственная
организация
Объединенных Наций

Organización de las
Naciones Unidas para la
Agricultura y la
Alimentación

October 7, 2022

Tender No. 2022/SLCXD/FLJAM/119021

INVITATION TO BID (ITB)

CLOSING DATE: October 17, 2022, 23:30 hours (Barbados time)

The Food and Agriculture Organization of the United Nations ("FAO" or "Organization") is an intergovernmental organization with more than 194 member countries. Since its inception, FAO has worked to alleviate poverty and hunger by promoting agricultural development, improved nutrition and the pursuit of food security - defined as the access of all people at all times to the food they need for an active and healthy life.

To achieve its goals, FAO cooperates with thousands of partners worldwide, from farmers' groups to traders, from non-governmental organizations to other UN agencies, from development banks to agribusiness firms (further and more detailed information on FAO can be found on the internet site: <http://www.fao.org>).

In preparing your bid, you should take into account the international status and activities of FAO by submitting your best commercial terms. You should also be aware that FAO enjoys certain privileges and immunities which include exemption from payment of Value Added Tax ("VAT" or "IVA"), customs duties and importation restrictions.

FAO intends to award a **Purchase Order (PO)** for services, specifically for:

Rental of venue, catering, and ancillary services for eight (8) meetings in Belize City, from October 2022 to February 2023

You are hereby invited to submit your best offer for the award of such **services**. The following procedures have been established by this Organization for the award of this Agreement:

1. PROCEDURES

- 1.1. You are invited to submit an offer in **English** language for the above-mentioned services. A description of the requested services is provided in **Appendix A**.
- 1.2. In submitting your offer you are supposed to have considered all aspects relevant to the performance of the proposed contract and to have obtained all necessary information and data as to risks, contingencies and other circumstances which may influence or affect your offer;
- 1.3. It is understood that all documents, calculations, etc. which may form part of your offer will become the property of the Organization, who will not be required to return them to your firm;

- 1.4. All costs incurred to prepare your bid have to be borne by you; FAO will not be liable to reimburse any or all of such costs.
- 1.5. The Organization may decide to make a partial award or no award at all should it consider that the results of this tender and/or any other related circumstance so require;
- 1.6. FAO shall have no obligation to purchase any minimum quantities of goods or services from the Contractor, and shall have no limitation on its right to obtain goods or services of the same kind, quality and quantity as described in **Appendix A** from any other source at any time;
- 1.7. The Organization reserves the right to publish the details of awards, including supplier name and country, total Contract value and a brief description of the services. In all cases, unsuccessful bidders will be notified;
- 1.8. Consortium of firms will be accepted provided that the companies indicate which firm will be the main Contractor and will be responsible for the signature of the relevant contract. Bidders adhering to the Consortium will have to notify FAO of their acceptance to participate in the Consortium;
- 1.9. Registration as a vendor in the UN Global Marketplace (UNGM), www.ungm.org, is a prerequisite for receiving an award from FAO. Please register your firm with UNGM. If you have any difficulties registering, please contact UNGM team using the Help button on the web site www.ungm.org.
- 1.10. The Organization has adopted a zero-tolerance approach to fraud, and it prohibits firms from engaging in corrupt, fraudulent, collusive, coercive, unethical and obstructive practices when participating in procurement activities. As provided by the Vendor Sanctions Procedures (http://www.fao.org/fileadmin/user_upload/procurement/docs/FAO_Vendors_Sanctions_Policy_-_Procedures.pdf), if the Organization determines that a firm has engaged in such conduct, it will impose sanctions and may share information on sanctioned firms with other Intergovernmental or UN Organizations;
- 1.11. A firm and its affiliates, agents and subcontractors should not be suspended, debarred, or otherwise identified as ineligible by any Intergovernmental or UN Organization, including any organization within the World Bank Group or any multi-lateral development bank, or by the institutions and bodies of economic integration organizations (e.g., the European Union). You are therefore required to disclose to the Organization whether your firm, or any of your affiliates, agents or subcontractors, is subject to any sanction or temporary suspension imposed by any such organization or National Authority at any time during the three years prior to the contract or at any time throughout the execution of the contract. You acknowledge that a breach of this provision will entitle FAO to terminate its contract with your firm, without any liability for termination charges or any other liability of any kind of FAO, and that material misrepresentations on your status constitute a fraudulent practice;
- 1.12. Bidders must certify that their firm is not associated, directly or indirectly, with entities or individuals (i) that are associated with terrorism, as in the list maintained by the Security Council Committee established pursuant to its Resolutions 1267 (1999) and 1989 (2011), or (ii) that are the subject of sanctions or other enforcement measures promulgated by the United Nations Security Council. Selected bidders also agree to undertake all reasonable efforts to ensure that none of the funds received from FAO under the awarded contract are used to provide support to

individuals or entities associated with terrorism or that are the subject of Security Council sanctions. This provision must be included in any subcontracts, sub-agreements or assignments entered into under the awarded contract. The Bidder acknowledges and agrees that this provision is an essential term of the awarded contract and any breach of these obligations and warranties shall entitle FAO to terminate the Contract immediately upon notice to the Contractor, without any liability for termination charges or any liability of any kind of FAO;

- 1.13. Bidders must certify that their company and/or subcontractors are not associated, directly or indirectly, with the consultant or any other entity who prepared the terms of reference or other bidding documents for this tender;
- 1.14. Please note that Bidders who use an independent consultant to assist in the preparation of offers may risk engaging in unacceptable practices if the same consultant assists another Bidder to prepare an offer for the same tender. Bidders are reminded that they are fully responsible for the conduct of any consultant who may be used to prepare offers for FAO tenders and they should take all measures to ensure that any independent consultant engaged to assist in the preparation of an offer for an FAO tender has not and will not be involved in the preparation of an offer for another Bidder for the same tender process.

Bidders are kindly requested to disclose to the best of their knowledge whether their company has any personal or professional relationships with FAO. The disclosure shall include all relevant details and should include, but not be limited to:

- **ANY current or past** employment relationship with FAO of your company's representatives and employees;
 - **ANY current or past** relationship with any FAO staff member (family members, spouses, etc.) of your company's representatives and employees.
- 1.15. Fairness and transparency are fundamental principles for FAO procurement activities. Firms that believe that the procurement process was not fair and transparent may request feedback from the office that issued the tender. If a satisfactory response is not received, a firm may present a protest following the bid protest procedures detailed in the following link: <http://www.fao.org/unfao/procurement/codedeconduitethique/protests/en/>. To report allegations of fraud or misconduct in the procurement process, bidders may submit information, also anonymously, to the Office of the Inspector General Hotline: <http://www.fao.org/aud/69204/en/>.

2. DOCUMENTS ENCLOSED

The following documents are enclosed:

- 2.1 The "**Bid Summary**" form, to be used **for submitting your offer**.
- 2.2 **Appendix 'A'** to the Letter of Invitation, with the detailed **description of the services**.
- 2.3 **Appendix 'B'** to the Letter of Invitation - Price list, for **your price offer**.
- 2.4 The **FAO General Terms and Conditions for Services** applicable to the Purchase Order.

3. DOCUMENTS TO BE SUBMITTED AND MANDATORY REQUIREMENTS

Your bid should consist of the following clearly identified **Mandatory Requirements and Documents**: Bidders should provide the information/documents listed below which are essential to being eligible for the participation to the tender and evaluation of the submitted offer. Failure to provide such information/evidence will result in the disqualification of the bidder from the tender evaluation process:

- 3.1 The duly completed and signed "**BID SUMMARY**" mentioned in paragraph 2.1 above.
- 3.2 **LEGAL STATUS.** The certificate of registration of the Bidder's firm or company (**business license**, articles of incorporation or equivalent document). **Valid license from authorities** for handling, storage, and sale of food according to the applicable health, hygiene, and restaurant regulations.
- 3.3 **SERVICE OFFER:** describing the facilities available for conducting the meetings, describing the equipment required (e.g., audio-visual equipment, furniture, etc.), catering options and other services available.
- 3.4 The duly completed **PRICE OFFER** set forth as **Appendix B** to the Letter of Invitation.

4. EVALUATION PROCEDURE.

- 4.1. Pass/Fail methodology will be applied to each mandatory requirement detailed in **paragraph 3** above. Bids that successfully pass all mandatory requirements will be further assessed according to the criteria detailed below:

Criteria	Maximum Points
Bidder's standards and procedures for catering and meeting services, including protocols followed for monitoring quality of food and services, security procedures in case of emergency, etc.	20
Reference letters from clients, related to satisfactory delivery and quality of Catering and Meeting Services.	10
Previous experience providing services to FAO or the United Nations.	10
Technical evaluation	40

- 4.2. The assessment of the technical criteria detailed in the table above accounts for 20% of the overall evaluation. The Rating of the Technical Offer (TO) will be obtained through the following formula:

$$TO \text{ Rating} = (Total \text{ Points Obtained by the Offer} / Max. \text{ Obtainable Points for TO}) \times 20$$

A minimum of twenty (20) points is required to pass the technical evaluation and continue with the evaluation of the financial offer.

- 4.3. **The Financial offer represents 80% of the overall evaluation.** Offers will be evaluated according to the pricing information provided through **Appendix 'B'** (price schedule). The Rating of the Financial Offer (FO) will be then obtained through the following formula:

$$FO \text{ Rating} = (\text{Lowest Priced Offer} / \text{Price of the Offer Being Reviewed}) \times 80$$

- 4.4. A PO will be awarded to the offer with the highest Total Combined Score, which will be obtained through the following formula:

$$\text{Total Combined Score} = TO \text{ Rating} + FO \text{ Rating}$$

- 4.5. FAO reserves the right to consider, and disqualify firms based on, documented prior poor performance, including but not limited to poor quality of goods or services provided, late delivery and unsatisfactory performance. FAO also reserves the right to have further discussions/negotiations with the Bidder prior to issuance of the contract.

5. **COMPLETENESS OF BID**

Bids will only be considered if they contain all of the above information and documents and observe the provisions of the enclosed sample contract as otherwise it will not be possible to evaluate them on an equal basis. Since this Organization is not allowed to sign contracts which do not specify its maximum financial liability, proposals which do not allow us to calculate such liability may be rejected.

6. **CURRENCY OF BID AND OF CONTRACT.**

Your offer should be expressed in United States Dollars (USD). The Contract can be expressed in USD or local currency. Payment can be made in local currency or USD, in the country where the selected Bidder provides the service.

7. **FORM OF SUBMISSION AND CLOSING DATE.**

- 7.1 Your offer should be submitted as follows:

1. **Uploading your Bid on UNGM:**

Please login and upload all the documents requested in **paragraph 3** of this Letter of Invitation in the designated placeholders in the UNGM portal and within the indicated deadline.

It is the exclusive responsibility of the bidders to ensure that the files are uploaded before the tender deadline. The system will reject any bid received after the deadline.

Please follow the instructions below to upload the electronic files in the UNGM portal:

- a) **Log in the UNGM website** with your e-mail and password;
- b) Click on MY TENDERS and select the tender;
- c) Click on VIEW DOCUMENTS (green button on the left of the specific tender notice you are interested in);

- d) Click on the second tab of the tender notice;
- e) Click on the “OPT IN” button;
- f) To upload all the files, click on the relevant “UPLOAD DOCUMENT” red buttons under the “MY TENDER RETURN”.

NOTE: It is highly recommended that the size of the files does not exceed 5MB.

IMPORTANT: Once all files are uploaded, please remember to click on the red button “SUBMIT MY RETURN” to send your offer. If the submission is properly completed, you will be able to view and download a receipt under the “HISTORY” tab.

SUBMISSIONS BY E-MAIL OR FAX ARE NOT ALLOWED.

2. Modification or Withdrawal of Bid:

A bidder may, without prejudice, modify or withdraw an offer before the deadline with the “MODIFY RETURN” function. No offer may be modified after the deadline for submission.

3. No Bid Notice:

In the event that your company is not interested to participate in this tender, the Organizations would appreciate your feedback with a brief explanation. In this case, you are kindly requested to click on the “OPT OUT” button displayed in the UNGM portal to send your reason for non-participation.

7.2 Your offer should reach this Organization no later than:

CLOSING DATE: October 17, 2022, 23:30 hours (Barbados time)

8. COMMUNICATIONS CONCERNING THIS TENDER.

- 9.1 All communications concerning this tender (questions, comments, requests) should mention the tender number (**TENDER No. 2022/SLCXD/FLJAM/119021**) and should be submitted as soon as possible through the UNGM portal under the “CORRESPONDENCE” tab.
- 9.2 Bidders are responsible for appropriately examining this tender. If the Bidder finds discrepancies in or omissions from the documents, or if their intent or meaning appear unclear or ambiguous, or if any other questions arise, the Bidder shall submit any request for clarification through the aforementioned “CORRESPONDENCE” tab.
- 9.3 In submitting a request for clarification, do not, under any circumstances, submit a copy of your offer or reveal any information about your intended quotation. This will invalidate your offer.
- 9.4 Responses to clarification enquiries will be issued by FAO through the UNGM portal simultaneously to all bidders. The system will send automatic e-mail notifications to all bidders every time a clarification, or any other change to the tender notice, is made.

- 9.5 All FAO's responses to bidders' questions will be uploaded under the "CLARIFICATIONS" tab of your Tender Management page and made available to all bidders. Please ensure to read all the clarifications as they become part of the technical specifications.

IMPORTANT: Deadline for questions: three (3) calendar days before the closing date.

- 9.6 FAO shall endeavour to provide answers to clarifications in an expeditious manner and not later than **two (2) calendar days before the closing date**. Any delay in such response shall not cause an obligation on the part of FAO to extend the submission date of the Bid, unless FAO deems that such an extension is necessary.

Thank you for your interest in assisting this Organization in the implementation of its activities.

Yours sincerely,

Procurement Service
Subregional office for the Caribbean (SLC)

BID SUMMARY

Instructions: Please complete the spaces left blank below.

PART I: Mandatory Requirements

I certify that I have provided documentation as evidence of meeting the **Mandatory Requirements** set forth in **paragraph 3** of the Letter of Invitation:

PART II: Commencement of Contract Performance

- ☐ I undertake to commence the performance of the contract immediately upon receipt of the Purchase Order.

PART III: Completeness of Bid

- ☐ I confirm having obtained all relevant data and information as regards risk, contingencies, and any other circumstances which may influence or affect the performance of the contract, which have been duly taken into account in the formulation of this bid.
- ☐ I understand that items for which no price is entered by the Bidder will not be paid for by the Organization when executed and shall be deemed covered by the other prices in the Bill of quantities and included in the total lumpsum.

PART V: Certification of Proper Procedures

- ☐ I certify that my firm/organization (including all members of a consortium, if applicable) and its subcontractors are not associated, directly or indirectly, with the consultant or any other entity who prepared the terms of reference or other bidding documents for the project.
- ☐ I acknowledge that my firm is responsible for any consultant, including independent consultants, who assists in the preparation of offers and confirm that my firm has taken all measures to ensure that any independent consultant engaged to assist in preparing this offer has not and will not be involved in the preparation of another bid for another bidder for the same tender process.

PART VI: Conflict of Interest Disclosure. Either:

- ☐ To the best of my knowledge, I confirm that none of my firm's representatives or employees have a current or former employment relationship with FAO, and none of my firm's representatives or employees has a current or past relationship with an FAO staff member (family members, spouses, etc.).

or

- ☐ I have provided below details regarding the following representatives or employees of my firm who have a current or former employment relationship with FAO and/or who have a current or past relationship with an FAO staff member:
-

PART VII: Contract Provisions:

- ☐ I confirm that the terms and conditions of the contract/s as enclosed with the letter of invitation are acceptable except for the reservations explicitly set out in this offer.

- ☐ I certify that my firm has not and will not engage in corrupt, fraudulent, collusive, coercive, unethical or obstructive practices during the selection process and throughout the negotiation and execution of the contract.

- ☐ I confirm that my firm, including any affiliates, agents or subcontractors, is not subject to any sanction or temporary suspension imposed by an Intergovernmental or UN Organization, including any organization within the World Bank Group or any multi-lateral development bank, or by an institution or body of an economic integration organization (e.g., the European Union). If my firm, or any affiliates, agents or subcontractors, has been subject to any temporary suspension or sanction by any such organization or National Authority within the preceding three years, I have provided further information below:

- ☐ I certify that my firm is not associated with any individual or entity appearing on the 1267/1989 list of the UN Security Council or with any individual or entity subject to any other sanctions or enforcement measures promulgated by the UN Security Council.

PART VIII: Validity of Bid:

This offer is valid for acceptance for a period of SIX (6) MONTHS as from the deadline for the submission of the offer indicated in the letter of invitation.

Name of Firm:

UNGM Number:

Mailing Address:

Telephone:

Email:

Person(s) to contact:

Banking Instructions

Bank Name:

Bank Country:

IBAN:

Account Number:

Bank Account Holder Name:

Branch Name:

Branch Address:

SWIFT/BIC Code:

Name & Title:

Company seal:

APPENDIX A. DESCRIPTION OF THE REQUESTED SERVICES AND SPECIFICATIONS

I. Background

FAO intends to enter into a **Purchase Order (PO)** with the company providing the best value for the money for the **provision of venue, furniture, catering and ancillary services**, for a series of **eight (8) meetings** to be held in **Belize City** from **October 2022 to February 2023**. The estimated dates are shown in the following table:

Number	Consultation	Event Duration	Possible Date	Number of Persons
1	Sustainable Fisheries, Technology and Value Chain Validation Consultation	8:30 am to 4:00 pm (1 day)	October 31, 2022	35
2	NAP Development Consultation	8:30 am to 4:00 pm (1 day)	Dec-22	30
3	NAP women and gender consideration consultation	8:30 am to 4:00 pm (1 day)	Dec-22	30
4	NAP Validation Consultation	8:30 am to 4:00 pm (1 day)	Jan-23	35
5	Climate Data and Information Consultation #1	8:30 am to 4:00 pm (1 day)	October 28, 2022	25
6	Climate Data and Information Consultation #2	8:30 am to 4:00 pm (1 day)	November 30, 2022	25
7	Country Priority Pipeline Project Consultation #2	8:30 am to 4:00 pm (2 days)	Jan-23	25
8	Concept Note Capacity Building	8:30 am to 4:00 pm (2 days)	Feb-23	20

II. Requirements

The **minimum specifications or requirements** for the services are as follows:

1. Venue with enough space according to the number of persons detailed in the table above. The maximum capacity of the venue shall not be compromised.
2. Availability of tables and chairs according to the number of persons.
3. Food and Beverage: Catering for 20-35 persons (morning snack, lunch, and evening snack) including refreshments, water, and coffee.
4. Audio Visual and Tech: PA system (1), LCD projector (1), microphones (2), internet and projector screen (1).
5. Furniture and Equipment: Flag poles (2), podium (1), flip chart stand with chart (1), extension cords (two of at least 15-10 feet long).

The Contractor shall provide all required on site personnel necessary to carry out the requested services. Personnel shall be trained and service-oriented minded. The Contractor shall determine a single point of contact to liaise with FAO staff. The Catering staff shall be courteous while providing the services. Contractor' staff shall maintain high standards of cleanliness in preparation and handling of food items and shall maintain a high level of personal hygiene and cleanliness.

APPENDIX B. SCHEDULE OF PRICES

The Bidder is required to complete the schedule of prices below.

Number	Consultation	Event Duration	Possible Date	Number of Persons	Price per day all inclusive (USD) ¹	Total offer in USD ²	Price per additional person ³
1	Sustainable Fisheries, Technology and Value Chain Validation Consultation	8:30 am to 4:00 pm (1 day)	October 31, 2022	35			
2	NAP Development Consultation	8:30 am to 4:00 pm (1 day)	Dec-22	30			
3	NAP women and gender consideration consultation	8:30 am to 4:00 pm (1 day)	Dec-22	30			
4	NAP Validation Consultation	8:30 am to 4:00 pm (1 day)	Jan-23	35			
5	Climate Data and Information Consultation #1	8:30 am to 4:00 pm (1 day)	October 28, 2022	25			
6	Climate Data and Information Consultation #2	8:30 am to 4:00 pm (1 day)	November 30, 2022	25			
7	Country Priority Pipeline Project Consultation #2	8:30 am to 4:00 pm (2 days)	Jan-23	25			
8	Concept Note Capacity Building	8:30 am to 4:00 pm (2 days)	Feb-23	20			

Notes:

¹ Includes rental of venue, furniture, audio-visual equipment, catering, and all ancillary services for the event, considering the number of persons indicated.

² Total offer according to the number of days of each event.

³ Additional cost per person, in case the number of participants is above the number specified in the table. Maximum capacity of venue shall not be exceeded.

Name and title of Bidder: _____

Authorised signature and stamp: _____

**FAO General Terms and Conditions for Services
(Document attached)**



GENERAL TERMS AND CONDITIONS FOR SERVICES

DEFINITIONS

“Contract” is used to include a purchase order, a contract, or any changes or amendments thereto, including all documents, exhibits, and attachments referenced therein, to which these Standard Provisions apply.

“Contractor” refers to the party with whom FAO is contracting to supply the goods and/or services and who shall have the sole and full responsibility for the performance of its obligations under this Contract.

“FAO” means the Food and Agriculture Organization of the United Nations.

“Goods” include equipment, spare parts, commodities, live plants or animals, seed, raw materials, components, intermediate products, or products, as specified in the Contract.

“Services” refers to the Contractor’s time, effort and/or expertise, as specified in the Contract.

ARTICLE 1 – LEGAL STATUS OF THE PARTIES

FAO and the Contractor shall also each be referred to as a “Party” hereunder, and:

- 1.1 Pursuant, *inter alia*, to the FAO Constitution and the Convention on the Privileges and Immunities of the Specialized Agencies, FAO has full juridical personality and enjoys such privileges and immunities as are necessary for the independent fulfillment of its purposes.
- 1.2 The Contractor shall have the legal status of an independent contractor vis-à-vis FAO, 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 FAO by the Contractor’s officials, employees, agents, servants, subcontractors and other representatives (collectively, the Contractor’s “personnel”), the following provisions shall apply:

- 2.1 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.
- 2.2 Such Contractor personnel shall be professionally qualified and, if required to work with officials or staff of FAO, 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.
- 2.3 At the option of and in the sole discretion of FAO:
 - 2.3.1 the qualifications of personnel proposed by the Contractor (*e.g.*, curriculum vitae) may be reviewed by FAO prior to such personnel’s performing any obligations under the Contract;
 - 2.3.2 any personnel proposed by the Contractor to perform obligations under the Contract may be interviewed by qualified staff or officials of FAO prior to such personnel’s performing any obligations under the Contract; *and*,

- 2.3.3 in cases in which, pursuant to Article 2.3.1 or 2.3.2, above, FAO has reviewed the qualifications of such Contractor's personnel, FAO may reasonably refuse to accept any such personnel.
- 2.4 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:
- 2.4.1 FAO 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.
- 2.4.2 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 FAO, which shall not be unreasonably withheld.
- 2.4.3 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.
- 2.4.4 All expenses related to the withdrawal or replacement of the Contractor's personnel shall, in all cases, be borne exclusively by the Contractor.
- 2.4.5 Any request by FAO 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 FAO shall not bear any liability in respect of such withdrawn or replaced personnel.
- 2.5 Nothing in Articles 2.2, 2.3 and 2.4, above, shall be construed to create any obligations on the part of FAO 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.
- 2.6 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 FAO shall:
- 2.6.1 undergo or comply with security screening requirements made known to the Contractor by FAO, including but not limited to, a review of any criminal history;
- 2.6.2 when within FAO premises or on FAO property, display such identification as may be approved and furnished by FAO 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 FAO for cancellation.
- 2.7 Within one working day after learning that any of Contractor's personnel who have access to any FAO premises have been charged by law enforcement authorities with an offense other than a minor traffic offense, the Contractor shall provide written notice to inform FAO about the particulars of the charges then known and shall continue to inform FAO concerning all substantial developments regarding the disposition of such charges.
- 2.8 All operations of the Contractor, including without limitation, storage of equipment, materials, supplies and parts, within FAO premises or on FAO property shall be confined to areas authorized or approved by FAO. 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 FAO premises or on FAO property without appropriate authorization from FAO.

ARTICLE 3 – ASSIGNMENT

- 3.1 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 FAO. Any such unauthorized assignment, transfer, pledge or other disposition, or any attempt to do so, shall not be binding on FAO. Any assignment by the Contractor which is not authorized by FAO will be void and FAO 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 FAO. Any such unauthorized delegation, or attempt to do so, shall not be binding on FAO.

- 3.2 The Contractor agrees that FAO may, at its discretion, assign, transfer, pledge, or make other disposition of this Contract or any part hereof, or any of FAO'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 – SUBCONTRACTING

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 this Contract, the Contractor shall obtain the prior written approval of FAO. FAO shall be entitled, in its sole discretion, to review the qualifications of any subcontractors and to reject any proposed subcontractor that FAO reasonably considers is not qualified to perform obligations under the Contract. The approval by FAO of a subcontractor shall not relieve the Contractor of any of its obligations under this Contract. FAO shall have the right to require any subcontractor's removal from FAO 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. The essential terms set out in Article 26 shall be included in all subcontracting arrangements entered into under this Contract.

ARTICLE 5 – EXAMINATION AND ACCEPTANCE

- 5.1 FAO 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.
- 5.2 In case of rejection by FAO of the equipment, materials, supplies and/or services provided, a new review may be carried out by the representatives of both FAO and the Contractor, if promptly requested by the Contractor and before FAO exercises any legal remedies. The Contractor shall bear the expenses of such a review.
- 5.3 If this Contract specifically requires the Contractor to procure equipment, materials or supplies on behalf of FAO, 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 FAO.

ARTICLE 6 – DELAYS AND DEFAULTS

- 6.1 If there should be any delay in the performance of this Contract or any part thereof, the Contractor shall notify FAO in writing giving the cause, such notification to reach FAO no later than ten (10) days after the date on which the delay is known by the Contractor.
- 6.2 If the Contractor is unable to obtain any materials or services necessary for the performance of the Contract from its normal sources of supply, it shall remain liable for any delays when equivalent materials or services can be obtained from other sources in good time.
- 6.3 In any event, if the Contractor fails to make delivery of the materials or to complete items or services required within the time specified in the Contract, or within any extension that may be granted, FAO may, without prejudice to any further rights it may have under this Contract and in particular under Article 17:
- 6.3.1 suspend or cancel the right of the Contractor to proceed further with any items or services - or part thereof - in which there has been a delay;
 - 6.3.2 obtain elsewhere upon such terms and conditions as may be deemed appropriate, replacement items or services similar to those which the Contractor failed to provide;
 - 6.3.3 make a corresponding adjustment to the consideration payable to the Contractor; provided, however, that the Contractor shall continue performance of this Contract to the extent not suspended or cancelled under the provisions of this paragraph.
- 6.4 The Contractor shall be liable for any excess costs or damages caused to FAO by a failure or delay on the part of the Contractor in the performance of its obligations under this Contract, except where such failure or delay is due to:

6.4.1 causes which are attributable to FAO;

6.4.2 Force Majeure, as defined in Article 16 below.

6.5 If, in the event of a default by the Contractor or a delay attributable to it, FAO is of the opinion that the determination of actual excess costs or damages, or any part thereof, incurred by FAO is not practicable, FAO may require the Contractor to pay, in lieu of or in addition to actual damages, as the case may be, the amount specified in, or to be calculated in accordance with, the relevant provision of this Contract, as fixed, agreed and liquidated damages for the duration of the delay or default.

6.6 FAO shall determine the effects of any delay or default particularly in regard to an adjustment of the consideration due to the Contractor and to excess costs or damages caused to FAO and its findings shall be binding, provided always that the Contractor shall have the right to avail itself of the provisions of Article 20.

6.7 FAO shall not be liable to pay interest on the amount(s) not paid to the Contractor within the payment schedule foreseen under the Contract, irrespective of the cause of such delay.

ARTICLE 7 – 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 FAO upon delivery of the goods and their acceptance by FAO in accordance with the requirements of the Contract.

ARTICLE 8 – 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 FAO 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 FAO, FAO 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 FAO to enable FAO to take appropriate measures to resolve the matter.

ARTICLE 9 – INDEMNIFICATION

9.1 The Contractor shall indemnify, defend, and hold and save harmless, FAO, and its officials, agents and employees, and any of its member nations or member organizations ("Members") or other ultimate beneficiaries, from and against all suits, proceedings, claims, demands, losses and liability of any kind or nature brought by any third party against FAO, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from, or relating to:

9.1.1 allegations or claims that the possession of or use by FAO of any patented device, any copyrighted material, or any other goods, property or services provided or licensed to FAO under the terms of the Contract, in whole or in part, separately or in a combination contemplated by the Contractor's published specifications therefor, or otherwise specifically approved by the Contractor, constitutes an infringement of any patent, copyright, trademark, or other intellectual property right of any third party; *or*,

9.1.2 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.

9.2 FAO may, where in its opinion, the successful implementation of the Contract or the reputation of FAO, might be prejudiced, withhold or deduct from the payments due to the Contractor under this Contract such amounts as may be required to honour third party claims brought against the Contractor if these claims are connected with the supplies or services to be provided under this Contract and if, after consultation with the Contractor, FAO is satisfied that such claims have been or may become the subject of a judgement, injunction or similar court order.

- 9.3 In addition to the indemnity obligations set forth in this Article 9, the Contractor shall be obligated, at its sole expense, to defend FAO and its officials, agents and employees, pursuant to this Article 9, regardless of whether the suits, proceedings, claims and demands in question actually give rise to or otherwise result in any loss or liability.
- 9.4 FAO 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 and immunities of FAO or any matter relating thereto, for which only FAO itself is authorized to assert and maintain. FAO 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.
- 9.5 In the event the use by FAO of any goods, property or services provided or licensed to FAO 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:
- 9.5.1 procure for FAO the unrestricted right to continue using such goods or services provided to FAO;
- 9.5.2 replace or modify the goods or services provided to FAO, or part thereof, with the equivalent or better goods or services, or part thereof, that is non-infringing; *or*,
- 9.5.3 refund to FAO the full price paid by FAO for the right to have or use such goods, property or services, or part thereof.
- 9.6 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, FAO, 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 10 – INSURANCE AND LIABILITY

- 10.1 The Contractor shall pay FAO promptly for all loss, destruction, or damage to the property of FAO 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.
- 10.2 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:
- 10.2.1 insurance against all risks in respect of its property and any equipment used for the performance of the Contract;
- 10.2.2 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;
- 10.2.3 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*,
- 10.2.4 such other insurance as may be agreed upon in writing between FAO and the Contractor.
- 10.3 The Contractor’s liability policies shall also cover subcontractors and all defense costs and shall contain a standard “cross liability” clause.

- 10.4 The Contractor acknowledges and agrees that FAO 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.
- 10.5 Except for the workers' compensation insurance or any self-insurance program maintained by the Contractor and approved by FAO, 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:
- 10.5.1 name FAO as an additional insured under the liability policies, including, if required, as a separate endorsement under the policy;
 - 10.5.2 include a waiver of subrogation of the Contractor's insurance carrier's rights against FAO;
 - 10.5.3 provide that FAO shall receive written notice from the Contractor's insurance carrier not less than thirty (30) days prior to any cancellation or material change of coverage; *and*,
 - 10.5.4 include a provision for response on a primary and non-contributing basis with respect to any other insurance that may be available to FAO.
- 10.6 The Contractor shall be responsible to fund all amounts within any policy deductible or retention.
- 10.7 Except for any self-insurance program maintained by the Contractor and approved by FAO 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 FAO. Prior to the commencement of any obligations under the Contract, the Contractor shall provide FAO with evidence, in the form of certificate of insurance or such other form as FAO may reasonably require, that demonstrates that the Contractor has taken out insurance in accordance with the requirements of the Contract. FAO 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 Article 10.5.3, above, the Contractor shall promptly notify FAO concerning any cancellation or material change of insurance coverage required under the Contract.
- 10.8 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 11 – ENCUMBRANCES AND LIENS

The Contractor shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office or on file with FAO against any monies due to the Contractor 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 or FAO.

ARTICLE 12 – EQUIPMENT FURNISHED BY FAO TO THE CONTRACTOR

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

ARTICLE 13 – COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS

- 13.1 Except as is otherwise expressly provided in writing in the Contract, FAO 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 FAO 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 FAO.

13.2 To the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the Contractor:

13.2.1 that pre-existed the performance by the Contractor of its obligations under the Contract, *or*

13.2.2 that the Contractor may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Contract,

FAO does not and shall not claim any ownership interest thereto, and the Contractor grants to FAO a perpetual license to use such intellectual property or other proprietary right solely for the purposes of and in accordance with the requirements of the Contract.

13.3 At the request of FAO, 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 FAO in compliance with the requirements of the applicable law and of the Contract.

13.4 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 FAO, shall be made available for use or inspection by FAO at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to FAO authorized officials on completion of work under the Contract.

ARTICLE 14 – PUBLICITY, AND USE OF THE NAME, EMBLEM OR OFFICIAL SEAL OF FAO

The Contractor shall not advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with FAO, nor shall the Contractor, in any manner whatsoever use the name, emblem or official seal of FAO, or any abbreviation of the name of FAO in connection with its business or otherwise without the written permission FAO.

ARTICLE 15 – CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION

All designs, drawings, specifications, reports, data, computer programs, and other technical or proprietary information compiled or developed by the Contractor or furnished or disclosed to the Contractor by FAO under this Contract (“Information”) shall be the property of FAO and shall be treated as confidential and safeguarded by the Contractor, its employees, agents and representatives. Unless otherwise authorized in writing by FAO, the Contractor shall use such Information only in the performance of this Contract. Upon completion or termination of this Contract, the Contractor shall return such Information to FAO.

15.1 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 FAO, the Contractor will give FAO sufficient prior notice of a request for the disclosure of Information in order to allow FAO to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.

15.2 FAO reserves the right to publish or otherwise make public the Contractor’s name and address, any information regarding the Contract including descriptions of the goods or services provided under the Contract and the Contract value. FAO may also disclose Information to the extent as required pursuant to the FAO Constitution or consistent with or pursuant to resolutions or regulations of the Conference of FAO or rules promulgated thereunder.

15.3 A Party shall not be precluded from disclosing Information that is obtained by that Party from a third party without restriction, is disclosed by the other Party to a third party without any obligation of confidentiality, is previously known by the Party who has received the Information, or at any time is developed by the Party completely independently of any disclosures hereunder.

15.4 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 16 – FORCE MAJEURE; OTHER CHANGES IN CONDITIONS

- 16.1 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 17. The Contractor shall be liable for any damages resulting from lack of notice of the *force majeure* event.
- 16.2 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, FAO shall have the right to suspend or terminate the Contract on the same terms and conditions as are provided for in Article 17, except that the period of notice shall be seven (7) days instead of thirty (30) days. In any case, FAO 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.
- 16.3 *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*), labor disputes, strikes or financial difficulties shall not constitute an event of *force majeure*. Notwithstanding anything to the contrary herein in this Contract, the Contractor recognizes that the provision of goods and services may from time to time be performed under harsh or hostile conditions, including civil unrest. Consequently, delays or failure to perform caused by events arising out of, or in connection with, such difficult conditions shall not, in and of itself, constitute *force majeure* under this Contract. The Contractor therefore acknowledges and agrees that, with respect to any obligations under the Contract that the Contractor must perform in areas in which FAO is engaged in, preparing to engage in, or disengaging from any 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.

ARTICLE 17 – TERMINATION

- 17.1 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 conciliation or arbitral proceedings in accordance with Article 20, shall not be deemed to be a "cause" for or otherwise to be in itself a termination of the Contract.
- 17.2 For the purposes of this Article, a "cause" include, without being limited to:
- 17.2.1 unforeseen causes beyond the control of FAO;
 - 17.2.2 repeated and/or serious noncompliance with laws and regulations related to social contribution, safety measures, pollution, prevention of injuries in the work place;
 - 17.2.3 serious contractual breaches compromising the normal performance of the services under this Contract;
 - 17.2.4 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 FAO;
 - 17.2.5 gross negligence;

- 17.2.6 unjustified delay in the execution of the services, so as to substantially prejudice the achievement of FAO's objectives under this Contract;
- 17.2.7 default in the submission of the performance bond as required, if applicable.
- 17.3 FAO may terminate the Contract at any time by providing written notice to the Contractor in any case in which the mandate of FAO applicable to the performance of the Contract or the funding of FAO applicable to the Contract is curtailed or terminated, whether in whole or in part. In addition, unless otherwise provided by the Contract, upon sixty (60) days' advance written notice to the Contractor, FAO may terminate the Contract without having to provide any justification therefor.
- 17.4 In the event of any termination of the Contract, upon receipt of notice of termination that has been issued by FAO, the Contractor shall, except as may be directed by FAO in the notice of termination or otherwise in writing:
- 17.4.1 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;
- 17.4.2 refrain from undertaking any further or additional commitments under the Contract as of and following the date of receipt of such notice;
- 17.4.3 place no further subcontracts or orders for materials, services, or facilities, except as FAO and the Contractor agree in writing are necessary to complete any portion of the Contract that is not terminated;
- 17.4.4 terminate all subcontracts or orders to the extent they relate to the portion of the Contract terminated;
- 17.4.5 transfer title and deliver to FAO the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the portion of the Contract terminated;
- 17.4.6 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 FAO thereunder;
- 17.4.7 complete performance of the work not terminated; *and*,
- 17.4.8 take any other action that may be necessary, or that FAO 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 FAO has or may be reasonably expected to acquire an interest.
- 17.5 In the event of any termination of the Contract, FAO shall be entitled to obtain reasonable written accountings from the Contractor concerning all obligations performed or pending in accordance with the Contract. In addition, FAO shall not be liable to pay the Contractor except for those goods delivered and services provided to FAO 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 FAO or prior to the Contractor's tendering of notice of termination to FAO.
- 17.6 The Contractor shall immediately report any change in its legal status or control to FAO. FAO may, without prejudice to any other right or remedy available to it, terminate the Contract forthwith in the event that:
- 17.6.1 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;
- 17.6.2 the Contractor is granted a moratorium or a stay, or is declared insolvent;
- 17.6.3 the Contractor makes an assignment for the benefit of one or more of its creditors;
- 17.6.4 a Receiver is appointed on account of the insolvency of the Contractor;
- 17.6.5 the Contractor offers a settlement in lieu of bankruptcy or receivership; *or*,

17.6.6 FAO 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.

17.7 Except as prohibited by law, the Contractor shall be bound to compensate FAO for all damages and costs, including, but not limited to, all costs incurred by FAO in any legal or non-legal proceedings, as a result of any of the events specified in Article 17.6, 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 FAO of the occurrence of any of the events specified in Article 17.6, above, and shall provide FAO with any information pertinent thereto.

17.8 The provisions of this Article 17 are without prejudice to any other rights or remedies of FAO under the Contract or otherwise.

ARTICLE 18 – 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 19 – NON-EXCLUSIVITY

Unless otherwise specified in the Contract, FAO shall have no obligation to purchase any minimum quantities of goods or services from the Contractor, and FAO 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 20 – SETTLEMENT OF DISPUTES, CONCILIATION AND ARBITRATION

20.1 Any dispute between the Parties concerning the interpretation and the execution of the Contract will be settled by negotiation or, if not settled by negotiation between the Parties or by another agreed mode of settlement shall, at the request of either Party, 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.

20.2 Any dispute between the Parties concerning the interpretation and the execution of the Contract that is unresolved after conciliation shall, at the request of either Party 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.

20.3 The conciliation or the arbitration proceedings shall be conducted in any of the six (6) official languages of FAO (Arabic, Chinese, English, French, Spanish and Russian) in which the Contract is drafted. In cases in which the language of the Contract is not an official language of FAO, the conciliation or the arbitration proceedings shall be conducted in English.

20.4 The Parties may request conciliation during the execution of the Contract or within a period not to exceed twelve (12) months after the expiry or the termination of the Contract. The Parties may request arbitration not later than ninety (90) days after the termination of the conciliation proceedings.

20.5 Decisions of the arbitral tribunal shall be final and binding to 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 London Inter-Bank Offered Rate (“LIBOR”) then prevailing, and any such interest shall be simple interest only.

ARTICLE 21 – PRIVILEGES AND IMMUNITIES AND APPLICABLE LAW

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

- 21.2 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 2010.

ARTICLE 22 – TAX EXEMPTION

- 22.1 Article III Section 9, of the Convention on the Privileges and Immunities of the Specialized Agencies provides, *inter alia*, that FAO is exempt from all direct taxes, including any value-added tax (VAT), 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 FAO from such taxes, restrictions, duties, or charges, the Contractor shall immediately consult with FAO to determine a mutually acceptable procedure.
- 22.2 The Contractor shall explicitly specify this tax exemption on any invoice. The Contractor authorizes FAO to deduct from the Contractor's invoices any amount representing such taxes, duties or charges, unless the Contractor has consulted with FAO before the payment thereof and FAO 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 FAO with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized, and FAO shall reimburse the Contractor for any such taxes, duties, or charges so authorized by FAO and paid by the Contractor under written protest.

ARTICLE 23 – MODIFICATIONS

- 23.1 FAO 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.
- 23.2 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 FAO 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 20 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.
- 23.3 No modification of or change in the terms of this Contract shall be valid or enforceable against FAO unless it is in writing and signed by a duly authorized officer.
- 23.4 Any modification of this Contract other than the changes provided for under paragraphs 23.1 to 23.3 above shall be effected by an amendment to this Contract to be mutually agreed between the Parties hereto.

ARTICLE 24 – AUDITS AND INVESTIGATIONS

- 24.1 Each invoice paid by FAO shall be subject to a post-payment audit by auditors, whether internal or external, of FAO or by other authorized and qualified agents of FAO 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. FAO shall be entitled to a refund from the Contractor for any amounts shown by such audits to have been paid by FAO other than in accordance with the terms and conditions of the Contract.
- 24.2 The Contractor acknowledges and agrees that, from time to time, FAO 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 FAO 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.
- 24.3 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 FAO 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 FAO hereunder.

ARTICLE 25 – LIMITATION ON ACTIONS

- 25.1 Except with respect to any indemnification obligations in Article 9, above, or as are otherwise set forth in the Contract, any conciliation proceedings in accordance with Article 20 above, arising out of the Contract must be commenced within twelve (12) months after the cause of action has accrued.
- 25.2 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 26 – ESSENTIAL TERMS

The Contractor acknowledges and agrees that each of the provisions in Articles 27 to 35 hereof constitutes an essential term of the Contract and that any breach of any of these provisions shall entitle FAO to terminate the Contract or any other contract with FAO immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind.

ARTICLE 27 – SOURCE OF INSTRUCTIONS

The Contractor shall neither seek nor accept instructions from any authority external to FAO in connection with the performance of its obligations under the Contract. Should any authority external to FAO seek to impose any instructions concerning or restrictions on the Contractor's performance under the Contract, the Contractor shall promptly notify FAO and provide all reasonable assistance required by FAO. 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 FAO, and the Contractor shall perform its obligations under the Contract with the fullest regard to the interests of the FAO.

ARTICLE 28 – OFFICIALS NOT TO BENEFIT

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

ARTICLE 29 – 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. The Contractor shall promptly correct any violations thereof and shall keep FAO 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 FAO, as such obligations are set forth in FAO vendor registration procedures.

ARTICLE 30 – LABOR:

- 30.1 The Contractor shall:
- 30.1.1 respect the prohibition of forced or compulsory labour in all its forms;
 - 30.1.2 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;
 - 30.1.3 ensure equality of opportunity and treatment in respect of employment and occupation; *and*
 - 30.1.4 ensure fair and reasonable conditions of safety, health and welfare.
- 30.2 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 – 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.

ARTICLE 32 – SEXUAL EXPLOITATION

The Contractor shall take all appropriate measures to prevent sexual exploitation or abuse of any direct beneficiary of the FAO projects or programmes receiving the goods or services provided under this Contract, or to any persons related to such beneficiaries, by its employees or any other persons engaged and controlled by the Contractor to perform any services under the Contract. For these purposes, sexual activity with any person less than eighteen years of age, regardless of any laws relating to consent, shall constitute the sexual exploitation and abuse of such person. In addition, the Contractor shall refrain from, and shall take all reasonable and appropriate measures to prohibit its employees or other persons engaged and controlled by it from exchanging any money, goods, services, or other things of value, for sexual favors or activities, or from engaging in any sexual activities that are exploitive or degrading to any direct beneficiary of the FAO projects or programmes receiving the goods or services provided under this Contract, or to any persons related to such beneficiaries.

ARTICLE 33 – TERRORISM

The Contractor agrees to undertake all reasonable efforts to ensure that none of the funds received from FAO under this Contract are used to provide support to individuals or entities:

- 33.1 associated with terrorism, as included in the list maintained by the Security Council Committee established pursuant to Resolutions 1267 (1999) and 1989 (2011); *or*
- 33.2 that are the subject of sanctions or other enforcement measures promulgated by the United Nations Security Council.

ARTICLE 34 – SANCTIONABLE ACTIONS

- 34.1 The Contractor shall observe the highest standard of ethics and will certify that it has not and will not engage in Sanctionable Actions during the selection process and throughout the negotiation and execution of this Contract. The Contractor expressly agrees to abide by the UN Supplier Code of Conduct.
- 34.2 FAO, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith if the Contractor, in the judgment of FAO, has engaged in Sanctionable Actions during the selection process or in negotiating or executing this Contract, and as appropriate, impose sanctions, as per the prevailing Sanctions Procedures (http://www.fao.org/fileadmin/user_upload/procurement/docs/FAO_Vendors_Sanctions_Policy_-_Procedures.pdf), and request full or partial restitution of sums previously paid by FAO under this Contract. FAO may also share information on the sanctioned Contractor with other Intergovernmental or UN Organizations.
- 34.3 For the purpose of this Article, Sanctionable Actions are defined as follows: "Corrupt practice" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value whether tangible or intangible to improperly influence the actions of another party; "Fraudulent practice" means any act or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial and/or other benefit and/or to avoid an obligation; "Collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party; "Coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party; "Unethical practice" is any act or omission contrary to the conflict of interest, gifts and hospitality or post-employment FAO policy (<http://www.fao.org/unfao/procurement/codeconduitethique/en/>), as well as any provisions or other published requirements of doing business with the Organization, including the UN Supplier Code of Conduct; and "Obstructive practice" is an act or omission by a Third Party that may prevent or hinder the work of Investigation Unit of the FAO Office of the Inspector General.

ARTICLE 35 – DISCLOSURE OF SANCTIONS OR TEMPORARY SUSPENSION

The Contractor should not be suspended, debarred, or otherwise identified as ineligible by any Intergovernmental or UN Organization, including any organization within the World Bank Group or any multi-lateral development bank, or by the institutions and bodies of economic integration organizations (e.g., the European Union). The Contractor is therefore required to disclose to FAO whether itself, or any of its affiliates or agents, is subject to any sanction or temporary suspension imposed by any such organization or National Authority at any time during the three years prior to this Contract and at any time throughout the execution of this Contract. The Contractor recognizes that a breach of this provision will entitle FAO to terminate its Contract with the Contractor, and that material misrepresentations on its status constitute a fraudulent practice.

ARTICLE 36 – COLLABORATION WITH CERTAIN COUNTRIES

FAO 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. These communications shall be deemed a condition of this Contract and be incorporated by the Contractor in any contracts with authorized subcontractors.

ARTICLE 37 – NOTICES AND COMMUNICATIONS

All notices and other binding communications shall be in English, or the language of the Contract, and shall be deemed to be validly given if sent by registered mail, by fax or by email with return receipt to the other Party at the address or numbers of either Party as indicated in the Contract.