

CONSTRUCTION CONTRACT

Contract No.: _____

Project: _____

Site Location: _____

THIS CONTRACT entered into as of [_____, 20__] between:

CATHOLIC RELIEF SERVICES - UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, a non-profit organization, incorporated under the laws of the District of Columbia, U.S.A., having its principal place of business at 228 W. Lexington Street, Baltimore, Maryland 21201, U.S.A., operating in the Country through its **Branch Chisinau** and identified with State Identification Number – Fiscal Code (IDNO) 1020600042681 and its registered office at 30/1 Gheorghe Asachi Street, Chisinau, MD-2028, Republic of Moldova and represented by Baher Helmy Abdou, its acting Country Representative (hereinafter referred to as "**CRS**")

and

[_____, a [_____] organized under the laws of [_____] and registered in the Country, having its registered office at [_____] and identified with [registration number _____], and represented by [_____] its [_____] (hereinafter referred to as "**Contractor**")

as collectively hereinafter may be referred to as the "**Parties**" or individually as a "**Party**."

PURPOSE

- A. CRS is entering into this Contract within the scope of its development activities and for the benefit of the people within the Country.
- B. Contractor is entering into this Contract to execute, complete and warranty the Work for CRS as provided herein.

1. DEFINITIONS; INTERPRETATION

1.1 **Definitions.** Capitalized terms used in this Contract but not otherwise defined herein shall have the meanings specified in this Section 1.1, unless the context requires otherwise:

"**Beneficiary**" means [_____].

"**Commencement Date**" means the date that is [_____] business days after the date of this Contract.

"**Completion Deadline**" means [_____] business days, calculated from the Commencement Date.

"**Contract Price**" means [the lump-sum of [_____] [_____]].

"**Country**" means the country in which the Site is located.

"**Defects Liability Period**" means the period commencing on the Completion Date and ending on the date that is [twelve] months thereafter.

"Force Majeure" means an exceptional event or circumstance (i) which is beyond a Party's control, (ii) which such Party could not reasonably have foreseen or protected against before entering into this Contract, (ii) which, having arisen, such Party could not reasonably have avoided or overcome and (iv) which is not substantially attributable to the other Party. Without limiting the generality of the foregoing, Force Majeure includes acts of God (including but not limited to flood, earthquake, storm, hurricane or other natural disasters), terrorist activities, war, extensive military mobilization, embargo and insurrection, but Force Majeure shall not include (a) lack of funds or change in economic circumstances, (b) delay, default or failure to obtain Contractor's equipment or materials or failure, act or omission of any subcontractor (unless caused by a Force Majeure), (c) economic hardship of such Party, (d) strikes or labor disturbances involving only employees of Contractor or employees of any subcontractor, (e) shortages of materials (unless caused by a Force Majeure), (f) customs delays, (g) increases in costs or (h) changes in applicable laws, regulations, orders or other requirements having the force of law, or (i) the Coronavirus Disease 2019 (COVID-19) pandemic as it exists as of the date of this Contract or as is reasonably foreseeable as of the date of this Contract.

"Project" means [_____].

"Site" means the places provided by CRS where the Work is to be executed, and any other places specified in this Contract as forming part of the Site.

"Variation" means any change to the Work, which is instructed or approved as a variation under Section 3.2.

"Work" means the engineering and design, procurement, delivery and transportation, construction and erection, installation, training, inspection and completion, and warranty and correction of defects, as applicable, with respect to the Project to be performed by Contractor pursuant to this Contract. Work includes (i) all labor, materials, equipment, services and any other items to be used by Contractor or its subcontractors in the performance of this Contract and (ii) all related items which would be required of a contractor of projects of comparable size and design which are necessary for the Project to be fully completed in accordance with the requirements specified herein.

1.2 **Legal Status.** It is mutually acknowledged and agreed that Contractor shall be considered as having the legal status of an independent contractor to CRS, and that neither Party, nor its subcontractors, is an agent, employee, partner, nor representative of the other.

1.3 **Severability.** If at any point, a clause in this Contract is deemed invalid by law, it alone, shall be removed from the Contract, leaving all other terms and conditions of this Contract valid and enforceable.

1.4 **Contract Copies.** This Contract is prepared in three copies. An original copy of the Contract will be given to Contractor.

1.5 **Entire Contract.** This Contract, including all of the Exhibits hereto, supersedes any and all other contracts, either oral or in writing, between the Parties hereto with respect to the subject matter herein, and no other contract, statement, or promise relating to the subject matter of this Contract which is not contained herein shall be binding.

1.6 **Amendments.** No modification or change in this Contract, no waiver of any of its provisions or any additional contractual relationship of any kind with Contractor shall be valid and enforceable against CRS unless provided by a written amendment to this Contract signed by the authorized official of both Parties.

1.7 **Assignment.** Contractor shall not assign, transfer, pledge or make other disposition of this Contract or any part thereof, or any of Contractor's rights, claims or obligations under this Contract except with the prior written consent of CRS.

1.8 **Incorporation; Order of Precedence.** Each exhibit and document referred to in this Contract is hereby incorporated as if set forth in full. In the event of a conflict, ambiguity or inconsistency between this Contract and any of the exhibits or documents forming part of this Contract, the following order of precedence shall apply: (i) Exhibit B; (ii) this Contract (to the extent not superseded by a subsequent amendment); (iii) the remaining exhibits to this Contract in the alphabetical order of such exhibits and (iv) any document referred to in this Contract.

1.9 **Language.** This Contract is made in the English language and only this English language version is binding. Any translation of this Contract into another language, regardless of the source of such translation, is solely for convenience of the Parties. In the event of any discrepancy between this Contract and any such convenience translation, this English language version shall control.

1.10 **No Waiver.** The failure of CRS to enforce any provision of this Contract shall not be construed as a waiver of that provision, nor prevent CRS thereafter from subsequently enforcing that provision or any other provision of this Contract.

2. CONTRACTOR RESPONSIBILITIES

2.1 **Performance of Work.** Contractor shall perform all obligations set forth in the attached Exhibit A and all related activities for the successful completion of the Work in compliance with this Contract, and all Work shall be performed in a timely, good quality and non-negligent manner, in compliance with all prudent industry practices, and in adherence with CRS's quality standards for workmanship. Contractor agrees that the Work performed under this Contract shall be complete in all aspects, and, unless otherwise specified in Exhibit A, Contractor shall provide all staff, transport, materials and tools and other ancillary services necessary for the performance of the Work.

2.2 **Compliance with Law.** Contractor shall comply with all laws, ordinances, rules, regulations and governmental approvals bearing upon the performance of its obligations under the terms of this Contract.

2.3 **Subcontractors.** CRS has exclusively selected Contractor to perform the Work under this Contract. Should Contractor choose to use a subcontractor for any part of the Work required under this Contract, Contractor agrees that it will seek the written approval of CRS prior to entering into any subcontract agreement. Contractor is fully responsible and liable for all actions and work performed by any and all subcontractors under this Contract. Contractor agrees that it will not seek additional funds from CRS for the payment of any subcontractors.

2.4 **Protection of Site and Surrounding Areas.** At all times from the date of this Contract and until the last of the Work is accepted by CRS, Contractor shall not engage in any activities, or permit the conduct of any activity, on the Site or in the surrounding areas that are inconsistent with the performance of the Work and/or will reflect in any way negatively on the Project or CRS. Contractor further agrees, as applicable for the performance of the Work, to secure, barricade, cover and adequately mark all areas, obstacles, excavations and other items that may be dangerous to humans and livestock.

2.5 **Protection of the Environment.** Contractor shall (a) take all necessary precautions to avoid causing damage to the environment, including any destruction of trees, when constructing the Works; (b) rectify any environmental damage on or surrounding the Site, including unlawful pollution, arising from or in connection with the acts or omissions of Contractor's employees, subcontractors and/or agents and (c) take all necessary precautions to minimize the impact of construction on the surrounding communities including noise. Any tree removal from the property, Site and surrounding area shall be approved by CRS. CRS shall mark all trees that may be removed by Contractor. CRS may assess against

Contractor a penalty of three times the market value of any trees destroyed or removed without CRS' prior approval. Contractor shall ensure that emissions, surface discharges and effluent from Contractor's activities shall not exceed the values prescribed by applicable laws.

2.6 Employees.

2.6.1 Contractor shall be responsible for the professional and technical competence of its and its subcontractors' employees involved in the Work and will select, for work under this Contract, reliable individuals who will perform effectively in the implementation of this Contract, will respect the local customs and will conform to a high standard of moral and ethical conduct.

2.6.2 Contractor agrees that it shall be responsible for ensuring a safe working environment for all its and its subcontractors' employees involved in the Work. In no circumstances shall CRS or the Beneficiary carry any responsibility or liability for any accidents or injuries involving Contractor's or its subcontractors' employees related to the Work.

2.6.3 Contractor agrees that, in its performance of the Work, it shall not discriminate against any employee, applicant for employment or beneficiary of the Project because of race, color, creed, religion, age, sex, marital status, sexual orientation or affectional preference, ancestry, physical or mental handicap.

2.6.4 Contractor shall also ensure where possible that [70%] of labor shall be from the locality in which the Works are executed. Any breach of this provision shall entitle CRS to terminate this Contract immediately upon notice to Contractor, at no cost to CRS. Prior to any termination, however, if Contractor is unable to locate skilled labor to meet the requirements of the Project, then it will notify CRS, and CRS and Contractor shall discuss what percentage of labor is feasible. At any time, CRS may require Contractor to supply proof of payment of all personnel and to submit to audit any and all records to ensure compliance with this provision. Contractor shall ensure that CRS and the Beneficiary are held harmless from any Contractor personnel claims. CRS reserves the right to approve or disapprove of any employees at any time.

2.7 **CRS's Instructions.** Contractor shall promptly comply, and cause its subcontractors to promptly comply, with all directions and instructions given by CRS's supervising engineer or designated representative. Contractor shall neither seek nor accept instructions from any authority external to CRS in connection with the performance of the Work or its other obligations under this Contract.

2.8 **Access to Work.** In the performance of the Work herein contemplated, Contractor has the authority to control and direct the performance of the details of the Work, CRS being interested only in the result obtained. However, the Work must meet the requirements of this Contract and shall be subject to CRS's right to inspection and approval to secure the satisfactory completion thereof. In order to evaluate Contractor's Work, CRS shall, with reasonable notice to Contractor, have access to any and all Work-related materials, including written materials developed by Contractor pursuant to the Contract. In addition, Contractor shall provide CRS with reports, records, manuscripts and other statistical information used in the course of performing the Work and its other obligations under this Contract, as may be requested by CRS. CRS shall designate one or more representative(s) who shall at reasonable times have access to the Work for the purpose of inspecting the Work performed by Contractor hereunder and to evaluate whether the Work is being performed in accordance with the provisions hereof. If any portion of the Work is inspected and subsequently rejected by such CRS representative, Contractor shall re-perform the rejected Work at Contractor's own cost. Contractor, at the direction of CRS, shall grant CRS, its other contractors and its partner field staff access to work sites, as required to accomplish other work outside the scope of this Contract.

2.9 **Progress Reports.** Contractor shall submit a weekly progress report to CRS in the format provided by CRS's supervising engineer.

2.10 “[RESERVED]”

3. SCHEDULE; COMPLETION; DELAY DAMAGES

3.1 **Schedule.** Contractor agrees that it has calculated the time necessary to complete all the Work under this Contract, has access to all necessary labor, materials and equipment needed for the Work and shall perform each portion of the Work, in full, and as described in Exhibit A, in compliance with the project schedule and on or before its corresponding deadline, as indicated in Exhibit A. If Contractor fails to perform any portion of the Work by the corresponding deadline set forth in the project schedule described in Exhibit A, Contractor shall promptly notify CRS.

3.2 Variations.

3.2.1 Variations may be initiated by CRS in writing at any time prior to the Completion Date, either by a written instruction or by a written request for Contractor to submit a proposal. Contractor shall execute and be bound by each Variation, unless Contractor promptly gives notice to CRS stating (with supporting particulars) that Contractor cannot readily obtain the equipment or materials required for the Variation. Upon receiving this notice, CRS may cancel, confirm or vary the instruction.

3.2.2 A Variation may include:

- a. changes to the quantities of any item of the Work from the scope included in this Contract (however, such changes do not necessarily constitute a Variation);
- b. changes to the quality and other characteristics of any item of the Work;
- c. changes to the levels, positions and/or dimensions or any part of the Work;
- d. removal or omission of any part of the Work from the scope included in this Contract;
- e. any additional work, materials, equipment or services necessary for the Work; or
- f. changes to the sequence or timing of the execution of the Work.

3.2.3 Contractor shall not make any alteration and/or modification of the Work, and no changes to the Contract Price or the Completion Deadline shall be permitted under this Contract, unless and until CRS instructs or approves a Variation in writing pursuant to this Section 3.2.

3.3 Force Majeure.

3.3.1 Neither Party shall be liable for any failure to perform or default in performing its obligations hereunder if such delay or default is caused by a Force Majeure. The Party whose performance is prevented by the Force Majeure shall, within 10 calendar days of discovery of the Force Majeure, inform the other Party of the impediment and the effects thereof. The affected Party shall exercise its best efforts under the circumstances to remove or remedy the events of Force Majeure and the effects thereof on the Work.

3.3.2 If the Party impacted by the Force Majeure is Contractor, Contractor shall also give notice and full particulars to CRS of such occurrence if Contractor is thereby rendered unable,

wholly or in part, to perform its obligations and meet its responsibilities under this Contract. Contractor shall also notify CRS of any other changes in conditions or the occurrence of any event, which interferes or threatens to interfere with its performance of this Contract. The notice shall include steps proposed by Contractor to be taken, including any reasonable alternative means for performance that is not prevented by the Force Majeure. On receipt of the notice required under this provision, CRS shall take such action as, in its sole discretion, as it considers being appropriate or necessary in the circumstances, including the granting to Contractor of a reasonable extension of the Completion Deadline in a written Variation instructed or approved by CRS pursuant to Section 3.2.

3.3.3 If the Force Majeure continues for 30 calendar days or more, CRS may, in its sole discretion, terminate all or that part of this Contract upon written notice to Contractor and the provisions of Section 8.5 shall apply.

3.4 **Completion.** The "**Completion Date**" shall mean the date on which each of the following events has occurred:

3.4.1 The Project and the Work have been fully completed (other than any minor outstanding punchlist items approved in writing by CRS, to be completed within a period agreed to in writing by CRS) in conformance with the requirements of this Contract and all applicable laws, ordinances, rules, regulations and governmental approvals.

3.4.2 All as-built drawings and other documents related to the Project required to be delivered pursuant to this Contract have been delivered to CRS.

3.4.3 All Contractor's equipment, materials and wastes have been removed from the Site and properly disposed of (other than those needed for the completion of any punchlist items).

3.4.4 Any delay damages then due under Section 3.5 have been paid to CRS, or CRS has deducted such delay damages from amounts owed to Contractor.

3.4.5 Each of the foregoing conditions has been certified to in writing by Contractor, and approved by CRS.

3.5 **Completion Deadline; Delay Damages.**

3.5.1 Contractor shall achieve the Completion Date on or before the Completion Deadline. In case of delay in achieving the Completion Date by the Completion Deadline, Contractor shall pay to CRS delay damages equal to [0.2]% of the Contract Price per day of delay, up to a maximum of [5]% of the Contract Price for the period until Completion is achieved in accordance with this Contract.

3.5.2 The Parties agree it would be difficult to determine the amount of actual damages that would be suffered by CRS due to a delay in achieving the Completion Date by the Completion Deadline, but that the delay damages set forth in this Section 3.5 are a fair and reasonable determination of the amount of actual damages that would be suffered by CRS, and that these delay damages do not constitute a penalty. Contractor hereby expressly waives any defense or right to contest the validity of these delay damages on the grounds that they are void as penalties or are not reasonably related to actual damages.

4. **DEFECTS LIABILITY PERIOD**

4.1 **Defects Warranty.** Contractor warrants throughout the Defects Liability Period and through the warranty period established in Section 4.4, irrespective of any prior termination hereof, that the Project will be completed to satisfy all applicable laws, ordinances, rules, regulations and governmental

approvals, and the Work, including each item of equipment and materials incorporated therein, will be of suitable grade of their respective kinds for their specified use herein, will be free from defects in design, engineering, materials, construction and workmanship, and shall conform in all respects to all requirements of this Contract.

4.2 Warranty Work. Contractor shall repair, replace, or correct, and disassemble and reassemble the Project and Work affected by, any failures, damage, defects or deficiencies under the warranties hereunder that occur during the Defects Liability Period and through the warranty period established in Section 4.4, in each case at no cost to CRS and within a reasonable time period as requested by CRS.

4.3 Subcontractor Warranties. Without limiting Contractor's own warranties hereunder, Contractor shall also, for the benefit of CRS, obtain from all subcontractors the best warranties available on commercially reasonable terms for the equipment, materials and services provided by such subcontractors, and shall assign such warranties to CRS upon the earlier of the expiration of the Defects Liability Period and the termination of this Contract.¹

4.4 [Statutory] Warranty; Survival of Obligations

Notwithstanding the expiration of the Defects Liability Period or any acceptance of the Work by CRS, Contractor shall remain responsible for a period of 5 years [from the Completion Date] to promptly repair, replace, reconstruct or otherwise remedy, at its sole cost and expense, any defect, deficiency, non-conformity or failure in the Work [or otherwise as required by Moldova law]. The expiration of the Defects Liability Period, release of retention, final payment, issuance of any completion certificate, occupancy of the Project, use of the Project by CRS or any Beneficiary, or termination of this Contract shall not relieve Contractor of any obligation arising under such warranty period.

If CRS or Beneficiary discovers a defect during such warranty period, CRS or the Beneficiary shall notify Contractor in writing and Contractor shall commence corrective action within the period specified in the notice, taking into account the nature and urgency of the defect. [Include as customary: If Contractor fails to do so, CRS or the Beneficiary may perform or procure the required corrective work and Contractor shall reimburse CRS or the Beneficiary for all reasonable costs incurred.]

The remedies set forth in this Section are cumulative and are in addition to, and not in lieu of, any other rights or remedies available under this Contract, applicable law, or otherwise.”

¹ CRS FORM NOTE: Evidence of assignment should be in the form of either a warranty issued in CRS's or Beneficiary's name (or expressly for its benefit) or a letter from the subcontractor acknowledging that CRS or Beneficiary may enforce the warranty.

5. PAYMENTS²

5.1 **Contract Price.** It is mutually agreed by the Parties that the Contract Price shall be paid to Contractor on a completion basis according to the payment schedule set forth in Exhibit A. The Contract Price is considered as the lump-sum cost to complete the Work, all import duties and taxes included, and shall not be adjusted without written direction of CRS or written amendment to this Contract.

5.2 **Payment Schedule.** Amounts owed under this Contract shall be invoiced by Contractor and paid by CRS as follows:

5.2.1 “[RESERVED]”

5.2.2 Progress payments for the Work shall be made upon completion, and satisfactory inspection by CRS's supervising engineer, for each item of Work set forth on the payment schedule set forth in Exhibit A. Contractor may submit invoices for items of Work completed no more frequently than once every three weeks. Any deviations from the payment schedule set forth in Exhibit A must be requested in writing by Contractor and approved in writing by CRS. CRS shall deduct and hold as retention an amount equal to 5% of the amount specified in each invoice. The retention shall serve as security for Contractor's full and faithful performance of all obligations under this Contract, including completion of the Work, correction of defects, performance of warranty obligations, payment of subcontractors and suppliers, and payment of all amounts owed by Contractor to CRS.

Upon the occurrence of a Contractor Default under Section 8.1, CRS may, without prejudice to any other rights or remedies, retain, apply, set off, or use all or any portion of the retention to satisfy any damages, losses, claims, liabilities, completion costs, corrective work costs, warranty costs, professional fees, or other amounts incurred or reasonably expected to be incurred by CRS arising out of or relating to such default. If CRS's damages and costs exceed the amount of the retention, Contractor shall remain liable for the deficiency.

. If there are no Contractor defaults and also no defects are found during the Defects Liability Period, the full amount of retention shall be paid to Contractor by the later of 10 business days after the expiration of the Defects Liability Period or the resolution, either as determined by CRS or through dispute resolution pursuant to Section 10..

5.2.3 A final payment of the Contract Price, which shall include the balance of any amounts CRS owes under this Contract, shall be made by the later of 10 business days after the expiration of the Defects Liability Period or the resolution of any defects for which CRS has made a claim during the Defects Liability Period. Contractor's acceptance of such final payment shall be deemed to be a waiver and release of all claims by Contractor for payment of the Contract Price or other obligations of CRS, except only unknown claims arising from fraud or misrepresentation. Promptly upon final payment, Contractor shall deliver all instruments required by applicable law or reasonably requested by CRS to effect the foregoing waiver and release and to demonstrate that all payments have been made to subcontractors.³

² CRS FORM NOTE: Consider including provision for CRS to pay subcontractors directly with a right to offset amounts due to Contractor by amounts paid to subcontractors. Inclusion of this provision should be determined on a project-by-project basis.

³ CRS FORM NOTE: Language and requirements of release will vary by jurisdiction and should be discussed with in-Country counsel. If local law provides for Contractor to deliver separate lien release documentation (e.g., final release, quitclaim, etc.), such documentation can be specifically referenced in this provision and a form attached to this Contract.

5.3 **Invoices; Payments.**

5.3.1 Payments as described in Section 5.2 shall only be processed after presentation by Contractor, and review and approval by CRS, of an invoice and all necessary supporting documentation (including photos evidencing progress being claimed, quality assurance and quality control reports and CRS approvals, inspection appraisal reports signed by both CRS and Contractor and joint progress accomplishment certificates). All invoices shall at a minimum include the following information:

- a. Contractor's full legal name, address, telephone number and other contact information;
- b. the Contract Number identified above;
- c. Contractor's payment instructions (check or wire transfer);
- d. detailed description of the Work being billed;
- e. the amounts to which Contractor considers itself entitled (including, if applicable, separate line items for any Variations); and
- f. signature/stamp of Contractor.

5.3.2 No amounts shall be payable to Contractor under this Contract without complete supporting documentation. Within 10 business days after delivery of each invoice with complete supporting documentation, and approval of such invoice by CRS, CRS shall pay to Contractor the amounts specified in such invoice, less:

- a. the value of any item of the Work not completed in a timely and satisfactory manner to the standards and specifications of this Contract, or which CRS otherwise expresses its reasons for disagreement;
- b. repayment of the advance payment, if any;
- c. withholding tax, if any; and
- d. described in Section 5.2.2 on the amount of such invoice.

5.3.3 CRS shall not be bound by any sum previously considered by CRS to be due to Contractor. CRS reserves the right to set-off or deduct any amount owed by Contractor to CRS from any payment owed to Contractor under this Contract.

5.3.4 Payment will only be made by CRS by check designated to ["_____"] or by wire transfer to Contractor's bank account in accordance with the instructions specified in the invoice. No payments will be made in cash. In the case where a payment is provided by wire transfer, Contractor will pay all bank transfer duties and fees. Contractor shall sign a properly stamped receipt acknowledging receipt of the payment.

5.3.5 Payment of the Contract Price (or any portion thereof) and/or approval of any invoice shall not constitute CRS's acceptance or approval of any portion of the Work or waiver of any claim or right CRS may have at that time or thereafter. Contractor shall not suspend, in whole or in part, performance of this Contract during any period of disagreement by CRS.

5.4 **Taxes.** Contractor is an independent contractor and not an employee of CRS. As such, Contractor shall pay for all taxes owed on income received from CRS during the period of this Contract.

If withholding tax applies to any payment to Contractor, CRS shall deduct such amount from each payment to Contractor and shall remit such amount to the tax or finance office on behalf of Contractor in accordance to applicable laws.⁴

5.5 **Currency.** The Contract Price is expressed entirely in [*Moldovan Lei (MDL)*] and all payments made in accordance with this Contract shall be in the same currency.

6. DUE CARE; RISK OF LOSS; TITLE

6.1 **Due Care.** At all times from the date of this Contract and until the last of the Work is accepted by CRS, Contractor agrees to exercise due care to protect, and accepts liability for all of the Work and all equipment and materials incorporated into the Work (including all equipment and materials used in connection therewith), against damages, decay, removal and/or destruction as it may relate to the Work.

6.2 **Risk of Loss.** Notwithstanding anything herein to the contrary, Contractor shall have the full responsibility for care, custody and control of the Site, the Work and all equipment incorporated into the Work (including all equipment and materials used in connection therewith) and shall bear the risk of loss thereof until the Completion Date, in each case at which time risk of loss shall pass to CRS or the Beneficiary, as directed by CRS.

6.3 **Title to Work.** Contractor warrants that title to the various equipment, materials and other components of the Work (including all information, documents and materials prepared or provided by Contractor as part of the Work) shall transfer to CRS or the Beneficiary, as directed by CRS, upon the earlier of the date payment for such equipment, materials or other components of the Work is made by CRS and the date such equipment, materials or other components of the Work are delivered to the Site. Contractor further warrants that, once title to any portion of the Work transfers, CRS or the Beneficiary, if directed by CRS, shall have good and marketable title to such portion of the Work, and such portion of the Work shall be free and clear of all liens, claims, security interests or encumbrances in favor of Contractor, any subcontractor, or any other person or entity making a claim by reason of having provided labor, materials or equipment relating to the Work, and that no basis shall exist for the filing of any such lien, claim, security interest or encumbrance. The obligations under this provision shall survive the expiration or termination of this Contract. Contractor shall deliver to CRS such assignments, bills of sale, receipts or other documents as reasonably requested by CRS to evidence such transfer of title.

6.4 **Title to CRS Equipment.** Title to any equipment and supplies that may be furnished by CRS shall rest with CRS and any such equipment or supplies shall be returned to CRS upon the completion of the Work or when no longer needed by Contractor. Such equipment, when returned to CRS, shall be in the same condition as when delivered to Contractor, subject to normal wear and tear. Contractor shall be liable to compensate CRS for equipment determined to be damaged or degraded beyond normal wear and tear.

7. REPRESENTATIONS AND WARRANTIES

7.1 **Bring-Down of Bid Document Representations and Warranties.** All representations, warranties and other statements made by Contractor in the bid documentation submitted to CRS were true and correct as of the date when made and are true and correct as of the date of this Contract.

7.2 **Additional Representations and Warranties.** Without limiting Section 7.1, Contractor represents and warrants to CRS that:

⁴ CRS FORM NOTE: Withholding tax to be confirmed by in-Country counsel.

7.2.1 Contractor is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation, and has full power to engage in the business it conducts and contemplates conducting under this Contract, and is and will be duly licensed or qualified under the laws of the Country and in each other jurisdiction in which such licensing or qualification is necessary or advisable to perform its obligations hereunder.

7.2.2 The execution, delivery and performance by Contractor of this Contract will not (a) violate or conflict with (i) any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected or (ii) its organizational documents, (b) violate or conflict with applicable laws or (c) subject the Project or any part thereof to any lien other than as contemplated or permitted by this Contract.

7.2.3 There are no actions, suits, proceedings, patent or license infringements or investigations pending or, to Contractor's knowledge, threatened against it before any court, arbitrator or governmental authority that could result in any materially adverse effect on the business, properties, assets or condition (financial or otherwise) of Contractor or impair its ability to perform its obligations under this Contract. Contractor has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or governmental authority that may result in any such materially adverse effect or impairment.

7.2.4 This Contract has been duly authorized, executed and delivered by or on behalf of Contractor and is, upon execution and delivery by each of the Parties hereto, the legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights and by general equitable principles.

7.2.5 Neither the execution nor delivery by Contractor of this Contract requires the consent of, approval of, giving of notice to, registration with or taking of any other action with respect to any governmental authority.

7.2.6 All persons who will perform any portion of the Work have or will have all business and professional certifications and licenses required by of this Contract and applicable laws to perform such portion of the Work under this Contract. Contractor has no knowledge of any reason that any such certifications and licenses cannot be obtained in the ordinary course of business and within the timeframe necessary to permit such persons to timely commence and perform any portion of the Work to completion in accordance with the terms and conditions of this Contract.

7.2.7 Neither Contractor nor any subcontractor, nor their respective employees, officers, representatives or other agents have engaged in any practice in violation of the provisions of Section 12, whether in bidding for this Contract or otherwise.

7.2.8 Contractor is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Contract as well as its obligations under other agreements with respect to the Project. Contractor has or will procure adequate resources and is qualified, in each case directly or through its subcontractors, to perform the Work in accordance with the terms and conditions of this Contract.

7.2.9 Contractor has inspected the Site and surrounding areas and has become generally familiar with the Site conditions and other general and local conditions, including conditions, if any, that may affect the supply of equipment and the performance of the Work or the timing or cost thereof. Contractor has performed, or has caused to be performed, all necessary due diligence, including review and analysis of surface, subsurface, geotechnical and weather reports and data for the Site.

8. DEFAULT; REMEDIES; TERMINATION

8.1 Contractor Defaults. Contractor shall be in default under this Contract if:

8.1.1 Contractor makes a general assignment for the benefit of its creditors, a receiver is appointed on account of the insolvency of Contractor, Contractor files a petition seeking to take advantage of any law relating to bankruptcy, insolvency, reorganization, winding-up or composition of or readjustment of debts, or Contractor is otherwise declared bankrupt or insolvent.

8.1.2 Contractor engages in any practice in violation of the provisions of Section 12, whether in bidding for or in performing its obligations under this Contract.

8.1.3 Contractor abandons the Work or fails to promptly comply with any instruction of CRS given in compliance with this Contract.

8.1.4 Contractor fails to obtain and maintain any advance payment security or performance security if required hereunder.

8.1.5 Contractor fails to obtain and maintain any insurance required hereunder.

8.1.6 The liability of Contractor for delay damages reaches or exceeds the limitation set forth in Section 3.5.

8.1.7 Contractor fails to comply with any other provision of this Contract and fails to cure or remedy such failure within 15 calendar days after Contractor knows of such failure or notice is received from CRS instructing Contractor to cure or remedy such failure.

8.2 **CRS Remedies.** Upon the occurrence and during the continuance of Contractor's default, in addition to any or all other remedies available at law or in equity, CRS has the right, in its sole discretion, to suspend Contractor's performance, to take over some or all of the Work from Contractor and perform and complete such Work itself or through any other contractor, to draw upon or otherwise utilize any advance payment security or performance security provided by Contractor, and/or to terminate this Contract. Without limitation of the foregoing, CRS may apply any retention held under Section 5.2.2 toward satisfaction of any damages, losses, costs, expenses, or liabilities arising from a Contractor Default.

8.3

8.4 **Termination for Convenience.** CRS, at its sole convenience, may at any time and for any reason terminate this Contract by written notice.

8.5 **Effect of Termination.** In the event that this Contract is terminated for any reason whatsoever:

8.5.1 Contractor shall be entitled only to compensation earned for Work completed (including materials purchased and delivered to the Site in compliance with this Contract) and approved by CRS prior to such date of termination (subject, in the event that the termination results from a Contractor's default, to CRS's right to deduct from such payment any additional costs incurred or expected to be incurred by CRS in performing and completing the remaining Work under this Contract);

8.5.2 Contractor shall deliver to CRS all finished and/or unfinished Work on the date of termination; and

8.5.3 to the extent that it exceeds payments due to Contractor as described in this Section 8.5, Contractor shall repay to CRS any advance payment or other over-payment described in Section 5.2 on the date of termination.

9. COPYRIGHT

9.1 **Ownership of Materials.** All Work performed by Contractor under this Contract, including all materials contained in the deliverables, shall be the property of CRS, and CRS retains copyrights over all original materials developed under this Contract. Contractor may not use these materials, whether in whole or in part, without the prior written consent of CRS.

9.2 **Third-Party Materials.** To the extent that Contractor intends to use materials of third parties, Contractor shall obtain the rights, without limitations, for CRS to reproduce, use and distribute such materials in any manner or media whatsoever.

10. GOVERNING LAW; SETTLEMENT OF DISPUTES

10.1 **Governing Law.** This Contract shall be construed in accordance with, and all disputes herein shall be governed by, the laws of the State of Maryland, U.S.A.⁵

10.2 Informal Resolution.

10.2.1 CRS and Contractor hereby agree to seek informal resolutions to any disputes, claims, controversies or disagreements before pursuing legal remedies.

10.2.2 If Contractor considers itself to be entitled to any increase in the Contract Price, extension of the Completion Deadline and/or any other additional payment or extension of time hereunder, Contractor shall give notice to CRS, describing the event or circumstance giving rise to the claim and detailing the specific provisions of this Contract which entitle Contractor to such relief for the claim. Such notice shall be given as soon as practicable, and no later than [10] business days after Contractor became aware, or should have become aware, of the event or circumstance.

10.2.3 If Contractor fails to give timely notice under Section 10.2.2, the Contract Price shall not be increased, the Completion Deadline shall not be extended, Contractor shall not be entitled to any other additional payment or extension of time, and CRS shall be discharged from all liability in connection with the claim.

10.2.4 If Contractor gives timely notice under Section 10.2.2:

- a. Contractor shall also submit any other notices which are required by this Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

⁵ CRS FORM NOTE: Choice of law to be discussed with in-Country legal counsel. *Any change to the law governing this Contract from Maryland law requires the approval of the CRS' Office of General Counsel ("OGC").* Note that most CRS Country Programs are offices of CRS US, with its principal place of business in Baltimore, Maryland. NOTE THAT CHANGES TO THE GOVERNING LAW GENERALLY WILL NOT BE APPROVED UNLESS (1) LOCAL LAW PROHIBITS THE APPLICATION OF ANY OTHER GOVERNING LAW, OR (2) THE APPLICATION OF MARYLAND LAW WOULD JEOPARDIZE THE ENFORCEABILITY OF THE CONTRACT. YOU MUST PROVIDE TO OGC A WRITTEN LEGAL OPINION FROM LOCAL COUSEL EXPLAINING ANY CHANGES TO THE GOVERNING LAW AND ADDRESSING THE FACTORS DESCRIBED IN THE PRECEDING SENTENCE.

- b. Contractor shall keep such contemporary records as may be necessary to substantiate the claim, either on the Site or at another location acceptable to CRS. Without admitting liability, CRS may, after receiving any notice under Section 10.2.2, monitor the record-keeping, receive copies of such records upon request, audit such records and/or instruct Contractor to keep further contemporary records.
- c. Within 10 business days after the notice under Section 10.2.2, or within such other period as may be proposed by Contractor and approved in writing by CRS, Contractor shall send to CRS a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:
 - i. this fully detailed claim shall be considered as interim;
 - ii. Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claims, and such further particulars as CRS may reasonably require; and
 - iii. Contractor shall send a final claim within 10 business days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by Contractor and approved by CRS.
- d. Within 10 business days of receiving a claim or any further particulars supporting a previous claim, CRS shall respond with approval, or with disapproval and detailed comments. CRS may also request any necessary further particulars, but shall nevertheless respond on the principles of the claim within such time. Any claim approved by CRS shall be documented in a written Variation instructed or approved by CRS pursuant to Section 3.2.
- e. The requirements of this Section 10.2.4 are in addition to those of any other Section that may apply to a claim. If Contractor fails to comply with this or another Section in relation to any claim, any extension of time and/or additional payment shall take account of the extent to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under Section 10.2.3.

10.3 Arbitration.

10.3.1 In the event such informal resolutions are not possible, or are not completed within 10 business days of commencement, any disputes, claims, controversies or disagreements arising out of or relating to this Contract shall be finally resolved and decided by binding arbitration pursuant to the then-applicable Rules of Arbitration of the International Chamber of Commerce by one independent arbitrator appointed by the International Chamber of Commerce. The seat of the arbitration shall be in [Baltimore, Maryland or in such other mutually agreed upon location] and the official language of the arbitration shall be English.⁶ The prevailing

⁶ CRS FORM NOTE: Whether disputes should be resolved by local courts or international arbitration (including whether the arbitration seat is within the Country) to be discussed with in-Country legal counsel and CRS' Office of General Counsel ("OGC"). If arbitration is selected, confirm that the country where the arbitration seat is located and where enforcement of the award may be sought are each a party to the New York Arbitration Convention (<http://www.newyorkconvention.org>). Any use of local courts for disputes requires the approval of OGC. A CHANGE TO THE DISPUTE RESOLUTION CLAUSE REQUIRES SUBMISSION TO OGC OF A WRITTEN EXPLANATION FROM LOCAL COUNSEL. CHANGES GENERALLY WILL NOT BE

Party shall be entitled to recover all damages and costs and attorney's fees associated with the arbitration from the non-prevailing Party.

10.3.2 The arbitrator shall have the discretion to hear and determine at any stage of the arbitration any issue asserted by any Party to be dispositive of any claim or counterclaim, in whole or part, in accordance with such procedure as the arbitrator may deem appropriate, and the arbitrator may render an award on such issue.

10.3.3 The award shall be rendered within 9 months of the appointment of the arbitrator, unless the arbitrator determines that the interest of justice requires that such limit be extended. The arbitration shall conclude and the dispute resolved by issuance of a written decision which may include, as appropriate, a monetary award, but not a penalty or punitive, consequential or exemplary damages, however described. An arbitral tribunal constituted under this Contract may, unless consolidation would prejudice the rights of any party, consolidate an arbitration hereunder with an arbitration under related agreements if the arbitration proceedings raise common questions of law or fact. If two or more arbitral tribunals under these agreements issue consolidation orders, the order issued first shall prevail.

10.3.4 Judgment upon any award(s) rendered by the arbitrator may be entered in any court having jurisdiction thereof. Each Party hereby waives all objection which it may have at any time to the laying of venue of any proceedings brought in such courts, waives any claim that such proceedings have been brought in an inconvenient forum and further waives the right to object with respect to such proceedings that any such court does not have jurisdiction over such Party.

10.3.5 The Parties undertake to keep confidential all awards in their arbitration, together with all materials in the proceedings created for the purpose of the arbitration and all other documents produced by another Party in the proceedings not otherwise in the public domain, save and to the extent that disclosure may be required of a Party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in legal proceedings before a court or other judicial authority. Nothing in this Contract shall prevent either Party from seeking provisional measures from any court of competent jurisdiction, and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

11. INDEMNIFICATION; INSURANCE; DAMAGES

11.1 **Contractor Indemnity.** Contractor shall indemnify, hold and save harmless and defend, at its own expense, the Beneficiary, CRS and each of their respective donors, officials, agents, servants and employees from and against all suits, claims, demands and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of Contractor, or Contractor's employees, officers, agents or subcontractors, in the performance of this Contract. This provision shall extend, inter alia, to claims and liability in the nature of workmen's compensation, death or bodily injury, damage to property, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by Contractor, its employees, officers, agents or subcontractors. The obligations under this provision shall survive the expiration or termination of this Contract.

APPROVED UNLESS OGC APPROVES THE CHANGE IN GOVERNING LAW AS DESCRIBED IN FOOTNOTE 25.

11.2 **Insurance.** Contractor agrees to provide, at CRS's request, a copy of all insurances and/or other documents that provide evidence that Contractor is adequately covered for risk, as such coverage is specified in Exhibit D.

11.3 **Direct Damages Only.** Except for delay damages allowed by this Contract, third-party indemnity obligations and liability for fraud, gross negligence, willful misconduct or violation of the provisions of Section 12, neither Party shall be responsible to the other Party for special, indirect, incidental, punitive, exemplary or consequential damages of any nature whatsoever, including but not limited to losses or damages caused by reason of loss of future profits or revenue, interest charges or cost of capital, whether liability arises as a result of breach of contract, tort liability, strict liability, by operation of law or in any other manner and whether arising before or after the Completion Date.

12. CRS DONOR REQUIREMENTS; NO ILLICIT PAYMENTS; NO CORRUPTION; NO CHILD LABOR OR SEXUAL EXPLOITATION; NO SUPPORT FOR TERRORISM; ANTI-TRAFFICKING AND ANTI-SLAVERY

12.1 **CRS Donor Requirements.** Contractor shall comply with all requirements set forth in Exhibit B, if applicable.

12.2 **No Illicit Payments.** Contractor shall not offer or otherwise provide to any personnel of CRS any direct or indirect benefit arising from this Contract or the award thereof.

12.3 **No Corruption.** Contractor, each of its subcontractors and each of their representatives shall not (a) commit or appear to commit any corrupt (including offering, giving, receiving or soliciting any thing of value to influence the actions of any public official) or fraudulent (including misrepresentation of facts to influence a procurement practice) action or practice or (b) otherwise make any payment, or have given or will give anything of value, in any case to any government official (including any officer or employee of any governmental authority) to influence his, her or its decision or to gain any other advantage for CRS, Contractor or such subcontractor or representative in connection with the Work to be performed hereunder.

12.4 No Child Labor or Sexual Exploitation.

12.4.1 Contractor shall ensure that its employees, personnel (whether paid or unpaid), subcontractors and agents do not engage in any sexual exploitation or abuse of minors (individuals under the age of 18) or of beneficiaries when carrying out the Work under this Contract, including but not limited to:

- a. any exchange of money, employment, goods or services for sex, including sexual favors or other forms of humiliating, degrading or exploitative behavior;
- b. any sexual activity with minors or any physical or suggestive contact regardless of the age of majority or age of consent locally (mistaken belief in the age of a child is not an excuse); and
- c. any form of unlawful harassment, discrimination, physical or verbal abuse, intimidation or exploitative sexual relations.

12.4.2 Contractor must not employ, or permit its subcontractors to employ, minors to carry out the Work under this Contract.

12.4.3 Contractor is obliged to support the creation and maintenance of an environment that prevents exploitation and abuse of children when carrying out the Work under this Contract. Where Contractor develops concerns or suspicions regarding abuse or exploitation by a fellow employee or other personnel, Contractor must report such concerns immediately to CRS.

12.5 No Support for Terrorism; Compliance with sanctions and export control laws. Contractor shall not employ or provide material support or resources to any individual or organization that is known to have advocated, sponsored or engaged in unlawful activity or terrorist acts. Contractor shall not employ, engage in transactions with or provide support or resources to any individual or organization that is or is 50% or more owned by one or more individuals or organizations that are: (i) on the Specially Designated Nationals and Blocked Persons List (the “*SDN List*”) maintained by the U.S. Treasury Department's Office of Foreign Assets Control (“*OFAC*”), (ii) located, organized or resident in a country or territory that is the subject of OFAC comprehensive economic sanctions, including, without limitation, Cuba, Iran, North Korea, Syria and the Crimea, or (iii) otherwise subject to sanctions administered by OFAC, the United Nations or any other relevant sanctions authority. In addition, Contractor agrees to comply with any applicable export and reexport control laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce.

12.5 Anti-trafficking and Anti-slavery. Contractor shall create, maintain, support and develop systems that ensure an environment that prevents trafficking in persons (as defined in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime). Contractor shall not, and shall cause its employees, its subcontractors and their employees not to, engage in any of the following conduct:

12.5.1 trafficking in persons (as defined in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime) during the duration of this Contract;

12.5.2 procurement of a commercial sex act during the duration of this Contract; or

12.5.3 use of forced labor in the performance of this Contract.

For purposes of this Section 12.5, "employee" means an individual who is engaged in the performance of this Contract as a direct employee, consultant or volunteer of Contractor or its subcontractors.

12.6 Code of Conduct. Contractor shall comply with the CRS Supplier/Service Provider Code of Conduct attached on Exhibit A.

13. NOTICES; CONFIDENTIALITY; USE OF CRS NAME

13.1 Notices. All formal correspondence and notices required under this Contract between the Parties must be in writing in English and directed to the registered address of the respective Party set forth beside its name in the preamble to this Contract.

13.2 Confidentiality. Contractor agrees to hold CRS's Confidential Information in strictest confidence, and will not disclose or use Confidential Information related to CRS outside the scope of this Contract, without CRS's prior authorization. For the purposes of this Contract, "Confidential Information" means any information disclosed by CRS, whether written, electronic or spoken, and includes but is not limited to information regarding projects and potential projects, organizational practices, donors and potential donors, methodologies, management philosophy and information concerning CRS and its employees and volunteers. Contractor further agrees to return all Confidential Information at the end of the Work, or whenever requested by CRS.

13.3 Use of CRS Name. Contractor shall not, in any manner whatsoever use the name, emblem or official seal of CRS or the Beneficiary, or any abbreviation of the name of CRS or the Beneficiary in connection with its business or organization or otherwise, unless specifically authorized by CRS in writing.

[Signature Page Follows]

We understand and accept the terms and conditions of the above Contract.

For and on behalf of **Contractor:**

For and on behalf of **CRS:**

Signature: _____

Signature: _____

Name:

Name:

Title:

Title: Country Representative

Date: _____

Date: _____

Witnesses:

Signature: _____

Signature: _____

Name:

Name:

EXHIBIT A

CONTRACTOR SCOPE OF WORK

[INCLUDE SPECIFIC DESCRIPTION OF THE WORK, INCLUDING MATERIALS,
CONSTRUCTION DRAWINGS AND SPECIFICATIONS]

[INCLUDE BILL OF QUANTITIES]

[INCLUDE PROJECT SCHEDULE]

[INCLUDE PAYMENT SCHEDULE]

[INCLUDE PROCUREMENT SCHEDULE]

[INCLUDE QUALITY CONTROL PLAN]

[SAFETY AND ENVIRONMENTAL MITIGATION]

[INCLUDE ANY GRIEVANCE PROCEDURES]

[CRS Supplier/Service Provider Code of Conduct]

EXHIBIT B

CRS DONOR REQUIREMENTS

[INAPPLICABLE]

EXHIBIT C

CONTRACTOR SECURITY

[INAPPLICABLE]

EXHIBIT D

INSURANCE

[INCLUDE SPECIFIC INSURANCE REQUIREMENTS FOR PROJECT]

In accordance with common construction practices in the Republic of Moldova, responsibility for insurance for the **works, personnel, equipment, third-party liability, and construction site risks** generally rests with the **Contractor**.

The Contractor is typically required to maintain all legally required insurance coverage throughout the execution of the contract and to bear all associated costs.