

The Government of Montenegro, represented by xxxxxxxx (**hereinafter referred to as the Government**),

and

_____, _____, identification number: _____, represented by _____, the director (**hereinafter referred to as the Beneficiary**),

(hereinafter referred to individually as **the Party**, and together as **the Parties**)

Considering that:

- *The Government of Montenegro, at its session held on 29 January 2015, adopted the Decree on fostering direct investments (Official Gazette of Montenegro 8/15), (hereinafter referred to as **the Decree**)*
- *on the basis of the Decree, a Public announcement was published on _____ for participation in the procedure of awarding funds for fostering direct investments (hereinafter referred to as **the Public Announcement**), which lasted until _____;*
- *on _____ (hereinafter referred to as the **Application date**), the Beneficiary submitted to the Secretariat for development projects (hereinafter referred to as the **Secretariat**) a correct application and supporting documents in accordance with the Decree (hereinafter referred to as the **Application**);*
- *on _____ the Commission for evaluation of applications (hereinafter referred to as **the Commission**) prepared the Report on evaluation and proposed to the Government decision on awarding funds for fostering investments;*
- *the Government of Montenegro adopted the Decision on awarding funds no. _____ of _____ (hereinafter referred to as the **Decision**);*

The Parties conclude the following:

AGREEMENT ON THE UTILIZATION OF FUNDS FOR FOSTERING DIRECT INVESTMENT

1. INTERPRETATION

- 1.1 Definitions and interpretations referred to in Article 1 of this Agreement shall apply to this Agreement.
- 1.2 All terms defined in this Agreement shall have so defined meaning whenever used in any Annex or other document, unless therein otherwise defined.
- 1.3 Except where otherwise indicated, references to article, paragraph, Annex or part of the Annex shall be a reference to article, paragraph, Annex or part of the Annex to this Agreement.

- 1.4 In the case of inconsistencies or contradictions of any provision of this Agreement to the provisions of the Annex to this Agreement or submitted documents, provisions of this Agreement shall be relevant.
- 1.5 Reference to a document shall include a reference to any future amendments to that document, as well as any document that replaces the original document to which a reference is made.
- 1.6 Reference to the Beneficiary shall include a reference to its legal successors.

2. DEFINITIONS

Bank guarantee: shall mean unconditional and irrevocable performance bank guarantee in the amount of EUR_____ (in words: _____ euros), payable at first call, without right of objection, issued by the commercial bank registered in Montenegro to the benefit of the Government of Montenegro for the period until the expiration of 60 days after the date of implementation of investment project and achieving full envisaged employment, which the Beneficiary shall submit to the Secretariat within 15 days of the conclusion of this Agreement, in the form and content of Annex 3 to this Agreement.

Application bank guarantee: shall mean unconditional and irrevocable application bank guarantee in the amount of EUR _____ (in words: _____ euros), payable at first call, issued by the commercial bank registered in Montenegro to the benefit of the Secretariat for development projects, with a validity period of 180 days from the public opening of applications. The period of validity of this guarantee may be extended at the request of the Secretariat for development projects.

Financial year: shall mean the period of 12 months beginning January 1 and ending December 31.

Financial statement: financial statements of the Beneficiary made in accordance with the Law on Accounting and Auditing and this Agreement.

Investment project shall mean a project for the financing of which funds are awarded and on the basis of which direct investment is realized.

Commission shall mean a body formed in accordance with the Decree and is responsible for evaluation of investment projects and other activities in accordance with the Decree.

Beneficiary shall mean a business entity which, in the manner and under conditions defined by the Agreement, is awarded funds for fostering investments.

Tangible investment: shall mean investment in land, buildings, production plants, machinery and equipment.

Minimum investment shall mean investment in the Investment project in the amount of minimum EUR 500,000.

Applicable law shall mean substantive and procedural law of Montenegro.

Intangible investment: shall mean investment in patents and licenses in accordance with the regulations governing state aid, which are subject to depreciation, and which are used by the Beneficiary and recorded in its balance sheets.

Investment obligation shall mean an obligation of the Beneficiary to make the investment in time and in the manner defined by the investment project and this Agreement.

Employment obligation shall mean an obligation of the Beneficiary to, in order to implement the investment project, open and fill at least 20 new jobs on a permanent basis, within three years from the date of conclusion of this Agreement, in accordance with the Decree.

Decision shall mean decision on awarding funds for fostering direct investments made by the Government.

Eligible investment costs: shall mean an investment in tangible assets, intangible assets, and Rental costs of business premises in which an investment project is realized and investments into leased land, buildings and production plants, provided that the lease period is not less than ten years after the conclusion of this Agreement.

Period of guaranteed investment and employment shall mean a period in which the Beneficiary is obliged to keep the value of the investment project and the number of new jobs created at least three years after completion of the investment project for small and medium-sized companies, or at least five years after completion of the investment project for large companies.

Secretariat shall mean the Secretariat for development projects, in charge of the procedure of implementation of the Public announcement and other activities specified by the Decree.

Bankruptcy proceedings: shall mean bankruptcy and liquidation proceedings in the manner specified by provisions of the Law on Bankruptcy (Official Gazette of Montenegro 1/11).

Request for disbursement of funds shall mean a request that the Beneficiary submits to the Secretariat in the Form contained in Annex 2 to this Agreement, based on which the disbursement of funds awarded for fostering investments is made.

3. SUBJECT OF THE AGREEMENT

3.1 The Government shall conclude with the Beneficiary this Agreement on the utilization of funds for fostering direct investments (hereinafter referred to as the **Agreement**), which regulates the mutual rights and obligations in relation to the

conditions, dynamics of implementation of the investment project and the utilization of awarded funds.

3.2 The subject of this Agreement shall be awarding funds to the Beneficiary for implementation of investment project " _____ " in _____, whose investment value for a period of three years amounts to EUR _____ (in words: _____ euros) and which opens ___ (in words: _____) new jobs.

3.3 On the day of signing of this Agreement, the Beneficiary, which submitted and application as a foreign investor, shall be obliged to submit an excerpt from the Central Registry of Business Entities confirming to have founded the company, legal person or to have been registered as an entrepreneur in accordance with applicable law.

4. INVESTMENT PROJECT

4.1 The Beneficiary undertakes to implement the investment project within a period of three years from the date of this Agreement in quantitative and qualitative terms in accordance with the Decree, this Agreement and the Application, and will be the sole beneficiary of the property acquired by direct investment.

4.2 Minimum investment of the Beneficiary into tangible and intangible assets shall amount to EUR _____ (in words: _____ euros).

4.3 The Beneficiary undertakes to open and fill ___ new jobs on a permanent basis within three years from the signing of this Agreement.

4.4 The Beneficiary must keep the value of the investment project and must not reduce the number of newly employed persons continuously during the Period of guaranteed investment and employment.

4.5 At proposal of the Commission, period of implementation of the investment project and opening and filling of new jobs under Article 4.3 of this Agreement may be extended if the Beneficiary was not able to implement the investment project within the period determined by this Agreement for reasons that could not have been foreseen at the time of signing of this Agreement, no longer than five years from the date of signing of this Agreement.

4.6 In the case of extension of the period referred to in Article 4.5 of this Agreement, the validity period of bank guarantee and other collaterals, shall be extended in proportion to the extension of the period of implementation of the Investment Project.

4.7 The Beneficiary shall, through implementation of investment project, fully meet the criteria based on the points awarded to it in the process of evaluating applications and awarding funds, all in accordance with the Decree.

5. DISBURSEMENT OF FUNDS

5.1 The Government shall approve to the Beneficiary the total amount of funds of EUR _____ (in words: _____ euros) (hereinafter referred to as the **Funds**).

5.2 The funds shall be disbursed in instalments amounting to one-third of the total amount of awarded funds for fostering investments, as follows:

1) first instalment in the amount of EUR _____, within 90 days from the date of submission of bank guarantee referred to in Article 6 of this Agreement;

2) second instalment in the amount of EUR _____, within 90 days from the date of realization of 50% of investment in accordance with the investment project;

3) third instalment in the amount of EUR _____, within 90 days from the date of achieving Employment obligation.¹

5.3 The payment of awarded funds for fostering direct investments shall be made on the basis of the request for disbursement of funds, with which documents shall be submitted evidencing the fulfilment of conditions referred to in Article 5.2 of this Agreement.

5.4 Request for disbursement of funds referred to in Article 5.3 of this Agreement shall be submitted Secretariat by the Beneficiary.

5.5 Upon the receipt of the request for disbursement of funds, the Secretariat shall check the fulfilment of conditions for disbursement of funds for fostering investments referred to in Article 5.2 of this Agreement.

5.6 Disbursement of Funds shall be made by the state administration body in charge of finance affairs, upon approval of the Secretariat.

5.7 Approved funds shall be disbursed by transfer to the commercial bank account of the Beneficiary specified in the request for disbursement.

6. COLLATERALS

6.1 The beneficiary shall prior to the submission of the request for disbursement of funds, within 15 days from the date of conclusion of this Agreement, submit to the Secretariat an unconditional bank guarantee to the benefit of the state of Montenegro, payable on first demand, without right of objection, issued by the commercial bank registered in Montenegro, in the amount of _____, with the validity period of _____.

6.2 The bank guarantee referred to in Article 6.1 of this Agreement shall be submitted for the period until the expiration of 60 days after the end date of the investment project and achievement of full envisaged employment, and may be withdrawn in accordance with the disbursement schedule and amounts of instalments referred to in Article 5.2.

¹ For capital investment funds will be awarded according to a separate schedule which will be defined by the agreement.

6.3 In addition to the bank guarantee, the Beneficiary shall within 15 days from the date of conclusion of this Agreement, submit two signed blank bills of exchange with signed authorization for the purpose of collection of statutory default interest.

6.4 Statutory default interest shall be calculated for the period from the date of disbursement of the last instalment to the date when the conditions are met for termination of this Agreement.

6.5 If the Beneficiary shall fail to submit the bank guarantee referred to in Article 6.1 of this Agreement, or shall fail to submit blank bill of exchange with signed authorization referred to in Article 6.3 of this Agreement, this Agreement shall be terminated. The Government shall have the right to collect the full amount of the Application Bank Guarantee, and the Beneficiary shall have no right to claim damages.

6.6 The Government shall have the right to withdraw the full amount of the bank guarantee in case of default of any obligation under this Agreement, in accordance with Article 9.3 of this Agreement.

7. REPORTING AND MONITORING

7.1 The Beneficiary shall report semi-annually to the Secretariat on the investment project implementation, 6 months from the beginning of the investment project implementation to the expiry of five years upon the expiry of investment project implementation.

7.2 The Report on investment project implementation shall contain:

- a) independent auditor's report on operations of the Beneficiary, which must contain information on the value of the eligible investment costs into tangible and intangible assets and the number of newly employed persons on a permanent basis for the period to which the report relates;
- b) report of the competent administration body in charge of tax affairs on the number of employees of the Beneficiary;
- c) report of the authorized assessor of the investment project implementation in qualitative and quantitative terms with the report on the value of assets included in the investment project, and
- d) report on the data on paid earnings, taxes and contributions for newly employed persons.

7.3 At the request of the Secretariat, the Beneficiary shall also submit other documents and provide additional information on the investment project implementation.

8. GUARANTEED INVESTMENT AND EMPLOYMENT

8.1 The Beneficiary shall during the Period of guaranteed employment and investment not alienate tangible and intangible assets acquired in implementation of the Investment project.

8.2 The Beneficiary shall allow the Secretariat or the person appointed by the Secretariat to control employment and investment planned by the investment projects, as well as access to documentation provided that:

- a) written notice of the intended supervision is submitted to the Beneficiary at least five business days in advance and
- b) that the persons performing insight into confidential documents and information are obliged to confidential treatment of information, in accordance with the regulations governing the protection of data representing a business secret.

8.3 If during the Period of guaranteed investment and employment the Secretariat or the person referred to in Article 8.2 of this Agreement that performs control shall determine that:

- a) the number of permanent employees of the Beneficiary is below the number of employees the Beneficiary is required to employ in accordance with this Agreement;
- b) the Beneficiary has not maintained the value of the Investment Project in accordance with this Agreement;
- c) that the Beneficiary breached the provisions of Article 8.1 of this Agreement;

The Secretariat or the person referred to in Article 8.2 of this Agreement shall submit a written notice indicating deficiencies referred to in items a, b and c of this Article.

8.4 If within 30 days after receipt of the notification referred to in Article 8.3 of this Agreement, the Beneficiary does not remedy the identified deficiencies as per items a, b and c of Article 8.3 of this Agreement, the Government, at the proposal of the Secretariat, shall have the right to terminate this Agreement and request a refund of the total amount of the Funds disbursed to the Beneficiary, plus statutory default interest.

8.5 In the case of Article 8.3 paragraph b of this Agreement, or in the event that the Beneficiary maintains the value of the Investment Project in the amount less than 80% of the Investment Obligation, the Government shall have the right to demand a refund of the total amount of the Funds disbursed to the Beneficiary, plus statutory default interest.

8.6 The Beneficiary shall undertake to in the Period of guaranteed investment and employment seek prior approval of the Secretariat for any status change, a change of legal form or establishment of another legal entity with its property or any other change in ownership structure.

8.7 The Beneficiary may change the business name, address, person authorized for representation, may increase the share capital and may transfer the shares to a related party not altering the effective control over the Beneficiary, and shall be obliged to notify the Secretariat without delay and no later than five working days of occurrence of such change in writing.

9. TERMINATION OF THE AGREEMENT

9.1 Breach of agreement

9.1.1 The Secretariat will propose to the Government to terminate this Agreement by sending written notice to the Beneficiary, if:

- a. it is established that any of the declarations and guarantees of the Beneficiary are false;
- b. it is established that the Beneficiary submitted incorrect information or did not submit information that would have a significant impact on the decision;
- c. the Beneficiary fails to perform any obligation under Article 4 of this Agreement;
- d. the Beneficiary did not submit bank guarantee in accordance with this Agreement;
- e. the Beneficiary is late with any phase of implementation of the Investment Project more than 60 days;
- f. the Beneficiary does not submit any report or information the submission of which is required under this Agreement or in the additional period of 15 days after the warning of the Secretariat and the Government on the delay;
- g. the Beneficiary does not fulfil the of the Investment obligation and/or Employment obligation;
- h. in the event that in the Period of guaranteed investment and employment against the Beneficiary bankruptcy or liquidation proceedings is initiated;
- i. the Beneficiary does not maintain the value of investments and/or the number of employees in the Period of guaranteed investment and employment;
- j. the Beneficiary ceases to exist or any action was taken that may lead to termination of its existence;
- k. the Beneficiary violates any other obligation under this Agreement and fails to remedy the same within 30 days of receipt of written notice from the Secretariat or the Government.

9.2 In the event of termination of this Agreement, the Beneficiary shall, within thirty (30) days of receipt of notice of termination of this Agreement, refund the amount that is equal to the amount of resources that the user received, less any amount paid by Customer Government pursuant to this Agreement. In any case, the user shall be liable for the obligations in connection with this Agreement to the amount of funds received plus statutory interest on arrears.

9.3 If the Beneficiary within deadline and in the manner specified in Article 9.2 of this Agreement shall not return the disbursed funds, the Government will withdraw the full amount of Bank Guarantee with bills of exchange for the purpose of collection of statutory default interest, and if it comes to the termination during the Period of guaranteed investment and employment, the Government shall have the right to claim the amount of disbursed funds in court.

9.4 In the event of termination of this Agreement for any reason, the Beneficiary shall hereby accept to have no right to claim damages of any kind.

10. ENVIRONMENTAL PROTECTION

The Beneficiary shall in carrying out its operations, construction, execution of works, operation of plants and in carrying out other activities, ensure the rational use of natural resources, inclusion of costs of environmental protection within investment and production costs, planning and taking measures to prevent environmental degradation in accordance with the Applicable law.

11. BUSINESS BOOKS

11.1 The Beneficiary shall keep business books in the office with a seat in Montenegro in accordance with applicable law in order to present the income and expenses from operations. Business books and other books and records shall be available at all reasonable times to representative of the Secretariat for control.

11.2 The Beneficiary shall submit to the Secretariat Financial statements for the previous financial year not later than 30 days from the beginning of the current financial year, as well as the audit reports of financial statements prepared by the auditor at the latest by June 30 of the current year for the previous financial year.

11.3 The Beneficiary shall perform its operations in accordance with the investment projects and this Agreement.

12. TRANSITIONAL AND FINAL PROVISIONS

12.1 Any disputes in connection with the execution of this Agreement shall be settled amicably.

12.2 In the event that it is not possible to resolve the dispute amicably, the court in Podgorica shall be competent to resolve the dispute arising out of or in connection with this Agreement.

12.3 On this Agreement shall apply and shall be interpreted according to the applicable law.

12.4 Termination of this Agreement shall not apply to Article 6 of this Agreement, which will apply to the total collection of the Funds as defined in that Article.

12.5 The Beneficiary may not assign this Agreement or transfer any right, claim, obligation, or liability under this Agreement or related to it, to any person, without the prior written consent of the Government.

12.6 This Agreement may be amended or supplemented only in writing, with the signature of both Parties.

12.7 This Agreement constitutes the entire and only agreement between the Parties regarding the subject matter of this Agreement and the same has to be certified.

12.8 This Agreement has been made in five certified copies, three of which for the Government, and two for the Beneficiary.

12.9 This Agreement shall be deemed concluded and enter into force upon signature of the authorized persons of both Parties.

Annexes:

- 1. Annex 1 – Investment project and Business plan**
- 2. Annex 2 – Form of Request for disbursement of funds**
- 3. Annex 3 – Bank guarantee form**

In Podgorica, date _____

GOVERNMENT OF MONTENEGRO

BENEFICIARY

XXXXXXXXXXXXXXXXXX

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