

DRAFT (3): 21 JULY 2020

# Beneficiary Agreement<sup>1</sup>

between

National Recovery Program Bureau

as financier

[Eligible Beneficiary Enterprise]<sup>2</sup>

as beneficiary

and

as

relating to

the enterprise support project of the Sint Maarten Trust  
Fund

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<sup>1</sup> Notes to Draftsperson:

This Agreement includes general provisions applicable to all transactions. It also contains the grant mechanism in the instances where the NRPB is granting moneys to the beneficiary for Assets and Non-Structural Repairs. Clauses 2 and 6 are only applicable in such instances should otherwise be deleted if not applicable.

<sup>2</sup> Please complete the name of the beneficiary based on Chamber of Commerce & Industry Records or if the beneficiary is not an incorporated entity then the trading name of the beneficiary

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**THIS AGREEMENT** is dated

and made

**BETWEEN:**

- (1) **NATIONAL RECOVERY PROGRAM BUREAU**, (the "NRPB"), established as an autonomous administrative authority by the Country of Sint Maarten through the Temporary National Ordinance on the NRPB; and
- (2) **ELIGIBLE BENEFICIARY ENTERPRISE**, (the "Beneficiary"), [registered with Chamber of Commerce and Industry with registration number [•] and the Tax Administration with CRIB number [•]] / [[•] [insert name and family name of beneficiary] an enterprise doing business as [•] in Sint Maarten]. [*Note: Delete the option which is not applicable*]

**BACKGROUND:**

- (A) Whereas, pursuant to a grant agreement No. TF0A9223 (the "Grant Agreement") entered into on March 5, 2020, between the NRPB and the International Bank for Reconstruction and Development (the "World Bank"), the World Bank has agreed to make available to the NRPB a grant (the "NRPB Grant"), on terms and conditions set forth in the Grant Agreement, to provide assistance in the implementation of the Sint Maarten Enterprise Support Project (the "Project").
- (B) **PARTICIPATING FINANCIAL INSTITUTION** (the "Participating Financial Institution" or "PFI") is willing and able to assist the NRPB with the implementation of various components of the Project by (i) extending to the Beneficiary, using loans received from the NRPB, loans for the financing of Assets and Repairs ("AR Sub-loans") and loans for the financing of Working Capital ("WC Sub-loans"); and (ii) agreeing to disburse, on behalf of the NRPB, grants for the financing of Assets and Repairs ("AR Grants").
- (C) The PFI will only make the AR Grants, the AR Sub-Loans and the WC Sub-loans available to the Beneficiary, upon receiving evidence of a signed Beneficiary Agreement.

**NOW THEREFORE, the NRPB and the Beneficiary hereby agree as follows:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

Capitalised terms used in this Agreement shall bear the meaning given to such term in Schedule 1 (*Definitions*) to this Agreement.

**1.2 Interpretation**

- (A) Unless a contrary indication appears, any reference in this Agreement to:
  - (1) the "Beneficiary", the "NRPB" or any "Party" includes its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
  - (2) a "Finance Document" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
  - (3) a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);

- (4) a “regulation” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
- (5) a provision of law is a reference to that provision as amended or re-enacted.
- (B) Clause and Schedule headings are for ease of reference only.
- (C) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (D) A reference to the singular includes the plural and vice versa.

## 2. **THE GRANT**

- (A) The NRPB agrees to make available to the Beneficiary an AR Grant in an amount not to exceed [•] Dollars (USD [•])/ Netherlands Antillean guilder (NAf [•]).
- (B) The AR Grant shall be disbursed to the Beneficiary by the PFI acting for and on behalf of the NRPB<sup>3</sup>

## 3. **BENEFICIARY REPRESENTATIONS AND WARRANTIES**

The Beneficiary makes the following representations and warranties in favour of the NRPB:

- 3.1 it is registered with the Chamber of Commerce and Industry of Sint Maarten, if the laws of Sint Maarten require the enterprise to be registered in order to be operational in the territory of Sint Maarten;
- 3.2 it is registered with the tax administration of Sint Maarten;
- 3.3 the obligations expressed to be assumed by it in any Finance Document are legal, valid, binding and enforceable obligations;
- 3.4 the entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:
  - (A) any law or regulation applicable to it;
  - (B) if the Beneficiary is an incorporated entity, its constitutional documents; or
  - (C) any agreement or instrument binding upon it or any of its assets;
- 3.5 it has the power to enter into and perform, and has taken all necessary action to authorise its entry into and performance of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents;
- 3.6 its operations and activities are in compliance with all environmental, health, safety and labour regulatory requirements applicable to it;

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<sup>3</sup> DRAFTING NOTE: CLAUSE 2 IS ONLY APPLICABLE IN THE INSTANCES WHERE AR GRANTS ARE PROPOSED TO BE DISBURSED TO THE BENEFICIARY. CLAUSE 2 SHOULD BE DELETED IF THIS IS NOT THE CASE.

- 3.7 its operations and activities do not involve any Excluded Activities; and
- 3.8 to the best of its knowledge and belief after due inquiry, there are no substantial or material liabilities, claims, or unmitigated risks to its operations, activities, employees, buildings or offices, or assets due to environmental, occupational health and safety, or labour-related issues.

#### 4. **BENEFICIARY UNDERTAKINGS**

The Beneficiary shall ensure, in relation to itself, its employees and its authorised delegates and contractors, that, from the date of this Agreement until the date which falls 45 days after the date on which there is no amount outstanding under the Finance Documents:

- 4.1 compliance with the provisions of the anti-corruption guidelines of the World Bank which, as at the date of this Agreement, are available at [https://policies.worldbank.org/sites/ppf3/PPFDocuments/40394039anti-corruption%20guidelines%20\(as%20revised%20as%20of%20july%201,%202016\).pdf](https://policies.worldbank.org/sites/ppf3/PPFDocuments/40394039anti-corruption%20guidelines%20(as%20revised%20as%20of%20july%201,%202016).pdf);
- 4.2 no amount received by it will be used for an Excluded Activity or at any time constitute an Ineligible Expenditure;
- 4.3 all of its operations and activities are in compliance with all applicable environmental, health, safety and labour regulatory requirements including laws, regulations, and applicable land titles, permits/authorizations;
- 4.4 it promptly obtains, complies with and does all that is necessary to maintain in full force all required authorisations, consents, approvals, licences, permits or registrations;
- 4.5 potentially adverse project-related environmental effects, from wastewater effluent, surface drainage, air emissions, and any other potential damage to the natural environment, are adequately mitigated;
- 4.6 it takes all reasonable and prudent actions to avoid substantial or material liabilities, claims, or unmitigated risks due to environmental, occupational health and safety, or labor-related issues, and if such event does occur, take the appropriate and reasonable actions to adequately resolve and mitigate such liability, claim, or risk; and
- 4.7 appropriate health and safety and environmental protection measures are being used in connection with the implementation and operation of its facilities.

#### 5. **INFORMATION UNDERTAKINGS**

The information undertakings in this Clause 5 remain in force from the date of this Agreement until the date which falls 45 days after the calendar year in which there is no amount outstanding under the Finance Documents:

- 5.1 The Beneficiary shall promptly provide to the NRPB (and any event within three days of it becoming aware) a written report of any incident or accident relating to its operations which had an adverse effect on the environment or worker health and safety including (each an "Incident Report"). In particular, such adverse effect is deemed to have occurred where:
- (A) applicable law requires notification of the accident/incident to the authorities;

- (B) the accident/incident involves fatality of worker(s) or worker health and safety accidents resulting in death, hospitalization or more than 5 days of loss of worker time; or
  - (C) there has been non-compliance with any material environmental health and safety regulation.
- 5.2 The Beneficiary shall submit each Incident Report timeously by way of email to the NRPB ([enterprisesupport@nrpbxm.org](mailto:enterprisesupport@nrpbxm.org)) and to the PFI at any email provided by the PFI to the Beneficiary for such reporting.
- 5.3 The Beneficiary shall submit to the NRPB, as soon as available, but in any event within 45 days after the end of the calendar year, an annual report on environmental and worker health and safety matters relating to the project and its operations (the “Annual Report”), in a form satisfactory to the NRPB and the World Bank, which shall include copies of any information on environmental matters that the Beneficiary may have to make available to the authorities and, in any event:
- (A) the current status of environmental and worker health and safety permits, licenses, or other approvals required for operations (including copies of renewals or modifications of any such approvals);
  - (B) a summary of incidents of non-compliance with the application of the environmental law, (including legal or administrative action or proceedings involving the Beneficiary or fines, penalties, or increased charges imposed on the Beneficiary);
  - (C) progress made on the implementation of any improvements recommended for environmental management or performance;
  - (D) worker health protection and safety initiatives (including training programs) taken by the Beneficiary; and
  - (E) Public complaints/representation, if any in relation to any of paragraphs (A) to (D) above.
- 5.4 The Annual Report shall state the steps taken or proposed by the Beneficiary to address any problems mentioned in such report and shall identify the person at the Beneficiary with overall responsibility for environmental health and safety matters.
- 5.5 The Beneficiary must ensure that the NRPB and any of its officers, employees and agents, are given, upon five Business Days’ advance notice, access during business hours to any property or site from which the Beneficiary operates. The Beneficiary hereby agrees in advance to comply with any additional obligations or conditions required by the NRPB following any such site visits including (without limitation) in relation to:
- (A) compliance with environmental law, regulations and guidance; and
  - (B) any specific reporting requirements in relation to the administration and monitoring of the Project and the utilisation of the NRPB Grant.

## 6. **AR GRANT REFUND EVENT**

If the NRPB determines that an amount of the AR Grant has been used in a manner inconsistent with the provisions of the Finance Documents the Beneficiary shall, upon notice

by the NRPB to the Beneficiary, promptly refund such amount to the NRPB. Such inconsistent use shall include, without limitation:

- (A) use of such amount to make a payment for an expenditure that is an Ineligible Expenditure or to finance an Excluded Activity; or
- (B) engaging in corrupt, fraudulent, collusive or coercive practices in connection with the use of such amount or allowing, directly or indirectly its representatives to do so.<sup>4</sup>

## 7. **EFFECTIVE DATE**

This Agreement shall not become effective until evidence satisfactory to the NRPB has been furnished to it showing that each other Finance Document has been signed and is fully effective.

## 8. **FINANCE DOCUMENTS ACKNOWLEDGEMENT**

The Beneficiary hereby acknowledges in favour of the NRPB that it has received a copy of the PFI Credit Agreement to which it is party and that it understands the terms and conditions thereof and unconditionally and irrevocably agrees to be bound by such terms and conditions.

## 9. **COSTS AND EXPENSES**

- (A) Unless otherwise agreed between the Parties, each Party shall pay its own costs and expenses incurred by them in connection with entry into of this Agreement.
- (B) The Beneficiary shall, within ten Business Days of demand, pay to the NRPB the amount of all costs and expenses (including legal fees) incurred by the NRPB in connection with the enforcement of, or the preservation of any rights under, this Agreement.

## 10. **ASSIGNMENT AND TRANSFER**

- 10.1 The Beneficiary is aware that the NRPB is established as autonomous administrative authority by the Country of Sint Maarten through the Temporary National Ordinance on the NRPB. Accordingly, the Beneficiary agrees that the administration of the Project and this Agreement may be transferred to the Country of Sint Maarten which would assume the actions and administrations of this Agreement. The NRPB may not otherwise assign or transfer any of its rights, benefits or obligations under this Agreement or enter into any transaction or arrangement which would result in any of those rights, benefits or obligations passing to or being held in trust for or for the benefit of any other person.
- 10.2 The Beneficiary may not assign or transfer any of its rights, benefits or obligations under this Agreement or enter into any transaction or arrangement which would result in any of those rights, benefits or obligations passing to or being held in trust for or for the benefit of another person.

## 11. **NOTICES**

### 11.1 **Communications in writing**

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<sup>4</sup> DRAFTING NOTE: CLAUSE 6 IS ONLY APPLICABLE IN THE INSTANCES WHERE AR GRANTS HAVE BEEN DISBURSED TO THE BENEFICIARY. CLAUSE 6 SHOULD BE DELETED IF THIS IS NOT THE CASE.

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by email or letter.

## 11.2 **Addresses**

Each Party has stated their address and email address (and the department or officer, if any, for whose attention the communication is to be made) on the signature page to this Agreement. Each Party hereby agrees that any change to such contact details will only be effective upon written notice to the other Party.

## 11.3 **Delivery**

(A) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:

- (1) if by way of email, when received in the mail server of the recipient; or
- (2) if by way of letter, when it has been left at the relevant address;

and, if a particular department or officer is specified as part of its address details provided under Clause 11.2, if addressed to that department or officer.

(B) Any communication or document to be made or delivered will be effective only when actually received by the relevant Party and then only if it is expressly marked for the attention of the department or officer identified with that Party's signature below (or any substitute department or officer as that Party shall specify for this purpose).

(C) Any communication or document which becomes effective, in accordance with Clauses 11.3(A) to 11.3(B), after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

## 12. **PARTIAL INVALIDITY**

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## 13. **REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of the NRPB, any right or remedy under this Agreement shall operate as a waiver of any such right or remedy or constitute an election to affirm this Agreement. No election to affirm this Agreement on the part of the NRPB shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

## 14. **AMENDMENTS AND WAIVERS**

Any term of this Agreement may be amended or waived only with the consent of the NRPB and the Beneficiary.



15. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

16. **GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by Sint Maarten law.

17. **ENFORCEMENT**

- (A) The courts of Sint Maarten have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "Dispute").
- (B) The Parties agree that the courts of Sint Maarten are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

**EXECUTION PAGES**

**ELIGIBLE BENEFICIARY ENTERPRISE**

By:

\_\_\_\_\_

Authorized Representative

Name:

Title:

By:

\_\_\_\_\_

Authorized Representative

Name:

Title:

**For purposes of this Agreement:**

(a) the Beneficiary's address is:

(b) the Beneficiary's contact details are:

E-mail:

**NATIONAL RECOVERY PROGRAM BUREAU**

By:

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Authorized Representative

Name: Claret Connor

Title: Director

**For purposes of this Agreement:**

(a) the NRPB's address is:

#57 Walter J.A. Nisbeth Road  
Philipsburg  
Sint Maarten

(b) the NRPB's E-mail is [enterprisesupport@nrbsxm.org](mailto:enterprisesupport@nrbsxm.org)

## SCHEDULE 1 – DEFINITIONS

In this Agreement:

“Excluded Activities” means those activities listed in Schedule 2 (*Excluded Activities*) to this Agreement.

“Finance Documents” means this Agreement, the PFI Credit Agreement, the Grant Agreement, the Subsidiary Agreement and any other agreement designated in writing as such by the Beneficiary and the NRPB from time to time.

“Ineligible Expenditure” means those amounts received by a Beneficiary under the Finance Documents:

- (A) which are used for any purpose outside the scope of the definitions in this Agreement (including, without limitation, the Project and each of its components);
- (B) for which the Beneficiary has been unable to provide sufficient and appropriate evidence of application to the satisfaction of the NRPB; and
- (C) which are used for payments made or due for expenditures incurred on or after December 30th, 2024,

in each case which are declared ineligible in the sole and absolute discretion of the NRPB on account of an audit or review or otherwise.

“Party” means a party to this Agreement.

“PFI Credit Agreement” means a credit agreement entered into on or about the date of this Agreement between the PFI and the Beneficiary in terms of which the PFI agrees to make available to the Beneficiary, AR Sub-Loans and WC Sub-Loans.

## SCHEDULE 2 – EXCLUDED ACTIVITIES

- Land acquisition
- Load bearing construction works
- Activities that affect water bodies in disputed areas
- Production or trade of weapons and munitions
- Adult entertainment
- Production or trade of strong alcoholic beverages (excluding beer, bars and restaurants)
- Production or trade of tobacco
- Adult entertainment
- Gambling, casinos activities, and equivalent activities
- Trade in wildlife or wildlife products regulated under Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)
- Purchasing/selling radioactive materials or unbounded asbestos fibers
- Activities that involve the purchase, use or selling of Persistent organic pollutants (POPs), Polychlorinated biphenyl compounds (PCBs, a class of synthetic organic chemicals) , Pesticides/herbicides subject to international phaseouts or bans; Ozone depleting substances subject to international phaseout
- Purchasing, use or selling Pharmaceuticals subject to international phaseouts or bans
- Commercial logging operations or the purchase of logging equipment for use in primary tropical moist forest
- Drift net fishing in the marine environment using nets in excess of 2.5 km in length
- Activities that require significant labor influx
- Activities that adversely affect vulnerable people and underserved groups (for example, elderly poor pensioners, the physically challenged, women, particularly head of households or widows) living in the area
- Activities that are noncompliance with labor principles, occupational health and safety, and rights relevant to the island
- Activities that have significant adverse environmental impacts that are sensitive, diverse, or unprecedented. These impacts may affect an area broader than the sites or facilities subject to physical works
- Activities that would involve conversion or degradation of natural habitats or which would involve the harvesting, use, or change in management of forest or coastal resources
- Activities in an international waterway or in a disputed area
- Activities that are illegal under country laws, regulations, or ratified international conventions and agreements
- Activities involve international trade in waste or waste products, except for nonhazardous waste destined for recycling
- Activities that involve degradation of a national park, similar protected area or national monument
- Activities that involve real estate speculation