



## AGREEMENT

### On Employment of the Georgian Labor Force for Seasonal Work in the Federal Republic of Germany

between

the Bundesagentur für Arbeit (BA - Federal Employment Agency), represented by its Executive Board, the Board in turn represented by the general management of the Zentrale Auslands- und Fachvermittlung (ZAV Bonn - International Placement Services)

- hereinafter referred to as "BA"

and

the Legal Entity of Public Law (LEPL) State Employment Support Agency of Georgia, represented by its Director

- hereinafter referred to as the "Georgian Partner Administration"

- both referred to hereinafter as "the Parties".

As the Federal Employment Agency, the BA is responsible for deployment of international workers based on the Ordinance on the Admission of Newly-Arrived Foreigners for the Purpose of Taking up Employment (Beschäftigungsverordnung – BeschV) issued by the Federal Ministry of Labor and Social Affairs (BMAS - Bundesministerium für Arbeit und Soziales). The International Placement Services (ZAV Bonn - Zentrale Auslands- und Fachvermittlung) is authorized by the BA to carry out and to conclude deployment agreements in the sense of Sec. 15a para. 1 BeschV with employment administrations of other nations.

The State Employment Support Agency of Georgia undertakes the duties according to the Decree of the Minister of IDPs from the Occupied Territories, Labour, Health and Social Affairs of Georgia No. 01-110/N of October 31, 2019 on Approval of the Regulations of the Legal Entity of Public Law – State Employment Support Agency.

A mutual agreement regulating the process and selection of employees is required in order to deploy workers for the purpose of seasonal employment in the Federal Republic of Germany.

Based on directive 2014/36/EU of the European Parliament and the Council of 26 February 2014 on the conditions for immigration and residence for residents of third countries for the purpose of employment as seasonal workers (ABl. L 94 of 03/28/2014, p. 375)

and of Sec. 15a paragraph 1 clause 1 number 1 BeschV,

the Parties hereby conclude the following agreement on seasonal employment of workers from Georgia in the Federal Republic of Germany.

## **I. General principles of cooperation**

### **Section 1. Purpose of the deployment**

The objective of this agreement is the deployment of workers from Georgia for the purpose of seasonal employment of at least 30 hours per week as harvest workers in the agricultural sector. Both Parties consider the first year of implementation of this agreement (2020) as a pilot phase for practical evaluation of the established process and conditions.

### **Section 2. Responsible institutions**

The following institutions are responsible in the process of deployment of workers from Georgia with domestic employers in Germany for the purpose of seasonal employment

#### For the BA:

International Placement Services (ZAV Bonn)

Villemombler Str. 76

53123 Bonn, Germany

#### For the Georgian State Employment Support Agency:

State Employment Support Agency

144 Tsereteli Avenue

Tbilisi 0119, Georgia

### **Section 3. Labor market requirements and availabilities in both countries**

Workers shall be deployed under this agreement in consideration of the labor market-related interests of both countries.

The Parties shall agree on annual quotas for this purpose. These define upper limits that are based on the requirements for seasonal workers in the German agriculture sector and take into consideration the potential availability of workers in the partner country.

A certain percentage of the general annual quota for seasonal workers in the agricultural sector coming to Germany from abroad will be reserved for seasonal workers from Georgia.

After coordinating with the German Federal Ministry of Labor (BMAS), the BA shall consult with the Georgian Partner Administration regularly at the start of each year to determine the quota for the current calendar year, not later than January 31<sup>st</sup>.

The Georgian Partner Administration is not obliged to completely fulfill the requirement for workers with potential applicants until the agreed maximum limit is reached. If the Georgian side cannot fulfill the corresponding demand, it will be granted to other partner countries.

## **Section 4. Deployment of seasonal workers using a simplified process**

### **I. General principles**

This deployment agreement in accordance with Sec. 15a paragraph 1 clause 1 number 1 BeschV serves to simplify the administrative process. When placing workers under this agreement, it is not necessary to check whether there are domestic or equivalent international applicants who can and want to carry out the work.

#### **(1) Deployment restrictions**

This agreement is expressly limited to deployment for seasonal employment in the agricultural sector to work as a harvest worker. It also does not apply to workers' family members.

Changes/expansions to other permitted seasonal work in accordance with Sec. 15a paragraph 1 clause 1 number 1 BeschV are allowed only with the approval of both Parties and require a formal amendment to this agreement or a separate agreement.

#### **(2) Maximum length of employment**

Seasonal employment under Sec. 15a paragraph 1 clause 1 number 1 BeschV can last for up to 90 days within a period of 180 days. The employment period indicated in the work permit is decisive for determining compliance. If the employment relationship starts later or ends earlier, this shall not affect compliance.

#### **(3) Employment conditions**

It is not allowed that the deployed workers are employed at worse conditions within the Federal Republic of Germany than comparable domestic German or equivalent employees. Therefore, all relevant German laws and legal regulations shall apply.

In addition, the following generally applies to seasonal agricultural employment in the sense of Sec. 15a paragraph 1 clause 1 number 1 BeschV:

- Employment shall be for at least 30 hours per week. Otherwise, the provision of the German Working Time Act (Arbeitszeitgesetz) applies.
- Employment shall be compensated at least with the statutory minimum wage according to the German Minimum Wage Act.



- Employment is not subject to compulsory social insurance/non-liability for social insurance if it is carried out for a maximum period of 70 working days over a period of 3 months under the conditions specified in the respective German laws and legal regulations.
- International workers shall be provided with or placed in lodgings for the duration of their employment relationship by the employer.
- International workers shall have a claim to vacation under the German Federal Leave Act.
- The employer shall bear the costs for providing sufficient health insurance protection in Germany.
- In any case, full transparency on the related travelling costs and its coverage will be given. The cost-sharing scheme must be included in the job offer and the employment agreement. Before accepting a job offer, the seasonal worker knows if he/she covers the travelling costs or the employer. The employer may cover the costs voluntarily (pro rata or in total).

#### **(4) Work permits**

Deployed workers receive a temporary work permit issued for the duration of their employment and linked to the employment relationship. The work permit shall be applied for by employers in the Federal Republic of Germany. Work permits granted shall be sent to the respective worker before their departure from Georgia to Germany and saved by the respective employers, while the copy remains with the worker.

#### **(5) Lodging**

The employer shall provide workers deployed under this agreement and employed in the Federal Republic of Germany with suitable lodging or ensure accommodation in such, for the duration of their employment.

Due to German law, lodging must fulfill the applicable requirements of the Workplace Ordinance (Arbeitsstättenverordnung) and the published Technical Regulations for Workplaces (ASR), in particular ASR A4.4. In general, common lodging is permitted. In any case, full transparency on the related costs and its coverage will be ensured. The costs of accommodation must be reasonable and must be transparent in the job offer. Before accepting a job offer, the seasonal worker knows if he/she covers the lodging costs or the employer. The employer will either provide a rental contract him/herself or offer lodging through a third party. When the employer provides the accommodation, the employer and the seasonal worker conclude a contract for the accommodation. The costs of accommodation must be shown in the rental contract and may not be withheld from the salary.

## **II. Deployment procedure**

### **(1) Job offers from employers in the Federal Republic of Germany**

Employers in the Federal Republic of Germany can report their seasonal requirements for agricultural harvest workers to the BA in the form of a concrete job offer in the sense of Sec. 15a paragraph 2 clause 1 number 3 BeschV. This must include at least the following information:

- Employer's requirements for applicants,
- Company in Germany,
- Location and type of work,
- Lodging and meals,
- Duration of employment,
- Remuneration,
- Work hours per week or month,
- Duration of paid leave,
- Start of employment, if possible.

## **(2) Review of employment conditions**

The BA reviews the offered employment conditions when a concrete job offer is received.

The BA shall only deploy workers under this agreement if the review of employment conditions is positive.

After a positive review of employment conditions, the BA transfers the employer's requirements to the Georgian Partner Administration.

## **(3) Selection of workers for deployment**

The Georgian Partner Administration is solely responsible for selecting the workers for deployment during the first deployment.

The Georgian Partner Administration shall select suitable applicants and suggest them to the BA for deployment. It shall ensure that they fulfill the following requirements:

- Citizens of Georgia;
- Minimum age of 18;
- Have not traveled to Schengen area states within the last 180 days before the planned end of the employment;
- Capability and motivation of planned work;
- Any cause (disruption), which results in restriction of re-entry.

The Georgian Partner Administration shall electronically transfer applicant profiles to the ZAV Bonn. Both partners will agree on a process for recording and transmitting the profiles under conditions that fulfill the data privacy specifications and provisions of both institutions, as well as the requirements of the European General Data Protection Regulation. These conditions will be described and specified in an annex to this agreement.

## **(4) Contact in case of successful deployment**

If the deployment of Georgian workers with an employer in the Federal Republic of Germany is successful, the ZAV Bonn shall inform the Georgian Partner Administration promptly which employer will be employing which worker. It shall also inform the Administration of the projected



start date and duration of employment. The Georgian Partner Administration shall transmit this information to the workers in question.

When ZAV Bonn transmits the deployment suggestion, employers shall receive the contact information of the selected Georgian workers, including their address, telephone number and e-mail address, for establishing the employment relationship (e.g. providing information on specific start date, concluding the employment agreement, clarifying social security insurance obligations).

The BA shall inform the Georgian Partner Administration about the work permits granted at regular intervals.

### **(5) Process for subsequent employment**

Georgian workers that have successfully completed the selection process at least once in accordance with the relevant provisions of Sec. 4, II - (3), (4) of this agreement and would like to be employed again with the same employer, can be requested by name.

To do so, when offering a specific position, the employer must inform the BA of the first name, last name and at least one additional unique identifying feature (such as biometric passport number) of the workers it wants to employ again.

The ZAV Bonn will inform the Georgian Partner Administration in regular intervals set/agreed by the Parties about the number of requests made by name.

## **Section 5. Deployment fees, anti-corruption clause, no discrimination**

### **(1) Deployment Fees**

It is not permitted to charge any fees for the selection and deployment services described in this agreement neither by the Georgian Partner Administration nor by the BA, regardless of their designation.

### **(2) Anti-corruption clause**

The Parties assure that they will not accept any benefits from third parties for carrying out the services described in this agreement, in particular not from potential employers or applicants, or their family members. This also includes the following prohibitions in the course of deployment:

- Accepting gifts or money or
- Allowing the granting or promising of any other advantages.

### **(3) Non-discrimination**

The Parties hereby agree that the deployment of workers shall be free of discrimination based on any ground such as gender, race, ethnic or social origin, worldview, religion or sexual orientation and other forms.

## **Section 6. Prohibition of the use of private recruitment agencies**

The deployment or recruitment of employees by private recruitment agencies is not permitted for either Party.

The Parties agree that information for and deployment of workers in the Federal Republic of Germany shall be handled by the Georgian State Employment Support Agency.

## **Section 7. Re-assignment**

A re-assignment of deployed applicants is generally possible, if necessary. It is excluded in the following cases:

- (1) the deployed applicants are not beginning to work at their indicated position, or the employment agreement with the suggested employer does not come into force due to reasons *attributable to the employer*.
- (2) the employment relationship is ended prematurely by the deployed worker due to reasons that lie in the responsibility of *the worker*.

## **Section 8. Administrative costs for carrying out this agreement**

- (1) Administrative costs incurred to carry out this agreements shall be borne by the Party for whose obligations said costs are incurred, e.g.

**the BA** shall bear the costs for its services offered to employers, deployment on the German side and carrying out the work permit process;

**the Georgian Partner Administration** - for informing and selecting applicants in Georgia.

- (2) The following applies to costs incurring for joint events for the implementation or development of this agreement, such as conferences or informational events:
  - Travel expenses, lodging and food and drink on site shall be paid by the guests;
  - Costs for on-site organization shall be paid by the host;
  - Required translation and interpreter services for the event shall be paid by one of the Parties, by agreement.

## **Section 9. Forms and information on employment in Germany, advertisement**

The BA shall provide the Georgian Partner Administration with:

- The information sheet for employers “Seasonal agricultural employment” in Germany;
- The “Applicant sheet” form with associated information/completion instructions;

- An example of the procedure of deployment;
- Sample employment agreement;
- Sample accommodation contract;
- Questionnaire to determine the compulsory insurance / exemption from insurance of seasonal workers (the Parties agree to elaborate implementation mechanism by mutual consultations).
- Basic information on legal regulations and laws in a summary.

Costs for translation into the respective national language(s) and for making a sufficient number of copies shall be borne by the Georgian State Employment Support Agency.

The Georgian Partner Administration is entitled to refer to their existing cooperation with the BA and to use the logo and lettering of the BA exclusively in this context.

#### **Section 10. Written form and communication during the deployment process**

- (1) Amendments, supplements, terminations and revocations of this agreement shall require the written form (signed by both Parties) or electronic form (qualified electronic signatures from both Parties).
- (2) Requirements of employers in Germany shall be transferred to the Georgian Partner Administration, and suggestions for suitable workers shall be transferred to the BA electronically through a standardized process fulfilling the data privacy law requirements of both Parties (cf. Sec. 4.II.3).

#### **Section 11. Monitoring of employment conditions and dispute regulation mechanism**

- (1) The Parties shall provide adequate monitoring of employment conditions of seasonal workers through existing competent public structures.
- (2) Potential disputes between employers and workers shall be addressed by the existing competent structures and be regulated in accordance with the applicable legislation of Germany.
- (3) Any dispute regarding this agreement will be resolved between the Parties by means of bilateral consultations and/or direct negotiations.

#### **Section 12. Coming into force/termination**

- (1) This agreement will enter into force upon signature by both Parties, allowing the first deployments from May 1, 2020.



- (2) Either contractual Party may terminate it in writing by September 30th, effective as of December 31st of the calendar year, without providing grounds.
- (3) Each of the Parties is entitled to terminate the agreement for grave causes by means of extraordinary termination without notice.

Grave causes are particularly considered to be:

- Charging fees to employees or employers for deployment.
  - A violation of the anti-corruption prohibition.
  - Deployment in inappropriate employment relationships.
- (4) This agreement is signed in two original copies, each in Georgian, German and English language, all texts being equally authentic. In case of divergences, the English text shall prevail.

Tbilisi, 17<sup>th</sup> of January, 2020

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Alexander Wilhelm

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