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Agreement for Canada-Alberta Cooperation on Immigration

Annex B: Temporary Foreign Workers

2009

1.0 Preamble

1.1 For the purposes of this Annex, unless otherwise stated, reference to Alberta means the Minister of Employment and Immigration ("AE&I"), and reference to Canada means the Minister of Citizenship and Immigration Canada ("CIC") and the Minister of Human Resources and Skills Development Canada, to be styled Human Resources and Social Development Canada/Service Canada ("HRSDC/SC").

1.2 Whereas the Agreement for Canada-Alberta Cooperation on Immigration, hereinafter referred to as the Agreement, was signed on May 11, 2007, Canada and Alberta agree that this Annex shall constitute an annex to that Agreement, and further that this Annex shall also constitute an agreement in accordance with paragraph 204 (c) of the *Immigration and Refugee Protection Regulations* ("IRPR") governing the issuance of work permits to foreign nationals destined to work in Alberta on a temporary basis, and pursuant to subsection 8(1) of the *Immigration and Refugee Protection Act* ("IRPA"). This Annex shall be governed by the provisions of the Agreement in any matters not specifically addressed in this Annex.

1.3 Whereas CIC relies on the Service Canada branch of HRSDC/SC for the provision of labour market opinions pursuant to section 203 of the IRPR, which opinions are required in some cases in order for CIC to issue a work permit, and whereas as a result of HRSDC/SC's involvement in the labour market opinion process, it possesses expertise and information that are necessary to Canada and Alberta in order to implement these operational improvements, the Minister of HRSDC/SC is a necessary and proper signatory to this Annex.

1.4 Whereas, pursuant to the *Department of Human Resources and Skills Development Act*, the powers, duties and functions of the Minister of Human Resources and Skills Development styled as Human Resources and Social Development extend to all matters relating to human resources and skills development in Canada over which Parliament has jurisdiction and which are not by law assigned to any other Minister, department, board or agency of the Government of Canada; and whereas the Minister of Human Resources and Skills Development styled as Human Resources and Social Development is authorized, pursuant to section 10 of the *Department of Human Resources and Skills Development Act* to enter into agreements with provinces for the purposes of facilitating the formulation, coordination and implementation of programs and policies related to the powers, duties and functions conferred by that Act, the Minister of HRSDC is authorized to be a party to this Annex.

1.5 A temporary foreign worker Annex to the Agreement will support Alberta's efforts to address its unique economic and social needs.

1.6 Canada and Alberta agree that measures to facilitate and expedite the entry of TFW will be taken recognizing the importance of supporting Alberta's efforts to train and improve the skills of Albertans, and of ensuring compliance with all applicable laws including immigration and labour regulations.

1.7 Canada and Alberta recognize that providing opportunities for all foreign nationals legally in Alberta to successfully participate in their respective workplaces and communities is essential to achieve the economic and social benefits of immigration policies and programs.

2.0 Definitions

2.1 "Dependent" refers to persons meeting the definition of "dependent child" as set out in section 2 of the IRPR.

2.2 "Employment Agency" is as defined in Alberta's *Designation of Trades and Business Regulation*, under the *Alberta Fair Trading Act*.

2.3 "Job" refers to any piece of work ("work" being defined in section 2 of the IRPR).

2.4 "Occupation" refers to a job which is defined and described in detail in the National Occupation Classification ("NOC") system as defined in section 2 of the IRPR.

2.5 "Skilled Worker" refers to any worker whose occupation is found in levels 0, A or B of the NOC system. A "low-skilled worker" is any worker who does not fit this definition of "skilled worker".

2.6 "Temporary Foreign Worker" or "TFW" refers to any foreign national who seeks to engage in work in Canada. "Temporary Foreign Worker Program" or "TFWP" refers to the functions under the IRPA and the IRPR that allow the Government of Canada to authorize foreign nationals to work temporarily in Canada.

2.7 When any term used in this Annex is not defined in this section but is defined in the IRPA or the IRPR, the definition found therein applies.

3.0 Objective and purposes

3.1 The objective of this Annex is to allow Canada and Alberta to better work together to meet the particular needs and circumstances of Alberta's employers, labour market and economy with respect to the role played by the entry of foreign nationals to the province to work on a temporary basis. In better addressing the needs of Alberta employers, Canada and Alberta recognize the unique situation of TFW in the labour market, and are committed to protecting their rights.

3.1.1 Canada and Alberta agree that meeting this objective will require the participation and co-operation of various federal and provincial departments in addition to those of the signing Ministers.

3.2 The purpose of this Annex is to identify areas of cooperation between Canada and Alberta and to support the operation of the federal TFW program in Alberta in ways that:

- a. provide Alberta with mechanisms to facilitate the entry of TFW to Alberta to meet its economic development priorities, in a manner that does not negatively affect the normal functioning of the local labour market;
- b. enhance information exchanges between Canada and Alberta for the purposes of policy and operational matters related to the TFW program;
- c. increase the awareness amongst employers, employment agencies/recruiters, and TFW of their respective rights and responsibilities; and,
- d. facilitate research and evaluation of the programs in order to enhance understanding of TFW outcomes.

3.3 The Annex seeks to promote the entry of TFW destined to work in Alberta through agreed-

upon mechanisms as expeditiously as possible, taking into consideration applicable law, operational and resource constraints, and national security.

4.0 Joint planning and the entry of TFW named by Alberta

4.1 In this section, unless otherwise indicated, references to "Canada" include both CIC and HRSDC/SC.

4.2 The Parties agree that addressing the objectives outlined in this Annex can be achieved in part through joint planning and priority setting with respect to the entry of TFW into Alberta.

4.3 Canada and Alberta agree that, pursuant to section 204 (c) of the IRPR, CIC may issue work permits to TFW destined to Alberta without requiring a labour market opinion (as described in section 203 of the IRPR), when Alberta has provided CIC with a written recommendation to do so.

4.3.1 In exercising this authority, based on Alberta's labour market information and projections, Alberta may recommend the entry of TFW whose presence in Alberta will contribute significantly to Alberta's economic development goals.

4.3.2 In exercising this authority, Alberta agrees to respect federal TFW program principles and objectives, and Canada's responsibility in delivering the TFW program pursuant to the IRPA and the IRPR. Alberta's authority under this section is to be exercised to address the specific objectives set out in section 3 of this Annex, and is not intended to replace or replicate a labour market opinion as described in section 203 of the IRPR.

4.3.3 Alberta will establish clear and transparent criteria and procedures to govern the use of this authority. Alberta will share with Canada its policies and procedures as adopted.

4.3.4 Work permit applications supported by an Alberta recommendation will continue to be assessed against all other applicable IRPA and IRPR criteria, including the applicant's ability to do the job and the likelihood that the applicant will voluntarily leave Canada at the end of the period authorized for their stay. In addition, the applicant must meet all admissibility criteria in order to obtain status as a temporary resident in Canada.

4.4 Canada and Alberta agree that the number of work permits issued to TFW principal applicants, pursuant to section 4.3 of this Annex, will be based on a written estimate from Alberta. Alberta will provide this estimate to the Canada-Alberta Working Group on Temporary Foreign Workers, defined in section 9.2 of this Annex, for any given calendar year, starting for the calendar year 2009, no later than November 15 of the preceding year.

4.4.1 Canada will make all reasonable efforts to ensure that work permit applications made pursuant to a written recommendation as described in section 4.3 of this Annex are processed in a timely manner.

4.5 Canada agrees to consider all of Alberta's operational and levels-related recommendations concerning the operation of the TFW Program in Alberta. Canada will use Alberta's estimates of demand for TFW in the province in developing operational plans for the effective operation of Canada's TFW program. Alberta's recommendations may be made based on:

- a. local labour market demand;
- b. Alberta's specific skills requirements;
- c. efforts by the Alberta employer community to fill job openings with Canadian citizens or permanent residents;
- d. implications for Alberta's communities; and,
- e. other considerations as may be determined by the Parties.

4.6 CIC agrees to pursue opportunities to ensure that appropriate levels of ongoing funding are secured that would provide a more stable basis to ensure the TFW program remains responsive to dynamic labour market needs.

4.7 For purposes associated with planning and policy, Canada and Alberta will conclude TFW information and data sharing agreements or Memoranda of Understanding at the earliest possible opportunity.

4.8 Pursuant to sections 4.4 and 4.5 of this Annex, Alberta's recommendations will be made at least once annually to the Canada-Alberta Working Group on Temporary Foreign Workers, defined in section 9.2 of this Annex.

4.9 To help achieve the objectives of this Annex, Canada agrees to consult Alberta with reasonable advance notice when Canada is contemplating entering into bilateral arrangements with a TFW source country and, in turn, Alberta agrees to provide reasonable advance notice when Alberta is contemplating entering into a bilateral arrangement with a TFW source country. Each party agrees to provide advice and make recommendations for the other's consideration respecting any such arrangements.

5.0 Operational improvements

5.1 In this section, unless otherwise indicated, references to "Canada" include both CIC and HRSDC/SC.

5.2 HRSDC/SC is committed to working with provinces to explore the establishment of national service standards for the processing of LMOs within 6 months of signing this Annex.

5.3 HRSDC/SC agrees to implement ongoing improvements to the processing of labour market opinions. Improvements will include:

5.3.1 HRSDC/SC posting labour market opinion processing times on its website; and,

5.3.2 Service Canada providing applicants with notification of the receipt of labour market opinion applications.

5.4 Canada and Alberta acknowledge the importance of enhancing the functioning and facilitating the orientation of all TFW in Alberta workplaces and communities. Through the Canada-Alberta Working Group on TFW, the Parties agree to implement a pilot project within 12 months of signing this Annex. CIC will work with Alberta to require all TFW destined to Alberta to fill occupations found in NOC C and D categories to demonstrate a minimum proficiency in French or English where this is required in order to better ensure their ability to undertake the work for which they have been recruited, pursuant to section 200 (3) (a) of the IRPR. In addition, subject to regulatory authority, all labour market opinion applications in these categories will be accompanied by a workplace and community orientation plan for TFW.

5.5 Alberta will endeavor to become a more attractive destination for TFW by making available information for TFW on eligibility for Alberta health insurance, workers compensation benefits, applicable employer or government-sponsored pension plans, and protection under the *Alberta Occupational Health and Safety Act*, the *Employment Standards Code*, the *Labour Relations Code* and the *Fair Trading Act*.

6.0 Compliance and enforcement

6.1 Alberta and Canada agree that the effective monitoring and compliance of TFW, employment agencies and employers with TFW program requirements, as well as with all applicable federal and provincial laws, is essential to TFW program integrity and the ability of Canada and Alberta to facilitate the entry of TFW into Alberta. To assist with the on-going administration and

enforcement of the TFW program in Alberta, Alberta and Canada agree to work with all relevant departments that respond to complaints or other information regarding work conditions for TFW, and maintain a coordinated enforcement strategy for administering programs that impact upon temporary foreign workers.

6.1.1 To facilitate these efforts, AE&I and HRSDC/SC will complete a Letter of Understanding to exchange information, and CIC will negotiate a Memorandum of Understanding to share information with Alberta.

6.1.2 Canada and Alberta will ensure that any exchange of personal information will be undertaken and conducted in accordance with the Privacy Act for Canada, the Personal Information Protection Act for Alberta, and any other applicable federal and provincial legislation and in accordance with their respective policies related to protection of privacy, access to information and security of records.

6.2 Canada and Alberta will jointly ensure that TFW program requirements are clearly understood by both clients and program staff by facilitating the transfer of timely and clear program information to employers, employment agencies, and TFW.

6.2.1 Alberta will provide relevant information resources to CIC, who will, in turn, distribute them to TFW upon entry into Canada.

6.3 CIC will actively engage the Canadian Border Services Agency (CBSA) to make operational improvements to ensure enforcement of terms associated with work permits.

6.4 Alberta will establish a TFW Advisory Office that will provide a point of referral and advocacy for TFW seeking assistance related to, among other things, dissatisfaction with working conditions. In enforcing the *Employment Standards Code*, Alberta will seek, to the extent possible, to ensure the wages, working conditions, and related obligations of employers to Temporary Foreign Workers are also consistent with the Service Canada Labour Market Opinion and the work permit.

6.4.1 Alberta will hire staff for the Advisory Office, and to promote compliance with applicable workplace standards, and employer undertakings. Canada will make the necessary operational improvements to support the work of the Advisory Office.

6.4.2 Canada and Alberta will dedicate resources to support the initiatives referred to in this section.

6.4.3 Canada and Alberta will assess the performance of these initiatives for the first two years of their operation and the Parties agree to consider adjusting resource allocations, as required.

6.5 Alberta agrees to share with HRSDC/SC information about employers who have not complied with relevant federal or provincial laws, as defined by the Letter of Understanding in clause 6.1.1, to assist Canada in making its assessment under section 203 (3) (d) of the IRPR.

6.5.1 Subject to regulatory authority, Canada agrees to consider information provided with respect to employer misrepresentation or non-compliance in the issuance or denial of positive labour market opinions and/or work permits.

6.6 Subject to regulatory authority, HRSDC/SC will require that, for the issuance of positive labour market opinions, all employment agencies hired by employers to recruit TFW to Alberta will be registered with Service Alberta and/or Canada.

6.7 Canada agrees to implement a pilot project in Alberta to issue open work permits to TFW upon recommendations from the Advisory Office described in section 6.4 of this Annex, in cases where employers or employment agencies have not complied with relevant federal or provincial laws pertaining to the treatment of TFW, to the serious detriment of the worker. The Canada-Alberta

Working Group on TFW, defined in section 9.2 of this Annex, will establish clear and transparent criteria and procedures to govern the referral to and exercise of this authority, and communicate these criteria and procedures to the aforementioned Advisory Office.

7.0 Innovative initiatives

7.1 In this section, unless otherwise indicated, references to "Canada" include both CIC and HRSDC/SC.

7.2 The Canada-Alberta Working Group on TFW, defined in section 9.2, will initiate the following pilot projects within 12 months of signing this Annex:

- a. Developing a work permit for health care professionals with terms and conditions that will enable licensing and work on the same permit.
- b. Spouses of long-haul truck drivers operating out of Alberta being eligible to receive open work permits.
- c. Dependents, aged 18-22, of TFW who are engaged in work within the NOC 0, A and B skill categories being eligible to receive open work permits.

7.2.1 The Canada-Alberta Working Group on TFW will also work toward developing occupation-specific (but non-employer specific) work permits for TFW working in Alberta in the engineering, construction and procurement industries to permit limited mobility of certain high-skilled TFW within a particular industrial sector.

7.3 Canada will not require a labour market opinion before issuing work permits to applicants eligible under section 7.2 of this Annex; subject to the agreement and approval of clear and transparent criteria established by Canada and Alberta. However, such applicants must still be assessed against and meet all other applicable federal criteria, including the applicant's ability to do the job and the likelihood that the applicant will voluntarily leave Canada at the end of the period authorized for their stay. In addition, the applicant must meet all admissibility criteria in order to obtain status as a temporary resident in Canada.

8.0 TFW program accountability and evaluation

8.1 In this section, unless otherwise indicated, references to "Canada" include both CIC and HRSDC/SC.

8.2 Canada and Alberta agree to encourage research related to the TFW Program, and to annually share their respective research priorities and planned activities, and to cooperate on research initiatives and evaluations, as appropriate. Where appropriate, the parties further agree to share with each other the results of any such research and evaluation activities.

8.3 Canada and Alberta agree to co-operate to improve the capture and understanding of TFW program accountability measures such as processing times and occupational coding of work permit recipients destined to Alberta, to support the ongoing review and evaluation of the TFW program.

8.4 Canada and Alberta recognize the importance of evaluating the pilot projects that are implemented under this Annex in order to determine their impacts and outcomes in Alberta. Accordingly, Canada and Alberta will develop an evaluation framework to ensure that sufficient data is available and analysis completed at appropriate intervals so that the pilot projects can be appropriately evaluated and serve to inform policy and program development. The evaluation framework will be developed by the Canada-Alberta Working Group on Temporary Foreign Workers as described in section 9.2 of this Annex.

8.5 Canada will evaluate the national TFW program on a five-year cycle so as to meet federal

government accountability and evaluation requirements. The operation of the federal TFW program within the province of Alberta will be evaluated as a component of the national study of the national TFW program. Working cooperatively with Alberta, Canada will lead the evaluation of the national TFW program, including the development of the Results-based Management and Accountability Framework (RMAF) and other national evaluation activities. Alberta will cooperate with Canada, including the sharing of relevant program information and data, to the extent permitted by law. Canada will provide Alberta with copies of all such RMAFs and other TFW program evaluations.

8.6 Canada agrees to develop means and procedures to code the work permits of TFW who are destined to work in Alberta in such a way that data pertaining to that group can be extracted from the data for the overall national TFW program, and shared with Alberta, within the limits of Canada's management information technology. This includes noting work permits that are issued under an Alberta recommendation as described in section 4.0 of this Annex, and work permits issued under the provisions of section 7.0 of this Annex.

8.7 Canada and Alberta agree to share information on prospective and actual TFW destined to Alberta to the extent permitted by law. Canada and Alberta further agree to make available to each other all relevant labour market information in their possession, subject to legal restrictions.

8.7.1 Canada will attempt to obtain authorization from all work permit applicants destined for Alberta to allow the sharing of work permit application information with Alberta by redesigning the work permit application form. This information will be used by Alberta as a basis for assessing the effectiveness of mechanisms, processes and engagement efforts.

8.8 Canada and Alberta will collaborate on the development and implementation of any future TFW program accountability measures that relate specifically to the functioning of the TFW program in Alberta.

9.0 Governance and other

9.1 In this section, unless otherwise indicated, references to "Canada" include both CIC and HRSDC/SC.

9.2 In this Annex, the Canada-Alberta Working Group on Temporary Foreign Workers refers to the Working Group established in March of 2006 by representatives of the Departments of the signatories to this Annex, as well as representatives from related Ministries.

9.2.1 Canada and Alberta agree to maintain the Canada-Alberta Working Group on Temporary Foreign Workers ("TFW Working Group") to oversee the implementation of this Annex and to meet the ongoing objectives set out in this Annex.

- a. The TFW Working Group will report to the Governance Committee, as established in section 7.0 of the Agreement for Canada-Alberta Cooperation on Immigration, on an annual basis.

9.3 In the case of a dispute or disagreement under this Annex, Canada and Alberta agree to use the dispute resolution process outlined in clause 7.5 of the Canada-Alberta Agreement on Immigration Cooperation

9.4 This Annex will remain in effect indefinitely subject to section 9.7 of this Annex. The Parties agree to review the operation of this Annex every four years.

9.5 In keeping with the objectives set out in section 3.0 of this Annex, Canada will be open and transparent concerning its intention to enter into agreements with other provinces respecting TFW. Canada will provide, at Alberta's request,

- a. copies of other federal-provincial agreements made under section 204 (c) of the IRPR; and,
- b. access to terms and conditions of other federal-provincial TFW agreements.

9.6 Any term of this Annex may be amended by the written mutual consent of the signatories of this Annex or by their designates.

9.7 This Annex may be terminated by any of the signatories to the Annex at any time by providing twelve months' notice in writing to the others.

9.8 Alberta will advise Canada on any proposed arrangement to be entered into with another party to carry out Alberta's responsibility under this Annex.

9.9 This Annex will take effect on the date that it is signed by the last of the parties to do so.

SIGNED this _____ day of _____, 2008

Minister of Citizenship and Immigration Canada

Minister of Human Resources and Skills Development Canada

Minister of Alberta Employment and Immigration

[Approved pursuant to the Government Organization Act]

Minister of Alberta International and Intergovernmental Relations

Date Modified: 2009-06-11