

## Human Resources and Skills Development Canada

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### Temporary Foreign Worker Program

### **AGREEMENT FOR THE EMPLOYMENT IN CANADA OF SEASONAL AGRICULTURAL WORKERS FROM MEXICO IN BRITISH COLUMBIA FOR THE YEAR 2011**

WHEREAS the Government of Canada and the Government of the United Mexican States are desirous that employment of a seasonal nature be arranged for Mexican Agricultural Workers in Canada where Canada determines that such workers are needed to satisfy the requirements of the Canadian agricultural labour market; and,

WHEREAS the Government of Canada and the Government of the United Mexican States have signed a Memorandum of Understanding to give effect to this joint desire; and,

WHEREAS the Government of Canada and the Government of the United Mexican States agree that an Agreement for the Employment in Canada of seasonal agricultural workers from Mexico be signed by each participating employer and worker; and,

WHEREAS the Government of Canada and the Government of the United Mexican States agree that an agent for the Government of the United Mexican States known as the "GOVERNMENT AGENT" shall be stationed in Canada to assist in the administration of the program;

THEREFORE, the following agreement for the employment in Canada of seasonal agricultural workers from Mexico is made in duplicate this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

### **I SCOPE AND PERIOD OF EMPLOYMENT**

1. The EMPLOYER agrees to employ the WORKER(S) assigned to him by the Government of the United Mexican States under the Mexican Seasonal Agricultural Workers Program and to accept the terms and conditions hereunder as forming part of the employment Agreement between himself and such referred WORKER(S). The number of WORKERS to be employed shall be as set out in the attached clearance order.
2.
  - i. Subject to compliance with the terms and the conditions found in this agreement, the EMPLOYER agrees to hire the WORKER(S) as \_\_\_\_\_ for a term of employment of not less than 240 hours in a term of 6 weeks or less, nor longer than 8 months with the expected completion of the period of employment to be the \_\_\_\_\_ day of \_\_\_\_\_, 2011 ;
  - ii. in the case of a TRANSFERRED WORKER, the term of employment shall consist of a cumulative term of not less than 240 hours.
  - iii. the EMPLOYER needs to respect the duration of the employment agreement signed with the WORKER(S) and their return to the country of origin by no later than December 15th with the exception of extraordinary circumstances (e.g. medical emergencies).
3. The employer shall pay the WORKER the approved piece work rate as set out in the "Minimum Piece Rates - Hand harvested crops" published by the B.C. Ministry of Skills Development and Labour for harvesting. The worker shall be paid at least the equivalent of \$9.28 per hour for every hour worked harvesting on a piece work basis.

The EMPLOYER shall pay the WORKER\_\_\_\_\_per hour for any period spent performing duties other than harvesting. (This hourly rate shall be no less than the most current minimum wage for 2011).

4. The EMPLOYER agrees:

- i. that the average minimum work week shall be 40 hours;
- ii. that, if circumstances prevent fulfilment of Clause I (4) (i) above, the average weekly income paid to the WORKER over the period of employment is as set out in Clause I (4) (i) above at the hourly minimum rate;
- iii. that where, for any reason whatsoever, no actual work is possible, the WORKER, shall receive an advance with a receipt signed by the WORKER to cover personal expenses, the EMPLOYER shall be entitled to recover said advance from the WORKER prior to the departure of the WORKER.

5. The RECEIVING EMPLOYER shall be provided by the SENDING EMPLOYER at the time of transfer an accurate record of earnings and deductions to the date of transfer, noting that the record needs to clearly state what, if any, deductions can still be recovered from the WORKER.

6. The GOVERNMENT AGENT and both PARTIES agree:

That in the event the EMPLOYER is unable to locate the WORKER because of the absence or death of the WORKER, the EMPLOYER shall pay any monies owing to the WORKER to the GOVERNMENT AGENT. This money shall be held in trust by the GOVERNMENT AGENT for the benefit of the WORKER. The GOVERNMENT AGENT shall take any or all steps necessary to locate and pay the money to the WORKER or, in the case of death of the WORKER, the WORKER'S lawful heirs.

7. The normal working day is not to exceed 8 hours, but the EMPLOYER may request of the WORKER and the WORKER may agree to extend his/her hours when the urgency of the situation requires it, and where the conditions of employment involves a unit of pay, and such requests shall be in accordance with the customs of the district and the spirit of this program, giving the same rights to Mexican workers as given to Canadian workers. The urgent working day should not be more than 12 hours daily.

8. For each six consecutive days of work, the WORKER will be entitled to one day of rest, but where the urgency to finish farm work cannot be delayed, the EMPLOYER may request the WORKER'S consent to postpone that day until a mutually agreeable date.

9. The EMPLOYER will give the WORKER a trial period of fourteen actual working days from the date of his arrival at the place of employment. The EMPLOYER shall not discharge the WORKER except for sufficient cause or refusal to work during that trial period.

10. An EMPLOYER shall, upon requesting the transfer of a WORKER, give a trial period of seven actual working days from the date of his arrival at the place of employment. Effective the eighth working day, such a WORKER shall be deemed to be an employee of that EMPLOYER.

11. The EMPLOYER shall provide the WORKER, and where requested, the GOVERNMENT AGENT with a copy of rules of conduct, safety discipline and care and maintenance of property as the WORKER may be required to observe.

## **II LODGING, MEALS AND REST PERIODS**

1. The EMPLOYER will:

- i. Provide suitable accommodation to the WORKER. Such accommodation must meet with the annual approval of the appropriate government authority responsible for health and living conditions in British Columbia or with the approval of a private housing inspector licensed by the province of British Columbia. In the absence of such authority, accommodation must meet with the approval of the GOVERNMENT AGENT; OR
- ii. Ensure that reasonable and suitable accommodation is affordably available for the

WORKER in the community. If the worker's accommodation is not on the farm the employer will pay any costs for transporting the worker to the worksite.

2. Costs related to accommodation will be paid by the WORKER at a rate of 10 percent of the WORKER'S gross pay from the first day of full employment. The amount paid for accommodation during the WORKER'S stay in Canada is not to exceed \$632.00.
3. The EMPLOYER will provide reasonable and proper meals for the WORKER; OR where the WORKER prepares his own meals, will furnish cooking utensils, fuel, and facilities without cost to the WORKER and to provide a minimum of thirty minutes for meal breaks.
4. Where the EMPLOYER is providing meals to the worker, the EMPLOYER will charge the worker a sum not to exceed \$6.50 per day for the cost of meals provided to the WORKER.
5. The EMPLOYER will provide the WORKER with at least two rest periods of 10 minutes duration, one such period to be held mid morning and the other mid afternoon, paid or not paid, in accordance with provincial labour legislation.
6. The contracting PARTIES agree:  
That in the case of a TRANSFERRED WORKER, the second EMPLOYER may continue to make deductions in expenses associated with the program, starting from the aggregate amount deducted by the first EMPLOYER, without exceeding the amounts indicated in the preceding paragraphs.

### **III DEDUCTIONS OF WAGES**

1. The EMPLOYER will deduct from the wages payable to the WORKER those employer deductions required to be made under law.
2. The EMPLOYER can deduct from the WORKER'S wages the actual premiums payable for health insurance as described in s. IV.2(i) below of \$1.28 per day per WORKER.

### **IV INSURANCE FOR OCCUPATIONAL & NON-OCCUPATIONAL INJURY AND DISEASE**

1. The EMPLOYER agrees to:
  - i. Comply with all laws, regulations and by-laws respecting conditions set by competent authority and, in addition, in the absence of any laws providing for payment of compensation to WORKERS for personal injuries received or disease contracted as a result of the employment, shall obtain insurance acceptable to the GOVERNMENT AGENT providing such compensation to the WORKER.
  - ii. Report to the GOVERNMENT AGENT within 48 hours all injuries sustained by the WORKER which require medical attention.
2. The WORKER agrees that:
  - i. The EMPLOYER shall remit in advance directly to the insurance company engaged by the Government of Mexico the total amount of insurance premium calculated for the stay period in Canada. In the case where the WORKER leaves Canada before the employment agreement has expired, the EMPLOYER will be entitled to recover any unused portion of the insurance premium from the insurance company.
  - ii. He will report to the EMPLOYER and the GOVERNMENT AGENT, within 48 hours, all injuries sustained which require medical attention.
3. The coverage for insurance shall include:
  - i. the expenses for non-occupational medical insurance which include accident, sickness, hospitalization and death benefits;
  - ii. any other expenses that might be looked upon under the agreement between the

Government of Mexico and the insurance company to be of benefit to the WORKER.

4. If the WORKER dies during the period of employment, the EMPLOYER shall notify the GOVERNMENT AGENT and upon receipt of instructions from the GOVERNMENT AGENT, either:
  - i. provide suitable burial; or
  - ii. remit to the GOVERNMENT AGENT a sum of money which shall represent the costs that the EMPLOYER would have incurred under Clause 4 (i) above, in order that such monies be applied towards the costs undertaken by the Government of Mexico in having the WORKER returned to his relatives in Mexico.

## **V MAINTENANCE OF WORK RECORDS AND STATEMENT OF EARNINGS**

The EMPLOYER agrees to:

1. Maintain and forward to the GOVERNMENT AGENT proper and accurate attendance and pay records; and provide to the worker a clear statement of earnings and deductions with each pay.

## **VI TRAVEL AND RECEPTION ARRANGEMENTS**

The EMPLOYER agrees to:

1. Pay the cost of two-way air transportation of the WORKER for travel from Mexico City to Canada by the most economical means.

The EMPLOYER is responsible for the cost two-way airfare for the WORKER, regardless of any early termination of the contract, whether by EMPLOYER or WORKER, and for any reason.

Notwithstanding the foregoing, where the WORKER becomes a transfer worker, within the meaning of clause I (9), the transfer employer is responsible for the return airfare of the WORKER.

2. Make arrangements:
  - i. to meet or have his agent meet and transport the WORKER from his point of arrival in Canada to his place of employment and, upon termination of his employment to transport the WORKER to his place of departure from Canada; and
  - ii. to inform and obtain the consent of the GOVERNMENT AGENT to the transportation arrangements required in (i) above.
3. The contracting PARTIES agree:

In the event that at the time of departure a named worker is unavailable to travel the EMPLOYER agrees, unless otherwise stipulated in writing on the request form, to accept a substitute WORKER.

## **VII OBLIGATIONS OF THE EMPLOYER**

1. The EMPLOYER agrees that the WORKER shall not be moved to another area of employment or transferred or loaned to another EMPLOYER without the consent of the WORKER and the prior approval in writing of HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA and the GOVERNMENT AGENT.
2. The EMPLOYER agrees and acknowledges that the WORKERS approved under the Seasonal Agricultural Workers Program are authorized by their work permit only to perform

agricultural labour for the EMPLOYER to whom they are assigned. Any person who knowingly induces or aids a foreign worker, without the authorization of HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA, to perform work for another person or to perform non-agricultural work, is liable on conviction to a penalty up to \$50,000 or two years imprisonment or both. Immigration and Refugee Protection Act S 124(1)(C) and 125.

3. The EMPLOYER agrees that WORKERS handling chemicals and/or pesticides will be provided with protective clothing at no cost to the WORKER, receive appropriate formal or informal training, and supervision where required by law.
4. The EMPLOYER agrees:  
That according to the approved guidelines in the province of British Columbia, the EMPLOYER shall take the WORKER to obtain health coverage according to provincial regulations.

## **VIII OBLIGATIONS OF THE WORKER**

The WORKER agrees:

1. To work at the place of employment.
2. To work at all times during the term of employment under the supervision and direction of the EMPLOYER and to perform the duties of the agricultural work requested of him in a workmanlike manner.
3. To obey and comply with all rules set down by the EMPLOYER relating to the safety, discipline, and the care and maintenance of property.
4. That he shall not work for any other person without the approval of HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA, the GOVERNMENT AGENT and the EMPLOYER, except in situations arising by reason of the EMPLOYER'S breach of this agreement and where alternative arrangements for employment are made.
5. To return promptly to Mexico upon completion of his\her authorized work period.
6. The worker agrees to repay to the employer for the work permit processing fee, which the employer has paid to CIC on behalf of the worker. It is agreed that the \$150 amount will be repaid in two equal amounts during the first month of work.

## **IX PREMATURE REPATRIATION**

1. If the worker has to be repatriated due to medical reasons which are verified by a Canadian doctor, the EMPLOYER shall pay the cost of reasonable transportation and subsistence expenses except in instances where repatriation is necessary due to a physical or medical condition which was present prior to the WORKER'S departure in which case the Government of Mexico will pay the full cost of repatriation.

## **X MISCELLANEOUS**

1. In the event of fire, the EMPLOYER'S responsibility for the WORKER'S personal clothing shall be limited to 1/3 its replacement cost to a maximum of \$150.00. The government of Mexico shall bear responsibility for the remaining cost of the replacement of the WORKER'S clothing.
2. The WORKER agrees that any personal information held by the Federal Government of Canada and the Government of the Province in which the work is performed may be released to HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA, to Citizenship & Immigration Canada to the GOVERNMENT AGENT, to the Western Agriculture Labour Initiative and to the Insurance Company designated by the GOVERNMENT AGENT, so as to facilitate the operation of the Foreign Seasonal Agricultural Workers Program.

The consent of the WORKER to the release of information includes, but is not restricted to:

- i. information held under the Employment Insurance Act, (including the WORKER'S Social

Insurance Number);

- ii. any health, social service or accident compensation related information held by the government of the province in which the work is performed, including any unique alpha-numerical identifier used by any province;
- iii. Medical and health information and records which may be released to Citizenship & Immigration Canada as well as the Insurance Company designated by the GOVERNMENT AGENT.

- 3. The EMPLOYER agrees to allow HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA or its designate access to all information and records necessary to ensure contract compliance.
- 4. This agreement shall be governed by the laws of Canada and of British Columbia. English and Spanish versions of this contract have equal force.
- 5. This contract may be executed in any number of counterparts, in the language of the signatory's choice, with the same effect as if all the Parties signed the same document. All Counterparts shall be construed together, and shall constitute one and the same contract.
- 6. The Parties agree that no term or condition of this agreement shall be superseded, suspended, modified or otherwise amended, in any way, without the express written permission of the competent Canadian and Mexican authorities, as well as the EMPLOYER and the WORKER.

IN WITNESS THEREOF THE PARTIES STATE THAT THEY HAVE READ OR HAD EXPLAINED TO THEM AND AGREED WITH ALL THE TERMS AND CONDITIONS STIPULATED IN THE PRESENT CONTRACT

DATE: \_\_\_\_\_

EMPLOYER'S SIGNATURE \_\_\_\_\_

WITNESS: \_\_\_\_\_

NAME OF EMPLOYER: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CORPORATE NAME: \_\_\_\_\_

ACCOUNT NUMBER FOR "WORKSAFE BC": \_\_\_\_\_

NAME OF WORKER: \_\_\_\_\_

WORKER'S SIGNATURE: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_ FAX: \_\_\_\_\_

PLACE OF EMPLOYMENT OF WORKER IF DIFFERENT FROM ABOVE:

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To enhance readability, the masculine gender is used to refer to both men and women.

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Date Modified: 2011-04-18