



TRANSFER CONTRACT FOR THE EMPLOYMENT IN CANADA OF COMMONWEALTH CARIBBEAN SEASONAL AGRICULTURAL WORKERS - 2011

THIS AGREEMENT made on the _____ (yyyy-mm-dd)

Between _____
(called throughout "**THE EMPLOYER**")

and _____
(called throughout "**THE WORKER**")

and _____
(called throughout "**THE GOVERNMENT'S AGENT**")

having been duly authorized by the **GOVERNMENT** of _____
(hereinafter referred to as "**THE GOVERNMENT**")
to act on its behalf.

WHEREAS the **EMPLOYER**, the **GOVERNMENT**, the **GOVERNMENT OF CANADA** and the **WORKER** desire that the **WORKER** shall be beneficially employed in Canada in agricultural employment of a seasonal nature.

The PARTIES AGREE as follows:

The particulars in respect of the **WORKER** are as follows:

WORKER'S Identity Card No. : _____

WORKER'S Address in Canada: _____

I SCOPE AND PERIOD OF EMPLOYMENT

The PARTIES agree as follows:

1. The **EMPLOYER** will employ the **WORKER** assigned to him by the **GOVERNMENT AGENT** as approved by **HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA (HRSDC)**, clearance order and the **WORKER** will serve the **EMPLOYER** at the place of employment subject to the terms and conditions herein mentioned provided, however, that such period of seasonal employment be not longer than eight (8) months nor less than 240 hours in a time of six (6) weeks or less unless **HRSDC** has agreed that an emergency situation exists, in which case the **PARTIES** agree that the minimum period of employment shall be not less than a term of 160 hours. The **EMPLOYER** shall 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).
2. The **EMPLOYER** agrees to employ the **WORKER** assigned to him from the date the **WORKER** arrives in Canada until _____ or until the completion of the work for which he is hired or assigned which ever comes sooner.
3. The **EMPLOYER** shall give the **WORKER** a trial period of seven actual working days from the date of his arrival at the place of employment. The **EMPLOYER** shall not discharge the **WORKER** except for misconduct or refusal to work during that trial period. Effective the eighth working day, such a **WORKER** shall be deemed to be a named **WORKER**.
4. The **EMPLOYER** shall provide the **WORKER** and the **GOVERNMENT AGENT**, with a copy of rules and regulations of conduct, safety, discipline and care and maintenance of property as the **WORKER** may be required to observe.

II LODGING MEALS AND REST PERIODS

The EMPLOYER agrees to:

1. Provide adequate clean living accommodation to the **WORKER**, without cost. Such accommodation must meet with the annual approval of the appropriate **GOVERNMENT** authority responsible for health and living conditions in the province where the **WORKER** is employed. The accommodation must also meet with the approval of the **GOVERNMENT AGENT**.

2. Provide reasonable and proper meals for the **WORKER** during periods of transportation and employment, at a cost to the **WORKER** as agreed in Clause IV-2 and, where the **WORKER** elects to prepare his own meals, to furnish cooking utensils, fuel, and facilities without cost to the **WORKER**.
3. Provide after 5 consecutive hours of employment a meal break of at least 30 minutes and to provide two rest periods of 10 minutes duration one such period to be mid morning and the other mid afternoon.
4. 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 can not be delayed, the **EMPLOYER** may request the **WORKER'S** consent to postpone that day until a mutually agreeable date.

III PAYMENT OF WAGES

The **EMPLOYER** agrees:

1. To pay the **WORKER** at his place of employment weekly wages in lawful money of Canada at a rate equal to the following, whichever is greatest:
 - i) the wage for agricultural **WORKERS** provided by law in the province in which the **WORKER** is employed; or
 - ii) the rate determined annually by **HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA** to be the prevailing wage rate for the type of agricultural work being carried out by the **WORKER** in the province in which the work will be done; or
 - iii) the rate being paid by the **EMPLOYER** to his regular seasonal work force performing the same type of agricultural work;
2. That the average minimum work week shall be 40 hours; and
 - i) that, if circumstances prevent fulfilment of Clause III - 2 above, the average weekly income paid to the **WORKER** over the period of employment is to be not less than an amount equal to a 40 hour week at the hourly rate for agricultural **WORKERS** provided by law in the province; and
 - ii) that where, for any reason whatsoever, no actual work is possible, the **WORKER**, shall receive a reasonable advance to cover his personal expenses.
3. That a recognition payment of \$4.00 per week to a maximum of \$128.00 will be paid to **WORKERS** with 5 or more consecutive years of employment with the same **EMPLOYER**, payable at the completion of the contract and not subject to the 25% remittance to the **GOVERNMENT AGENT**.
4. To allow **HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA** or its designate access to all information and records necessary to ensure contract compliance.

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** and the **WORKER** or **WORKER'S** lawful heirs shall have no further recourse against the **EMPLOYER** for any such monies paid to the **GOVERNMENT AGENT**.

IV DEDUCTIONS FROM WAGES

The **WORKER** agrees that the **EMPLOYER**:

1. Shall remit to the **GOVERNMENT AGENT** 25% of the **WORKER'S** wages for each payroll period at the time of delivering the pay sheets as required by clause (VI). The **WORKER** further understands that pursuant to the supplementary agreement between the **WORKER** and his/her **GOVERNMENT** that a specified percentage of the 25% remittance to the **GOVERNMENT AGENT** shall be retained by the **GOVERNMENT** to defray administrative costs associated with the delivery of the program.
2. May deduct from the **WORKER'S** wages, a sum not to exceed \$7.00 per day for the cost of meals provided to the **WORKER**.
3. May deduct from the **WORKER'S** wage an amount to reflect utility costs in relation to the employment of the **WORKER** in the provinces of Alberta, Manitoba, Ontario, New Brunswick, Prince Edward Island and Saskatchewan* only. The amount of the deduction is to be 2.16 Canadian dollars per working day and to be adjusted annually on a year over year basis beginning January 1, 2012, by a percentage consistent with the variation in SAWP wages as per Section III, Subsection (1) of the Agreement. A working day for the purpose of this deduction is to be such that a **WORKER** completes a minimum of four (4) hours of work in a given day. Deductions withheld under this provision are to be made for the current pay period only.

* In Saskatchewan, workers employed by greenhouses and nurseries are exempt from

this deduction.

4. Will make deductions from the wages payable to the **WORKER** only for the following:
 - i) those **EMPLOYER** deductions required to be made under law;
 - ii) all other deductions as required pursuant to this agreement.

V INSURANCE FOR OCCUPATIONAL & NON-OCCUPATIONAL INJURY AND DISEASE

The **EMPLOYER** agrees:

1. To 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** to provide for such compensation to the **WORKER**.
2. To report to the **GOVERNMENT AGENT** within 48 hours, all injuries sustained by the **WORKER** which require medical attention.

VI MAINTENANCE OF WORK RECORDS AND STATEMENT OF EARNINGS

The **EMPLOYER** agrees to:

1. Complete and deliver to the **GOVERNMENT AGENT** within seven days of the completion of each payroll period, copies of pay sheets indicating all the deductions in respect of the **WORKER'S** wages.
2. Provide to the **WORKER** a clear statement of earnings and deductions with each pay.

VII TRAVEL AND RECEPTION ARRANGEMENTS

The **EMPLOYER** agrees to:

1. Pay to the appointed **TRAVEL AGENT** in advance the cost of one-way air transportation of the **WORKER**, as between Kingston, Jamaica, and Canada by the most economical means as expressed in the Memorandum of Understanding.
2. Upon termination of his employment to transport the **WORKER** to his place of departure from Canada and all such transportation will be with the prior knowledge and consent of the **GOVERNMENT AGENT**.

The **WORKER** agrees to:

3. Pay to the **EMPLOYER** on account of transportation costs referred to in Clause VII(1) by way of regular payroll deduction, the sum of \$4.20 per working day beginning on the first full day of employment and the aggregate payment in any event is not to be greater than \$ 505.00.

The **PARTIES** agree:

4. Where a federal/provincial agreement on the selection of foreign worker exists with associated cost recovery fees, the cost of such provincial fees (e.g. Quebec acceptance certificate - CAQ) will be reimbursed to the **EMPLOYER** by the **WORKER** either through weekly deduction or from his final pay cheque by his election. Where a government agency reimburses an employer the latter shall not make any deductions from wages or other payment due to the worker.

VIII OBLIGATIONS OF THE EMPLOYER

The **EMPLOYER** agrees:

1. That the **WORKER** shall not be moved to another area or place 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**.

The **EMPLOYER** agrees and acknowledges:

2. 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.
3. That 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 Act and Refugee Protection Act S. 124(1) and 125.

4. That if it is determined by the **GOVERNMENT AGENT**, after consultation with **HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA**, that the **EMPLOYER** has not satisfied his obligations under this agreement, the agreement will be rescinded by the **GOVERNMENT AGENT** on behalf of the **WORKER**, and if alternative agricultural employment cannot be arranged through **HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA** for the **WORKER** in that area of Canada, the **EMPLOYER** shall be responsible for the full costs of repatriation of **WORKER** as between Kingston, Jamaica and Canada; and if the term of employment as specified in Clause I - 1., is not completed and employment is terminated under Clause VIII - 4., the **WORKER** shall receive from the **EMPLOYER** a payment to ensure that the total wages paid to the **WORKER** is not less than that which the **WORKER** would have received if the minimum period of employment had been completed.
5. That **WORKERS** handling chemicals and/or pesticides are to be provided with protective clothing at no cost to the **WORKER**, receive appropriate formal and informal training and supervision where required by law.
6. That according to the approved guidelines in the province where the worker is employed the **EMPLOYER** shall take the **WORKER** to obtain health coverage according to the provincial regulations.

IX OBLIGATIONS OF THE WORKER

The **WORKER** agrees:

1. To proceed to the place of employment as aforesaid in Canada when and how the **GOVERNMENT AGENT** shall approve.
2. To work and reside at the place of employment or at such other place as the **EMPLOYER**, with the approval of the **GOVERNMENT AGENT**, may require.
3. 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 job requested of him efficiently.
4. To obey and comply with all rules set down by the **EMPLOYER** and approved by the **GOVERNMENT AGENT** relating to the safety, discipline, and the care and maintenance of property.
5. That:
 - i) he shall maintain living quarters furnished to him by the **EMPLOYER** or his **AGENT** in the same state of cleanliness in which he received them; and
 - ii) the **EMPLOYER** may, with the approval of the **GOVERNMENT AGENT**, deduct from the **WORKER'S** wages the assessed cost if any to the **EMPLOYER** to maintain the quarters in the appropriate state of cleanliness.
6. 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**.
7. To return promptly to the place of recruitment upon completion of the authorized work period.

X PREMATURE REPATRIATION

The **PARTIES** agree:

1. That following completion of the trial period of employment by the **WORKER**, the **EMPLOYER**, after consultation with the **GOVERNMENT AGENT**, shall be entitled for non-compliance, refusal to work, or any other sufficient reason, to terminate the **WORKER'S** employment hereunder and so cause the **WORKER** to be repatriated; and the full cost of the repatriation to Kingston, Jamaica shall be paid by the **EMPLOYER**.
2. That 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 the repatriation is necessary due to a physical or medical condition which was present prior to the **WORKER'S** departure in which case the **WORKER** will pay the full cost of repatriation.

XI FINANCIAL UNDERTAKINGS

The **PARTIES** further agree:

1. That any bona fide debt to the **EMPLOYER** voluntarily incurred by the **WORKER** in respect of any matter incidental or relating to his employment hereunder shall be repaid by him to the **EMPLOYER**.
2. For the purpose of securing the recovery of any amount payable by the **WORKER** under this contract, the **GOVERNMENT** shall be entitled to set aside all monies remitted to the **GOVERNMENT AGENT** under this Agreement until an amount representing the cash equivalent of \$200.00 (Canadian currency) has been accumulated, and to retain such amount during the period in which the **WORKER** is employed in Canada and for a period not exceeding six months after the date of his repatriation. Subject to any order of a court of competent jurisdiction and to bankruptcy notice under any law relating to bankruptcy, the **GOVERNMENT** shall

apply such amount to the payment of any sum not exceeding the cash equivalent of \$200.00 (Canadian currency) as may be properly payable to the **EMPLOYER** or to the **GOVERNMENT** in respect of any matters referred to in this Agreement upon demand being made for payment thereof.

3. That any expenditure incurred by the **GOVERNMENT AGENT** in repatriating the **WORKER** by reason of his employment being terminated under this Agreement shall be repaid by the **WORKER** to the **GOVERNMENT**.

XII GOVERNING LAWS

1. All provisions of this Agreement affecting the obligations created:
2. between the **WORKER**, the **EMPLOYER** and **HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA** or the **GOVERNMENT AGENT**, the **EMPLOYER** and **HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA** shall be governed by the laws of Canada, and of the province in which the **WORKER** is employed; and
3. between the **WORKER** and the **GOVERNMENT**, shall be governed by the laws of the sending country;
4. The French and English versions of this contract have equal force.

XIII MISCELLANEOUS

1. 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, provide standard burial or alternatively make a contribution towards the body's repatriation in the amount equal to what the burial cost would have been.
2. The **WORKER** agrees that the following 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 the **GOVERNMENT AGENT**, to his **EMPLOYER**, to the Foreign Agricultural Resource Management Service or to the Fondation des entreprises en recrutement de main-d'oeuvre agricole étrangère:
 - (i) information held under the Employment Insurance Act, (including the worker's Social Insurance Number); and
 - (ii) any health insurance number, social service or accident compensation related information, including any unique alpha-numerical identifier used by any province.
3. In the event of a fire, the **EMPLOYER**, the **GOVERNMENT AGENT** and the **WORKER**, will bear the replacement cost of the worker's personal property up to a maximum of \$650.00 each.
4. 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 **PARTIES** signed the same document. All counterparts shall be construed together and shall constitute one and the same contract.
5. 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 **GOVERNMENT OF CANADA**, the **GOVERNMENT AGENT**, the **EMPLOYER** and the **WORKER**.

In witness whereof the **PARTIES** state they have either read or had explained to them and agreed with all the terms and conditions stipulated in the present contract.

DATE: _____

NAME OF EMPLOYER: _____

ADDRESS: _____

CORPORATE NAME: _____

TELEPHONE: _____ FAX NO.: _____

PLACE OF EMPLOYMENT OF WORKER (IF DIFFERENT FROM ABOVE): _____

EMPLOYER'S SIGNATURE: _____

WITNESS: _____

NAME OF WORKER: _____

WORKER'S SIGNATURE: _____

WITNESS: _____

GOVERNMENT AGENT'S SIGNATURE: _____

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