



2004

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

THIS AGREEMENT made on the _____

between _____
(called throughout "THE EMPLOYER")

and _____
(called throughout "THE WORKER")

and _____

having been duly authorized by the GOVERNMENT of _____

(hereinafter referred to as "The GOVERNMENT") to act on its behalf (called throughout "THE GOVERNMENT'S AGENT")

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 Development Canada (HRDC), 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 HRDC 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.
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 un-named 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 misconduct or refusal to work during that trial period.
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 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 prepares 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:
 - i) the wage for agricultural workers provided by law in the province in which the WORKER is employed;
 - ii) the rate determined annually by HUMAN RESOURCES 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; whichever is the greatest, provided:
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- iv) that the average minimum work week shall be 40 hours;
 - v) that, if circumstances prevent fulfilment of Clause III - 1.(iv) 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
 - vi) that where, for any reason whatsoever, no actual work is possible, the WORKER, shall receive a reasonable advance to cover his personal expenses.
2. 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.
 3. To allow HUMAN RESOURCES 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 \$6.50 per day for the cost of meals provided to the WORKER.
3. 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:

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.

VII TRAVEL AND RECEPTION ARRANGEMENTS

The EMPLOYER agrees to:

1. Pay to the appointed travel agent the cost of two-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. Make arrangements 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 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 \$3.20 per working day beginning on the first full day of employment and the aggregate payment in any event is not to be greater than \$425.00.

The PARTIES agree:

4. That the EMPLOYER, on behalf of the WORKER, will advance the Work Permit Fees and will be reimbursed by the GOVERNMENT AGENT 30 days after the WORKER'S arrival in Canada provided the EMPLOYER submits payrolls.
5. In the event that at the time of flight departure a named worker is unavailable to travel the Employer agrees to accept a substitute worker and the Supply Country shall maintain an adequate supply of pool workers to assure that there shall be a worker on that departing flight.

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 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 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 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 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.

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 he:
 - i) 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) realizes that 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 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; where
 - i) the WORKER was requested by name by the EMPLOYER, the full cost of repatriation shall be paid by the EMPLOYER;
 - ii) the WORKER was selected by the GOVERNMENT and 50% or more of the term of the Agreement has been completed, the WORKER shall be responsible for the full cost of repatriation;
 - iii) the WORKER was selected by the GOVERNMENT and less than 50% of the term of the Agreement has been completed, the WORKER shall be responsible for the full cost of repatriation and shall also reimburse the EMPLOYER for the monetary difference between the actual cost of transportation of the WORKER to Canada and the amount collected by the EMPLOYER under Clause VII 3., actual cost being the net amount paid to the Carrier plus the Travel Agent's Commission at the International Air Transportation Association Approved Rate;
2. That if, in the opinion of the GOVERNMENT'S AGENT, in consultation with the EMPLOYER, personal domestic circumstances exist in the island of recruitment which make repatriation of the WORKER desirable or necessary prior to the expected date of termination of the Agreement, the GOVERNMENT'S AGENT shall cause the WORKER to be repatriated, and where,
 - i) the WORKER was requested by name by the EMPLOYER, the full cost of repatriation to Kingston, Jamaica, shall be paid by the EMPLOYER;
 - ii) the WORKER was selected by the GOVERNMENT and 50% or more of the term of the Agreement has been completed, the EMPLOYER shall pay 25% of the cost of reasonable transportation and subsistence expenses of the WORKER in respect of his repatriation to Kingston, Jamaica;

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- iii) the WORKER was selected by the GOVERNMENT and less than 50% of the term of the Agreement has been completed, the WORKER shall be responsible for the full cost of repatriation.
- 3. Where 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 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'S 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:
 - (i) between the WORKER, the EMPLOYER and HUMAN RESOURCES DEVELOPMENT CANADA or the GOVERNMENT AGENT, the EMPLOYER and HUMAN RESOURCES DEVELOPMENT CANADA shall be governed by the laws of Canada, and of the province in which the WORKER is employed, and
 - (ii) between the WORKER and the GOVERNMENT, shall be governed by the laws of the sending country;
- 2. The French and English version 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, the Worker's EMPLOYER, to the Foreign Agricultural Resource Management Service or to the Fondation des entreprises en recruitment 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 fire, the Employer's responsibility for the Worker's personal property replacement cost shall be limited to \$250.00. This amount is considered to be part of any content insurance that the Employer may carry.
- 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.

NAME OF EMPLOYER: _____ ADDRESS: _____

CORPORATE NAME: _____

TELEPHONE: _____ FAX NO.: _____

PLACE OF EMPLOYMENT OF WORKER IF DIFFERENT FROM ABOVE: _____

EMPLOYER'S SIGNATURE: _____ WITNESS: _____

WORKER'S SIGNATURE : _____ WITNESS:

GOVERNMENT AGENT'S SIGNATURE: _____

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

(January 2004)