

AGREEMENT FOR THE EMPLOYMENT IN CANADA OF SEASONAL AGRICULTURAL WORKERS FROM MEXICO - 2006

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 _____, 20_____.

I SCOPE AND PERIOD OF EMPLOYMENT

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.

The **PARTIES** agree as follows:

1. (a) subject to compliance with the terms and the conditions found in this agreement, the **EMPLOYER** agrees to hire the **WORKER(S)** as a _____ 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 _____, 20_____.
- (b) in the case of a **TRANSFERRED WORKER**, the term of employment shall consist of a cumulative term of not less than 240 hours.
- (c) 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).
2. The normal working day is 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.
3. 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.
4. To 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.
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. 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 a "**NAMED WORKER**" and clause X - 1.(i) will apply.
7. 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

The **EMPLOYER** agrees to:

1. Provide suitable 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. In the absence of such authority, accommodation must meet with the approval of the **GOVERNMENT AGENT**.
2. Provide reasonable and proper meals for the **WORKER** and, where the **WORKER** prepares his own meals, to furnish cooking utensils, fuel, and facilities without cost to the **WORKER** and to provide a minimum of thirty minutes for meal breaks.
3. 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.

III PAYMENT OF WAGES

The EMPLOYER agrees:

1. To allow **HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA** (HRSDC) or its designate access to all information and records necessary to ensure contract compliance.
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**, and **ONLY** where no provincial vacation pay is applicable. SAID recognition payment is payable to eligible **WORKERS** at the completion of the contract.
3. To pay the **WORKER** at his place of employment weekly wages in lawful money of Canada at a rate equal to:
 - i) the minimum wage for **WORKERS** provided by law in the province in which the **WORKER** is employed;
 - 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 Canadian workers performing the same type of agricultural work; which ever is the greatest, provided:
 - iv) that the average minimum work week shall be 40 hours;
 - v) that, if circumstances prevent fulfilment of Clause III (iv) above, the average weekly income paid to the **WORKER** over the period of employment is as set out in Clause III (iv) above at the hourly minimum rate;
 - vi) 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 deduct said advance from the **WORKER'S** pay prior to the departure of the **WORKER**.

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.

IV DEDUCTIONS OF WAGES

The WORKER agrees that the EMPLOYER:

1. Shall recover the cost of non-occupational medical coverage by way of regular payroll deduction at a premium rate of \$0.50 per day per **WORKER** in all provinces.
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 to:

1. 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**;
2. Report to the **GOVERNMENT AGENT** within 48 hours all injuries sustained by the **WORKER** which require medical attention.

The WORKER agrees that:

1. 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. Such amount will be recovered by the **EMPLOYER** with the deduction made to the **WORKER'S** wages according to clause IV - 1. 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;
2. 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.

VI MAINTENANCE OF WORK RECORDS AND STATEMENT OF EARNINGS

The **EMPLOYER** agrees to:

- i. Maintain and forward to the **GOVERNMENT AGENT** proper and accurate attendance and pay records.
- ii. 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 travel agent the cost of two-way air transportation of the **WORKER** for travel from Mexico City to Canada by the most economical means.
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.

The **WORKER** agrees to:

Pay to the **EMPLOYER** costs related to air travel and the work permit processing fee as follows:

- i) Costs related to travel will be deducted by way of regular payroll deductions at a rate of 6 percent of the **WORKER'S** gross pay from the first day of full employment. The amount deducted for travel is not to exceed \$450.00.
- ii) A cost of \$150 for the work permit processing fee. This amount will be deducted during the first six weeks of work through weekly proportional deduction.

The aggregate payment to the **EMPLOYER** for travel and the work permit processing fee is not to be less than \$150.00 or greater than \$600.00.

Where a federal/provincial agreement on the selection of foreign workers exists with associated cost recovery fees, the cost of such provincial fees will be reimbursed to the **EMPLOYER** from the **WORKER'S** final vacation pay cheque.

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.

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**.

The **RECEIVING EMPLOYER** agrees:

That in the case of a **TRANSFERRED WORKER** the receiving **EMPLOYER** agrees to pay the travel agent in advance the cost of on-way air transportation of the worker between Canada and Mexico by the most economical means as expressed in the Memorandum of Understanding.

VIII OBLIGATIONS OF THE EMPLOYER

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**.

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.

The **EMPLOYER** agrees:

That **WORKERS** handling chemicals and/or pesticides have been provided with protective clothing at no cost to the **WORKER**, received appropriate formal or informal training and supervision where required by law.

The **EMPLOYER** agrees:

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 provincial regulations.

IX OBLIGATIONS OF THE WORKER

The **WORKER** agrees:

1. 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.
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:
 - 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 his wages the cost to the **EMPLOYER** to maintain the quarters in the appropriate state of cleanliness.
5. 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 under clause X - 4.
6. To return promptly to Mexico upon completion of his\her authorized work period.

X PREMATURE REPATRIATION

1. 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. The cost of such repatriation shall be paid as follows:
 - i) if the **WORKER** was requested by name by the **EMPLOYER**, the full cost of repatriation shall be paid by the **EMPLOYER**;
 - ii) if the **WORKER** was selected by the Government of Mexico and 50% or more of the term of the contract has been completed, the full cost of returning the **WORKER** will be the responsibility of the **WORKER**;
 - iii) if the **WORKER** was selected by the Government of Mexico and less than 50% of the term of the contract has been completed, the cost of the north-bound and south-bound flight will be the responsibility of the **WORKER**. In the event of insolvency of the **WORKER**, the Government of Mexico, through the **GOVERNMENT AGENT** will reimburse the **EMPLOYER** for the unpaid amount less any amounts collected under Clause VII - "The **WORKER** Agrees to:".
2. If it is the opinion of the **GOVERNMENT AGENT** that personal and/or domestic circumstances of the **WORKER** in the home country warrant, the **WORKER** shall be repatriated with full cost of the repatriation paid by the **WORKER**.
3. 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.
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** to Mexico City, Mexico; and if the term of employment as specified in Clause I - 1., is not completed and employment is terminated under Clause X - 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 if a transferred **WORKER** is not suitable to perform the duties assigned by the receiving **EMPLOYER** within the seven days trial period, the **EMPLOYER** shall return the **WORKER** to the previous **EMPLOYER** and that **EMPLOYER** will be responsible for the repatriation cost of the **WORKER**.

XI 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 Foreign Agricultural Resource Management Service, in the case of Quebec, to the *Fondation des entreprises en recrutement de main-d'oeuvre agricole étrangère* 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. That the agreement shall be governed by the laws of Canada and of the province in which the worker is employed. French, English and Spanish versions of this contract have equal force.

- 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 the **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 competent Canadian and Mexican authorities, as well as the **EMPLOYER** and his **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

EMPLOYER'S SIGNATURE _____

WITNESS: _____

NAME OF EMPLOYER: _____

ADDRESS: _____

CORPORATE NAME: _____

TELEPHONE: _____ FAX NO.: _____

PLACE OF EMPLOYMENT OF
WORKER IF DIFFERENT
FROM ABOVE: _____

GOVERNMENT AGENT'S SIGNATURE _____

WITNESS: _____

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