

BUSINESS PERFORMANCE AGREEMENT

BETWEEN:

**THE GOVERNMENT OF MANITOBA
(hereinafter called "Manitoba"),**

-and-

**Candidate's Name PB2X-000XX
(hereinafter called the "Applicant").**

WHEREAS:

- A. Manitoba administers the Provincial Nominee Program (the "**Program**") in the Province of Manitoba pursuant to the Immigration Agreement entered into between Manitoba and the Government of Canada ("**Canada**") in June of 2003, pursuant to subsection 8(1) of the *Canada Immigration and Refugee Protection Act* (the "**Act**");
- B. Through the Program, Manitoba offers foreign nationals who wish to immigrate to and establish a business in the Province of Manitoba the opportunity to be nominated for permanent resident status in Canada;
- C. The Applicant has applied in writing to the Program (the "**Application**") and it is a condition of acceptance by Manitoba that the Applicant enter into a written Business Performance Agreement (this "**Agreement**") with Manitoba whereby the Applicant acknowledges that in order to be nominated by Manitoba for permanent resident status, the Applicant must fulfill all of the obligations specified in this Agreement within the time periods specified in this Agreement.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES TO THIS AGREEMENT HEREBY AGREE AS FOLLOWS:

1.0 Defined Terms

1.1 The following terms shall have the following meanings:

- (a) "**Business**" means the business specified in paragraph 2.7(c) of this Agreement;
- (b) "**Business Establishment Period**" means the period of time specified in paragraph 2.7 of this Agreement;
- (c) "**Certificate of Nomination**" means a certificate that Manitoba may issue pursuant to subsection 87(2) of the IRPA Regulations;
- (d) "**Change of Business**" means the establishment or purchase of a business by the Applicant other than the business specified in paragraph 2.7(c) of this Agreement;
- (e) "**Date of Arrival**" means the Applicant's first day of arrival in Canada after obtaining a Work Permit;
- (f) "**Final Report**" means the written report referred to in paragraph 2.7(c) of this Agreement;
- (g) "**FTE Job**" means a permanent, full-time position or equivalent part-time positions of employment in the Business of at least thirty (30) paid hours of continuous employment per week or one thousand five hundred sixty (1,560) hours of continuous employment per year;

- (h) **“Investment”** means an eligible expenditure made by the Applicant in accordance with Schedule A to this Agreement;
- (i) **“Letter of Support”** means a letter that Manitoba provides to Canada recommending that Canada admit the Applicant to Canada as a temporary resident under a Work Permit;
- (j) **“Party”** means either Manitoba or the Applicant, and where used in the plural means both Manitoba and the Applicant;
- (k) **“Progress Report”** means the written reports referred to in paragraph 2.7(b) of this Agreement;
- (l) **“Regulations”** means the *Immigration and Refugee Protection Regulations* made under the Act;
- (m) **“Tangible Asset”** means a physical asset purchased by the Applicant for the purpose of establishing or operating the Business, and may include furniture, office equipment, computers, tools, machinery or fixtures, and may also include inventory, vehicles or real estate if determined eligible by the Program in accordance with Schedule A to this Agreement, but shall not include cash; and
- (n) **“Work Permit”** means that Canada may, pursuant to the Act and the Regulations, issue to the Applicant an authorization to work in Canada as a temporary resident for a period of twenty-four (24) months from the Date of Arrival.

2.0 Approval and Nomination Process

- 2.1 After this Agreement is duly signed by the Applicant and received by the Program, Manitoba will in due course provide a Letter of Support to Canada.
- 2.2 The Applicant acknowledges that, even if Manitoba provides a Letter of Support to Canada, the final decision regarding admission to Canada as a temporary resident and the issuing of a Work Permit will be made solely by Canada, and Manitoba has no authority regarding whether Canada will grant temporary resident status or issue a Work Permit to the Applicant.
- 2.3 If Manitoba determines, in its sole discretion, that the Applicant has fulfilled the obligations specified in this Agreement within the periods specified in this Agreement, Manitoba will nominate the Applicant for permanent resident status in Canada by issuing a Certificate of Nomination.
- 2.4 The Applicant acknowledges that it is within the sole discretion of Manitoba to determine whether the Applicant, has satisfied the obligations specified in this Agreement, and that the issuing of a Letter of Support does not guarantee nomination by Manitoba.
- 2.5 The Applicant must continue to satisfy all of the obligations specified in this Agreement following nomination by Manitoba. Failure to continue to satisfy these obligations may result in the withdrawal in writing of the Certificate of Nomination by Manitoba.
- 2.6 The Applicant acknowledges that, even if Manitoba nominates the Applicant for permanent resident status, the final decision regarding admission to Canada as a permanent resident will be made solely by Canada, and Manitoba has no authority regarding whether Canada will grant permanent resident status to the Applicant or any accompanying family members.
- 2.7 The Applicant shall:
 - (a) within thirty (30) days of the Date of Arrival, attend an arrival meeting with Program staff in the City of Winnipeg in the Province of Manitoba, confirm the identity of the Applicant in a manner satisfactory to the Program, and provide Program staff with

Initials: _____

- the residential address and telephone number of the Applicant within the Province of Manitoba, as well as any other information that the Program staff may require;
- (b) Submit Progress and Final Reports as required by the Program, all of which shall be in such form and content as is acceptable to the Program;
 - (c) Purchase/establish and operate a **Business Type** Business **inside/outside of the Winnipeg Metropolitan Region** for no less than six (6) months immediately prior to submitting the Final Report to the Program;
 - (d) no later than twenty (20) months after the Date of Arrival, submit a Final Report to the Program in such form and content as is acceptable to the Program;
 - (e) make an eligible Investment of not less than **\$xxxxxxx** dollars (in Canadian funds) in establishing or purchasing the Business, in accordance with Schedule A to this Agreement;
 - (f) continue to own, control and financially support the Business at all material times;
 - (g) operate the Business on a day-to-day basis for the purpose of generating profits;
 - (h) attend at the premises of the Business on a regular basis to provide active and ongoing day-to-day management and direction of the Business;
 - (i) reside in the Province of Manitoba within one hundred (100) kilometres of the Business, and remain in the Province of Manitoba, for at least eighty percent (80%) of the time following the Date of Arrival;
 - (j) comply with all applicable federal, provincial and municipal statutes, regulations and bylaws in establishing, purchasing and operating the Business, including but not limited to all provincial employment standards legislation;
 - (k) obtain all necessary licenses and permits to establish and operate the Business;
 - (l) obtain appropriate independent advice from professionals who are familiar with the laws of the Province of Manitoba with respect to establishing, purchasing or operating the Business;
 - (m) provide such proof as may be required by the Program that neither the Applicant nor the Business are the subject of bankruptcy proceedings, insolvency or dissolution at the time the Applicant submits the Final Report to the Program; and
 - (n) provide the Program with and permit the Program to inspect any information or documents with respect to the Business, including audited financial statements, payroll, tax records and the physical premises of the Business, which the Program may request or which may be required by the Program to determine whether the Applicant has satisfied the obligations specified in this Agreement.

3.0 Job Creation Requirements

- 3.1 The Applicant shall ensure that the Business creates a minimum of one (1) new FTE Job in the Province of Manitoba, which shall be continuously staffed for at least six (6) months by one (1) or more Canadian citizens or permanent residents of Canada who reside in the Province of Manitoba and are not a spouse or dependent of the Applicant, prior to the Applicant submitting the Final Report to the Program.
- 3.2 If the Business is established through the purchase of an existing business or franchise by the Applicant, the Applicant shall demonstrate that the Business has maintained the number of FTE Jobs already existing in the Business at the time of its purchase by the Applicant for at least six (6) months prior to the Applicant submitting the Final Report to the Program.

Initials: _____

4.0 Request for Change of Business

4.1 If the Applicant wishes to establish or purchase a business other than that which is specified in paragraph 2.7(c) of this Agreement, the Applicant shall make a written request to the Program for a Change of Business. Following receipt of such written request, Manitoba may consider the request on the basis of the same criteria that the Program applied in assessing the original Application, provided that:

- (a) Manitoba is under no obligation to approve a Change of Business, and any decision regarding whether to approve a Change of Business will be at the sole discretion of Manitoba;
- (b) any request by the Applicant for a Change of Business shall be supported by such information and documents as may be required by the Program, in such form and content as is acceptable to the Program;
- (c) Manitoba will not consider a request for a Change of Business that may decrease the amount of the Investment, or alter any of the commitments made by the Applicant in the Application which would have reduced the Expression of Interest points earned by the Applicant;
- (d) Manitoba will only consider a request for a Change of Business if it is received within twelve (12) months following the Date of Arrival; and
- (e) no more than one (1) request for a Change of Business will be considered by Manitoba.

5.0 Request for Extension

If the Applicant is unable to fulfill all of the obligations specified in this Agreement, within the time periods specified in this Agreement, the Applicant shall make a written request to the Program for an extension of time.

Manitoba may consider the issuance of a second Letter of Support provided that:

- (a) Manitoba is under no obligation to consent to an extension or provide a second Letter of Support, and any decision regarding whether to consent to an extension or provide a second Letter of Support will be at the sole discretion of Manitoba;
- (b) any request for an extension shall be supported by such information and documents as may be required by the Program, in such form and content as is acceptable to the Program;
- (c) Manitoba will only consider a request for an extension if it is received at least thirty (30) days prior to the expiration of the Work Permit; and
- (d) the Applicant acknowledges that even if Manitoba provides a second Letter of Support, the final decision regarding any extension of the temporary resident status and Work Permit of the Applicant will be made solely by Canada, and Manitoba has no authority regarding whether Canada will extend the temporary resident status or Work Permit of the Applicant.

6.0 Representations

6.1 The Applicant acknowledges that all information provided to Manitoba by the Applicant is accurate, correct and truthful, and Manitoba may rely upon the information provided by the Applicant, including the information contained in the Application, in issuing the Letter of Support and the Certificate of Nomination.

6.2 The Applicant acknowledges that the provision of any inaccurate, false or misleading information to Manitoba by the Applicant shall result in a refusal to issue a Certificate of Nomination, or if one has already been issued, withdrawal of the Certificate of Nomination.

Initials: _____

- 6.3 The Applicant acknowledges that any information provided to the Applicant by the Program has been provided for the purpose of information only and not as advice.
- 6.4 The Applicant acknowledges that the issuing of a Certificate of Nomination by Manitoba does not constitute any promise, assurance or endorsement of the merits, feasibility, potential or commercial viability of the Business.
- 6.5 The Applicant acknowledges that the issuing of a Certificate of Nomination by Manitoba does not constitute any promise or assurance of the ability of the Applicant to obtain any licenses or permits necessary to establish, purchase or operate the Business.

7.0 Preamble and Schedules

The preamble to this Agreement and all Schedules hereto shall form part of this Agreement. In any conflict between the main body of this Agreement and either the preamble or one of the Schedules hereto, the main body shall govern.

8.0 Entire Agreement

- 8.1 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter thereof, and replaces each and every existing agreement between the Parties, whether express, implied or statutory. There are no representations, warranties, covenants, terms, conditions, promises, undertakings or collateral agreements between the Parties, whether express, implied or statutory, other than expressly set forth in this Agreement.
- 8.2 The Applicant will neither advance nor authorize to be advanced, and hereby agrees that the Applicant will be estopped from advancing, any claim or other proceeding based upon or that would in law be predicated on, the existence of any representation, warranty, covenant, term, condition, promise, undertaking or collateral agreement between the Parties, whether express, implied or statutory, other than expressly set forth in this Agreement.

9.0 Consent

Wherever the consent or approval of Manitoba is required by this Agreement, such consent or approval shall be valid only if it is confirmed in writing by a representative for Manitoba authorized for that purpose.

10.0 Time of the Essence

Time shall be of the essence of this Agreement with respect to the obligations of the Applicant.

11.0 Termination

If Manitoba, in its sole discretion, determines that the Applicant is in breach of any term of this Agreement, or that the Applicant has failed to fulfill any of the obligations specified in this Agreement, within the time periods specified in this Agreement, Manitoba may terminate this Agreement, notify Canada that this Agreement has been terminated and take such further action pursuant to the Act and the Regulations as Manitoba may determine appropriate.

12.0 No Assignment

The Applicant shall not assign or transfer this Agreement or any of the rights or obligations under this Agreement.

13.0 Governing Law, Reference to Legislation

- 13.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of Manitoba and the laws of Canada applicable therein. The Parties to this

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Agreement hereby irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of the Province of Manitoba and all courts competent to hear appeals therefrom.

- 13.2 Any reference in this Agreement to the Act also includes the Regulations, as such Act or Regulations may from time to time be amended, modified, replaced or re-enacted.

14.0 Severability

In the event that any provision of this Agreement is for any reason found by a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement.

15.0 Amendment

All amendments to this Agreement shall be consented to by Manitoba and reduced to writing and signed by the Applicant and on behalf of Manitoba by a representative for Manitoba authorized for that purpose.

16.0 Scanned Signatures

This Agreement, any amending agreement, and any related documents to be provided under this Agreement shall be deemed received when they are signed and delivered by one Party in the form of a scanned portable document format (pdf) that is attached to an electronic mail (email) to the other Party, provided that the original signed copy of this Agreement, Amending Agreement or related document is forthwith delivered by the one Party to the other Party.

17.0 Notice

Any notice, or other communication required to be provided in writing under this Agreement, shall be addressed as follows:

- (a) IF TO MANITOBA:

Manitoba Provincial Nominee Program

7th Floor, 213 Notre Dame Avenue
Winnipeg, Manitoba, Canada R3B 1N3

- (b) IF TO THE APPLICANT: (Print your name and address)

18.0 Acknowledgement and Declaration

The Applicant acknowledges:

- (a) that he/she understands this Performance Agreement and that he/she has obtained independent legal advice, consulted with advisors and/or translation services to the extent necessary;

Initials: _____

- (b) that he/she fully understands the terms and provisions of the Agreement and the nature and effect of the obligations of the Applicant under the Agreement, including the possible consequences if the Applicant fails or neglects to perform such obligations; and
- (c) that the Applicant is entering into the Agreement and undertaking the obligations under the Agreement freely and voluntarily without pressure or influence, or the fear thereof, from or by any person.

19.0 Consent to Collection and Disclosure of Information

The Applicant hereby consents to the collection by the Program of any personal, financial or other information or documents with respect to the Applicant or the Business which may be required by the Program to determine whether the Applicant has satisfied the obligations specified in this Agreement, and the Applicant consents to the disclosure to the Program of any personal, financial or other information or documents with respect to the Applicant or the Business by any person, department, agency or organization, including any federal, provincial, municipal or other local authority, or any financial institution or private entity which has conducted business with the Applicant or the Business, and the Applicant further consents to the disclosure by the Program of any personal, financial or other information or documents with respect to the Applicant or the Business to any person, department, agency or organization for the purpose of determining whether the Applicant has satisfied the obligations specified in this Agreement.

THE PARTIES HERETO HAVE EACH SIGNED THIS AGREEMENT ON THE DATES NOTED BELOW.

FOR MANITOBA:

Date: _____

Name:
Title of Office: Acting Manager
Immigration Pathways Division
Department of Advanced Education, Skills & Immigration

APPLICANT: LAST NAME, First Name
PBXX-000XX

Date: _____

Signature

WITNESS:

Date: _____

Name:

Address:

Phone Number:

Email Address:

SCHEDULE A

Investment Eligibility Criteria

A. Eligible Expenditures

The purchase of:

- a) an existing business already in operation in the Province of Manitoba, by way of either a share purchase agreement or an asset purchase agreement; or
- b) an existing franchise already in operation in the Province of Manitoba, by way of a franchise agreement; or
- c) Tangible Assets, for the purpose of establishing or operating the Business in the Province of Manitoba; or
- d) Services related to leasehold improvements and start-up costs such as legal services, permits and licenses, for the purpose of establishing or operating the Business in the Province of Manitoba.

B. Specific Eligibility Criteria

1. The amount of the Investment specified in paragraph 2.7(e) of this Agreement shall be transferred by the Applicant from a foreign jurisdiction to the Province of Manitoba and be expended out of the personal resources of the Applicant.
2. The Applicant shall hold and control at least thirty-three and one third percent (33.33%) of the equity in the Business or, if the Applicant does not hold and control at least thirty-three and one third percent (33.33%) of the equity in the Business, the Applicant shall make an equity investment in the Business of at least one million dollars (\$1,000,000.00), notwithstanding the amount specified in paragraph 2.7(e) of this Agreement.
3. All incorporated businesses should be incorporated either with the Province of Manitoba or Federal Government of Canada.
4. Any shares in the Business controlled by the Applicant shall be Class A, voting and non-redeemable.
5. If the Investment is made in a business that is newly established by the Applicant, the total amount of the Investment specified in paragraph 2.7(e) of this Agreement shall be expended on tangible assets and start-up costs such as legal services, permits and licenses.
6. The Program will determine, in its sole discretion, the eligibility of any goodwill. If the Investment is made in an existing business or franchise, the value of goodwill will not be considered eligible as an Investment unless the Applicant can support the valuation of the goodwill by providing a business valuation report issued by a Canadian chartered accountant or chartered business valuator. If eligible, the value of the Investment in goodwill will be limited to a maximum of thirty percent (30%) of the amount specified in paragraph 2.7(e) of this Agreement.

Initials: _____

7. Working capital will not be considered eligible as an Investment, with the exception of the purchase of start-up inventory which is essential to the Business. The Program will determine, in its sole discretion, the eligibility of any inventory purchased, based on the industry, size and scope of the Business and the type of inventory purchased. If eligible, the value of the Investment in inventory will be limited to a maximum of six (6) months' worth of inventory in conformity with industry average. However, if the investment is made in an existing business or franchise, the value of investment in inventory will be limited to a maximum of three (3) months' worth of inventory in conformity with industry average.
8. The purchase of a motor vehicle will not be considered eligible as an Investment unless the purchase of the vehicle is essential to the Business. The Program will determine, in its sole discretion, if a vehicle is essential to the Business. If eligible, the value of the Investment in a vehicle will be calculated as the lesser of either the total purchase price of the vehicle or thirty thousand dollars (\$30,000.00).
9. The purchase of real estate will not be considered eligible as an Investment unless the purchase of real estate is essential to the Business. The Program will determine, in its sole discretion, if a purchase of real estate is essential to the Business. If eligible, the value of the Investment in real estate will be calculated as the lesser of either the total purchase price of the real estate or seventy-five thousand dollars (\$75,000.00).
10. Cash or cash equivalents, including but not limited to cash identified as current assets in the financial statements of the Business, will not be considered eligible as an Investment.
11. A maximum of three (3) months of operating expense will be considered Eligible as Investment. The operating expense must have been incurred and been paid for in the normal operation of the Business for the purpose of generating active business income.
12. Personal property such as residential real estate or personal vehicles etc. will not be considered eligible as an Investment.
13. The following types of businesses are not eligible as Investments:
 - a) businesses operated primarily for the purpose of deriving passive income such as rent, interest, dividends or capital gains, including a business prohibited by subsection 87(6)(a) of the Regulations;
 - b) immigration-linked investment schemes, as that term is defined in subsection 87(9) of the Regulations;
 - c) businesses established or purchased by another Program applicant or nominee within the previous seven years from the date of this Agreement;
 - d) businesses that are considered ineligible by the Program; and
 - e) businesses which include a share redemption or buy back option.

Initials: _____