

Newfoundland and Labrador Provincial Nominee Program

International Entrepreneur Category

Business Performance Agreement



For Office Use Only NLPNP
File #

Dated this _____ day of _____, 20____

Between _____ (“applicant” and “associated partners” if applicable)

And Her Majesty the Queen, in right of the Province of Newfoundland and Labrador, as represented by the Minister of Immigration, Population Growth and Skills (**the “Province”**)

WHEREAS: The Province has developed and administers the Newfoundland and Labrador Provincial Nominee Program (“NLPNP”) under the authority of the 2016 Canada-Newfoundland and Labrador Immigration Agreement.

WHEREAS: Pursuant to NLPNP, the applicant (and associated partners if applicable) has, with a view to becoming a permanent resident:

- submitted to the Province a Business Establishment Plan to establish, operate, and actively manage a qualifying business in the context of the NLPNP International Entrepreneur Category;
- indicated a desire to establish, operate, and actively manage a qualifying business in Newfoundland and Labrador and to make the required minimum investment; and
- indicated an intention to settle permanently in Newfoundland and Labrador.

WHEREAS: The Province accordingly wishes to provide an International Entrepreneur Approval Letter in the applicant’s name for their submission to Immigration, Refugees and Citizenship Canada (IRCC), according to the said 2016 Canada-Newfoundland Immigration Agreement and this Business Performance Agreement (this “Performance Agreement”) to facilitate the application for a work permit. Execution of this Performance Agreement is a pre-condition to the Province issuing the International Entrepreneur Approval Letter;

AND WHEREAS: the purpose of the Performance Agreement is to outline the amount the principal applicant (and associated partners, if applicable) will invest in the business or the amount of investment coupled with a percentage of ownership in the business; the sector in which the business will operate; other information relevant to the application including but not limited to job creation, business succession, active role in management of business, and business location; and other commitments and understandings of the applicant with respect to the application process leading up to the potential receipt of permanent residency.

NOW THEREFORE in consideration of the premises and mutual agreements herein set forth, the Parties agree as follows:

Part 1: Definitions:

In this Performance Agreement:

- a) **“Arrival Date”** means the date upon which an applicant arrives in Newfoundland and Labrador after the work permit issuance date.
- b) **“Associated Partners”** means the partners to the “Principal Applicant” in the proposed business being established and who are also seeking permanent residency. Please note that the maximum number of associated partners for the International Entrepreneur category is nine (9), excluding the principal applicant.
- c) **“Business”** has the meaning ascribed to it in paragraph 3.1(d) of this Performance Agreement.
- d) **“Business Establishment Period”** means the period that begins at the work permit issuance date and ends at the date of expiration on the work permit; including any extension thereof.
- e) **“Business Establishment Plan”** means a document that outlines, to NLPNP’s satisfaction, the applicant’s business plan for starting or purchasing a business in Newfoundland and Labrador and includes details on its operations.
- f) **“Business Establishment Progress Report”** means a document that outlines, to NLPNP’s satisfaction, the progress of the applicant’s Business Establishment Plan.
- g) **“Certificate of Nomination”** means a certificate the Province issues to IRCC under the terms and conditions of NLPNP, which indicates that the Province has nominated the applicant to be a permanent resident.
- h) **“Designated Supplier”** means a third-party service provider, otherwise called a Net Worth Verifier or a Review Engagement and Special Purpose Report provider that is authorized by a regulated licensing authority to provide such services as part of the NLPNP International Entrepreneur category.
- i) **“Effective Date”** means the date on which this Performance Agreement is last signed.
- j) **“Entrepreneur Approval Letter”** means a letter issued by NLPNP to the applicant in support of the applicant’s application to IRCC for a work permit.

- k) **“Investment”** has the meaning ascribed to it in paragraph 3.1(f).
- l) **“IRCC”** means Immigration, Refugee and Citizenship Canada.
- m) **“Work Permit Issuance Date”** means the date of issuance indicated on the applicant’s work permit issued by the Canadian government.
- n) **“NLPNP”** means Newfoundland and Labrador Provincial Nominee Program.
- o) **“NLPNP International Entrepreneur Category”** means a business immigration program operated by NLPNP.
- p) **“Newfoundland and Labrador”** means the geographic area comprising the Province of Newfoundland and Labrador.
- q) **“Permanent Resident”** means a foreign national to whom Canada has granted a current permanent resident visa to live in Canada, effective on the date an immigration officer at a Canadian port of entry has confirmed entry.
- r) **“Permanent Resident Visa”** means a document issued by an overseas IRCC visa office to a foreign national. It allows that person to travel to Canada to become a permanent resident.
- s) **“Review Engagement”** means a report prepared by a Designated Supplier, which consists of a review of the financial statements of the applicant’s business and includes a conclusion (Review Report).
- t) **“Special Purpose Report”** means a report prepared by a Designated Supplier which outlines the following:
- i) the financial viability and sustainability of the business discussing any relevant issues affecting the business’ ability to continue in the near future as a going concern;
 - ii) recommendations for the business to improve its viability and sustainability;
 - iii) a determination of any issues, challenges or concerns pertaining to auditing the financial statements; and
 - iv) a business review, which may include, but not be limited to: market analysis, product analysis, competitive analysis, and financial analysis.
- u) **“Temporary Resident”** means a foreign national who is in Canada legally for a short period. Temporary residents include students, foreign workers and visitors, such as tourists.
- v) **“Term”** means the period beginning on the effective date and ending upon the earlier of the expiration of the work permit, or the issuance of a permanent resident visa.

Part 2: Issuance of the Entrepreneur Approval Letter

- 2.1. The applicant agrees that the issuance of an International Entrepreneur Approval Letter is subject to the:
- a) completion and acceptance of the applicant's application to NLPNP, including but not limited to the acceptance of the Business Establishment Plan attached hereto as Schedule "B"; and
 - b) execution by the applicant and delivery to the Province of this Performance Agreement.

Part 3: Applicant's (and associated partners if applicable) Obligations After Receiving a Work Permit

- 3.1. The applicant represents and agrees that in consideration of the Province issuing an International Entrepreneur Approval Letter and the Canadian Government issuing a work permit, the applicant will during the Term:
- a) assume residence in Newfoundland and Labrador as a temporary resident within six (6) months of issuance of the work permit;
 - b) meet with NLPNP staff within 30 business days of arriving in Newfoundland and Labrador;
 - c) provide the following:
 - 1. A copy of the work permit;
 - 2. Newfoundland and Labrador address and telephone number.
 - d) make every reasonable effort to establish or purchase a business that is a qualifying business, as determined by NLPNP (the "Business"), within six (6) months of the applicant's arrival date as per the Business Establishment Plan;
 - e) comply with the *Immigration and Refugee Protection Regulations* paragraph 87(6)(c) that requires the applicant to provide active and ongoing management of the business from within Newfoundland and Labrador;
 - f) (i) own a minimum of 33.33% ownership in the business **AND** make a capital investment of no less than \$200,000 CAD to establish or purchase and maintain the business in accordance with the Business Establishment Plan (the "Investment") **OR** (ii) make a capital investment of no less than \$1,000,000 CAD to establish or purchase and maintain the business in accordance with the Business Establishment Plan (the "Investment"); (iii) transfer the investment funds to a Canadian bank account within 60 days of arrival in NL;
 - g) adequately support the business, both financially and personally to the reasonable satisfaction of the Province;
 - h) hold a managerial position in the business and attend at the business premises on a regular basis to provide ongoing day-to-day management and direction;
 - i) comply with all Federal, Provincial and Municipal statutes, regulations and bylaws applicable to establishing, purchasing and maintaining the business, including obtaining the necessary licenses, and permits from Federal, Provincial or Municipal authorities;

- j) seek and obtain appropriate independent professional advice as to establishing or purchasing and in maintaining the business;
- k) permit NLPNP staff to review any records and reports prepared by Designated Suppliers and supporting documents related thereto;
- l) operate and actively manage the business in accordance with the Business Establishment Plan; and
- m) obtain a Review Engagement and a Special Purpose Report from a Designated Supplier prior to submitting a Nomination Request Form.

Part 4: Proof of Compliance

(Note: The section below pertains to both the principal applicant (and associated partners if applicable.))

- 4.1. The applicant agrees to provide the Province with such documentation as the Province may reasonably require in order to verify that the applicant has satisfied the obligations imposed by this Performance Agreement.
- 4.2. The applicant agrees that the Province shall have the right to request additional supporting documentation to satisfy the Province that the applicant has met the obligations under this Performance Agreement, including but not limited to those documents listed in Schedule "A" attached to and forming part of this Performance Agreement.
- 4.3. The applicant must demonstrate at least 12 months of active and on-going participation in the day-to-day management and direction of the business before submitting a request for nomination.
- 4.4. The applicant and the Province agree that a number of identifying documents may be requested to prove Newfoundland and Labrador residence. These may include but are not limited to, a valid Newfoundland and Labrador Medical Coverage Plan (MCP) number, Newfoundland and Labrador issued driver's license, utility bills and property documents.
- 4.5. The applicant must permit, and upon request must participate in, monitoring activities that are undertaken by NLPNP in order to review the applicant's progress towards compliance with the performance expectations set out in the Agreement, and the applicant must upon request provide access to records and physical premises.

Part 5: Certificate of Nomination

- 5.1. The applicant (and associated partners if applicable) agrees that the issuance of a Certificate of Nomination is subject to the:
 - a) submission of a Request for Nomination; and
 - b) verification by the Province that the applicant has met all of the terms, conditions and criteria of the NLPNP International Entrepreneur Category and has satisfied the obligations imposed by this Performance Agreement.

Part 6: Province's Decisions

- 6.1. It is within the Province's sole discretion to determine whether the applicant and associated partners (if applicable) have satisfactorily completed the performance expectations described in this Performance Agreement. If the Province determines, in its sole discretion, that the performance expectations have not been satisfied, nomination of the applicant for permanent residence status in Canada will not be forthcoming and the applicant's NLPNP International Entrepreneur category file with the Province will be closed.

Part 7: Applicant's Acknowledgements

- 7.1. The applicant (and associated partners if applicable) acknowledge that:
- a) the offering of an International Entrepreneur Approval Letter or a Certificate of Nomination by the Province does not constitute any promise or assurance of ability to obtain any licenses and permits necessary to establish and maintain the business;
 - b) the offering of an International Entrepreneur Approval Letter or a Certificate of Nomination by the Province does not constitute any endorsement or sanction of the merits, feasibility, and investment potential or commercial viability of the business; and
 - c) the issuance of an International Entrepreneur Approval Letter or a Certificate of Nomination is just one of a number of requirements for immigration to Canada and that the final decision regarding admission to Canada as a permanent resident will be made by the Government of Canada.

Part 8: Information

- 8.1. The applicant (and associated partners if applicable) agree:
- a) that information offered by the Province has not been offered as advice in establishing or maintaining the business;
 - b) that the Province is relying upon the information contained in the application, and in this Performance Agreement, in issuing the International Entrepreneur Approval Letter or Certificate of Nomination; and
 - c) that the authority to collect, use and disclose personal and business information is set out in Section K of the Application to the NLPNP International Entrepreneur Category and that such consent shall be valid during the term.

Part 9: Default or Breach by applicant

- 9.1. The applicant (and associated partners if applicable) agrees:
- a) that the Province may refuse the application, or rescind the International Entrepreneur Approval Letter or Certificate of Nomination upon any misrepresentation or intentional omission of material information that is relevant to the application and will result in the applicant being ineligible to re-apply to the NLPNP for a period of five (5) years;
 - b) that a finding by the Province that the applicant has breached, or is unable to comply with the terms of this Performance Agreement may, at the sole discretion of the Province, result in the rescission of the International Entrepreneur Approval Letter or the withdrawal of the Certificate of Nomination by the Province, as applicable;
 - c) that the applicant (and associated partners if applicable) shall indemnify and hold harmless the Province, its Ministers, employees, servants and agents from and against all damages, costs, loss, expenses (including legal fees), claims, actions, suits or other proceedings of any kind or nature, which they, or any of them, may at any time incur or sustain as a result of or arising out of a default of the Performance Agreement, or any act, omission or negligence of the applicant, or any of its associated partners, employees, servants, agents, or subcontractors, in the performance of this agreement, including without limitation, any injury or death to persons, or loss of or damage to property. Notwithstanding the foregoing, the applicant and associated partners shall not be liable for any indirect or consequential damages sustained by the Province unless such damages result from the negligence or willful default of the applicant, its employees, servants, agents or subcontractors; and
 - d) that the Province shall not be liable for any damages or injury (including death) to any person or to any property of the applicant as a result of or arising out of this Performance Agreement or the provision of the services by the applicant or associated partners under this Performance Agreement, unless such damages are direct damages and are caused solely and directly by or as a result of the negligence of the Province. In no event shall the Province be liable for any indirect or consequential damages that are sustained by the applicant, howsoever caused, as a result of or arising out of this Performance Agreement or the provision by the applicant of any services hereunder.

Part 10: Miscellaneous

Note: The section below pertains to both the applicant (and associated partners if applicable)

- 10.1. The applicant and the Province agree that this Performance Agreement shall be governed by and construed in accordance with the laws of the Province and the laws of Canada applicable in Newfoundland and Labrador.
- 10.2. The applicant and the Province irrevocably and unconditionally attorn exclusively to the courts having jurisdiction in Newfoundland and Labrador.
- 10.3. The applicant agrees not to assign or transfer this Performance Agreement or any of the rights or obligations under this Performance Agreement.
- 10.4. The applicant and the Province agree that time shall be of the essence of this Performance Agreement.
- 10.5. The applicant's address for service shall be:
xxxxxxxxxxxxxxxxxx
- 10.6. The Province's address for service shall be:
Office of Immigration and Multiculturalism
Department of Immigration, Population Growth and Skills
Government of Newfoundland & Labrador
P.O. Box 8700, St. John's, NL A1B 4J6 CANADA
- 10.7. The applicant agrees that all amendments to this Performance Agreement must be made in writing and signed by the applicant and the Province.
- 10.8. The applicant and the Province have signed below and agree that this Performance Agreement takes effect on the effective date.
- 10.9. The applicant acknowledges that it understands this Performance Agreement and that it has obtained independent legal advice, consulted with advisors and/or translation services to the extent necessary.
- 10.10. This Performance Agreement may be signed in counterpart and through the use of scanned, facsimile or other graphically reproduced copy. Each counterpart will constitute an original and, when taken together, will constitute one document.

- 10.11. This Performance Agreement does not operate as a permit, license, approval or other statutory authority which the applicant may be required to obtain from the Province or any of its agencies in order to commerce and operate the business, and it is the applicant's responsibility to obtain any required permit, license, approval or other statutory authority. In addition, nothing in the Agreement is to be construed as interfering with, or fettering in any manner, the exercise by the Province or its agencies of any statutory, prerogative, executive or legislative power or duty.
- 10.12. The following documents form part of this Performance Agreement:
- a) These Articles of Agreement; and
 - b) The Schedules;

In the event of any conflict or inconsistency between or among any of the foregoing, the documents comprising this Performance Agreement shall be given precedence in the following order:

- a) These Articles of Agreement; and amendments hereto
- b) Schedule A
- c) Schedule B – Business Establishment Plan

Per: _____
Minister
Department of Immigration, Population Growth
and Skills

Date

Applicant

Date

For associated partners (if applicable):

Associated Partner

Date

Associated Partner

Date

Associated Partner

Date

Associated Partner

Date

Associated Partner

Date

Associated Partner

Date

Associated Partner

Date

Associated Partner

Date

Associated Partner

Date

SCHEDULE “A”

The following is a list of additional supporting documentation that may be requested from the applicant as proof of business establishment and operation.

1. Establish a Business

- a) Business Licenses
- b) Business Name Registration
- c) Articles of Incorporation (if any)
- d) Partnership Agreement (if any)
- e) Photos of Business Location
- f) All relevant personal and corporate banking information showing that the necessary funds have been transferred to a Canadian Bank and all Canadian Bank records necessary to demonstrate that the required investment has been undertaken in the agreed business.
- g) Evidence of professional relationships in Newfoundland and Labrador (*include business cards for your accountant, lawyer, real estate agent, etc.*).
- h) A Solicitor's Certificate (or Chartered Accountant Certificate) verifying the Statement of Account showing where the funds invested originated and where the funds have been invested.

2. Purchase/Investment in Business

- a) Sale/Purchase Agreement and related documentation evidencing resulting ownership position
- b) Registration/Land Title (if applicable)
- c) Partnership Agreement (if applicable)
- d) Lease contract (if applicable)
- e) Financial and accounting records for the Term (Note: Eligible Capital Assets and Working Capital are defined below.)

3. CAPITAL ASSETS

The following is a list of equity expenditures that can be included as business investments:

- Land
- Buildings
- Equipment
- Software
- Licenses
- Franchise fees
- Leasehold improvements
- Pre-paid lease agreement
- Share capital
- Professional fees associated with the establishment of business (not with immigration)
- One vehicle (in accordance with Canada Revenue Agency (CRA) guidelines or personal use vehicles in a business)

Note: Exceptions will be made for vehicles used in a transportation, manufacturing or construction company where it is clear many vehicles are used in the movement of goods or equipment, or the cost of the vehicle is greater than Canada Revenue Agency's guidelines.

Principal residences will not be included as part of a client's business investment. Home-based businesses are not considered a viable business venture and may not be considered as part of the business investment. For greater certainty, applicants may not claim a household business.

The Office of Immigration and Multiculturalism (OIM) may consider eligible operating expenses (rent, wages and salaries, utilities, advertising, accounting and insurance) as eligible investment in the following circumstances:

- For the establishment of a new business: a maximum of six (6) months of operating expenses.
- For the purchase of an existing business: a maximum of three (3) months of operating expenses.

Ineligible Business Investment:

- Cash is not an eligible business investment.
- Operating expenses are not an eligible business investment for Franchise purchase/start up.

Copies of original receipts must be submitted for proof of investment.

4. WORKING CAPITAL

Receipts are required for the working capital portion of your investment.

You must list the items you deem as working capital in your investment breakdown.

The following items will be deemed as working capital:

- Inventory
- Start-up costs
- Marketing trips
- Educational courses related to the business operation
- Prepaid insurance
- Business supplies

5. Active Role in Management of Business

Representative samples of documentation generated in the day-to-day operation of the business, including correspondence, business contracts, invoices, purchase orders, cheques and internal memos addressed to or signed by the nominee.

6. Number and Type of Jobs Created/Sustained

- a) Payroll documents
- b) Wages and benefits paid from financial statements of the business

SCHEDULE "B"
Business Establishment Plan

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