

NOVA SCOTIA NOMINEE PROGRAM
ENTREPRENEUR STREAM

Business Performance Agreement

Dated this ____ day of _____, 2019 (“Effective Date”)

Between

(the “Applicant”)

And

Her Majesty the Queen, in right of Nova Scotia, as represented by the Minister Responsible for Nova Scotia Office of Immigration (the “Province”)

Introduction:

The Province has developed and administers the Nova Scotia Nominee Program (“NSNP”) under the authority of the *Agreement on Canada-Nova Scotia Cooperation on Immigration, 2007*.

Pursuant to NSNP the Applicant has, with a view to becoming a Permanent Resident:

- submitted to the Province a Business Establishment Plan to establish and operate a qualifying business in the context of the NSNP-Entrepreneur Stream;
- indicated a desire to establish and operate a qualifying business in Nova Scotia and to make the required minimum investment; and
- indicated an intention to settle permanently in Nova Scotia.

The Province accordingly wishes to provide an Entrepreneur Approval Letter in the Applicant’s name for their submission to Immigration, Refugee and Citizenship Canada (IRCC), according to the said Agreement on Canada-Nova Scotia Cooperation on Immigration and this Business Performance Agreement (this “Performance Agreement”).

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

Part 1: Definitions:

1.1 In this Performance Agreement:

“Arrival Date” means the date upon which an Applicant arrives in Nova Scotia after the Work Permit Issuance Date.

“Arrival Report” means a report that must be submitted by the Applicant to NSNP within 60 calendar days of the Applicant’s Arrival Date.

“Audit Opinion” means a report prepared by a Designated Supplier, specifically an Audit Service Verifier, which includes an audit of the financial statements of the Applicant’s Business.

“Business” has the meaning ascribed to it in paragraph 3.1(d) of this Performance Agreement;

“Business Establishment Period” means the period which begins at the Work Permit issuance date and ends at the date of expiration on the work permit; including any extension thereof.

“Business Establishment Plan”- means a document that outlines, to NSNP’s satisfaction, the Applicant’s Business plan for starting or purchasing a business in Nova Scotia and includes details on its operations.

“Business Establishment Progress Report” means a document that outlines, to NSNP’s satisfaction, the progress of the Applicant’s Business Establishment Plan.

“Certificate of Nomination” means a certificate the Province issues to IRCC under the terms and conditions of NSNP, which indicates that the Province has nominated the Applicant to be a Permanent Resident.

“Designated Supplier” means a third-party service provider, otherwise called a Net Worth Verifier or an Audit Service Verifier, that the Province has selected to provide services as part of the NSNP Entrepreneur Stream.

“Entrepreneur Approval Letter” means a letter issued by NSNP to the Applicant in support of the Applicant’s application to IRCC for a Work Permit.

“Investment” has the meaning ascribed to it in paragraph 3.1(h).

“IRCC” means Immigration, Refugee and Citizenship Canada.

“Work Permit Issuance Date” means the date of issuance indicated on the Applicant’s Work Permit issued by the Canadian government;

“NSNP” means Nova Scotia Nominee Program.

“NSNP Entrepreneur Stream” means a business immigration program operated by NSNP.

“Nova Scotia” means the geographic area comprising the Province of Nova Scotia;

“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.

“Permanent Resident Visa” means a document issued by an IRCC visa office overseas to a foreign national. It allows that person to travel to Canada to become a permanent resident.

“Special Purpose Report” means a report prepared by a Designated Supplier, specifically an Audit Service Verifier, which outlines the following:

- (a) 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;
- (b) recommendations for the Business to improve its viability and sustainability;
- (c) a determination of any issues, challenges or concerns pertaining to auditing the financial statements; and
- (d) a Business review which may include, but not be limited to: market analysis, product analysis, competitive analysis, and financial analysis.

“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.

“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 residence visa.

Part 2: Issuance of the Entrepreneur Approval Letter

- 2.1. The Applicant agrees that the issuance of an Entrepreneur Approval Letter is subject to the:
 - (a) completion and acceptance of the Applicant’s application to NSNP, including but not limited to the acceptance of the Business Establishment Plan; and
 - (b) execution by the Applicant and delivery to the Province of this Performance Agreement.

Part 3: Applicant’s Obligations After Receiving a Work Permit

- 3.1. The Applicant represents and agrees that in consideration of the Province issuing an Entrepreneur Approval Letter and the Canadian Government issuing a Work Permit, the Applicant will during the Term:
 - (a) assume residence in Nova Scotia as a Temporary Resident within 12 months of issuance of the Entrepreneur Approval Letter
 - (b) meet with NSNP staff within 60 business days of arriving in Nova Scotia;
 - (c) provide the following:
 1. A copy of the Work Permit;

2. Nova Scotia address and telephone number; and
 3. Arrival Report. Including proof of funds transfer to Canada of no less than \$150,000.00 CAD.
- (d) make every reasonable effort to establish or purchase a business that is a qualifying business, as determined by NSNP (the “Business”), within 6 months of the Applicant’s Arrival Date as per the Business Establishment Plan;
 - (e) will 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 Nova Scotia;
 - (f) own a minimum of 33.33% ownership in the Business;
 - (g) adequately support the Business, both financially and personally to the reasonable satisfaction of the Province;
 - (h) make a capital investment of no less than \$150,000 CAD to establish or purchase and maintain the Business in accordance with the Business Establishment Plan (the “Investment”) and Schedule B.
 - (i) 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;
 - (j) 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;
 - (k) seek and obtain appropriate independent professional advice as to establishing or purchasing and in maintaining the Business;
 - (l) permit NSNP staff to review any records and reports prepared by Designated Suppliers and supporting documents related thereto;
 - (m) operate the Business in accordance with the Business Establishment Plan; and
 - (n) obtain an Audit Opinion and a Special Purpose Report from a Designated Supplier prior to submitting a nomination request form.

Part 4: Proof of Compliance

- 4.1. The Applicant agrees to provide the Province with such documentation as the Province may reasonably require 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 twelve months of active and on-going participation in the day-to-day management and direction of the Business before application for nomination.
- 4.4. The Applicant and the Province agree that a number of identifying documents may be requested to prove Nova Scotia residence. These may include but are not limited to, a valid Nova Scotia Medical Services Insurance number, Nova Scotia issued driver’s license, utility bills and property documents.

- 4.5 The Applicant will submit a Business Establishment Progress Report, when requested to do so by NSNP.
- 4.6 The Applicant must permit, and upon request must participate in, monitoring activities that are undertaken by NSNP 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 agrees that the issuance of a Certificate of Nomination is subject to the:
- (a) submission of a Request for Nomination Form; and
 - (b) verification by the Province that the Applicant has met all of the terms, conditions and criteria of the NSNP Entrepreneur Stream 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 has 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 NSNP Entrepreneur Stream file with the Province will be closed.

Part 7: Applicant's Acknowledgements

- 7.1. The Applicant acknowledges that:
- (a) the offering of an 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 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 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 agrees

- (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 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 NSNP Entrepreneur Stream and that such consent shall be valid during the Term.

Part 9: Default or Breach by Applicant

9.1. The Applicant agrees:

- (a) that the Province may refuse the application, or rescind the 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 NSNP for a period of five 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 Entrepreneur Approval Letter or the withdrawal of the Certificate of Nomination by the Province, as applicable;
- (c) that the Applicant 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 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 shall not be liable for any indirect or consequential damages sustained by the Province unless such damages result from the negligence or wilful 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 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

- 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 Nova Scotia.
- 10.2. The Applicant and the Province irrevocably and unconditionally attorn exclusively to the courts having jurisdiction in Nova Scotia.
- 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:

***** *****

- 10.6. The Province's address for service shall be:

Nova Scotia Office of Immigration
1469 Breton Street, 3rd Floor
PO Box 1535
Halifax, Nova Scotia B3J 2Y3

- 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. The "Effective date" refers to the date this contract is signed by the last of the parties to sign.

- 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 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 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 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 Agreement shall be given precedence in the following order:

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

Per: _____ Date: _____
Minister
Responsible for Immigration

Applicant Date

Sample

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.

Establish a Business

- Business Licenses
- Business Name Registration
- Articles of Incorporation (if any)
- Partnership Agreement (if any)
- Photos of Business Location
- 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
- Evidence of professional relationships in Nova Scotia (*include business cards for your accountant, lawyer, real estate agent, etc.*)
- 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.

Purchase/Investment in Business

- Sale/Purchase Agreement and related documentation evidencing resulting ownership position
- Registration/Land Title (Farm Applicants)
- Partnership Agreement (if applicable)
- Lease Contract (if applicable)
- Financial and accounting records for the Term

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

Number and Type of Jobs Created/Sustained

- Payroll documents
- Wages and benefits paid from financial statements of the Business

SCHEDULE “B”
ELIGIBLE INVESTMENTS

Any expenses incurred prior to the mutual signing by both parties of the Business Performance agreement will NOT be eligible as proof of investment. The following is a list of business items that can be included for proof of investment:

- Land
- Buildings
- Equipment
- Software
- Licenses
- Franchise fees
- Leasehold improvements
- Inventory
- Business supplies
- Educational courses related to the business operation
- Prepaid insurance
- Marketing costs
- Start-up costs (research, permits, licenses, incorporation costs, taxes)
- Operating Expenses (rent, wages, salaries, utilities, advertising, accounting, insurance)
- Professional fees associated with the establishment of business (not with immigration)
- One vehicle (in accordance with Canadian Revenue Agency (CRA) guidelines for personal use vehicles in a business)
- Office Furniture and Fixtures

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 Revenue Agencies’ 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.

NSOI 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 months of operating expenses.
- For the purchase of an existing business: A maximum of three months of operating expenses.

Ineligible Investment:

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

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

Sample

SCHEDULE "C"
Business Establishment Plan

The following is a list of conditional requirements that are required for nomination.

Arrival Date: The Applicant shall arrive no more than 12 months (365 days) of receiving their Entrepreneur Approval Letter.

Business Operation: The Applicant's plan is to Purchase/Start XXXX named company in AREA, the business will XXXXX (provide relevant additional details).

Total Investment: The Applicant shall invest CAD\$ XXX,XXX.XX (CAD\$ written number) within XXXX period of time, etc.

Business location:

Number of Staff: The business will hire/maintain XXXX number of staff within XXXX period of time. Add details of positions.

Sample