

EMPLOYMENT AGREEMENT

BETWEEN:

MANITOBA GOVERNMENT
represented by the Clerk of Executive Council

(Manitoba)

- and -

Dwayne Marling

(Employee)

WHEREAS Manitoba, through Order-in-Council 129/2017 has appointed Employee as the Special Assistant to the Minister, on terms and conditions to be set forth in an employment agreement with Manitoba;

NOW THEREFORE the parties agree:

SECTION 1 - TERM OF AGREEMENT

1.1 The Agreement is deemed to come into effect on May 15, 2017 and shall continue until terminated in accordance with the provisions of the Agreement.

SECTION 2 - APPOINTMENT

2.1 Employee is appointed as a technical officer currently assigned as the Special Assistant to the Minister, effective May 15, 2017, on the terms and conditions set out in the Agreement.

2.2 Employee agrees to exercise and carry out the powers, duties and responsibilities of the Special Assistant to the Minister, ("the Services").

- 2.3 Employee shall be considered to be on probation for a six (6) month period from the start date outlined in 2.1 above.
- 2.4 Employee, if rejected from employment during the probationary period, shall be entitled to two (2) weeks' notice or pay in lieu of notice and the notice or pay in lieu of notice provisions in Section 10 of this Agreement shall not apply.
- 2.5 Employee agrees that Manitoba retains the right to transfer Employee to alternate management or advisory positions during the term of this Agreement.
- 2.6 Employee, if promoted to another position as a result of a transfer in accordance with 2.5, shall be paid a salary commensurate with the new position and shall be placed on probation for a six (6) month period from the date of appointment.
- 2.7 Employee, if rejected during probation referred to in 2.6, shall be returned to a position and salary level comparable to that held prior to the promotion.

SECTION 3 - REMUNERATION AND BENEFITS

- 3.1 Manitoba shall pay to Employee as remuneration for his services, within the Special Assistant to the Minister (SPM) classification, a basic annual salary of \$78,054 payable in equal bi-weekly installments of \$2,992.08, at the accepted regular Manitoba Civil Service pay periods, pro-rated where necessary for any shorter period.
- 3.2 Manitoba shall make:
 - (a) all deductions required in respect of Income Tax, Canada Pension Plan, Employment Insurance; and

- (b) any other deductions required to be made from payments to Employee, whether in accordance with any applicable laws or statutes, or otherwise; and
 - (c) any deductions requested by Employee and agreed to by Manitoba.
- 3.3 The remuneration to Employee shall be adjusted at such times as salary adjustments are made in the salary range of excluded employees in the employ of Manitoba.
- 3.4 Employee shall be considered as an employee for purposes of *The Civil Service Superannuation Act*.
- 3.5 Employee is entitled to participate fully in the group benefit programs that have been or may be established for the employees of Manitoba including its programs relating to group insurance, long-term disability, and health benefits programs, comparable to those provided to civil servants. Employee will be eligible to participate in the group benefit programs after the waiting periods established by Manitoba. The waiting periods commence on the effective date as per section 1.1.
- 3.6 Employee, with the approval of Manitoba, is eligible to receive other benefits normally granted to employees employed by Manitoba.

SECTION 4 - VACATION

- 4.1 Employee shall be entitled to accrue and take vacation leave in accordance with the policy applicable to employees of Manitoba.

- 4.2 Employee shall, on termination, reimburse Manitoba for any vacation taken in excess of entitlement.
- 4.3 Manitoba shall pay to Employee any vacation entitlement not taken by Employee on termination.

SECTION 5 – UNDERTAKINGS OF EMPLOYEE

- 5.1 While the agreement is in effect, Employee shall:
- (a) provide the Services, as required under the Agreement, with due care, in good faith and to the best of his abilities;
 - (b) devote his time, attention and skills on a full time basis, to providing the Services; and
 - (c) work such days and hours as may be reasonably required to fully and properly provide the Services.
- 5.2 Employee agrees to comply with the rules, regulations, and policies of Manitoba that govern the conduct of its employees and officers.
- 5.3 Employee will receive or have access to confidential information in the course of providing the Services. While the Agreement is in effect and at all times thereafter, Employee shall:
- (a) treat and retain as strictly confidential all information, data, research, documents and materials acquired, discovered, produced, or to which access has been given, in the course of, or incidental to, the performance of the Agreement;

- (b) use the information, data, research, documents and materials referred to in section 5.3(a) solely for the purpose of providing the Services, and for no other purpose;
- (c) not disclose, or authorize or permit to be disclosed, to any person, corporation, organization or entity, any information, data, research, documents or materials referred to in section 5.3(a), except where disclosure is:
 - (i) necessary to provide the Services;
 - (ii) authorized or required by legislation; or
 - (iii) required by an order of a court, person or body with jurisdiction to compel production of the information, data, research, documents or materials or is required by a rule of court that relates to the production of the information; and
- (d) comply with all policies, rules and directions made or given by Manitoba with respect to safeguarding or ensuring the confidentiality of any information, data, research, documents and materials referred to in section 5.3(a).

5.4 Employee will also receive or have access to personal information and personal health information, as those terms are defined in *The Freedom of Information and Protection of Privacy Act* (C.C.S.M. c. F175) and *The Personal Health Information Act* (C.C.S.M. c. P33.5), in the course of providing the Services. With respect to the information, while the Agreement is in effect and at all times thereafter, Employee shall:

- (a) comply with the fair information practices reflected in, and with the provisions of, *The Freedom of Information and Protection of Privacy Act* and *The Personal Health Information Act* and the regulations under these Acts, as amended or replaced from time to time;
- (b) without limiting section 5.4(a), execute and comply with the Pledge of Confidentiality required under *The Personal Health Information Regulation* (Man. Reg. 245/97, as amended or replaced), on any form that may be specified by Manitoba for the purpose;
- (c) comply with all policies, rules and directions of Manitoba, with respect to safeguarding or ensuring that personal information and personal health information is collected, used, disclosed, protected, retained and destroyed in accordance with the provisions of *The Freedom of Information and Protection of Privacy Act*, *The Personal Health Information Act* and the regulations under these Acts (as amended or replaced from time to time).

5.5 As a condition precedent to employment, Employee agrees and consents to the disclosure and release of personal information necessary for the purpose of Manitoba conducting a high level enhanced security clearance which includes a Criminal Records Check to determine Employee's suitability for employment. Employee will provide the necessary personal information and the consent to release personal information to Manitoba when requested to disclose within 3 weeks of the commencement of this employment agreement. If Manitoba in its sole discretion, finds the Criminal Records Check to be unsatisfactory, this Agreement is void as if never made.

SECTION 6 - CONFLICT OF INTEREST AND OTHER RULES OR REGULATIONS

- 6.1 Prior to executing the Agreement, Employee shall make a declaration to Manitoba as to actual or potential conflict of interest as required by the Conflict of Interest Guidelines, policies and legislation of Manitoba.
- 6.2 Employee shall provide the Services and perform the duties under the Agreement in accordance with applicable legislation and the principles and intent of the Conflict of Interest Guidelines.
- 6.3 Employee is not permitted to engage in outside professional and business interests except with the written approval of Manitoba or designate. Manitoba or designate shall not grant approval unless Employee, once in each year, makes full disclosure of the nature of the interests and confirms, in writing, that the outside interests do not impede Employee's ability to perform the Services, are performed in Employee's personal time and without use of government offices or equipment, do not directly or indirectly relate to the Services and do not lead to a contravention of conflict of interest legislation, policies or guidelines or of any other provision of the Agreement.

SECTION 7 – CONFIDENTIALITY

- 7.1 Employee shall well and faithfully serve Manitoba and use his best efforts to promote the interests thereof and shall not directly or indirectly disclose the private affairs of Manitoba or any secret of Manitoba, and shall not directly or indirectly use for his own purposes any confidential information which Employee may acquire with respect to Manitoba's affairs. The restriction on the use of disclosure of information shall be in effect during the terms of the Agreement and at all times thereafter.

SECTION 8 – EXPENSES

- 8.1 Employee shall be reimbursed for all reasonable traveling and other expenses actually and properly incurred by her/him in connection with his duties hereunder in accordance with the provisions of Manitoba's policies and procedures on claiming such expenses.

SECTION 9 – OWNERSHIP OF INFORMATION, ETC.

- 9.1 All information, data, research, documents and materials acquired, discovered or produced by Employee in the performance of the Agreement, shall be the exclusive property of Manitoba (including all intellectual property rights), and shall be delivered without cost to Manitoba upon request.
- 9.2 Employee hereby waives any moral rights under the *Copyright Act (Canada)* in respect of all matters or things mentioned in section 9.1, and agrees to execute any additional documents, in form and content satisfactory to Manitoba, which Manitoba may reasonably require to evidence the waiver.

SECTION 10 - TERMINATION

- 10.1 The Agreement may be terminated in the following manner:
- (a) by agreement of the parties;
 - (b) at any time by Employee, without cause, by giving to Manitoba three (3) weeks' notice in writing;
 - (c) at any time by Manitoba:

(i) without cause

(A) by giving to Employee written notice for a period calculated on the basis of four (4) weeks' notice and in addition a period of notice equivalent to two (2) weeks for each year of continuous service based on Employee's most recent date of appointment as recognized by Manitoba with the proviso that the sum of such notice periods shall be for a period of not more than fifty-two (52) weeks in total, or

(B) in lieu of giving written notice, paying to Employee a sum equivalent to four (4) weeks separation pay and in addition a sum equivalent to two (2) weeks pay for each year, of continuous service based on Employee's most recent date of appointment as recognized by Manitoba with the proviso that the sum of such payments shall not exceed fifty-two (52) weeks in total;

(ii) Immediately and without notice, for cause or for breach of any term or condition of the Agreement by Employee.

10.2 For the purpose of section 10.1(c) (ii), "for cause" includes, but is not limited to, the following situations:

(a) Employee is guilty of criminal or fraudulent conduct;

(b) Employee is guilty of gross or persistent or deliberate and willful misconduct;

- (c) Employee is guilty of a material breach, or persistent breaches, of Manitoba's Conflict of Interest guidelines, policies or legislation;
- (d) Employee deliberately acts, or knowingly or willfully omits to act, in any way which adversely affects Manitoba in a material way;
- (e) Employee's conduct is unbecoming a person occupying Employee's position and is likely to injure Manitoba or its goodwill.

10.3 The parties acknowledge and agree that the above notice periods or payments in lieu are reasonable.

10.4 Upon termination of the Agreement, Manitoba shall be under no obligation to make any further payments to Employee, other than such payments as Employee may be entitled to receive under the Agreement for Services provided to Manitoba, and if applicable, under section 10.1(c)(i).

SECTION 11 – INDEMNIFICATION

11.1 Employee shall use due care in the performance of his obligations under the Agreement. If an action or proceeding is brought against Employee arising out of the performance of his duties, then:

- (a) Employee, upon learning or being served with any legal documents, shall advise Manitoba;
- (b) Manitoba shall pay any damages or costs awarded against Employee in any such action or proceedings and all legal fees;

- (c) Manitoba shall pay any sum required to be paid by Employee in connection with the settlement of any claim made against Employee if such settlement is approved by Manitoba before it is finalized; provided the conduct of Employee which gave rise to the action did not constitute gross negligence of his duty as an employee;
- (d) Upon Employee notifying Manitoba in accordance with paragraph (a) above, Manitoba and Employee shall forthwith meet and appoint counsel that is mutually agreeable to both parties. Should the parties be unable to agree on counsel that is satisfactory to both, then Manitoba shall unilaterally appoint counsel.

SECTION 12 – GENERAL PROVISIONS

- 12.1 The parties may amend any provision of the Agreement at any time by agreement in writing.
- 12.2 The Agreement shall be construed, performed and enforced in accordance with the laws of the Province of Manitoba. Any action taken relating to the Agreement shall be commenced in the Court of Queen's Bench (Winnipeg) Centre of Manitoba.
- 12.3 The parties shall not assign or transfer the Agreement, or any of the rights, responsibilities or obligations under the Agreement.
- 12.4 The document contains the entire agreement between the parties. There are no undertakings, representations or promises, express or implied, other than those contained in the Agreement. The Agreement shall supersede and replace any other employment agreement between Manitoba and Employee.

- 12.5 The Agreement shall inure to the benefit of, and be binding upon, Manitoba and the heirs, executors and administrators of Employee.
- 12.6 Employee agrees that this Agreement and any records and information created or collected pursuant to the Employee's employment (including but not limited to Employee's name, classification, salary, benefits or employment responsibilities) may be disclosed by Manitoba. Decisions about disclosure are at Manitoba's sole discretion.

SECTION 13 - NOTICES

- 13.1 Any notice given under the Agreement shall be in writing and delivered or sent by courier, facsimile transmission, or registered mail to the respective addresses set out below or to such other address as one party may notify the other party in writing:

(a) **If to Manitoba:**
Clerk of the Executive Council
Room 215, Legislative Building
450 Broadway
Winnipeg, MB R3C 0V8

(b) **If to Employee:**
Dwayne Marling

13.2 Any notice or communication sent by registered mail shall be deemed to have been received on the third business day following the date of mailing. Any notice or communication sent by way of facsimile transmission shall be deemed to have been received on the day it was transmitted, but only if the sender has a facsimile transmission report generated by the sender's facsimile machine which confirms that the notice or communication was transmitted in its entirety. If mail service is disrupted by labour controversy, notice shall be delivered personally or by way of facsimile transmission.

IN WITNESS WHEREOF the parties have executed the Agreement on the dates noted below.

"Original signed by"

May 29, 2017

Dwayne Marling

Date