



Australian Government
Department of Immigration and Border Protection

PORK INDUSTRY LABOUR AGREEMENT

Under the *Migration Act 1958*

Between

**Commonwealth of Australia as represented by the
Minister for Immigration and Border Protection
(Minister)**

and

XXXXXXXXXXXXXXXXXXXX

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Labour Agreement

Effective Date: Date signed by the Commonwealth.

Parties

The Commonwealth of Australia (the “Commonwealth”) as represented by the Minister for Immigration and Border Protection (the “Minister”). The Commonwealth’s particulars are set out in **Item 1 of Schedule 1**.

AND

The party specified in **Item 2 of Schedule 1** (the “Approved Sponsor”). The Approved Sponsor’s particulars are set out in **Item 2 of Schedule 1**.

Background

- A. This labour agreement (the “Agreement”) is a “labour agreement” as defined in the Migration Regulations. This Agreement will be administered by the Department of Immigration and Border Protection (“DIBP or the Department”) on behalf of the Commonwealth.
- B. This Agreement sets out the terms and conditions by which the Approved Sponsor may recruit, employ or engage the services of overseas workers who are intended to be employed or engaged by the Approved Sponsor as holders of Subclass 457 Temporary Work (Skilled) or Subclass 186 Employer Nomination Scheme visas in its business undertaking as described in **Item 3 of Schedule 1**.
- C. The Approved Sponsor is an “approved sponsor”, as defined in subsection 5(1) of the Migration Act by virtue of entering into this Agreement.

Operative Part

1 Definitions

- 1.1 Unless the context indicates a contrary intention, words and phrases in this Agreement have the same meanings attributed to them in the *Migration Act* and the *Migration Regulations*.
- 1.2 In the event of any inconsistency between this Agreement and the Migration Act and the Migration Regulations, the Migration Act and the Migration Regulations will prevail.
- 1.3 In this Agreement:

Address means a party’s address set out in **Schedule 1**.

Agreement means this labour agreement, any schedules, attachments and any documents incorporated into this labour agreement by reference.

ANZSCO means the Australian and New Zealand Standard Classification of Occupations.

AQF means the Australian Qualifications Framework.

Australian where the context so admits, means an Australian citizen (whether born in Australia or elsewhere) or a non-citizen who, being usually resident in Australia is the holder of a permanent visa granted under the Migration Act.

Base rate of pay means the rate of pay payable to an employee for his or her full time ordinary hours of work, but not including any of the following:

- (a) incentive-based payments and bonuses;
- (b) loadings;
- (c) monetary allowances;
- (d) overtime or penalty rates;
- (e) any other separately identifiable amounts.

Ordinary hours of work is determined under the relevant state/territory or federal award.

Where there is no award, the full time ordinary hours will be 38 hours per week.

Business Day means a day on which business is generally conducted in the Australian Capital Territory, and excludes Saturdays, Sundays and public holidays.

Business Address means the physical address at which a business is located.

Ceiling number means the number of primary Subclass 457 or Subclass 186 Employer Nomination Scheme visas that can be nominated as defined in **Schedule 3**.

Confidential Information in relation to a Party, means information that is:

- (a) by its nature capable of being protected in law or equity as confidential;
- (b) designated by a Party as confidential in **Item 5 of Schedule 1**; or
- (c) in the case of the Commonwealth's Confidential Information, the Approved Sponsor knows or ought to know is confidential;

but does not include information:

- (d) which is or becomes public knowledge other than by breach of the Contract or any other confidentiality obligations; or
- (e) that has been independently developed or acquired without reference to the other Party's Confidential Information.

Concessions means any variations to the requirements prescribed in the Migration Legislation in relation to the skills, qualifications, employment background, level of English Language proficiency and the Temporary Skilled Migration Income Threshold (TSMIT) required for the nomination and grant of a Subclass 457 or Subclass 186 Employer Nomination Scheme visa.

Damages means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties.

DIBP means the Department of Immigration and Border Protection ("the Department").

Effective Date means:

- (a) the date (if any) specified in **Item 4 of Schedule 1**;
- (b) if no such date is specified, the date on which this Agreement is signed by the parties, or if signed on separate days, the date of the last signature.

Email Account means a party's email address set out in **Schedule 1**.

IELTS means the International English Language Testing System.

Migration Act means the *Migration Act 1958*, as varied from time to time.

Migration Legislation means the Migration Act and/or the Migration Regulations.

Migration Regulations means the *Migration Regulations 1994* made under the *Migration Act 1958*, as varied from time to time.

Minister means “the Minister” for Immigration and Border Protection, the Assistant Minister, and his/her authorised representative performing relevant functions as the Minister under the Migration Legislation.

Nominate means a nomination referred to in section 140GB of the Migration Act.

Nominee means the holder of, or an applicant or proposed applicant for, a Subclass 457 or Subclass 186 Employer Nomination Scheme visa.

On-hire¹, under a labour agreement, means a person’s business activities which include activities relating to either or both of:

- (a) the recruitment of labour for supply to another business; and
- (b) the hiring of labour to another business;
- (c) the reference to ‘another business’ in paragraph (a) and (b) above, includes any other business that is related to a person’s business.

Occupations means those occupations prescribed in **Schedule 3**.

Postal Address means the address to which mail is delivered.

Primary Sponsored Person takes the same meaning as in the Migration Regulations.

Terms and conditions of employment takes the same meaning as Regulation 2.57 of the Migration Regulations.

The Department means the Department of Immigration and Border Protection.

TSMIT means the Temporary Skilled Migration Income Threshold specified in an instrument made under regulation 2.72(10)(cc) of the Migration Regulations, as routinely indexed.

Workforce means the total number of Australian workers (including permanent residents), subclass 457 visa holders, and other temporary visa holders engaged by the Approved Sponsor.

Workplace law means the *Fair Work Act 2009* and relevant laws of the Commonwealth and of the relevant State or Territory relating to equal employment opportunity, unlawful discrimination and occupational health and safety legislation regulating the employment by the Approved Sponsor of its Primary Sponsored Persons.

Workforce plan means a report that outlines the current, and where requested, projected future composition of an Approved Sponsor’s workforce. It should include details of the total number of Australian workers (including permanent residents), subclass 457 visa holders, and other temporary visa holders engaged by the Approved Sponsor.

2 Interpretation

(corresponding meanings) a word that is derived from a defined word has a corresponding meaning.

(headings) clause headings, the table of contents and footnotes are inserted for convenience only and do not affect interpretation of this Agreement.

(references) a reference to a party, clause, paragraph or schedule is a reference to a party, clause, paragraph or schedule to, or of this Agreement.

(requirements) a requirement to do anything includes a requirement to cause that thing to be done, and a requirement not to do anything includes a requirement to prevent that thing being done.

¹ An example of On-hire is where a person proposes to sponsor someone to come to Australia for the purpose of hiring out the visa holder’s services to client organisations, rather than to work directly in the person’s business.

(including) including and **includes** are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind.

(rules of construction) neither this Agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

(singular and gender) the singular includes the plural and vice-versa, and words importing one gender include all other genders.

(legislation) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations, directions or instruments issued under it.

(day) unless stated otherwise a reference to a day is a reference to a calendar day.

(month) a reference to a month is a reference to a calendar month.

(person) a reference to a person includes an individual, a body corporate, statutory corporation, partnership, body politic and permitted assigns, as the context requires.

(writing) a reference to a notice, consent, request, approval or other communication under this Agreement or an agreement between the parties means a written notice, request, consent, approval or agreement.

3 Period

- 3.1 This Agreement commences from the date signed by the Commonwealth specified in **Item 4 of Schedule 1**.
- 3.2 Unless terminated earlier in accordance with clause 19 of this Agreement, the period of this Agreement will be the time specified in **Item 4 of Schedule 1**.
- 3.3 For the purpose of Migration Regulation 457.511, the end of the period specified for any Subclass 457 visa granted pursuant to this Agreement, will be no more than four (4) years from the date of grant.

4 Pre-contractual representations

- 4.1 The Approved Sponsor warrants that information supplied to the Commonwealth with respect to the Approved Sponsor being a fit and proper person to enter into this Agreement and upon which the Commonwealth relied, was true and correct.

Sponsorship and nomination of overseas workers

5 On-hire prohibited

- 5.1 On-hire is prohibited under this Agreement. Specifically:
 - (a) the Approved Sponsor must not nominate a proposed occupation for a Nominee, for On-hire;
 - (b) any such nominations will not be approved under this Agreement; and
 - (c) the Approved Sponsor must not utilise the services of a visa-holder employed pursuant to a nomination under this Agreement, for On-hire.

6 Labour market need

- 6.1 The Approved Sponsor must take all reasonable steps to ensure it recruits suitably skilled Australians who are available before engaging Primary Sponsored Persons under this Agreement.

PART A – Subclass 457

7 Nomination

- 7.1 A nomination under this Part means a nomination referred to in section 140GB of the Migration Act.
- 7.2 The Approved Sponsor acknowledges the general requirements of the Subclass 457 visa programme and agrees that Primary Sponsored Persons engaged through this Agreement may only be engaged in occupations, and with concessions referred to in **Schedules 3 and 4**.
- 7.3 The Approved Sponsor may only nominate Primary Sponsored Persons for:
- (a) Occupations and Concessions outlined in **Schedule 3 and 4**, respectively; and
 - (b) up to the Ceiling Number specified in **Schedule 3**; and
 - (c) an Occupation to be performed in a location listed in **Item 1 of Schedule 3**.
- 7.4 The Approved Sponsor will ensure that the number of Primary Sponsored Persons employed under this Agreement in the occupations listed in **Schedule 3** does not exceed:
- (a) the Ceiling Number identified in **Schedule 3**; or
 - (b) where one or more ceiling numbers have been approved by a subsequent variation, the most recently approved Ceiling Number.
- 7.5 The Approved Sponsor acknowledges that the Minister may, in his/her absolute discretion:
- (a) vary the Ceiling Numbers up or down;
 - (b) vary the Concessions.
- 7.6 In addition to the information specified in the Migration Regulations, the Approved Sponsor must provide written certification that the visa applicant:
- (a) has the commensurate qualifications and experience in relation to the nominated occupation as specified in **Item 2 of Schedule 3**; and
 - (b) unless varied in accordance with **Item 4 of Schedule 3**,
 - i. has, in the three (3) years prior to visa application, undertaken a test of English language proficiency and achieved the score specified for the relevant test in the instrument made under paragraph 457.223(4)(eb) of the Migration Regulations; or
 - ii. is the current holder of a valid passport issued by:
 - A. Canada; or
 - B. New Zealand; or
 - C. the Republic of Ireland; or
 - D. the United Kingdom; or
 - E. the United States of America; or
 - iii. has completed at least five (5) cumulative years of full-time study in a secondary or higher education institution where instruction was conducted in English; or

- iv. will be paid a Base Rate of Pay which is at least the level of salary worked out in the way specified in the instrument made under paragraph 457.223(6)(a) of the Migration Regulations.

7.7 In addition to the information specified in the Migration Regulations, the Approved Sponsor must demonstrate, through written evidence, at nomination, that the visa applicant will:

- (a) be employed full time and will receive terms and conditions of employment which are no less favourable than the terms or conditions of employment that are, or would be provided, to an Australian performing equivalent work in the Approved Sponsor's workplace at the same location, and
- (b) receive a Base Rate of Pay, under the terms and conditions of employment referred to in clause 7.7 (a) that is equal to or greater than the TSMIT, unless varied in **Item 3 of Schedule 3**.

7.8 Where no Australian is performing equivalent work in the Approved Sponsor's workplace at the same location, the Approved Sponsor must, in addition to the information specified in the Migration Regulations, demonstrate through written evidence, at nomination that:

- (a) the visa applicant will be employed on a full-time basis; and
- (b) the terms and conditions of employment received by the visa applicant will be no less favourable than that paid to an Australian performing equivalent work; and
- (c) the visa applicant will receive a Base Rate of Pay, under the terms and conditions of employment referred to in clause 7.8 (b) that is equal to or greater than TSMIT, unless varied in **Item 3 of Schedule 3**.

7.9 In addition to the information in the Migration Regulations, the Approved Sponsor must provide written certification that the following information provided in support of a nomination application, is true and correct:

- (a) that the Approved Sponsor has taken all reasonable steps to ensure it recruits suitably skilled Australians, before engaging Primary Sponsored Persons under this Agreement; and
- (b) that the tasks of the position include a significant majority of the tasks of the nominated occupation as described in ANZSCO, unless varied in **Schedule 4**; and
- (c) that the visa applicant will complete a skills assessment where:
 - i. such is required in accordance with the standard subclass 457 visa programme as prescribed in the Migration Legislation; or
 - ii. where the Minister specified that a skills assessment is required in **Item 1 of Schedule 5**.

7.10 The Approved Sponsor must comply with any additional requirements for nomination that is stipulated by the Minister in **Item 1 of Schedule 5**.

8 Approval of nominations

8.1 The Minister will approve nominations in accordance with the Migration Legislation.

8.2 The Minister will notify the Approved Sponsor of a decision on the nomination application.

8.3 The period of an approval of a nomination will be in accordance with the Migration Legislation.

9 Sponsorship obligations

9.1 The Approved Sponsor must satisfy its sponsorship obligations in the Migration Regulations.

- 9.2 The Approved Sponsor is specifically required to meet the following obligations in the Migration Regulations and as varied, if at all, in **Schedule 6**, as follows:
- (a) to cooperate with inspectors (Regulation 2.78);
 - (b) to ensure equivalent terms and conditions of employment (Regulation 2.79(2));
 - (c) to pay travel costs to enable sponsored persons to leave Australia (Regulation 2.80);
 - (d) to pay costs incurred by the Commonwealth to locate and remove unlawful non-citizen (Regulation 2.81);
 - (e) to keep records (Regulation 2.82);
 - (f) to provide records and information to the Minister (Regulation 2.83);
 - (g) to provide information to the Minister when certain events occur (Regulation 2.84);
 - (h) to ensure a Primary Sponsored Person does not work in an occupation other than an approved occupation (Regulation 2.86);
 - (i) not to recover certain costs (Regulation 2.87).
- 9.3 The Approved Sponsor must comply with Workplace law, and the Migration Legislation.

PART B – Subclass 186 (transition from subclass 457 to subclass 186 under the labour agreement stream of the Migration Regulations)

10 Nomination

- 10.1 A nomination under this Part means a nomination referred to in the Migration Regulations for a permanent residence visa specified in **Item 5 of Schedule 3**.
- 10.2 The Approved Sponsor acknowledges the general requirements for permanent residence and agrees that Primary Sponsored Persons engaged through this Agreement may only be engaged in occupations, and with concessions referred to in **Schedules 3 and 4**:
- 10.3 The Approved Sponsor may only nominate Primary Sponsored Persons for:
- (a) occupations as specified in **Item 1 of Schedule 3**;
 - (b) up to the ceiling number specified in **Schedule 3**;
 - (c) an occupation to be performed in a location listed in **Item 1 of Schedule 3**;
 - (d) an occupation which will be full time, ongoing and available for at least two years.
- 10.4 The Approved Sponsor acknowledges that the Minister may, in his/her absolute discretion:
- (a) vary the Ceiling Numbers up or down;
 - (b) vary the Concessions.
- 10.5 The Approved Sponsor must make nominations in accordance with the approved forms.
- 10.6 The Approved Sponsor must comply with any additional requirements for a permanent residence nomination that is stipulated by the Minister in **Item 2 of Schedule 5**.
- 10.7 The Approved Sponsor may only nominate a Primary Sponsored Person who:
- (a) has the commensurate qualifications and experience in relation to the nominated occupation as specified in **Item 2 of Schedule 3**;
 - (b) unless varied in accordance with **Item 4 of Schedule 3**:
 - i. has, in the three (3) years prior to visa application, undertaken a test of English language proficiency and achieved the score specified for the relevant test in the instrument made under paragraph 186.222(a) of the Migration Regulations; or

- ii. is a class of person who is specified in an instrument made under paragraph 186.222(b) of the Migration Regulations as being exempt from the English language requirement.
 - (c) has not turned 50 years of age at time of nomination, unless varied in **Item 6** of **Schedule 3**.
- 10.8 The Approved Sponsor must demonstrate, through written evidence, at nomination, that the Primary Sponsored Person will:
- (a) be employed full time and will receive terms and conditions of employment which are no less favourable than the terms or conditions of employment that are, or would be provided, to an Australian performing equivalent work in the Approved Sponsor's workplace at the same location, and
 - (b) receive a Base Rate of Pay, under the terms and conditions of employment referred to in clause 10.8(a) that is equal to or greater than the TSMIT, unless varied in **Item 3** of **Schedule 3**.
- 10.9 Where no Australian is performing equivalent work in the Approved Sponsor's workplace at the same location, the Approved Sponsor must, in addition to the information specified in the Migration Regulations, demonstrate through written evidence, at nomination that:
- (a) the Primary Sponsored Person will be employed on a full-time basis; and
 - (b) the terms and conditions of employment received by the Primary Sponsored Person will be no less favourable than that paid to an Australian performing equivalent work; and
 - (c) the Primary Sponsored Person will receive a Base Rate of Pay, under the terms and conditions of employment referred to in clause 10.8 (b) that is equal to or greater than TSMIT, unless varied in **Item 3** of **Schedule 3**.
- 10.10 The Approved Sponsor must provide written certification that the following information provided in support of a nomination application, is true and correct:
- (a) that the tasks of the position include a significant majority of the tasks of the nominated occupation as described in ANZSCO, unless varied in **Schedule 4**;
 - (b) that the position will be ongoing for at least two (2) years.

11. Approval of nominations

- 11.1 The Minister will approve nominations in accordance with this Agreement, including any requirements specified in **Item 2** of **Schedule 5**.
- 11.2 The Minister will notify the Approved Sponsor of a decision on the nomination application.
- 11.3 The period of an approval of a nomination will be in accordance with the Migration Legislation.

PART C: Other provisions

12. Training and recruitment of Australian workers

- 12.1 The Approved Sponsor must comply with the training and recruitment obligations outlined in **Schedule 2**.
- 12.2 The Approved Sponsor may carry out the training obligations itself or through contracted service providers.
- 12.3 The Approved Sponsor warrants that the training provided will be fit for any purpose express or implied.

13. **Supporting Primary Sponsored Persons**

- 13.1 The Approved Sponsor will be responsible for ensuring that all Primary Sponsored Persons engaged under this Agreement are supplied with workplace rights information.
- 13.2 The information referred to in clause 13.1 should be provided within seven (7) days of the date the Primary Sponsored Persons commences employment in the nominated Occupation with the Approved Sponsor.

14. **Reporting obligations**

14.1 Unless varied in **Schedule 7**:

- (a) the Approved Sponsor must provide a report to the Department within 30 days following a request by the Minister or when requesting a variation to **Schedule 3**;
- (b) the report must include:
 - i. updated Workforce Plans; and
 - ii. evidence of efforts to recruit domestically, using the template provided in **Schedule 8**; and
 - iii. evidence of the Base Rate of Pay for Primary Sponsored Persons; and
 - iv. evidence of compliance with the training obligations defined in **Schedule 2**; and
 - v. details of any breaches of immigration or other Commonwealth or State laws; and
 - vi. the dates and numbers and occupations of any and all Australian workers who have been retrenched or made redundant in the past twelve (12) month period.

15. **Monitoring**

- 15.1 The Minister may, from time to time, audit the Approved Sponsor's performance of its obligations in this Agreement and the Approved Sponsor will cooperate with the Minister for the purpose of such audits.
- 15.2 Without limiting the generality of the preceding clause, the Approved Sponsor will:
- (a) liaise with and provide information and assistance to the Minister as reasonably required by the Minister for the purposes of such audits;
 - (b) comply with the Minister's reasonable requests or requirements for the purposes of such audits.
- 15.3 Unless specified otherwise in the Migration Legislation, the Approved Sponsor will retain all records generated for the purposes of this Agreement for seven (7) years from the date of expiration or termination of this Agreement.

Miscellaneous Provisions

16. **Relationship between the parties**

16.1 Nothing in this Agreement:

- (a) constitutes a partnership between the parties; or
- (b) except as expressly provided, makes a party an agent of another party for any purpose.

16.2 A party cannot in any way or for any purpose:

- (a) bind another party; or
- (b) contract in the name of another party.

- 16.3 If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.
- 16.4 If the Approved Sponsor is constituted by more than one legal entity (such as a partnership or an unincorporated association), each of those legal entities will be jointly and severally liable for the performance of all of the Approved Sponsor's obligations under this Agreement.

17. Confidential information and information sharing

- 17.1 If a party's information is specified as Confidential Information in **Item 5 of Schedule 1**, the other party will not disclose the information without the first party's prior written consent, except when disclosure of the information is required by law, statutory or portfolio duties, or in accordance with clause 17.3 of this Agreement.
- 17.2 The Approved Sponsor must comply with any reasonable request by the Commonwealth for information to enable the Commonwealth to meet its obligations in this Agreement.
- 17.3 The Approved Sponsor consents to information concerning it which is relevant to the operation of this Agreement being shared by the Minister with:
- (a) State or Territory government agencies in the State or Territory in which the Approved Sponsor conducts business, where those agencies have regulatory or other relevant interests in the operation of this Agreement;
 - (b) Commonwealth agencies with regulatory or other relevant interests in the operation of this Agreement.
- 17.4 The Approved Sponsor will allow the disclosure of information related to this Agreement for various reporting and Commonwealth disclosure obligations. These disclosures include:
- (a) disclosure of procurement information for the Department's annual reporting purposes;
 - (b) disclosure to the Parliament and its committees, as appropriate, in line with the *Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters*;
 - (c) disclosure of information consistent with the *Freedom of Information Act 1982 (Cth)*;
 - (d) disclosure of discoverable information that is relevant to a case before a court; and
 - (e) disclosure of information as required under other legislation or Commonwealth policy.
- 17.5 Clause 17.3 survives the termination or expiration of this Agreement.

18. Suspension

- 18.1 The Minister may, in his/her absolute discretion, suspend this Agreement in whole or in part.
- 18.2 The Approved Sponsor and other third parties are not entitled to any compensation or payments as a result of the Minister suspending this Agreement under clause 18.1.
- 18.3 Where the Minister suspends this Agreement in accordance with clause 18.1 the Minister will notify the Approved Sponsor in writing.
- 18.4 For the avoidance of doubt, where the Minister notifies that this Agreement has been suspended in accordance with clause 18.3, the suspension shall take effect at the time the notice is taken to be received by the Approved Sponsor, in accordance with clause 27.
- 18.5 Where the Minister suspends this Agreement in accordance with clause 18.1 the Minister may suspend consideration of all nomination and visa applications made in accordance with this Agreement.
- 18.6 After a period of suspension, the Minister may, at his/her absolute discretion, choose to resume this Agreement by notifying the Approved Sponsor in writing.

- 18.7 Where the Minister chooses to resume this Agreement in accordance with clause 18.6 and notifies the Approved Sponsor, the Agreement will resume at the time the notice is taken to be received, in accordance with clause 27.
- 18.8 For the avoidance of doubt, any period of suspension will have no impact on and will not amend the period of this Agreement. The period of this Agreement will remain as specified in **Item 4 of Schedule 1**.

19. Termination

- 19.1 The Minister may, in his/her absolute discretion, terminate this Agreement at any time including for reasons of public interest where there is a change in policy or a change in government which results in a change in policy settings.
- 19.2 The Approved Sponsor will not be entitled to any compensation or payments as a result of the Minister terminating this Agreement under clause 19.1.
- 19.3 Otherwise, if the Minister contends that the Approved Sponsor is in default under this Agreement, the Minister may, without prejudice to any right of action or remedy which has accrued or which may accrue (including the Minister's entitlement to terminate in accordance with clause 19.6):
- (a) suspend this Agreement in whole or in part; and
 - (b) serve notice on the Approved Sponsor, advising that this Agreement is suspended and requiring the Approved Sponsor to rectify to the satisfaction of the Minister, those aspects of the Approved Sponsor's performance which are of concern to the Commonwealth; or
 - (c) terminate this Agreement without prejudice to any right of action or remedy which has accrued or which may accrue.
- 19.4 If the Approved Sponsor is in breach of a sponsorship obligation in the Migration Regulations the Approved Sponsor will be taken to be in default under this Agreement as if the statutory obligation was a contractual obligation of the Approved Sponsor.
- 19.5 For the avoidance of doubt, a breach of the Approved Sponsor's warranty given in clause 4.1 with respect to pre-contractual information, will entitle the Minister to suspend this Agreement and serve a notice under clause 19.3 and/or to take any other contractual redress in accordance with this Agreement.
- 19.6 A party may, in its discretion, terminate this Agreement early by giving 28 days' notice to the other party, whereupon this Agreement will be terminated with effect 28 days after the notice of termination is served. A party serving a notice of termination under this sub-clause:
- (a) need not specify a reason for serving the notice;
 - (b) may withdraw the notice before the 28 days have elapsed; and
 - (c) will not be liable to compensate the other party for costs or damages that may arise from the early termination.
- 19.7 For the avoidance of doubt if this Agreement is terminated for any reason, or for no reason:
- (a) the Approved Sponsor's approval as a sponsor for the purposes of this Agreement will thereby be automatically terminated; and
 - (b) visas granted pursuant to this Agreement will be subject to the operation of the Migration Legislation.
- 19.8 A waiver by a party in respect of any breach of a condition or provision of this Agreement will not be deemed to be a waiver in respect of any continuing or subsequent breach of that provision, or breach of any other provision. The failure of a party to enforce at any time any of the provisions of this Agreement will in no way be interpreted as a waiver of such provision.

20. Sanctions

- 20.1 Instead of terminating this Agreement, the Commonwealth may, in its discretion:
- (a) bar the Approved Sponsor, for a specified period, from making further nominations under this Agreement, or
 - (b) suspend consideration of any or all nomination and visa applications made pursuant to this Agreement.
- 20.2 The Commonwealth may, in its discretion, instead of terminating this Agreement or in addition to terminating this Agreement, take action against the Approved Sponsor for a breach of contract to recover damages and/or for injunctive relief.
- 20.3 The Commonwealth may, in its discretion, instead of taking any enforcement action under this Agreement or in addition to taking such enforcement action, pursue a civil penalty under the Migration Legislation for failing to satisfy a sponsorship obligation.

21. Dispute resolution

- 21.1 The Parties will deal with any dispute arising during the course of this Agreement as follows:
- (a) the party claiming that there is a dispute must notify the other party of the dispute;
 - (b) the parties will use reasonable endeavours to resolve the dispute by direct negotiation;
 - (c) the parties must allow twenty-eight (28) days from notification of the dispute to reach a resolution or to agree to select some alternative dispute resolution procedure; and
 - (d) if there is no resolution or agreement then a party may propose mediation or arbitration, or commence legal proceedings or terminate this Agreement.
- 21.2 The parties acknowledge that the Migration Review Tribunal and Administrative Appeals Tribunal may have jurisdiction to review certain visa decisions and that the Migration Review Tribunal may have jurisdiction to review nomination decisions under this Agreement. This Agreement does not abrogate any rights of a merits review by the Migration Review Tribunal or the Administrative Appeals Tribunal.

22. Assurances, counterparts and assignment

- 22.1 Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Agreement.
- 22.2 This Agreement may be executed in any number of counterparts.
- 22.3 A party cannot assign or otherwise transfer its rights under this Agreement without the prior written consent of the other party.

23. Variation and entire agreement

- 23.1 A provision of this Agreement can only be varied by a written document executed by or on behalf of all parties.
- 23.2 The contents of this Agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this Agreement, whether orally or in writing.

24. Fettering and publishing

- 24.1 Nothing in this Agreement fetters or detracts from the Commonwealth's discretions, functions or powers under the Migration Legislation, Workplace law or other relevant Commonwealth laws.

24.2 In the event the Commonwealth has published an outline of this Agreement, the published outline is an invitation to treat with prospective sponsors and is not an offer to enter into contractual relations with any such sponsor on the basis of the published outline.

24.3 The Commonwealth may grant or refuse to grant consent, in its absolute discretion, to any application by the Approved Sponsor for consent to a change in control of the Approved Sponsor that may be inimical to the Approved Sponsor's capacity to perform its obligations under this Agreement, and the Commonwealth may attach such conditions on a consent as the Commonwealth sees fit.

25. Legal expenses

25.1 Each party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Agreement.

25.2 The Approved Sponsor must pay any stamp duty assessed on or in relation to this Agreement and any instrument or transaction required by or necessary to give effect to this Agreement.

26. Survival after termination

26.1 Any provision of this Agreement which expressly or by implication from its nature is intended to survive the termination or expiration of this Agreement and any rights arising on termination or expiration will survive, including Confidential Information, and the Approved Sponsor's sponsorship obligations.

27. Notices

27.1 Any notice, demand, consent or other communication given or made under this Agreement:

- (a) must be clearly readable;
- (b) must, unless it is sent by email, be signed by the party giving or making it (or signed on behalf of that party by its authorised representative);
- (c) must, unless it is sent by email, be left at the Address or sent by pre-paid security post (air mail if outside Australia) to the Business Address of the recipient; and
- (d) may be sent by email to the receiving party's Email Account.

27.2 A notice to be served on the Commonwealth will be taken to be served if it is served on the Department's address in **Item 1 of Schedule 1**.

27.3 A party may change its Business Address, Postal Address or Email Account for the purpose of service by giving notice of that change to the other party in accordance with clause 27.1.

27.4 Any communication will be taken to be received by the recipient:

- (a) in the case of a letter, on the third (seventh, if sent outside the country in which the letter is posted) Business Day after the date of posting;
- (b) in the case of an email, at the end of the day in which the email is transmitted.

28. Governing law and jurisdiction

28.1 The laws applicable in the Australian Capital Territory govern this Agreement.

28.2 The parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and any courts competent to hear appeals from those courts.

29. Indemnity

29.1 The Approved Sponsor agrees to indemnify the Minister from and against any:

- (a) cost or liability incurred by the Minister; or
- (b) loss or expense incurred by the Minister in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Minister,

arising from:

- (c) any act or omission by the Approved Sponsor or its Personnel in connection with this Agreement; or
- (d) any breach by the Approved Sponsor of its obligations or warranties under this Agreement;

irrespective of whether there was fault on the part of the person whose conduct gave rise to that liability, loss or damage, or loss or expense.

29.2 The Approved Sponsor's liability to indemnify the Minister under clause 29.1 will be reduced proportionately to the extent that any breach of this Agreement by the Minister or any act or omission involving fault on the part of the Minister contributed to the relevant cost, liability, loss, damage, or expense.

29.3 The right of the Minister to be indemnified under clause 29.1 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Minister is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage, or expense.

29.4 In clause 29.1:

- (a) "the Minister" includes officers, employees and agents of the Minister; and
- (b) "Personnel" means a party's officers, employees, agents, contract staff or professional advisers engaged in, or in relation to, the performance or management of this Agreement;

29.5 Clause 29.1 will survive six (6) years from the expiration or termination of this Agreement.

Schedule 1 Particulars

Item 1

Commonwealth Particulars

Name: Department of Immigration and Border Protection
Address: 6 Chan Street, BELCONNEN ACT 2617
Telephone Number: (02) 6264 1055
Email Address: labour.agreement.section@border.gov.au
Contact officer: Director, Labour Agreement Section

Item 2

The Approved Sponsor's Particulars

Name:
ACN:
ABN:
Business structure:
Business Address:
Postal Address:
Telephone Number:
Email Address:
Contact officer:

Item 3

The Approved Sponsor's Business

Business Undertaking:
Industry segment:

Item 4

Commencement and period

Effective Date: The date signed by the Commonwealth.
Cease Date: Xxx years from date of effect

Item 5

Commercial-in-Confidence Information

Party: The Department of Immigration and Border Protection on behalf of the Commonwealth

XXXXXX Pty Ltd

The terms of this Agreement

All information provided to request and secure access to a Labour Agreement

Schedule 2 Training and recruitment obligations

1. The Approved Sponsor must, throughout the term of this agreement, demonstrate a commitment to the provision of employment, training and career progression opportunities to Australians through compliance with this Schedule.
2. It is an obligation of the Agreement that the Approved Sponsor must undertake recruitment activities which afford Australians the first opportunity for employment, prior to nomination of positions covered by this Agreement.
3. It is an obligation of this Agreement that the Approved Sponsor must, over the term of each year of the Agreement, ensure that:
 - (a) payments equivalent to at least two (2) per cent of the gross payroll of the Approved Sponsor are made to an industry training fund that operates in the same industry as the Approved Sponsor; or
 - (b) payments equivalent to at least one (1) per cent of the gross payroll of the Approved Sponsor are made for the provision of structured training for the Australian employees of the Approved Sponsor.
4. Expenditure that may count towards training expenditure for the purposes of this Agreement is outlined in Legislative Instrument IMMI 13/030, as varied from time to time.

Schedule 3 Occupation; Ceiling numbers; Location; Qualifications and Experience; and Concessions covered by this Agreement

Item 1 Occupations, Ceiling Numbers and Location

Occupation	Ceiling numbers of Primary Sponsored Persons: Subclass 457			Ceiling numbers of Primary Sponsored Persons: Subclass 186			Location of work
	Year 1	Year 2	Year 3	Year 1	Year 2	Year 3	
Senior Stockperson (Piggery)	To be completed	To be completed	To be completed	To be completed	To be completed	To be completed	To be completed

- The Minister may vary the ceiling number at any time.
- [To be inserted only where ceilings across the three years are provided up front in the agreement]. Year 2 and 3 ceilings may be subject to annual review.
- [To be inserted where year 2 and 3 ceilings are updated annually]. Before the subsequent years of the term of operation commence, the Approved Sponsor may request a ceiling for the subsequent year. The Commonwealth reserves the right to make the final decision as to the ceiling for each year of the Agreement.

Item 2 Qualifications and Experience:

The Approved Sponsor must provide written certification that the visa applicant has:

- at least an AQF III in Agriculture (Pig Production); or equivalent qualifications as assessed by a registered training organisation; and at least three (3) years of recent and relevant work experience; or
- has at least five (5) years of recent and relevant work experience in a medium to large size commercial piggery.

Item 3 Concessions to TSMIT

For the purpose of determining at clause 7.7(b) and clause 10.8(b), where TSMIT is equal to or greater than \$53,900, the Base Rate of Pay may be varied to include a maximum of 6 hours guaranteed overtime (to a maximum 44 hour week) where, at time of nomination, the Approved Sponsor:

- provides evidence that the hours are guaranteed within the employment contract, and written confirmation the hours are consistent with the National Employment Standards; and
- provides written evidence that the terms of condition of employment are no less favourable than the terms and conditions of employment that are, or would be, provided to an Australian performing equivalent work in the Approved Sponsor's workplace at the same location, as outlined at clauses 7.7(a) and 7.8(b) or 10.8(a) and 10.9(b).

For the purposes of this provision 'National Employment Standards' means the 10 minimum standards of employment that are set out in **Part 2-2 of the Fair Work Act 2009**.

Item 4 Concessions to English language requirement

Nil.

Item 5 Permanent residence visa

Permanent residence visa: subclass 186

The Approved Sponsor may only nominate a Primary Sponsored Person who has been employed as a Subclass 457 primary visa holder in the occupation of senior stockperson (piggery) for at least four (4) years before the nomination is made. If licensing or registration is required in Australia for the nominated occupation, the Approved Sponsor may only nominate a Primary Sponsored Person who holds the appropriate license or registration.

Item 6 Concessions to age requirement (permanent residence)

Nil

Schedule 4 Concessions to tasks of occupations in ANZSCO

Occupation Description: *Senior Stockperson (Piggery)* – for immigration purposes – ANZSCO skill level 4.

There is currently no ANZSCO code for the occupation of *senior stockperson (piggery)*. For administrative purposes only, employers should use the code 070299 in lieu of an ANZSCO code when nominating this position.

For the purposes of this labour agreement, this occupation is described as follows:

Tasks Include:

- Supervise the site and facilities in terms of the required human resources, physical resources, safety requirements, consumables, documentation and measurement devices;
- Provide overall maintenance and compliance of the Company Quality Assurance program for the site ensuring that all relevant documentation is kept current;
- Supervise data collection and recording so information is accurate to aid stock and inventory control;
- Undertake specific tasks assigned by management to ensure that environmental, quality and safety goals are met;
- Implement preventable maintenance programs to reduce planned and unplanned down time;
- Supervise trial sheds, collect and record data in accordance with trial protocols;
- Selection of breeding stock and/or pigs for sale;
- Supervision and participation of daily inspection of livestock, such that the animals are appropriately fed, watered, environmental parameters are fulfilled. The Senior Stockperson (Piggery) in this case would work with and supervise a less experienced Stockperson;
- Supervision and participation of daily inspection of livestock, ensuring compromised animals are individually assessed, identified, treated and record in accordance with the Company Herd Health Plan and the industries Model Code of Practice;
- Euthanise sick or injured stock in a humane manner and in accordance with the *Model Code of Practice for Animal Welfare – Pigs 3rd edition*;
- Conduct post mortem examinations of deceased stock and report findings;
- Collect boar semen at an artificial insemination laboratory;
- Undertake processing duties within the artificial insemination laboratory;
- Supervision and participation in the mating of animals via individually supervised mating or through Artificial Insemination;
- Supervision of the birthing process, including the ability to physically conduct unsupervised internal assessments of females during parturition to minimise this incidence of still births;
- Participate in company/industry training sessions and workshops as required;
- Perform any other duty as required by the Unit Manager.

Schedule 5 Additional requirements for nomination

Item 1 Subclass 457

Where the Base Rate of Pay includes agreed guaranteed overtime, the Approved Sponsor provides evidence at time of nomination that the hours are guaranteed within the employment contract for the overseas worker, and confirms the hours are consistent with the National Employment Standards.

For the purposes of this provision the Base Rate of Pay may include a maximum of 6 hours guaranteed overtime (to a maximum 44 hour week).

If licensing or registration is required in Australia for the nominated occupation, the Approved Sponsor may only nominate a Primary Sponsored Person who holds the appropriate license or registration.

Item 2 Subclass 186

The Approved Sponsor may only nominate a Primary Sponsored Person who has been employed as a Subclass 457 primary visa holder in the occupation of senior stockperson (piggery) for at least four (4) years before the nomination is made.

If licensing or registration is required in Australia for the nominated occupation, the Approved Sponsor may only nominate a Primary Sponsored Person who holds the appropriate license or registration.

Schedule 6 Variation of sponsorship obligations

Item 1 Obligation to cooperate with inspectors

The obligation in regulation 2.78 of the Migration Regulations applies and is not varied.

Item 2 Obligation to ensure equivalent terms and conditions of employment

The obligation in regulation 2.79 of the Migration Regulations applies and is varied in accordance with the following provisions:

- (a) Wages and salary must be paid to the Primary Sponsored Person directly by the Approved Sponsor.
- (b) All Primary Sponsored Persons will be employed on a full-time basis and will receive terms and conditions of employment which are no less favourable than the terms and conditions of employment that are, or would be, provided to an Australian performing equivalent work in the Approved Sponsor's workplace at the same location.
- (c) The Base Rate of Pay, under the terms and conditions of employment must be equal to or greater than TSMIT, unless varied in **Item 3 of Schedule 3**.
- (d) Any payments (including, but not limited to, repayments of salary advances made to the Primary Sponsored Person at the discretion of the Approved Sponsor) deducted from the Primary Sponsored Person's salary may only be made with the consent and written permission of the Primary Sponsored Person.

Item 3 Obligation to pay travel costs to enable sponsored persons to leave Australia

The obligation in regulation 2.80 of the Migration Regulations applies and is not varied.

Item 4 Obligation to pay costs incurred by the Commonwealth to locate and remove unlawful non-citizens

The obligation in regulation 2.81 of the Migration Regulations applies and is not varied.

Item 5 Obligation to keep records

The obligation in regulation 2.82 of the Migration Regulations applies and is not varied.

Item 6 Obligation to provide records and information to the Minister

The obligation in regulation 2.83 of the Migration Regulations applies and is not varied.

Item 7 Obligation to provide information to Immigration when certain events occur

The obligation in regulation 2.84 of the Migration Regulations applies and is not varied.

Item 8 Obligation to ensure Primary Sponsored Person works or participates in nominated occupation, program or activity

The obligation in regulation 2.86 of the Migration Regulations applies and is not varied.

Item 9 Obligation not to recover, transfer or take actions that would result in another person paying for certain costs

The obligation in regulation 2.87 of the Migration Regulations applies and is not varied.

Schedule 7 Variations to Reporting Requirements

None

Schedule 8 Domestic Recruitment Efforts Template

Summary of domestic recruitment efforts by [organisation name]:

List occupation sought under the labour agreement	List all advertising or recruitment efforts by your organisation in the last six months for the occupation ²	Period of advertising or recruitment	Geographical target audience	Number of applications received	Number of applicants that were hired	Reasons that candidates were not successful	How many Australians do you currently employ in this occupation?

I declare that the information I have provided in this document is true and correct and I am aware of the penalties for providing misleading or false information to the Commonwealth.

Signature: _____

Name and position of authorised person: _____ Date _____

² One method per table cell (e.g. Seek.com advertising). Please replicate the row if multiple methods have been used. You must attach examples of your efforts to recruit for the occupation.

Signing page

Signed for and on behalf of the Commonwealth)
under the written authority of the Minister for)
Immigration and Border Protection:)

.....
Print name and details of the Authorised Person

.....
Signature of the Authorised Person

Date of signing:/...../.....
dd/mm/yyyy

.....
Signature of Witness

.....
Print name of Witness

Date of signing:/...../.....
dd/mm/yyyy

Signed for and on behalf of XXX Pty Ltd)

.....)

ABN

In accordance with section 127 of the *Corporations Act 2001* by:

.....
Signature of director/Authorised Person

.....
Signature of Director/Secretary

.....
Print name and details of the Authorised Person

.....
Print name and details of the Authorised Person

Date of signing:/...../.....
dd/mm/yyyy

Date of signing:/...../.....
dd/mm/yyyy

.....)
Print name and details of the Approved Sponsor
(if the Approved Sponsor is not a body corporate).

.....
Signature of Witness

.....
Print name of Witness

Date of signing:/...../.....
dd/mm/yyyy