



Australian Government
Department of Home Affairs

LABOUR AGREEMENT – HORTICULTURE INDUSTRY

Under the *Migration Act 1958*

Between

Commonwealth of Australia as represented by the
Assistant Minister for Immigration
(Assistant Minister)

and

Xxxxx Pty Ltd

Table of Contents

1.	Definitions	4
2.	Interpretation	7
3.	Agreement period	8
4.	Pre-contractual representations.....	8
5.	Acknowledgements	8
Nomination of an Overseas Worker		9
6.	Nomination requirements	9
7.	Visa requirements.....	9
8.	Visa period.....	10
9.	Sponsorship obligations.....	10
10.	Reporting	10
11.	Review	10
12.	Audits of this Agreement.....	10
Miscellaneous Provisions		11
13.	Notices.....	11
14.	Variation and entire agreement.....	11
15.	Suspension.....	11
16.	Termination	12
17.	Adverse Information.....	13
18.	Sanctions.....	13
19.	Relationship between the parties	13
20.	Assurances, counterparts and assignment.....	14
21.	Dispute resolution.....	14
22.	Confidential information and information sharing	14
23.	Fettering and publishing	15
24.	Legal expenses.....	15
25.	Survival after termination	15
26.	Governing law and jurisdiction	16
27.	Indemnity.....	16
28.	Severability, Waiver	16
29.	Conflict of Interest.....	16

Schedule 1	Particulars	17
Schedule 2	Ceilings and concessions relating to nomination criteria covered by this Agreement	18
Schedule 3	Additional requirements for Nomination.....	21
Schedule 4	Concessions relating to visa criteria covered by this Agreement	34
Schedule 5	Variation of sponsorship obligations	39
Schedule 6	Additional sponsorship obligations specific to this Agreement	41
Schedule 7	Information to be provided to the Department	42
Signing Page	43

Labour Agreement

Effective Date: Date signed by the Commonwealth being the last party to sign the Agreement.

Parties

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

AND

The party specified in **Item 2 of Schedule 1** (the “Sponsor”). The 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.
- B. This Agreement will be administered by the Department of Home Affairs on behalf of the Commonwealth.
- C. This Agreement sets out the terms and conditions by which the Sponsor may recruit, employ or engage the services of an Overseas Worker who is intended to be employed or engaged in its business undertaking as described in **Item 3 of Schedule 1**.
- D. For the purposes of employer sponsored visa programs, the Sponsor, by virtue of entering into this Agreement, will also be an “Approved Work Sponsor” as defined in the Migration Act.

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**.

Adverse Information has the same meaning as in the Migration Regulations.

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

Annualised Salary means for the purpose of this Agreement remuneration paid to an Overseas Worker on an annualised basis from the date they commence employment, excluding periods that they are offshore on approved leave without pay.

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

Approved Work Sponsor has the same meaning as in the Migration Act.

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.

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.

Category 1 location means a location within Australia with a postcode that is not designated as a regional area of Australia for skilled migration purposes.

<https://immi.homeaffairs.gov.au/visas/working-in-australia/skill-occupation-list/regional-postcodes>

Category 2 location means a location within Australia with a postcode that is designated as a regional area of Australia and under the category 'Cities and major regional centres' for skilled migration purposes.

<https://immi.homeaffairs.gov.au/visas/working-in-australia/skill-occupation-list/regional-postcodes>

Category 3 location means a location within Australia with a postcode that is designated as a regional area of Australia and under the category 'Regional centres and other regional areas' for skilled migration purposes.

<https://immi.homeaffairs.gov.au/visas/working-in-australia/skill-occupation-list/regional-postcodes>

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 age skills, qualifications, employment background, level of English Language proficiency, the CSIT and the TSMIT required for the nomination and grant of a SID, SESR or ENS visa.

Contact Officer means the officers referred to in **Item 1** and **Item 2** of **Schedule 1**.

CSIT means the Core Skills Income Threshold specified in an instrument made under the Migration Regulations.

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

Earnings has the same meaning as in the Migration Regulations.

Employment period means the stay period that a Sponsor requests for the Nominee in the nomination application form.

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**.

ENS visa means an Employer Nomination Scheme (ENS) visa (Subclass 186), which is a visa permitting its holder permanent residence in Australia.

Full time means 38 hours or a period between 32 and 45 hours that is specified under the relevant industry award and is consistent with the National Employment Standards.

IELTS means the International English Language Testing System.

Industrial instrument means an instrument in force under a law of the Commonwealth or the State/Territory that regulates workplace relations and prescribes terms and conditions of employment between employers and employees including, but not limited to, an award or agreement made under the *Commonwealth Fair Work Act 2009 (Cth)* and an award or agreement made by a relevant State/Territory industrial tribunal or court.

Migration Act means the Migration Act.

Migration Legislation means the Migration Act and/or the Migration Regulations and/or any instruments made under the Migration Act or the Migration Regulations.

Migration Regulations means the *Migration Regulations 1994 (Cth)* made under the Migration Act.

Minister or **Assistant Minister** means a reference to a "Minister" appointed to administer the Department and includes where relevant, delegates of the Minister.

Nominate means to lodge a nomination application for a SID, SESR or ENS visa under the Migration Legislation.

Nomination means a nomination referred to in section 140GB of the Migration Act for the SID and SESR visas, and regulation 5.19 for the ENS visa.

Nomination Ceiling means the number of nominations that a Sponsor can have approved in any Year for a specified Occupation as defined in **Schedule 2**.

Nominee means the Overseas Worker specified in a Nomination.

Occupations means those Occupations prescribed in **Schedule 2**.

On-hire¹ 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.

Overseas Worker means the holder of, or an applicant or proposed applicant for, a TSS, SID, SESR or ENS visa, whether onshore or offshore.

Postal Address means the address to which mail is delivered.

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

Relevant Industrial Instrument means an industrial instrument that applies to a Primary Sponsored Person and regulates the terms and conditions of employment of that Primary Sponsored Person.

Secondary Sponsored Person has the same meaning as in the Migration Regulations.

SESR visa means the Skilled Employer Sponsored Regional (Subclass 494) visa, which is a temporary visa within the meaning of the Migration Act.

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.

SID visa means a Skills in Demand (SID) (subclass 482) visa, which is a temporary visa within the meaning of the Migration Act.

Sponsor means the party to this Agreement specified in **Item 2 of Schedule 1**.

Standard Business Sponsor has the same meaning as in the Migration Regulations.

Standard Skilled visa program requirements refers to the legislative requirements that must be met for the Core Skills or Specialist Skills stream of the SID visa program, the Employer Sponsored stream of the SESR visa program or the Temporary Resident Transition stream of the ENS visa program.

Subclass 457 visa means the Temporary Work (Skilled) (Subclass 457) visa.

Terms and Conditions of Employment takes the same meaning as in the Migration Regulations.

The Department means the Department of Home Affairs.

Top Up means an additional salary amount paid to an Overseas Worker to ensure that requirements under this Agreement are met as prescribed under clause 2, **Item 2 of Schedule 6**.

TSMIT means the Temporary Skilled Migration Income Threshold, specified in an instrument made under the Migration Regulations.

TSMIT/CSIT Fortnightly Rate means the (annual salary x 12) divided by 313.

TSMIT/CSIT Hourly Rate means the TSMIT/CSIT Weekly Rate divided by 38.

TSMIT/CSIT Weekly Rate means the (annual salary x 6) divided by 313.

Workforce means the total number of Australian workers and temporary visa holders engaged by the Approved Work Sponsor (including as contractors).

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 workplace health and safety legislation regulating the employment by the Sponsor of an Overseas Worker.

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

Year means the period of 12 months commencing on the day this Agreement commences, or a period of 12 months commencing on an anniversary of that day.

2. Interpretation

In this Agreement, unless the context indicates a contrary intention:

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

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

(documents) a reference to this Agreement or another document includes any document which varies, supplements, replaces, assigns or novates this Agreement or that other document.

(gender) words importing one gender include all other genders.

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

(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.

(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.

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

(**party**) a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns.

(**parts**) a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation.

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

(**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.

(**replacement bodies**) a reference to a body (including an institute, association or any government, local government, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public authority or other person who exercises a relevant authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions.

(**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.

(**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**) the singular includes the plural and vice-versa.

(**time and date**) a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Australian Capital Territory, Australia, even if the obligation is performed elsewhere.

(**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. Agreement period

3.1 This Agreement commences from the Effective Date as specified in **Item 4 of Schedule 1**.

3.2 Unless terminated earlier in accordance with clause 16 of this Agreement, the period of this Agreement will be the time specified in **Item 4 of Schedule 1**.

4. Pre-contractual representations

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

5. Acknowledgements

5.1 The parties acknowledge and agree that:

- (a) the Commonwealth may, in its absolute discretion, by notice in writing, at any time:
 - (i) amend or update the Occupations, maximum numbers, and Concessions for the purposes of this Agreement; or
 - (ii) amend, update or replace any other content in the Schedules of this Agreement;

- (b) nothing in this Agreement fetters or detracts from the discretions, functions or powers of the Commonwealth under Law.

Nomination of an Overseas Worker

6. Nomination requirements

- 6.1 The Sponsor may only nominate an Overseas Worker for:
 - (a) visas outlined in **Schedule 2**;
 - (b) Occupations outlined in **Schedule 2**;
 - (c) up to the Nomination Ceiling specified in **Schedule 2**; and
 - (d) an Occupation to be performed in a location listed in **Schedule 2**.
- 6.2 Occupations If the Sponsor wishes to increase the Nomination Ceilings in any year during the period of this Agreement as set out in **Schedule 2** to this Agreement, they must provide the Department with the information detailed in **Schedule 7**. A departmental decision-maker will then assess whether the Department will agree to proposed variations to the existing agreement.
- 6.3 The Sponsor acknowledges and agrees that there is no guarantee that additional Nominations and increases in the Nomination Ceilings will be agreed to and that the Commonwealth reserves the right to make the final decision as to the Nomination Ceiling for each year of the Agreement.
- 6.4 Before they Nominate a Nominee under this Agreement, the Sponsor must take all reasonable steps to ensure that:
 - (a) the Sponsor recruits suitably skilled Australians who are available; and
 - (b) the Overseas Worker will be able to meet any requirements outlined at **Schedule 4**.
- 6.5 The Sponsor will aim to ensure that:
 - (a) in any one Year period Overseas Workers do not comprise more than a third of their Workforce;
 - (b) their reliance on Overseas Workers decreases during the life of this Agreement; and
 - (c) their reliance on temporary visas decreases where existing temporary visa holders have successfully transitioned to permanent residence under this Agreement.
- 6.6 In addition to SID, SESR or ENS Nomination requirements outlined in the Migration Regulations, the Sponsor must demonstrate, through written evidence, when the Sponsor Nominates a Nominee that the Standard Skilled visa program requirements as outlined in the Migration Regulations in relation to the TSMIT or CSIT, Earnings and/or working hours, unless varied in **Schedule 2** of this agreement, are met.
- 6.7 The Sponsor must comply with any additional requirements for Nomination that are stipulated by the Assistant Minister in **Schedule 3**.

7. Visa requirements

- 7.1 The Sponsor acknowledges that as part of the visa application process, the Nominee will need to meet the criteria for grant of a visa as outlined in the Migration Regulations.
- 7.2 This may include:
 - (a) requirements that the Nominee has the sufficient skills, experience and English proficiency to perform the Nominated occupation, and has demonstrated this where requested by the Department; and

(b) if applying for the SESR or ENS visa, any age requirements.

7.3 In most cases, these requirements mirror Standard Skilled visa program requirements.

7.4 Where variations to regulatory or policy requirements apply for visa applicants who are being sponsored under this Agreement, because the Assistant Minister has agreed to certain Concessions, these are specified in **Schedule 4**.

8. Visa period

SID visa

8.1 The Sponsor acknowledges and agrees that when Nominating an Overseas Worker for a SID visa, the Sponsor will select a proposed employment period of up to a maximum of four (4) years. If approved, the SID visa for the Nominee may be granted for the requested period.

SESR visa

8.2 The SESR visa will be granted for a period of five (5) years if all legislative requirements are met.

ENS visa

8.3 A permanent visa will be granted if all legislative requirements are met.

9. Sponsorship obligations

9.1 The Sponsor must satisfy:

- (a) its sponsorship obligations in the Migration Regulations, including where varied (if at all), as outlined in **Schedule 5**;
- (b) any additional obligations imposed in accordance with subsection 140H(3) of the Migration Act specified in **Schedule 6**.

9.2 The Sponsor must comply with Workplace Law, the Migration Legislation and any other immigration laws regulating employment of the Sponsor's sponsored Overseas Worker.

10. Reporting

10.1 The Sponsor must provide a report to the Department within 30 days following a request by the Department. This report must include the items outlined at **Schedule 7** to this Agreement.

11. Review

11.1 This Agreement will be reviewed after three (3) years and/or on an annual basis where additional Nominations increasing the Nomination Ceilings are sought by the Sponsor.

12. Audits of this Agreement

12.1 The Assistant Minister may, from time to time, audit the Sponsor's performance of its obligations under this Agreement and the Sponsor will cooperate with the Assistant Minister for the purpose of such audits.

12.2 Without limiting the generality of the preceding clause, the Sponsor will:

- (a) liaise with and provide information and assistance to the Assistant Minister as reasonably required by the Assistant Minister for the purposes of such audits;

- (b) comply with the Assistant Minister's reasonable requests or requirements for the purposes of such audits.
- 12.3 Unless specified otherwise in the Migration Legislation, the 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.
- 12.4 Clause 12 survives the termination or expiration of this Agreement.

Miscellaneous Provisions

13. Notices

- 13.1 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.
- 13.2 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**.
- 13.3 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 13.1.
- 13.4 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 providing that the sender does not receive an email delivery failure notification in respect of the email.

14. Variation and entire agreement

- 14.1 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.
- 14.2 Unless otherwise specified in this Deed, a provision of this Agreement can only be varied by a written document executed by or on behalf of all parties.

15. Suspension

- 15.1 The Assistant Minister may, in his/her absolute discretion, suspend this Agreement, in whole or in part, including in situations where Adverse Information regarding the Sponsor has been received, is being investigated and is not considered reasonable to disregard.
- 15.2 The Sponsor and other third parties are not entitled to any compensation or payments as a result of the Assistant Minister suspending this Agreement under clause 15.1.
- 15.3 Where the Assistant Minister suspends this Agreement in accordance with clause 15.1 the Assistant Minister will notify the Sponsor in writing.

- 15.4 For the avoidance of doubt, where the Assistant Minister notifies that this Agreement has been suspended in accordance with clause s 15.1 and 15.3, the suspension shall take effect at the time the notice is taken to be received by the Sponsor, in accordance with clause 13.
- 15.5 Where the Assistant Minister suspends this Agreement in accordance with clause 15.1, the Assistant Minister may, in determining the order for considering and disposing of Nomination applications and visa applications, give the lowest priority to applications made under this Agreement.
- 15.6 After a period of suspension, the Assistant Minister may, at his/her absolute discretion, choose to resume this Agreement by notifying the Sponsor in writing.
- 15.7 Where the Assistant Minister chooses to resume this Agreement in accordance with clause 15.6 and notifies the Sponsor, the Agreement will resume at the time the notice is taken to be received, in accordance with clause 13.
- 15.8 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**.

16. Termination

- 16.1 The Commonwealth may, in its absolute discretion, terminate this Agreement at any time including for reasons of public interest where:
- (a) there is a change in policy or a change in government which results in a change in policy settings; or
 - (b) Adverse Information has been received by the Department regarding the Sponsor and it is not considered reasonable to disregard.
- 16.2 The Sponsor will not be entitled to any compensation or payments as a result of the Assistant Minister terminating this Agreement under clause 16.1.
- 16.3 Otherwise, if the Commonwealth contends that the Sponsor is in default under this Agreement, the Commonwealth may, without prejudice to any right of action or remedy which has accrued or which may accrue (including the Commonwealth's entitlement to terminate in accordance with clause 16.1):
- (a) suspend this Agreement in whole or in part; and
 - (b) serve notice on the Sponsor, advising that this Agreement is suspended and requiring the Sponsor to rectify to the satisfaction of the Commonwealth, those aspects of the 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.
- 16.4 If as an Approved Sponsor, the Sponsor is in breach of a sponsorship obligations under the Migration Legislation, the Sponsor will be taken to be in default under this Agreement as if the statutory obligation was a contractual obligation of the Sponsor.
- 16.5 For the avoidance of doubt, a breach of the Sponsor's warranty given in clause 4.1 with respect to pre-contractual information, will entitle the Commonwealth to suspend this Agreement and serve a notice under clause 15.3 and/or to take any other contractual redress in accordance with this Agreement.
- 16.6 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 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.

16.7 For the avoidance of doubt if this Agreement is terminated for any reason, or for no reason:

- (a) the Sponsor will no longer be an Approved Sponsor and their approval as a Sponsor for the purposes of this Agreement will be automatically terminated; and
- (b) visas granted pursuant to this Agreement will be subject to the operation of the Migration Legislation.

16.8 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.

17. Adverse Information

17.1 The Sponsor is required to disclose to the Department Adverse Information about the Sponsor or any persons associated with the Sponsor.

17.2 The Sponsor is required to disclose such Adverse Information to the Department, as soon as practicable, after it becomes aware of such information.

17.3 Unless otherwise agreed, the Sponsor must respond to any notices in the timeframe requested in the relevant notice (including any requests for information included in the notices) issued by the Department in relation to Adverse Information that the Department has become aware of, or Adverse Information that the Department reasonably believes or suspects to exist and should be disclosed.

17.4 "Associated with" has the same meaning as in regulation 1.13B of the Migration Regulations 1994.

18. Sanctions

18.1 Instead of terminating this Agreement:

- (a) the Commonwealth may, in its discretion, prevent or 'bar' the Sponsor from making further Nominations under this Agreement for a specified period, or
- (b) the Assistant Minister may, in his or her absolute discretion, give the lowest processing priority to Nomination applications and visa applications made under this Agreement.

18.2 The Commonwealth may, in its discretion, instead of terminating this Agreement or in addition to terminating this Agreement, take action against the Sponsor for a breach of contract to recover damages and/or for injunctive relief.

18.3 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 or issue an infringement notice under the Migration Legislation for failing to satisfy a sponsorship obligation.

19. Relationship between the parties

19.1 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.

- 19.2 A party cannot in any way or for any purpose:
- (a) bind another party; or
 - (b) contract in the name of another party.
- 19.3 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.
- 19.4 If the 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 performance under this Agreement.

20. Assurances, counterparts and assignment

- 20.1 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.
- 20.2 This Agreement may be executed in any number of counterparts.
- 20.3 A party cannot assign or otherwise transfer its rights under this Agreement without the prior written consent of the other party.

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 28 days from notification of the dispute to reach a resolution or to agree to refer the dispute to mediation in accordance with, and subject to, The Institute of Arbitrators and Mediators Australia Mediation Rules or some other form of alternative dispute resolution procedure agreed to in writing by the Parties; and
 - (d) in the event that:
 - (i) the Parties have attended mediation, or some other form of alternative dispute resolution procedure; and
 - (ii) no written settlement agreement is executed within 15 Business Days (or such extended time as the Parties may agree in writing before the expiration of the 15 Business days) of the conclusion of the mediation or some other form of alternative dispute resolution procedurethen either Party may commence legal proceedings or terminate this Agreement.
- 21.2 The Parties acknowledge that the Administrative Appeals Tribunal may have jurisdiction to review decisions in relation to nomination applications and visa applications. This Agreement does not abrogate any rights of a merits review by the Administrative Appeals Tribunal.

22. Confidential information and information sharing

- 22.1 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.
- 22.2 The Sponsor consents to information concerning it which is relevant to the operation of this Agreement being shared by the Assistant Minister with:

- (a) State or Territory government agencies in the State or Territory in which the 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, including the Department of Education, Skills and Employment.
- 22.3 The 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*;
 - (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.
- 22.4 The Sponsor acknowledges and agrees that the Department will publish information on its website regarding this Agreement, with more sensitive business information contained in labour agreement requests and agreements, as specified at **Item 5 of Schedule 1** to remain confidential.
- 22.5 The Sponsor must comply with any reasonable request by the Commonwealth for information to enable the Commonwealth to meet its obligations in this Agreement.
- 22.6 Clause 20.3 survives the termination or expiration of this Agreement.

23. Fettering and publishing

- 23.1 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.
- 23.2 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.
- 23.3 The Commonwealth may grant or refuse to grant consent, in its absolute discretion, to any application by the Sponsor for consent to a change in control of the Sponsor that may be inimical to the Sponsor's performance under this Agreement, and the Commonwealth may attach such conditions on a consent as the Commonwealth sees fit.

24. Legal expenses

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

25. Survival after termination

- 25.1 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 any sponsorship obligations as an Approved Sponsor.

26. Governing law and jurisdiction

- 26.1 The laws applicable in the Australian Capital Territory govern this Agreement.
- 26.2 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.

27. Indemnity

- 27.1 The Sponsor agrees to indemnify the Commonwealth from and against any:
- (a) cost or liability incurred by the Commonwealth; or
 - (b) loss or expense incurred by the Commonwealth 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 Commonwealth,
- arising from:
- (c) any act or omission by the Sponsor or its Personnel in connection with this Agreement; or
 - (d) any breach of its obligations as an Approved Sponsor 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.
- 27.2 The Sponsor's liability to indemnify the Commonwealth under clause 27.1 will be reduced proportionately to the extent that any breach of this Agreement by the Commonwealth or any act or omission involving fault on the part of the Commonwealth contributed to the relevant cost, liability, loss, damage, or expense.
- 27.3 The right of the Commonwealth to be indemnified under clause 27.1 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Assistant Minister is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage, or expense.
- 27.4 In clause 27.1, "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.
- 27.5 Clause 27.1 will survive six (6) years from the expiration or termination of this Agreement.

28. Severability, Waiver

- 28.1 If any provision of this Agreement is held to be unlawful, invalid, unenforceable or in conflict with any Law, it is to be severed so that the validity and enforceability of the remaining provisions are not affected.
- 28.2 A right or remedy created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delays by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

29. Conflict of Interest

- 29.1 Each party warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement no conflict of interest exists or is likely to arise under this Agreement.
- 29.2 If, during the period of this Agreement, a party becomes aware of a conflict of interest or a risk of conflict of interest arising, each party undertakes to notify the other party immediately in writing of that conflict or risk.

Schedule 1

Particulars

Item 1

Commonwealth Particulars

Name: Department of Home Affairs

Address: 6 Chan Street, BELCONNEN ACT 2617

Email Address: labour.agreement.section@homeaffairs.gov.au

Contact Officer: Director, Labour Agreement Section

Item 2

The Sponsor's Particulars

Name:

ACN:

ABN:

Business Structure:

Business Address:

Postal Address:

Telephone Number:

Email Address:

Contact Officer:

Item 3

The Sponsor's Business

Industry Segment: Horticulture

Item 4

Commencement and period

Effective Date: The date signed by the Commonwealth being the last party to sign the Agreement

Cease Date: Five (5) years from the Effective Date

Item 5

Commercial-in-Confidence Information

The company specific information (i.e. non-template text) contained in the Schedules to this Agreement.

All information provided to request and secure access to this Agreement.

Item 6

Regional categorisation

Category 1, 2 or 3

Schedule 2 Ceilings and concessions relating to nomination criteria covered by this Agreement

Item 1 Occupations, Nomination Ceiling and Location

The table below outlines the Occupations that can be utilised under this Agreement for the visa programs specified. It also specifies the Nomination Ceilings per Year for these Occupations, and where the Nominated positions should be based (i.e. location of work).

SESR Nomination Ceiling

Occupation	Code	Nomination Ceilings					Location of Work
		Year 1	Year 2	Year 3	Year 4	Year 5	
		0	0	0	0	0	X Category 1, 2 or 3

Note: The SESR visa is not available for ANZSCO Skill Level 5 Occupations

SID Nomination Ceiling

Occupation	Code	Nomination Ceilings					Location of Work
		Year 1	Year 2	Year 3	Year 4	Year 5	
		0	0	0	0	0	X Category 1, 2 or 3

ENS Nomination Ceiling

Occupation	Code	Nomination Ceilings					Location of Work
		Year 1	Year 2	Year 3	Year 4	Year 5	
		0	0	0	0	0	X Category 1, 2 or 3

Note:

- The Assistant Minister may vary the above Nomination Ceiling and Occupations at any time, with Nomination Ceiling subject to annual review.
- If the Sponsor wishes to increase the Nomination Ceiling numbers specified above, they must seek a variation to this Agreement as outlined at clause 6.2 to this Agreement.

The table below is the list of approved Occupations available under the Horticulture Industry Labour Agreement and is provided for reference only

Approved Occupation	ANZSCO Code or nearest equivalent	ANZSCO Skill Level/Equivalent
Agriculture Technician	321212	3
Agronomist	234112	1
Biosecurity Officer	311399	2
Cold Storage Manager	149999	3

Entomologist	234518	1
Facility Plant Manager	149913	2
Facility Supervisor	070499	2
Fitter and Welder	323213	3
Fork Lift Driver	721311	4
Horticulture Farm Manager	070499	1
Horticulture Grower	070499	1
Horticulture Research & Development Officer	132511	1
Horticulture Section Manager	070499	5
Irrigation Designer/Manager	234111	1
Irrigationist	841999	5
Irrigationist Assistant	841999	5
Machinery Manager	149913 or 149999	4
Machinery Supervisor	149999	4
Maintenance Electrician	341111	3
Mechanical Engineer	233512	1
Mechanic	321211	3
Mobile Plant Operator	721111	4
Nurseryperson	362411	3
Nursery Supervisor	362411	3
Production Horticulturist	070499	3
Production Horticulture Supervisor	070499	4
Protected Cropping Grower	070499	1
Quality Assurance Manager	139914	1
Section Supervisor	070499	4
Senior Nurseryperson	362411	3
Truck Driver	733111	4

Item 2 Caveats not applicable

None of the matters specified in an instrument made under subregulations 2.72(9) or 2.72C(11), of the Migration Regulations, for the purpose of determining whether an occupation applies to a Nominee, (called ‘caveats’ in Departmental policy instructions) applies to any occupation specified in this Agreement.

Item 3 Concessions regarding salary requirements

Standard Skilled visa program requirements are varied to require the Earnings of the Nominee and the

equivalent Australian worker to only be equal to or greater than 90% of the TSMIT/CSIT.

‘Annual Market Salary Rate’ has the same meaning as in the Migration Regulations.

‘Reduced TSMIT/CSIT’ means 90% of TSMIT/CSIT.

‘Earnings’ has the same meaning as in the Migration Regulations, except that:

- (a) it also includes monetary and non-monetary benefits where:
 - (i) The benefits support the living costs of the Overseas Worker; and
 - (ii) The Overseas Worker would have incurred that cost had it not been provided by the approved sponsor; and
 - (iii) The benefits are quantifiable; and
 - (iv) The benefits are consistent with terms and conditions provided to existing Australians employed in a similar position; and
 - (v) The benefits are guaranteed in the employment contract; and
 - (vi) The benefits exclude contingent payments such as overtime (other than guaranteed overtime), bonuses and commissions.

Schedule 3 Additional requirements for Nomination

Item 1 Occupations not in ANZSCO, with no close ANZSCO equivalent Occupation

The parties agree to the inclusion of the following Occupations, not listed in ANZSCO, in this Agreement. For the purposes of Nomination application and assessment, the tasks and relevant 6-digit codes for these Occupations are outlined in **Table 1** below:

Table 1: Duties/tasks of Nominated Occupation where the Occupation is not in ANZSCO, with no close equivalent ANZSCO Occupation

Approved Occupation Title	Occupation Code	Tasks of occupation under labour agreement will generally include:
		<i>None Approved</i>
Facility Supervisor	070499	<p>Ensure correct handling of product to meet customers' requirements including grading, packing, cool chain, hygiene and dispatch</p> <ul style="list-style-type: none"> • Assess incoming product regarding quality and determine grading resources • Monitor quality of product through various stages in production shed, washing, 1st, 2nd and final grading • Rectify any issues due to mechanical damage/grading quality • Liaise with Harvest Supervisor/Maintenance Manager/Dispatch Manager • Ensure all Quality Assurance (QA) records are correct, allowing for complete traceability • Manage correct cool chain when handling and dispatch of product • Ensure all personnel are trained and performing as per standard procedure • Ensure all waste products are handled as per standard procedure • Ensure all dispatches are as per standard procedure.
Horticulture Farm Manager	070499	<p>The position involves overseeing and managing the cultivation, growing and maintenance of vegetables, fruits, berries, nuts, or other crops. The Production Horticulture Manager is involved in the management of all of the associated production processes. Relevant tasks include, but are not limited to:</p> <ul style="list-style-type: none"> • Determining, implementing and monitoring production strategies, policies and plans • Planning details of production activities in terms of output quality and quantity, cost, time available and labour requirements • Controlling the operation of production plant and quality procedures through planning of maintenance, designation of operating hours and supply of parts and tools • Monitoring production output and costs, and adjusting processes and resources to minimise costs • Informing other Managers about production matters • Overseeing the acquisition and installation of new plant and

		<p>equipment</p> <ul style="list-style-type: none"> • Directing research into production methods, and recommending and implementing initiatives • Controlling the preparation of production records and reports • Coordinating the implementation of occupational health and safety requirements <p>Directing staff activities and monitoring their performance.</p>
Horticulture Grower	070499	<ul style="list-style-type: none"> • Planning and coordinating the production and marketing of crops, such as fruit and nuts, vegetables, turf and flowers, from soil preparation to harvest taking into account environmental and market factors • Selecting and planting seeds, seedlings and bulbs, and grafting new varieties to root stocks • Maintaining crop production by cultivating, de-budding and pruning, and maintaining optimal growing conditions • Organising and conducting farming operations, such as collecting, storing, grading and packaging produce, and organising the sale, purchase and dispatch of produce • Directing and overseeing general farming activities such as fertilising and pest and weed control • Maintaining farm buildings, fences, equipment and water supply systems • Maintaining and evaluating records of farming activities, monitoring market activity, and planning crop preparation and production to meet contract requirements and market demand • Managing business capital including budgeting, taxation, debt and loan management • May select, train and supervise staff and contractors • Develop climate risk management strategies • Manage work health and safety processes.
Horticulture Section Manage	070499	<ul style="list-style-type: none"> • Ensure that all specification for seeding and planting are satisfied • Assess quality of work and take corrective actions where applicable • Ensure that seed stock/levels/usage are managed as per company procedures • Liaise with Farm Operation Manager/Agronomist where required • Ensure that all seeding equipment is maintain as per procedures • Monitor germination to ensure seeds are of acceptable quality • Ensure all records are maintained • Ensure all crops are labelled correctly.
Production Horticulturist	070499	<ul style="list-style-type: none"> • Ensure that all land preparations are done as per established procedures. • Train/monitor operators where required to ensure tasks are done as per standard procedures • Prepare working programs daily/weekly/monthly to facilitate implementation of respective tasks • Assess quality of work and take corrective actions where applicable

		<ul style="list-style-type: none"> • Ensure that all material inputs are adequate for respective operations • Ensure the upkeep of all tractors and implements • Liaise with Farm Operation Manager/Agronomist/Maintenance Manager where required • Operate various tractors and implements • Identify and report unusual disease or plant pest signs • Operate pressurised irrigation systems • Prepare and apply chemicals to control pest, weeds and diseases • Coordinate horticultural crop harvesting • Fumigate soil • Manage, install drainage systems • Monitor and manage nursery plants • Operate spreading and seeding equipment.
Production Horticulture Supervisor	070499	<ul style="list-style-type: none"> • Ensure scheduled crops for intended harvest have passed the withholding period • Ensure that all specialised harvest equipment is maintained • Ensure correct harvest to suit conditions of crop, soil moisture and variety to minimize any mechanical damage • Liaise with Farm Operation Manager/Shed Production Manager/Maintenance Supervisor • Ensure quality of harvest throughout harvest period to minimize damage. • Identify and report unusual disease or plant pest signs • Transport and store chemicals • Prepare and apply chemicals to control pest, weeds and diseases • Implement a post-harvest program • Establish horticultural crops • Carry out emergency disease or plant pest control procedures at infected premises • Operate chemical application machinery and equipment • Coordinate work site activities • Perform shed nursery activities • Regulate crops.
Protected Cropping Grower	070499	<ul style="list-style-type: none"> • Planning and coordinating the production and marketing of crops, such as grain, cotton, sugar cane, fruit and nuts, vegetables, turf and flowers, from soil preparation to harvest taking into account environmental and market factors • Selecting and planting seeds, seedlings and bulbs, and grafting new varieties to root stocks • Maintaining crop production by cultivating, de-budding and pruning, and maintaining optimal growing conditions • Organising and conducting farming operations, such as collecting, storing, grading and packaging produce, and organising the sale, purchase and dispatch of produce • Directing and overseeing general farming activities such as fertilising and pest and weed control

		<ul style="list-style-type: none"> • Maintaining farm buildings, fences, equipment and water supply systems • Maintaining and evaluating records of farming activities, monitoring market activity, and planning crop preparation and production to meet contract requirements and market demand • Managing business capital including budgeting, taxation, debt and loan management • May select, train and supervise staff and contractors • Establish and monitor hydroponic crops • Plan a growing-on program • Plan a propagation program • Develop a horticultural production plan • Identify risk and apply risk management processes • Monitor the implementation of quality and food safety programs.
Section Supervisor	070499	<p>Ensure that crop treatments are carried out as per established procedures and operators are trained to discharge their respective duties</p> <ul style="list-style-type: none"> • Liaise with Agronomist/Agricultural Technician/Farm Operation Manager regarding crop treatments • Liaise with maintenance division regarding maintenance of plant and equipment • Ensure all methods of crop treatments are done as per standard procedures. Pre-plant, fertiliser application, broadcasting of fertilizer and boom spraying of chemicals • Ensure the weather conditions are suitable to perform the required task to achieve the best efficacy • Liaise with Agronomist regarding scheduling of all crop water requirements • Monitor operations in garden growing to ensure work quality • Manage stock of fertilisers and chemicals.

Item 2 Occupations not in ANZSCO, but where a close equivalent ANZSCO Occupation exists

The parties agree to the inclusion of the following Occupations, not listed in ANZSCO but where a close ANZSCO equivalent Occupation exists, in this Agreement. For the purposes of Nomination application and assessment, the tasks and relevant 6-digit codes for these Occupations are outlined in **Table 2** below:

Table 2: Duties/tasks of Nominated Occupation where the Occupation is not in ANZSCO, but a close equivalent ANZSCO Occupation exists

Approved Occupation Title	Closest ANZSCO equivalent	ANZSCO	Tasks of occupation under labour agreement will generally include:
			<i>None Approved</i>
Agriculture Technician	Diesel Motor Mechanic	321212	The work involves undertaking repairs and maintenance to a wide range of agricultural vehicles and equipment

Approved Occupation Title	Closest ANZSCO equivalent	ANZSCO	Tasks of occupation under labour agreement will generally include:
			<p>including tractors, trucks, headers and associated agricultural equipment.</p> <ul style="list-style-type: none"> • Diagnosing faults in diesel engines, transmissions and mechanical parts • Dismantling and repairing engines, transmissions and mechanical parts • Performing maintenance services on vehicles and agricultural equipment • Testing and diagnosing vehicles and equipment for operational efficiency • Undertaking repairs on farm • Ordering spare parts for vehicles and equipment.
Biosecurity Officer	Primary Products Inspector nec	311399	<ul style="list-style-type: none"> • Inspecting animals, plants and agricultural produce to identify product quality issues, and providing advice to producers • Auditing and monitoring quality procedures at farms and food handling and processing facilities to ensure compliance with required standards • Testing samples of produce for quality, size and purity • Ensuring that required standards of hygiene are observed at storage, processing and packing facilities and in transport vehicles • Advising primary producers on economic aspects of disease eradication and informing producers and the general public of the health implications of diseases and impurities • Advising on the identification of pests and diseases and on regulations pertaining to grading, packing and loading of products • Patrolling and investigating waterways for unlawful fishing activities and the removal of protected marine life • May initiate or assist in legal action to enforce regulations • Inspecting import and export documentation • Understanding of biosecurity protocols.
Cold Storage Manager	Hospitality, Retail and Service Managers nec	149999	<ul style="list-style-type: none"> • Product Picking in chiller and freezer environment • Repetitive Manual Handling • Stacking products in cold stores • Experience within the food manufacturing industry is preferred • Sound knowledge in WHS & GMP procedures

Approved Occupation Title	Closest ANZSCO equivalent	ANZSCO	Tasks of occupation under labour agreement will generally include:
			<ul style="list-style-type: none"> • Ability to withstand working in a cold room environment ranging from 3 degrees and up • Picking fresh food stock from production line • Working in a cold storage environment • Accurately packing stock • Managing a team.
Entomologist	Zoologist	234518	<ul style="list-style-type: none"> • Designing and conducting experiments, making observations and measurements, researching information, analysing data, preparing or supervising the preparation of laboratory reports and scientific papers, presenting findings at scientific meetings and conferences, and supervising the work of staff • Studying the forms and structures of bodily organs and tissues by systematic observation, dissection and microscopic examination • Investigating the chemical structure and function of living cells and their isolated components, organs and tissues in humans, animals, plants, and micro-organisms • Examining micro-organisms, such as bacteria, fungi, yeast and their enzymes, and using the knowledge gained to create and develop new, and improve existing, products, materials and processes • Investigating the effects of environmental factors, such as rainfall, temperature, sunlight, soil, topography and disease, on plant growth • Planning and undertaking experiments to study, measure and understand marine animals and plants • Studying the growth and characteristics of micro-organisms, such as bacteria, algae and fungi, and the effects they have on plants, animals and humans to develop medical, veterinary, industrial, environmental and other practical applications • Investigating the interrelationships between animals in their natural surroundings, in captivity and in laboratories.
Facility Plant Manager	Facilities Manager	149913	<p>Organises, controls and coordinates the strategic and operational management of horticulture facilities to ensure the proper and efficient operation of all physical aspects of a facility, to create and sustain safe and productive environments for occupants.</p> <ul style="list-style-type: none"> • Manage the shed floor on a day to day basis • Ensure all cool rooms are operating correctly

Approved Occupation Title	Closest ANZSCO equivalent	ANZSCO	Tasks of occupation under labour agreement will generally include:
			<ul style="list-style-type: none"> • Ensure all produce is packed to specifications, efficiently, without compromising on quality • Ensure that the logistics supervisor has the product in a timely fashion and to a quality standard to ensure all product can be delivered in full and on time. • Lead a team of staff who manage the packing shed floor efficiently • Maintain a high standard of work practices at all times • Liaise with the post-harvest operations manager to predetermine daily and weekly objectives • Assist the post-harvest operations manager in supervising the staff engaged in quality control, residue limit monitoring, and protocol requirements for all markets, and especially export markets • Assist in liaising with our grower services teams and farm managers to ensure the smooth delivery of fresh produce for packing • Ensure that the protocol and MRL requirements advised by Technical Services and customer requirements set by marketing are implemented in the packing and logistics process, especially traceability, labelling and other documentation • Supervise the quality control of the produce being packed to ensure it meets the requirements of the packing instruction • Assist to oversee the procurement of temporary labour, consumables, freight and other services required to take the produce from the farms through the supply chain to our customers • Operate the traceability management systems and processes provided by management to ensure the shed floor is being run at cost effectively as possible without compromising on the quality output that we provide to our customer base, and suggest improvements to the system • Assist in the development of plans for the refurbishment, maintenance and continuous improvement of the assets • Assist in the management of relationships (personal and contractual) with external service providers, growers, and other stakeholders • Provide input into project cost-analysis and budget preparation • Follow Occupation Health & Safety Policies/Procedures and help ensure all packing shed

Approved Occupation Title	Closest ANZSCO equivalent	ANZSCO	Tasks of occupation under labour agreement will generally include:
			<p>staff comply with occupational health and safety, and quality assurance requirements</p> <ul style="list-style-type: none"> • Assist in the completion of all quality system documentation.
Horticulture Research & Development Officer	Research and Development Manager	132511	<ul style="list-style-type: none"> • Determining, implementing and monitoring research and development strategies, policies and plans • Developing and implementing research projects, priorities and targets to support commercial and policy developments • Leading major research projects and coordinating activities of other research workers • Assessing the benefits and monitoring the costs and effectiveness of research and development activities • Interpreting results of research projects and recommending associated product and service development innovations • Providing advice on research and development options available to the organisation • Monitoring leading-edge developments in relevant disciplines and assessing implications for the organisation • May publish results of significant research projects.
Irrigation Designer/Manager	Agricultural Consultant	234111	<p>An Irrigation manager provides professional and technical support to the horticulture and agriculture industry sectors in developing, designing and managing irrigation systems. This role can be as an internal business manager or by external consultancy.</p> <ul style="list-style-type: none"> • Determine soil types and growth characteristics of crops • Interpret aerial photographs and prepare maps showing soil and vegetation patterns • Determine water quality and availability • Select appropriate irrigation technologies paying regard to site and crop requirements and effective water management • In conjunction with Agribusiness professionals, develop an irrigation and drainage management plan • Design irrigation systems and monitoring programs • Establish an irrigation related environmental protection program • Establish and undertake monitoring of the irrigation program and recommend system improvements • Provide specialist advice to clients including plans and reports

Approved Occupation Title	Closest ANZSCO equivalent	ANZSCO	Tasks of occupation under labour agreement will generally include:
			<ul style="list-style-type: none"> • Prepare estimates, quotes and tenders • Manage complex irrigation projects • Set up laboratory or field equipment for testing • Negotiate and monitor contracts.
Irrigationist	Farm, Forestry & Garden Worker nec	841999	<ul style="list-style-type: none"> • Determine hydraulic parameters for an irrigation system • Implement an irrigation-related program • Schedule irrigations • Select and manage pumping systems for irrigation • Interpret and apply irrigation designs • Supervise irrigation system installations • Supervise irrigation maintenance.
Irrigationist Assistant	Farm, Forestry & Garden Worker nec	841999	<p>Providing support to the Irrigationist on the following:</p> <ul style="list-style-type: none"> • Determine hydraulic parameters for an irrigation system • Implement and irrigation-related program • Schedule irrigations • Select and manage pumping systems for irrigation • Interpret and apply irrigation designs • Supervise irrigation system installations • Supervise irrigation maintenance.
Maintenance Electrician	Electrician (General)	341111	<ul style="list-style-type: none"> • Assist with maintenance and continuous improvement of the equipment • Ensure equipment is operating at high efficiency during peak season, and manage breakdowns • Perform preventative maintenance on equipment in the off-season • Install and apply continuous improvement initiatives.
Mechanic	Motor Mechanic (General)	321211	<ul style="list-style-type: none"> • Detecting and diagnosing mechanical and electrical faults in engines and parts • Dismantling and removing engine assemblies, transmissions, steering mechanisms and other components, and checking parts • Repairing and replacing worn and defective parts and reassembling mechanical components, and referring to service manuals as needed • Performing scheduled maintenance services, such as oil changes, lubrications and engine tune-ups, to achieve smoother running of vehicles and ensure compliance with pollution regulations • Reassembling engines and parts after being repaired

Approved Occupation Title	Closest ANZSCO equivalent	ANZSCO	Tasks of occupation under labour agreement will generally include:
			<ul style="list-style-type: none"> • Testing and adjusting mechanical parts after being repaired for proper performance • Diagnosing and testing parts with the assistance of computers • May inspect vehicles and issue roadworthiness certificates or detail work required to achieve roadworthiness • May respond to vehicle breakdown.
Machinery Manager	149913 – Facilities Manager or 149999 - Hospitality, Retail and Service Managers nec	149913 or 149999	<ul style="list-style-type: none"> • Effectively run packaging lines on a day to day basis, under the direction of the packaging shed management team. • Manage the packing line via an effective and proactive supervisory presence to achieve maximum efficiency • Liaise with the quality control officer on a day to day basis to ensure the correct quality standards are met • Set and control the operation of the MAF operating system to obtain accurate performance which meet specifications and packing instructions • Have full knowledge of all the protocols that must be met for domestic and export fruit, and check the packing instructions, labelling (cartons, crates, and pallets) and traceability systems match the requirements for those markets • Control fruit inputs with the forklift driver • Liaise with the designated chemical supervisor to ensure that effective and timely monitoring and management of all line functions are carried out in a timely manner • Perform pack house staff training as requested by management • Assist in the management of all packing lines as required by shed management • Have a full understanding of the traceability system • Ensure the fruit label applicators are functioning to their full potential and general maintenance when required • Follow Occupation Health & Safety policies and procedures and help ensure all packing shed staff complies with occupational health and safety, and quality assurance requirements • Report repairs and maintenance requirements promptly to the maintenance supervisor

Approved Occupation Title	Closest ANZSCO equivalent	ANZSCO	Tasks of occupation under labour agreement will generally include:
			<ul style="list-style-type: none"> Other duties as agreed in consultation with management.
Machinery Supervisor	Hospitality, Retail and Service Managers nec	149999	<ul style="list-style-type: none"> Perform machinery maintenance Operate machinery and equipment Supervises and coordinates employees who operate machines Prepares work schedules, assigns work and oversees the work Ensures machine operation is done correctly Monitors and evaluates production records and reports.

Item 3 Labour market testing arrangements

SID and SESR visas

Category 1 location

Evidence of labour market testing must accompany nominations lodged in accordance with this Agreement. The evidence provided should be equivalent to that required under Standard Employer Sponsored visa program requirements.

Category 2 and 3 locations

Evidence of labour market testing must accompany SID or SESR Nominations lodged in accordance with this Agreement. These attempts must have been conducted in the last 12 months prior to lodging the nomination application.

Location of Business (Designated Regional Area)	LMT requirements
Category 2	The Sponsor must be able to demonstrate at least two (2) separate attempts to test the Australian labour market for the nominated occupation with national reach.
Category 3	<p>The Sponsor must be able to demonstrate at least two (2) separate attempts to test the Australian labour market for the nominated occupation.</p> <ul style="list-style-type: none"> One (1) advertisement must have national reach (this may include recruitment platforms like Indeed, Seek or Workforce Australia (previously known as jobactive) - but may also include: a relevant industry website; national print media; or national radio).

- One (1) advertisement may be local or regional (this may include a business' own website or local/regional print media or radio).

Item 4 Time period required to hold a temporary skilled visa

ENS visa

Skill Level 1, 2 and 3 Occupations

For skill level 1, 2 and 3 Occupations, as referred to in **Table 3** below, the Sponsor may only Nominate an Overseas Worker for a ENS visa who has been employed:

- directly for them as a Primary Subclass 457 or 482 visa holder in the Nominated Occupation, for at least three (3) years before the Nomination is made; or
- if they held a Subclass 457 visa before 18 March 2018, as a primary Subclass 457 or 482 visa holder in the Nominated Occupation, for at least three (3) years before the Nomination is made.

Skill Level 4 and 5 Occupations

For skill level 4 and 5 Occupations, as referred to in **Table 3** below, the Sponsor may only Nominate an Overseas Worker for a ENS visa who has been employed:

- directly for them as a Primary Subclass 457 or 482 visa holder in the Nominated Occupation, for at least four (4) years before the Nomination is made; or
- if they held a Subclass 457 visa before 18 March 2018, as a primary Subclass 457 or 482 visa holder in the Nominated Occupation, for at least four (4) years before the Nomination is made.

Table 3: Skill Level for approved Occupations

Approved Occupation	ANZSCO Code or nearest equivalent	ANZSCO Skill Level/equivalent
Agriculture Technician	321212	3
Agronomist	234112	1
Biosecurity Officer	311399	2
Cold Storage Manager	149999	3
Entomologist	234518	1
Facility Plant Manager	149913	2
Facility Supervisor	070499	2
Fitter and Welder	323213	3
Fork Lift Driver	721311	4
Horticulture Farm Manager	070499	1
Horticulture Grower	070499	1
Horticulture Research & Development Officer	132511	1

Horticulture Section Manager	070499	5
Irrigationist	841999	5
Irrigationist Assistant	841999	5
Irrigation Designer/Manager	234111	1
Machinery Manager	149913 or 149999	4
Machinery Supervisor	149999	4
Mechanical Engineer	233512	1
Maintenance Electrician	341111	3
Mechanic	321211	3
Mobile Plant Operator	721111	4
Nurseryperson	362411	3
Nursery Supervisor	362411	3
Production Horticulture Supervisor	070499	4
Production Horticulturist	070499	3
Protected Cropping Grower	070499	1
Quality Assurance Manager	139914	1
Senior Nurseryperson	362411	3
Truck Driver	733111	4
Section Supervisor	070499	4

Schedule 4 Concessions relating to visa criteria covered by this Agreement

Item 1 Skills, Qualifications, Employment background and Work experience

The skills, qualifications and employment background considered necessary to perform the Nominated Occupations specified in this Agreement, and Concessions to work experience requirements, for the SID, SESR and ENS visa are specified in **Items 1a** and **1b** below.

Item 1a Occupations on the eligible lists of skilled Occupations

For the Occupations in **Table 4** below, which are on the eligible lists of skilled Occupations for the SID, SESR or ENS visas:

- any application for a SID, SESR or ENS visa connected with these Occupations must satisfy the skill and qualification requirements under the standard SID, SESR and ENS visa programs;
- there are no Concessions to the work experience requirements for any application for a SID or ENS visa connected with these Occupations;
- any application for a SESR visa connected with these Occupations must demonstrate at least two (2) years relevant work experience.

Skills Assessment

Where a positive skills assessment is required for a Nominated Occupation under the standard SID, SESR or ENS visa programs, evidence of this will need to be provided in accordance with Standard Skilled visa program requirements.

Table 4: Approved Occupations on the eligible list of skilled Occupations

Approved Occupation	ANZSCO Code or nearest equivalent
<i>None approved</i>	
Agriculture Technician	321212
Agronomist	234112
Biosecurity Officer	311399
Entomologist	234518
Facility Plant Manager	149913
Fitter and Welder	323213
Horticulture Research & Development Officer	132511
Irrigation Designer/Manager	234111
Maintenance Electrician	341111
Mechanic	321211
Mechanical Engineer	233512
Nurseryperson	362411

Nursery Supervisor	362411
Quality Assurance Manager	139914
Senior Nurseryperson	362411

Item 1b Occupations not on the eligible lists of skilled Occupations

Skills, qualifications and work experience requirements, for Occupations not on the eligible lists of skilled Occupations for the SID, SESR or ENS visas, are specified below and will apply to any application for a SID, SESR or ENS visa in connection with this Agreement.

The visa applicant must:

1. Undergo a skills assessment by VETASSESS;
2. Meet the skill level as defined in **Table 5** below; and
3. Demonstrate at least two (2) years relevant work experience.

Skills Assessment

Qualifications are to be assessed by VETASSESS, as being at least equivalent to the relevant Australian Qualifications Framework (AQF) qualification listed in **Table 5** below, in order to assist the Assistant Minister's decision as to whether the visa applicant has the necessary qualifications for the position.

Experience must be certified by VETASSESS as being genuine and relevant to the Nominated Occupation/position, in order to assist the Assistant Minister's decision as to whether the visa applicant has the necessary employment background for the position.

Note: VETASSESS may consider previous work experience undertaken by a visa applicant in addition to, or in lieu of, relevant qualifications. Where previous work experience is counted toward meeting any requirements specified in **Table 5**, the same periods of work experience can also be counted toward the two (2) years relevant work experience requirement.

Table 5: Qualifications and experience for Occupations not on the eligible list of skilled occupation

Approved Occupation	ANZSCO Code	Skills and Qualifications
		<i>None approved</i>
Cold Storage Manager	149999	At least a relevant AQF Diploma or equivalent OR Three (3) years employment experience as a cold storage manager
Facility Supervisor	070499	At least relevant AQF Cert III or Cert IV qualifications or equivalent OR Three (3) years employment experience as a Facility Supervisor with relevant formal training OR Five (5) years employment experience as a Facility Supervisor with no formal training

Fork Lift Driver	721311	<p>At least relevant AQF Cert II or equivalent AND at least one and half (1.5) years (20+hpw) relevant post qualifications experience</p> <p>OR</p> <p>At least relevant AQF Cert III or equivalent AND at least one (1) year (20+hpw) relevant post qualifications experience</p> <p>OR</p> <p>at least two (2) years (38+hpw) relevant experience</p>
Horticulture Farm Manager	070499	<p>At least relevant AQF Cert III or Cert IV qualifications or equivalent</p> <p>OR</p> <p>Three (3) years employment experience as a Horticulture Farm Manager with relevant formal training</p> <p>OR</p> <p>Five (5) years employment experience as a Horticulture Farm Manager with no formal training</p>
Horticulture Grower	070499	<p>At least relevant AQF Cert III or Cert IV qualifications or equivalent</p> <p>OR</p> <p>Three (3) years employment experience as a Horticulture Grower with relevant formal training</p> <p>OR</p> <p>Five (5) years employment experience as a Horticulture Grower with no formal training</p>
Horticulture Section Manager	070499	<p>At least relevant AQF Cert IV or equivalent AND one (1) year (20+hpw) relevant post qualifications experience</p>
Irrigationist	841999	<p>At least a relevant AQF Cert II or equivalent AND at least one (1) year (20+hpw) relevant post qualifications experience</p> <p>OR</p> <p>Have at least two (2) years (38+hpw) relevant experience</p>
Irrigationist Assistant	841999	<p>At least a relevant AQF Cert II or equivalent AND at least one (1) year (20+hpw) relevant post qualifications experience</p> <p>OR</p> <p>Have at least two (2) years (38+hpw) relevant experience</p>
Machinery Manager	149913 or 149999	<p>At least a relevant AQF Diploma or equivalent</p> <p>OR</p> <p>Three (3) years employment experience as a machinery manager</p>
Machinery Supervisor	149999	<p>At least a relevant AQF Diploma or equivalent</p> <p>OR</p> <p>Three (3) years employment experience as a machinery supervisor</p>
Mobile Plant Operator	721111	<p>At least a relevant AQF Cert II or equivalent AND at least one (1) year (20+hpw) Relevant experience</p> <p>OR</p> <p>At least two (2) years (10+hpw) relevant experience AND at least two</p>

		(2) years post qualifications experience
Production Horticulturist	070499	At least relevant AQF Cert III or Cert IV qualifications or equivalent OR Three (3) years employment experience as a production horticulturalist with relevant formal training OR Five (5) years employment experience as a production horticulturalist with no formal training
Production Horticulture Supervisor	070499	At least relevant AQF Cert III or Cert IV qualifications or equivalent OR Three (3) years employment experience as a production horticulturalist with relevant formal training OR Five (5) years employment experience as a production horticulturalist with no formal training
Protected Cropping Grower	070499	At least relevant AQF Cert III or Cert IV qualifications or equivalent OR Three (3) years employment experience as a Protected Cropping Grower with relevant formal training OR Five (5) years employment experience as a Protected Cropping Grower with no formal training
Section Supervisor	070499	At least relevant AQF Cert IV or equivalent AND one (1) year (20+hpw) relevant post qualifications experience
Truck Driver	733111	At least a relevant AQF Cert II or equivalent AND at least one (1) year (20+hpw) relevant experience OR at least two (2) years (10+hpw) relevant experience AND at least two (2) years post qualifications experience

Item 2 English Language

SID visa

For a SID visa application in connection with this Agreement, an Overseas Worker has sufficient English language skills that are suitable to perform the Nominated Occupation if:

- they demonstrate an IELTS overall test score of at least 5.0 (or equivalent) with a minimum component score of score of 4.0 (or equivalent);

OR

ENS and SESR visas

For a ENS or SESR visa application in connection with this Agreement, an Overseas Worker has sufficient English language skills that are suitable to perform the Nominated Occupation if:

- they demonstrate an IELTS overall test score of at least 5.0 (or equivalent) with a minimum component score of score of 4.5 (or equivalent).

Item 3 Age

The Sponsor may only Nominate an Overseas Worker for a SESR or ENS visa who is under 50 years of age at the time of visa application lodgement.

Schedule 5 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 obligations in regulations 2.79 and 2.79A of the Migration Regulations apply and are varied to include the following **additional** obligations.

The Approved Sponsor must:

- (a) employ the Primary Sponsored Person on a full time basis;
- (b) only deduct payments from the Primary Sponsored Person's salary with the consent and written permission of the Primary Sponsored Person;
- (c) pay the Primary Sponsored Person a Top-Up if an equivalent Australian is paid more than the Primary Sponsored Person in any twelve month period for equivalent work:
 - (i) this amount should equal the difference between the amount paid to the equivalent Australian and the amount paid to the Primary Sponsored Person for the twelve month period; and
 - (ii) this amount is to be paid to the Primary Sponsored Person in the month following the 12 month period.

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 Assistant 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 varied to include the following **additional** obligations.

1. The Approved Sponsor cannot recover costs including but not limited to;
 - (a) the Approved Sponsor's recruitment costs; and
 - (a) English language testing and/or training for Primary Sponsored Person.
2. Where the Approved Sponsor provides accommodation and/or board:
 - (a) it must not be compulsory for the Primary Sponsored Person to accept the accommodation and/or board;
 - (b) it can only be charged at a fair and reasonable market rate; and
 - (c) charges for accommodation and/or board must satisfy the Commonwealth as being fair and reasonable and meet workplace laws.

Schedule 6 Additional sponsorship obligations specific to this Agreement

The additional obligations listed below are applicable and commence when the Primary Sponsored Person commences his or her employment or engagement with the Approved Work Sponsor, and ends on the earlier of the day on which the Primary Sponsored Person:

- (a) is granted a further substantive visa that is:
 - (i) not a SID or SESR visa; and
 - (ii) in effect; and
- (b) ceases employment or engagement with the Approved Work Sponsor.

Item 1 Obligations not to recruit where money owed

The Approved Work Sponsor must not Nominate Primary Sponsored Persons or Secondary Sponsored Persons who it has assessed, reasonably suspects or ought to reasonably suspect of owing money as a result of being recruited.

Item 2 Obligations to pay salary directly

An Approved Work Sponsor must pay the Nominee directly, including taxes and superannuation. These payments must be made from the organisation's Australian bank account.

Item 3 Obligations regarding salary deductions

An Approved Work Sponsor may not deduct an amount from an amount payable to a Primary Sponsored Person unless the deduction is authorised:

- (a) in writing by the employee and is principally for the employee's benefit; or
- (b) by the employee in accordance with an enterprise agreement; or
- (c) by or under a modern award or a Fair Work Act order; or
- (d) by or under a law of the Commonwealth, a State or a Territory, or an order of a court.

Item 4 Labour hire providers and employment arrangements

The Approved Work Sponsor must ensure that where they utilised a labour hire or recruitment company to source an Overseas Worker that such providers are licensed in accordance with any relevant state or territory legislation.

The Approved Work Sponsor must also ensure that each Overseas Worker works directly for them once employed.

Schedule 7 Information to be provided to the Department

The Sponsor must provide the following documentation to the Department when requested or when seeking additional Nomination Ceilings:

- (a) updated Workforce Plans;
- (b) evidence of labour market testing that has been undertaken during the last 12 months;
- (c) evidence that the Sponsor has a strong record of, or a demonstrated commitment to, employing local labour and non-discriminatory employment practices;
- (d) evidence of salary arrangements for, and amounts paid to, Primary Sponsored Persons;
- (e) details of any breaches of immigration or other Commonwealth or State laws;
- (f) the dates and numbers and Occupations of any and all Australian workers who have been retrenched or made redundant in the past 12 month period; and
- (g) any additional information requested by the Assistant Minister.

Signing Page

SIGNED, SEALED AND DELIVERED for
and on behalf of the **COMMONWEALTH
OF AUSTRALIA** under the written authority
of the **Assistant Minister for Immigration**
by its duly authorised departmental official in
the presence of

Signature of delegate

Signature of witness

Name and position of delegate

Name of witness

Date *dd/mm/yyyy*

Date *dd/mm/yyyy*

SIGNED SEALED and DELIVERED for and)
on behalf of [Sponsor's Name] Pty Ltd)

ACN: XXX XXX XXX)

ABN: XX XXX XXX XXX)

in accordance with the requirements of section 127
of the *Corporations Act 2001* (Cth):

Signature of director

Signature of director/company secretary

Name of director

Name of director/company secretary

Date *dd/mm/yyyy*

Date *dd/mm/yyyy*