



Australian Government
Department of Home Affairs

LABOUR AGREEMENT – MINISTER OF RELIGION

Under the *Migration Act 1958*

Between

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

and

XXXXXXXXXXXXXXXXXXXXXX

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Labour Agreement

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

Parties

The Commonwealth of Australia (the “Commonwealth”) as represented by the Assistant Minister for Immigration (the “Assistant 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 “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 regulation 1.03 of the *Migration Regulations 1994* (the Migration Regulations).
- B. This Agreement will be administered by the “Department” on behalf of the Commonwealth and the Assistant Minister.
- C. This Agreement sets out the terms, conditions and legal requirements by which the Sponsor may recruit, employ or engage the services of Overseas Workers who are intended to be employed or engaged by the Sponsor as holders of Subclass 482 (Skills in Demand) (SID) or Subclass 186 (Employer Nomination Scheme) (ENS) visa in its business industry 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 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 meaning given by regulation 1.13A of the Migration Regulations.

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 and has the meaning specified by the Minister in a legislative instrument made under the Migration Regulations.

Approved Sponsor has the same meaning as defined in subsection 5(1) of 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.

Caveat means a condition that excludes an occupation from use under a visa program in certain circumstances. A summary of these caveats is provided on the Department’s website. For the specific

wording of each caveat, see the legislative instrument for the relevant visa program as outlined on the Department's website.

Change of Control includes, in relation to a corporation, a change in Control of:

- (a) the composition of the board of directors of the corporation;
- (b) more than half the voting rights attaching to shares in the corporation; or
- (c) more than half the issued shares of the corporation (excluding any part that carries no right to participate beyond a specified amount in the distribution of either profit or capital).

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 Core Skilled Income Threshold (CSIT) required for the nomination and grant of a Skills In Demand (SID) or ENS visa.

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 Agreement or any other confidentiality obligations; or
- (e) that has been independently developed or acquired without reference to the other Party's Confidential Information.

Control includes control or a power or ability to control that is direct or indirect or is or can be, exercised as a result of, by means of, in breach of, or by revocation of, trusts, relevant agreements and practices, or any of them, whether or not they are enforceable.

Corporations Act means the *Corporations Act 2001* (Cth).

CSIT means the Core Skills Income Threshold specified in an instrument, as amended from time to time, made under paragraph 2.72(15)(d) of 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.

Department means the Department of Home Affairs or any department, agency or authority of the Commonwealth which is from time to time responsible for administering this Agreement.

Earnings has the same meaning as in the Migration Regulations.

Employment period means the stay period that a Sponsor requests for the Nominee in a SID 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 a Subclass 186 (Employer Nomination Scheme) visa.

IELTS means the International English Language Testing System.

Migration Act means the *Migration Act 1958* (Cth), as amended from time to time.

Migration Legislation means the Migration Act and/or the Migration Regulations and/or any instruments made under the Migration Act or the Migration Regulations as amended from time to time.

Migration Regulations means the *Migration Regulations 1994* (Cth) made under the Migration Act, as amended from time to time.

Minister means a reference to a "Minister" appointed to administer the Migration Legislation and

includes where relevant, delegates of the Minister appointed in accordance with the Migration Legislation.

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

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

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 or ENS visa, whether onshore or offshore.

Personnel means a party's officers, employees, agents, contractors or professional advisers engaged in, or in relation to, the performance or management of this Agreement.

Period of this Agreement means the time period specified in **Item 4 of Schedule 1**.

Postal Address means the address to which mail is delivered.

Religious Institution means a body that meets the requirements of regulation 1.03 of the Migration Regulations.

SID visa means Subclass 482 (Skills in Demand) visa.

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 SID visa program, or under the ENS visa program if applying for permanent residence.

State or Territory means a State or Territory of Australia.

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

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

Workplace Law means the *Fair Work Act 2009* (Cth), and relevant laws of the Commonwealth and of the relevant State or Territory regulating the employment by the Approved Sponsor of an Overseas Worker.

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) 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

(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.

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.

(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.

(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. 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 this Agreement, the period of this Agreement will be the time specified in **Item 4 of Schedule 1**, being from the Effective Date until the Cease Date.

4. Representations

4.1 As at the Effective Date, the Sponsor warrants that information supplied to the Department 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 nothing in this Agreement fetters or detracts from the Commonwealth's or a Minister's discretions, functions or powers under the Migration Legislation, Workplace Law or other relevant Commonwealth laws.

Nomination of Overseas Workers

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 If the Sponsor wishes to increase the Nomination Ceilings in any year during the Period of this Agreement, they must submit a written request to the Department with the information detailed in **Schedule 7** of this Agreement. A departmental decision-maker will then assess whether the Department will agree to proposed variations to the Agreement.

6.3 The Sponsor acknowledges that there is no guarantee that Nominations above the Nomination Ceiling or requests to increase the Nomination Ceilings will be agreed to and that the Department 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) it recruits suitably skilled Australians who are available; and
 - (b) the Overseas Worker will be able to meet any revised visa requirements outlined at **Schedule 4**.
- 6.5 The Sponsor will take all reasonable steps to ensure that:
- (a) in any one year period Overseas Workers do not comprise more than a third of their Workforce; and
 - (b) their reliance on Overseas Workers decreases during the life of this Agreement.
- 6.6 In addition to SID or ENS nomination requirements outlined in the Migration Regulations, the Sponsor must demonstrate, through written evidence, when lodging a SID or ENS nomination that the Standard skilled visa requirements as outlined in the Migration Regulations in relation to the CSIT, Earnings and/or working hours, are met unless varied in **Schedule 2**.
- 6.7 The Sponsor must comply with any additional requirements for nomination in the schedules to this Agreement.

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 demonstrated this where requested by the Department; and
 - (b) if applying for permanent residence, 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 Minister has agreed to certain Concessions, these are specified in **Schedule 4**.

8. Visa period

SID visa

- 8.1 The Sponsor acknowledges 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 will be granted for the requested period, unless a different or more restricted period is specified in **Schedule 4**.

ENS visa

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

9. Sponsorship obligations

- 9.1 In relation to any SID visa holders, as an Approved Sponsor, the Sponsor must satisfy:
- (a) its sponsorship obligations in the Migration Regulations, including where varied (if at all), as outlined in **Schedule 5**, which the Approved Sponsor is required to comply with by virtue of subsection 140H(2) of the Migration Act; and
 - (b) any additional obligations specified in **Schedule 6**, which the Approved Sponsor is required to comply with by virtue of subsection 140H(3) of the Migration Act.
- 9.2 The Sponsor must comply with Workplace Law, the Migration Legislation and any other applicable

immigration laws regulating employment of the Sponsor's sponsored Overseas Workers.

9.3 Clause 9 survives the termination or expiration of this Agreement.

10. Reporting

10.1 The Sponsor must provide a report in writing 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 may be reviewed after three (3) years from the Effective Date and may be reviewed earlier at the Department's discretion at any time if additional Nominations increasing the Nomination Ceilings have been requested by the Sponsor.

12. Audits of this Agreement

12.1 The Department may, from time to time, audit the Sponsor's performance of its obligations under this Agreement and the Sponsor will cooperate with the Department 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 Department as reasonably required by the Department for the purposes of such audits;
- (b) comply with the Department'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 This clause 12 does not detract from the statutory powers of the Auditor-General or Information Officer (including their delegates).

12.5 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 have been 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 have been 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.

14. Variation and entire agreement

- 14.1 Subject to clause 5.1, 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 Agreement, a provision of this Agreement can only be varied by a written document executed by or on behalf of both parties.

15. Suspension

- 15.1 The Department may, in its absolute discretion, suspend this Agreement, in whole or in part, including in situations where Adverse Information regarding the Sponsor has been received and is being investigated.
- 15.2 The Sponsor and other third parties are not entitled to any compensation or payments as a result of the Department suspending this Agreement under clause 15.1.
- 15.3 Where the Department suspends this Agreement in accordance with clause 15.1 the Department will notify the Sponsor in writing.
- 15.4 For the avoidance of doubt, where the Department notifies the Sponsor that this Agreement has been suspended in accordance with clause 15.3, the suspension shall take effect at the time the notice is taken to have been received by the Sponsor, in accordance with clause 13.
- 15.5 Where the Department suspends this Agreement in accordance with clause 15.1, the Department will continue to process Nomination applications and visa applications in accordance with the Migration Legislation but 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 During any period of suspension, the Department may, at its absolute discretion, choose to resume this Agreement by notifying the Sponsor in writing.
- 15.7 Where the Department 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 have been 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.

16. Termination

- 16.1 The Department 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.
- 16.2 The Sponsor will not be entitled to any compensation or payments as a result of the Department terminating this Agreement under clause 16.1.
- 16.3 Otherwise, if the Sponsor has failed to satisfy any of its obligations under this Agreement, the Department may, without prejudice to any right of action or remedy which has accrued or which may accrue (including the Department's entitlement to terminate in accordance with clause 16.1 or the Department's right to suspend the Agreement in accordance with clause 15.1):
 - (a) if the Department considers that the failure is capable of remedy, by notice require that the failure be remedied within the time specified in the notice and, if not remedied within that time, may terminate the Agreement immediately by giving a second notice; and
 - (b) if the Department considers that the failure is not capable of remedy, 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 have failed to satisfy its obligations under this Agreement as if the statutory obligation was a contractual obligation of the Sponsor under this Agreement and the Department may terminate this Agreement in accordance with clause 16.3(b).
- 16.5 For the avoidance of doubt, a breach of the Sponsor's warranty given in clause 4.1, will entitle the Department to terminate this Agreement in accordance with clause 16.3(b).
- 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 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.
- 16.7 For the avoidance of doubt if this Agreement is terminated for any reason, or for no reason, the Approved Sponsor's approval as a sponsor for the purposes of this Agreement will thereby be automatically terminated.
- 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. Sanctions

- 17.1 Instead of terminating this Agreement and without limiting any action that may be taken under law:
- (a) the Department may, in its absolute discretion, bar the Sponsor from making further nominations under this Agreement for a specified period; and/or
 - (b) the Department may, in its absolute discretion, give the lowest processing priority to nomination applications and visa applications made under this Agreement.
- 17.2 The Department may, in its discretion, instead of terminating this Agreement or in addition to terminating this Agreement, take action against the Sponsor for any breach to recover damages and/or any breach to recover damages and/or injunctive relief.
- 17.3 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 and infringements notice under the Migration Legislation for failing to satisfy a sponsorship obligation.

18. Adverse Information

- 18.1 The Sponsor is required to disclose to the Department Adverse Information about the Sponsor or any persons associated with the Sponsor.
- 18.2 The Sponsor is required to disclose such Adverse Information to the Department, as soon as practicable, after it becomes aware of such information.
- 18.3 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.
- 18.4 For the purposes of this clause 18, "associated with" has the same meaning as in regulation 1.13B of the Migration Regulations.

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 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 The Sponsor cannot assign or otherwise transfer its rights under this Agreement without the prior written consent of the Department.

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) failing settlement within 28 days from notification of the dispute (or such other period as agreed by the parties in writing) the parties may agree to refer the dispute to mediation or some other form of alternative dispute resolution procedure agreed; 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 a further 15 Business Days (or such other period as agreed by the parties in writing) of the conclusion of the mediation or some other form of alternative dispute resolution procedure

then either Party may commence legal proceedings.

21.2 Each party will bear its own cost of complying with this clause 21, and the parties will bear equally the cost of any third person engaged under clause 21.1(c).

21.3 This clause 21 does not apply to:

- (a) action by the Department under or purportedly under clause 15 or 17 or
- (b) action by either party under or purportedly under clause 16
- (c) legal proceedings by either party seeking urgent interlocutory relief.

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 is authorised to provide Confidential Information of the Department to those Personnel who require access for the purposes of this Agreement. The Sponsor agrees, on request by the Department at any time, to arrange for the Personnel to give a written undertaking in a form acceptable to the Department relating to the use and non-disclosure of Confidential Information of the Department.

- 22.3 The Sponsor agrees to secure all Confidential Information of the Department against loss and unauthorised access, use, modification or disclosure.
- 22.4 Subject to clauses 22.5 to 22.7, the Department will not, without the prior written authorisation of the Approved Sponsor, disclose any Confidential Information of the Approved Sponsor to a third party.
- 22.5 The obligations of the Department under this clause 22 will not be taken to have been breached to the extent that Confidential Information:
- (a) is disclosed by the Department to its Personnel solely in order to comply with its obligations, or to exercise its rights, under this Agreement;
 - (b) is disclosed by the Department to its internal management Personnel, solely to enable effective management or auditing of Agreement-related material;
 - (c) is disclosed by the Department to the responsible Minister;
 - (d) is disclosed by the Department in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
 - (e) is shared by the Department within the Department's organisation, or with another Commonwealth, State or Territory agency, where this serves the Commonwealth's legitimate interests or where those agencies have legitimate interests in receiving such information;
 - (f) is authorised or required by law to be disclosed; or
 - (g) is in the public domain otherwise than due to a breach of this clause 22.
- 22.6 Where the Department discloses Confidential Information to another person pursuant to clauses 22.5(a) to 22.5(e), the Department will notify the receiving person that the information is confidential.
- 22.7 In the circumstances referred to in clauses 22.5(a), 22.5(b) and 22.5(e), the Department agrees not to provide the information unless the receiving person agrees to keep the information confidential.
- 22.8 The obligations under this clause 22 in relation to an item of information described in **Item 5 of Schedule 1** continue for the period set out there in respect of that item.
- 22.9 The Sponsor acknowledges and agrees that the Department will publish information on its website regarding this Agreement, but Confidential Information of the Sponsor will not be included.
- 22.10 The Sponsor must comply with any reasonable request by the Department for information to enable the Department to meet its obligations in this Agreement.
- 22.11 Clause 22 survives the termination or expiration of this Agreement.

23. Fettering and publishing

- 23.1 The Department 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 and the Department may attach such conditions on a consent as the Department 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.
- 25.2 The termination or expiry of this Agreement does not affect any other obligations that the Sponsor may have at law, including under the Migration Laws.

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 Department from and against any:
- (a) cost or liability incurred by the Department; or
 - (b) loss or expense incurred by the Department 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 Department,
- arising from:
- (c) any act or omission by the Sponsor or its Personnel in connection with this Agreement; or
 - (d) any breach of its Sponsorship 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 Department under clause 27.1 will be reduced proportionately to the extent that any breach of this Agreement by the Department or any act or omission involving fault on the part of the Department contributed to the relevant cost, liability, loss, damage, or expense.
- 27.3 The right of the Department 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 Department 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, Clause 27 will survive six (6) years from the expiration or termination of this Agreement.

28. Conflict of Interest

- 28.1 In this clause 28, Conflict of Interest means any matter, circumstance, interest, or activity affecting the Sponsor (including its Personnel) which may impair or may appear to impair the ability of the Sponsor to perform its obligations under this Agreement diligently and independently.
- 28.2 The Sponsor 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.
- 28.3 If, during the period of this Agreement a Conflict of Interest arises, or appears likely to arise, the Sponsor agrees:
- (a) to notify the Department immediately;
 - (b) to make full disclosure of all relevant information relating to the Conflict of Interest; and
 - (c) to take any steps the Department reasonably requires to resolve or otherwise deal with the Conflict of Interest.

Schedule 1 Particulars

Item 1 The Commonwealth's 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:
 Telephone Number:
 Email Address:
 Contact Officer:

Item 3 The Sponsor's Business

Industry Segment: Religious Services

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.

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).

SID nomination ceilings

Occupation	Code	Nomination Ceilings					Location of Work
		Year 1	Year 2	Year 3	Year 4	Year 5	
Minister of Religion	272211	0	0	0	0	0	XXX
Religious Assistant	451816	0	0	0	0	0	

ENS nomination ceilings

Occupation	Code	Nomination Ceilings					Location of work
		Year 1	Year 2	Year 3	Year 4	Year 5	
Minister of Religion	272211	0	0	0	0	0	XXX
Religious Assistant	451816	0	0	0	0	0	

Note:

- The Department may vary the above ceiling numbers and Occupations at any time, with ceiling numbers subject to annual review.
- If the Sponsor wishes to increase the ceilings specified above, they must seek a variation to this Agreement as outlined at clause 6.2 to this Agreement.
- The occupation of Minister of Religion (ANZSCO 272211) for the purposes of this agreement is defined to include bishop or equivalent senior minister of another religion that would normally be classified under the occupation of Specialist Managers nec (ANZSCO 139999).
- The tasks expected to be undertaken by a **Minister of Religion** or **Religious Assistant** have also been varied for the purposes of this labour agreement from those listed in the ANZSCO – see **Item 3** below.

Item 2 Concessions regarding salary requirements

Standard skilled visa salary requirements apply, subject to the concession that, non-monetary benefits **can be included to the value of 10 per cent** when:

- calculating the Annual Market Salary Rate (AMSR); and
- assessing whether salary arrangements will meet CSIT requirements.

OR

Reduced CSIT* requirements apply, and non-monetary benefits can be included to the value of 10 percent when calculating the Reduced CSIT.

*‘Reduced CSIT’ means the equivalent of the national minimum wage, as determined by the Fair Work Commission.

OR

Overseas workers nominated under this agreement as a **Minister of Religion (ANZSCO 272211)** are taken to have met salary requirements where a concession has been awarded due to vow of poverty or a vow of service in place.

Item 3 Occupation tasks and responsibilities

Overseas Workers nominated under this Agreement as a **Minister of Religion (ANZSCO 272211)** are expected to have a leadership role in the institution. It is expected that some of the tasks would be higher level managerial tasks, with the Overseas Worker responsible for planning, organising, directing and controlling processes within their religious institution.

Overseas Workers nominated under this Agreement as **Religious Assistant (ANZSCO 451816)** are expected to undertake religious duties/tasks that support the senior leadership of an institution at the specified location where they will be working.

Schedule 3 Additional requirements for nomination

Item 1 Evidence of salary arrangements

The Sponsor must, in addition to the information prescribed in the Migration Regulations, demonstrate through written evidence, at the time of nomination, that the nominee will be engaged full time.

OR

Where a concession has been awarded to an Overseas Worker nominated under this Agreement as a **Minister of Religion (ANZSCO 272211)** due to a vow of poverty or service, the Sponsor must attest that the Overseas Worker will be provided all living needs, including board and lodging, health, education, welfare and any other costs incurred by the minister of religion.

Item 2 Time period required to hold a temporary skilled visa

The Sponsor may only nominate an Overseas Worker for an ENS visa where the Overseas Worker has been employed as a Temporary Skilled (Work) (Subclass 457) or TSS/SID (Subclass 482) visa holder in the nominated occupation, for at least two (2) years.

For immediate ENS – e.g.: Archbishops or equivalent senior minister of another religion

Overseas Workers nominated under this Agreement as a **Minister of Religion (ANZSCO 272211)** who will fill the most senior Minister of religion position, e.g. Archbishop or an equivalent senior position in another religion, are not required to have held a TSS/SID visa for any specified period of time at the time the ENS nomination application is lodged. The Sponsor may therefore, nominate the nominee for an ENS visa from the commencement date of this Agreement.

Schedule 4 Concessions relating to visa criteria covered by this Agreement

Item 1 Qualifications and Experience

Ministers of Religion must:

- (a) (where available and applicable):
 - (i) be 'ordained' or have taken 'profession to religious life' as a minister of religion; and
 - i. have minimum qualifications equivalent to an appropriate Australian Qualification Framework (AQF) bachelor degree; or
 - ii. have undertaken at least five (5) years of relevant structured training or instruction; or
- (b) where (a) cannot be met, have worked in the nominated occupation for at least five (5) years.

For ENS (Direct Entry stream): If employed in the role of a Archbishop or equivalent senior minister of another religion, the nominee must also have been ordained for at least five (5) years and (where available and applicable) have a post-graduate degree or equivalent formal training.

Religious Assistants must have a level of skill commensurate with the following qualifications and experience:

- (a) Possess the qualifications equivalent to a relevant AQF Certificate II or III (ANZSCO Skill Level 4); or
- (b) Have at least two (2) years of relevant structured training or instruction; or
- (c) Have worked in the nominated occupation for at least two (2) years.

Item 2 English Language

SID and ENS visas

Overseas Workers nominated under this Agreement are not required to demonstrate their English language proficiency to be considered to have sufficient English to perform the nominated occupation if they are working in a cloistered or monastic environment.

OR

Overseas Workers nominated for a TSS under this Agreement must at a minimum demonstrate an International English Language Testing System (IELTS) test score of at least 4.0 (or equivalent) in listening and speaking components.

To be eligible for an ENS, the Overseas Worker must at a minimum meet functional English language requirement of IELTS overall score of 4.5 (or equivalent) with a minimum score of 4.0 in all four components.

OR

Overseas Workers nominated under this Agreement can be considered to have sufficient English to perform the nominated occupation if they demonstrate completion of at least five (5) years of full-time study in a secondary education institution or higher education institution, where the instruction was delivered in English.

Item 3 Age

Visa applicant must be no more than 60 years of age at time of lodging an ENS visa application.

Item 4 Permanent Residence Pathway

Option 1: (No Permanent Residency Pathway approved. Note: A) and/or B) can be approved]

No Permanent Residency Pathway is approved under this Agreement.

Option 2: [Permanent Residency Pathway approved. Note: A) and/or B) can be approved]

A permanent residency pathway for Overseas Workers is available through the ENS visa program:

A) [General Permanent Residency Pathway approved for Minister of Religion(s) or Religious Assistant]

The Sponsor may only nominate an Overseas Worker for an ENS visa in the nominated occupation of Minister of Religion or Religious Assistant, who has been employed as a Temporary Skilled (Work) (Subclass 457), TSS or SID (Subclass 482) visa holder in the nominated occupation, for at least two (2) years.

AND/OR

B) [Direct Permanent Residency Pathway approved for senior Minister of Religion(s) position]

An ENS (Direct Entry stream) is approved under this Agreement if an Overseas Worker will fill the most senior Minister of religion position, e.g. Archbishop or an equivalent senior position in another religion.

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 obligation in regulation 2.79 of the Migration Regulations applies and is varied as follows:

- (a) the Approved Sponsor must employ the Primary Sponsored Person on a full time basis;
- (a) the nominee's annual Earnings must be no less than is, or would be provided, to an Australian performing equivalent work in the Approved Sponsor's workplace at the same location; and
- (b) any payments 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. For clarity, the Approved Sponsor must not charge employees for services.

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 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 visa; and
 - (ii) in effect; and
- (b) ceases employment or engagement with the Approved Sponsor.

Item 1 Obligations to pay salary directly

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

Item 2 Obligations regarding salary deductions

An Approved 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) authorised by the employee in accordance with an enterprise agreement; or
- (c) authorised by or under a modern award or a Fair Work Act order; or
- (d) authorised by or under a law of the Commonwealth, a State or a Territory, or an order of a court.

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 salary arrangements for, and amounts paid to, Primary Sponsored Persons;
- (c) details of any breaches of immigration or other Commonwealth or State laws;
- (d) 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
- (e) any additional information requested by the Minister.

Signing Page

Executed as a Deed

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

[Insert Organisation])

ACN: XXXXXXXXXXXX.....)

ABN: XXXXXXXXXXXX.....)

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

Signature

Date *dd/mm/yyyy*

Name and position of signatory

in the presence of:

Name of witness

Signature of witness

Date *dd/mm/yyyy*

OFFICIAL

OFFICIAL