



Australian Government
Department of Home Affairs

LABOUR AGREEMENT – PORK INDUSTRY

Under the *Migration Act 1958*

Between

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

and

XXXXXX 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	15
27.	Indemnity	15
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	20
Schedule 4	Concessions relating to visa criteria covered by this Agreement.....	21
Schedule 5	Variation of sponsorship obligations.....	23
Schedule 6	Additional sponsorship obligations specific to this Agreement.....	24
Schedule 7	Information to be provided to the Department.....	25
Signing Page	26

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 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 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 and the TSMIT/CSIT 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 1958 (Cth)*.

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.

Nomination Ceiling means the number of nominations that an Approved 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 means the Overseas Worker that is the holder of a SID, SESR or ENS visa that was granted under this Agreement.

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 takes 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.

Stand-down means “the employer has the right to deduct payment for any period on which an employee cannot be usefully employed, because of any industrial action (other than industrial action organised or engaged in by the employer), or through any breakdown of machinery if the employer cannot reasonably be held responsible for the breakdown or any stoppage of work for any cause for which the employer cannot reasonably be held responsible, or for any period which an employee cannot be usefully employed because of any industrial action in the meat industry”.

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 Medium-term stream of the SID visa program, the Employer Sponsored stream of the SESR visa program or the TRT stream of the ENS visa program.

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, as amended from time to time, specified in an instrument made under the Migration Regulations.

Workforce means the total number of Australian workers and temporary visa holders engaged by the Approved 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 relating to equal employment opportunity, unlawful discrimination and workplace health and safety legislation regulating the employment by the Sponsor of its 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

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 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 Nominate a Nominee, that the Standard Skilled visa program requirements as outlined in the Migration Regulations in relation to the TSMIT/CSIT, Earnings and/or working hours, unless varied in **Schedule 2**, 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 will 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 clauses 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 Assistant Minister may, in his/her 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 Assistant Minister contends that the Sponsor is in default under this Agreement, the Assistant Minister may, without prejudice to any right of action or remedy which has accrued or which may accrue (including the Assistant Minister'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 Assistant Minister, 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 Assistant Minister 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 under Migration Legislation 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 procedure

then 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 (Cth)*;
 - (d) disclosure of discoverable information that is relevant to a case before a court; and
 - (e) disclosure of information as required under other legislation or Commonwealth policy.
- 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 22.3 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 Assistant Minister from and against any:
- (a) cost or liability incurred by the Assistant Minister; or

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

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 Assistant Minister under clause 27.1 will be reduced proportionately to the extent that any breach of this Agreement by the Assistant Minister or any act or omission involving fault on the part of the Assistant Minister contributed to the relevant cost, liability, loss, damage, or expense.

27.3 The right of the Assistant Minister 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:

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

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, Employer Sponsored Program Management

Item 2

The Approved Sponsor's Particulars

Name:

ACN:

ABN:

Business Structure:

Business Address:

Postal Address:

Telephone Number:

Email Address:

Contact Officer:

Item 3

The Sponsor's Business

Industry Segment: Pork Industry

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 ceilings

Occupation	Code	Nomination Ceilings					Location of work
		Year 1	Year 2	Year 3	Year 4	Year 5	
Senior Stockperson (Piggery)	070499	0	0	0	0	0	X Category 1, 2 or 3

SID nomination ceilings

Occupation	Code	Nomination Ceilings					Location of work
		Year 1	Year 2	Year 3	Year 4	Year 5	
Senior Stockperson (Piggery)	070499	0	0	0	0	0	X Category 1, 2 or 3

ENS nomination ceilings

Occupation	Code	Nomination Ceilings					Location of work
		Year 1	Year 2	Year 3	Year 4	Year 5	
Senior Stockperson (Piggery)	070499	0	0	0	0	0	X Category 1, 2 or 3

Note:

- The Assistant Minister 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.
- There is currently no ANZSCO code for the occupation of 'Senior Stockperson (Piggery)'. For administration purposes only, Sponsors should use code 070499 when nominating this position.

Item 2 Concession to Occupation Tasks

The tasks of a Senior Stockperson (Piggery) (Code: 070499) under this agreement as follows:

- supervise the site and facilities in terms of the required human resources, physical resources, safety requirements, consumables, documentation and measurement devices;
- provide overall maintenance and compliance of the Company Quality Assurance program for the site ensuring that all relevant documentation is kept current;

- supervise data collection and recording so information is accurate to aid stock and inventory control;
- undertake specific tasks assigned by management to ensure that environmental, quality and safety goals are met;
- implement preventable maintenance programs to reduce planned and unplanned down time;
- supervise trial sheds, collect and record data in accordance with trial protocols;
- selection of breeding stock and/or pigs for sale;
- supervision and participation of daily inspection of livestock, such that the animals are appropriately fed, watered, environmental parameters are fulfilled. The Senior Stockperson (Piggery) in this case would work with and supervise a less experienced Stockperson;
- supervision and participation of daily inspection of livestock, ensuring compromised animals are individually assessed, identified, treated and record in accordance with the Company Herd Health Plan and the industries Model Code of Practice;
- euthanise sick or injured stock in a humane manner and in accordance with the Model Code of Practice for Animal Welfare – Pigs 3rd edition;
- conduct post mortem examinations of deceased stock and report findings;
- collect boar semen at an artificial insemination laboratory;
- undertake processing duties within the artificial insemination laboratory;
- supervision and participation in the mating of animals via individually supervised mating or through Artificial Insemination;
- supervision of the birthing process, including the ability to physically conduct unsupervised internal assessments of females during parturition to minimise this incidence of still births;
- participate in company/industry training sessions and workshops as required;
- perform any other duty as required by the Unit Manager.

Item 3 Concessions regarding salary requirements

SID, ENS and SESR visas

Category 1 and 2 locations

Nil concessions

OR

Category 3 locations

Nominees must receive guaranteed earnings at least equal to or greater than 90% of TSMIT/CSIT.

Schedule 3 Additional requirements for nomination

Item 1 Labour market testing requirements

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

Item 3 Time period required to hold a temporary skilled visa

ENS visa

Category 1, 2 and 3 locations

The Sponsor may only nominate an Overseas Worker for an ENS visa who has been employed:

- directly for them as a Primary Subclass 457 or 482 visa holder in the nominated occupation on a full-time basis, 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 on a full-time basis, for at least three (3) years before the nomination is made.

Schedule 4 Concessions relating to visa criteria covered by this Agreement

Item 1 Qualifications and Experience

SID visas

Category 1, 2 and 3 locations

Overseas workers employed under this labour agreement can be considered to have the skills, qualifications and employment background necessary to perform the tasks of the nominated occupation, as required under the Migration Regulations, if they provide evidence and/or a written certification from the Sponsor demonstrating that they have:

Occupation	Occupation Code	Required Qualifications and Experience
Senior Stockperson (Piggery)	070499	Overseas workers must have: (a) at least an AQF certificate III in Agriculture (Pig Production) or equivalent qualifications as assessed by a registered training organisation AND demonstrate at least three (3) years recent and relevant work experience in a medium to large size commercial piggery; OR (b) at least five (5) years recent and relevant work experience; OR (c) AQF certificate III in Agriculture (Pig Production) and at least 18 months relevant work experience in Australia.

SESR visas

Category 2 and 3 locations

SESR visa applicants must meet the skill requirements as outlined above with the exception that:

- They must have a minimum of three (3) years full-time work experience (regardless of whether Australian or offshore work experience) in the nominated occupation specified in this labour agreement.

ENS visas

Category 1, 2 and 3 locations

ENS visa applicants must meet the skill requirements as outlined above with the exception that:

- They must have a minimum of three (3) years full-time work experience (regardless of whether Australian or offshore work experience) in the nominated occupation specified in this labour agreement.

Item 2 English Language

SID, SESR and ENS visas

Category 1, 2 or 3 locations

An Overseas Worker nominated under this Agreement, who is unable to meet Standard skilled visa program requirements, can be considered to have sufficient English to perform the nominated occupation if they demonstrate an IELTS overall test score of at least 5.0, with a score of at least 4.5 in each of the four test components, or equivalent.

Item 3	Age
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ENS and SESR visas

Category 1 location

Standard skilled visa program age requirements apply.

OR

Category 2 and 3 locations

The Sponsor may only nominate an Overseas Worker for a SESR or ENS visa who is under 55 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 obligation in regulation 2.79 of the Migration Regulations applies and is not varied.

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 not varied. For clarity, the Approved Sponsor must not charge employees for services.

Item 10 Obligation not to engage in discriminatory work practices

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

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

Item 1 Obligations not to recruit where money owed

The Approved 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 Information on workplace rights

The Approved Sponsor must ensure that all Primary Sponsored Persons engaged under this Agreement are supplied with workplace rights information within seven (7) days of commencing employment in the Nominated Occupation with the Approved Sponsor.

Item 3 Obligations to pay salary directly

An Approved Sponsor must pay the nominee directly, including taxes and superannuation.

Item 4 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.

Item 5 Obligations regarding charging for fees for services provided

An Approved Sponsor must not charge Overseas Workers fees for services provided, including for their nomination and securing employment.

Item 6 Labour hire providers and employment arrangements

The Approved 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 Sponsor must also ensure that any 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*