



Australian Government

WORK AGREEMENT

Under the *Migration Act 1958*

Between

Commonwealth of Australia

and

XXXXXXXXXX Pty Ltd

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Work Agreement

Effective Date

The date signed by the Commonwealth.

Parties

Commonwealth of Australia represented by the Department of Immigration and Citizenship (DIAC) (**the Commonwealth**).

The Commonwealth's particulars are set out in **Item 1 of Schedule 1**.

The party specified in **Item 2 of Schedule 1 (the Approved Sponsor)**.

The Approved Sponsor's particulars are set out in **Item 3 of Schedule 1**.

Background

- A. This Agreement, as a "work agreement" as defined in the *Migration Act*, will be administered by DIAC on behalf of the Commonwealth.
- B. This Agreement is a labour agreement that authorises the Approved Sponsor to recruit, employ or engage the services of people who are intended to be employed or engaged by the Approved Sponsor as holders of Subclass 457 (Business (Long Stay)) visas.
- C. The Commonwealth's reasons for entering into this Agreement are to support the economic, health or security benefits to Australia through the temporary entry and stay in Australia of sponsored overseas workers.
- D. The Approved Sponsor, whose business undertaking is described in **Item 4 of Schedule 1**, has demonstrated to the Commonwealth that sufficient numbers of Australian workers with the required skills are not readily available for employment in Australia.
- E. The Approved Sponsor is an "approved sponsor" as defined in the *Migration Act* by virtue of entering into this Agreement.

- F. This Agreement sets out the terms and conditions of the Approved Sponsor's authority to recruit, employ or engage the services of persons who are holders of Subclass 457 visas.

Operative part

1 Definitions and interpretation

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

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

Agreement means this work agreement, any schedules, attachments and any document incorporated into this work agreement by reference.

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.

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

Effective Date means:

- (a) the date (if any) specified in **Item 5 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**.

Fax Number means a party's facsimile number set out in **Schedule 1**.

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

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

On-hire means a person's business activities which include activities relating to either or both of:¹

- (a) the recruitment of labour for supply to other unrelated businesses (the person's client organisations); and
- (b) the hiring of labour to other unrelated businesses (again, client organisations).

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

Primary sponsored person takes the same meaning as in the *Migration Regulations*.²

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.

² Primary sponsored persons, as per the *Migration Regulations*, include all holders, or former holders of Subclass 457 visas who were last identified in an approved nomination by the Approved Sponsor.

This means that the terms of this work agreement cover all primary sponsored persons; including those nominated while a previous agreement with the Approved Sponsor was in effect.

Secondary sponsored person take the same meaning as in the *Migration Regulations*.

Workplace law means the *Fair Work Act 2009*, and relevant equal employment opportunity, unlawful discrimination and occupational health and safety legislation regulating the employment by the Approved Sponsor of its sponsored overseas workers.

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

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

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

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

(Minister) a reference to the Commonwealth as a party to this Agreement includes, where appropriate, a reference to the Minister for Immigration and Citizenship and his or her authorised representative performing relevant functions as the Minister under the *Migration Act* or the *Migration Regulations*.

(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.

2 Period

- 2.1 This Agreement commences from the Effective Date.
- 2.2 Unless terminated earlier in accordance with section 9 of this Agreement, the period of this Agreement will be the time specified in **Item 5 of Schedule 1**.
- 2.3 If no such time is specified, the period will be three (3) years.

3 On hire, commercial-in-confidence, pre-contractual representations

- 3.1 If On-hire is prohibited in **Item 6 of Schedule 1**:
 - (a) the Approved Sponsor must not nominate a proposed occupation for an applicant or a proposed applicant, for On-hire;
 - (b) any such nominations will not be approved under this Agreement; and
 - (c) the Approved Sponsor must not utilise the services of a visa holder employed pursuant to a nomination under this Agreement, for On-hire.
- 3.2 To avoid doubt, if On-hire is not specifically allowed in **Item 6 of Schedule 1**, On-hire will be taken to be prohibited.
- 3.3 If a party's information is specified as commercial-in-confidence information in **Item 7 of Schedule 1**, the other party will not disclose the information without the first party's prior written consent, except when disclosure of the information is

required by law, statutory or portfolio duties, or in accordance with clause 8.6 of this Agreement.

- 3.4 The Approved Sponsor warrants that information supplied to the Commonwealth with respect to the Approved Sponsor being a fit and proper person to enter into this Agreement (regardless of whether the information is included in the Annexure to this agreement) and upon which the Commonwealth relied, was true and correct.

4 Nominations

- 4.1 A nomination under this Agreement means a nomination referred to in section 140GB of the *Migration Act*.
- 4.2 The Approved Sponsor may nominate:
 - (a) an applicant, or proposed applicant, for a Subclass 457 visa in relation to:
 - (1) the applicant or proposed applicant's proposed occupation;
 - (2) the program to be undertaken by the applicant or proposed applicant; or
 - (3) the activity to be carried out by the applicant or proposed applicant, or
 - (b) a proposed occupation, provided the applicant or proposed applicant for the Subclass 457 visa who will work in the nominated occupation, has been identified in the nomination.
- 4.3 A new nomination must be made under this Agreement if the applicant or proposed applicant's previous approved nomination was made when the Approved Sponsor was a Standard Business Sponsor.
- 4.4 If a limitation on the type of occupation, program or activity is specified in **Item 8 of Schedule 1**, the Approved Sponsor may only nominate for those occupation, program or activity types.

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- 4.5 If a limitation on the location of business sites is specified in **Item 8 of Schedule 1**, the Approved Sponsor may only nominate for those locations and must employ visa holders only at those sites.
- 4.6 The Approved Sponsor may only employ primary sponsored persons up to the maximum number for particular years of this Agreement specified in **Item 8 of Schedule 1**.
- 4.7 The Approved Sponsor must make nominations in accordance with the approved forms.
- 4.8 The Approved Sponsor must provide, as part of the nomination:
- (a) The information required in the Migration Regulations and any further information specified in **Item 1 of Schedule 2**;
 - (b) The fee specified in the *Migration Regulations*.
- 4.9 The Commonwealth may refund the fee in accordance with the circumstances for such a refund in the *Migration Regulations*.
- 5 Approval of nominations**
- 5.1 DIAC (for the Commonwealth) will approve nominations in accordance with the criteria specified in the Migration Regulations and any requirements specified in **Item 2 of Schedule 2**.
- 5.2 DIAC will notify the Approved Sponsor of a decision whether or not to approve a nomination in accordance with the *Migration Regulations*.
- 5.3 The period of an approval of a nomination will be in accordance with the *Migration Regulations*.
- 6 Sponsorship obligations**
- 6.1 The Approved Sponsor must satisfy its sponsorship obligations in the *Migration Regulations* as varied, if at all, in **Schedule 4**, as follows:
- (a) The obligation to cooperate with inspectors specified in **Item 1 of Schedule 4**.
 - (b) The obligation to ensure equivalent terms and conditions of employment specified in **Item 2 of Schedule 4**.
 - (c) The obligation to pay travel costs to enable sponsored persons to leave Australia specified in **Item 3 of Schedule 4**.
 - (d) The obligation to pay costs incurred by the Commonwealth to locate and remove an unlawful non-citizen specified in **Item 4 of Schedule 4**.
 - (e) The obligation to keep records specified in **Item 5 of Schedule 4**.
 - (f) The obligation to provide records and information to the Commonwealth as specified in **Item 6 of Schedule 4**.
 - (g) The obligation to provide information to the Commonwealth when certain events occur as specified in **Item 7 of Schedule 4**.
 - (h) The obligation to ensure a primary sponsored person does not work in an occupation other than an approved occupation, as specified in **Item 8 of Schedule 4**.
 - (i) The obligation not to recover certain costs from a primary sponsored person or secondary sponsored person specified in **Item 9 of Schedule 4**.
- 6.2 The Approved Sponsor must satisfy the training obligations in **Schedule 5** (if any) regarding Australians.
- 6.3 The Approved Sponsor may carry out the obligations in **Schedule 5** itself or through contracted service providers.
- 6.4 The Approved Sponsor warrants that the training provided will be fit for any purpose express or implied in **Schedule 5**.

6.5 The Approved Sponsor must satisfy its sponsorship obligations in **Schedule 6** (if any), which are additional obligations to the sponsorship obligations in the *Migration Regulations* as varied (if at all) in **Schedule 4**.

6.6 The Approved Sponsor must comply with Workplace law, and immigration laws regulating employment of the Approved Sponsor's sponsored overseas workers.

7 Notices

7.1 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); and
- (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 Address or to the Fax Number of the recipient; and
- (d) may be sent by email to the receiving party's Email Account provided the receiving party effectively acknowledges receipt by return email to the sending party's Email Account.

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

7.3 A party may change its Address, Fax Number or Email Account for the purpose of service by giving notice of that change to the other party in accordance with clause 7.1.

7.4 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 a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile communication was sent in its entirety to the Fax Number of the recipient; and

(c) if the time of dispatch of a facsimile is not on a day, or is after 5.00 pm (local time) on a day, in which business generally is carried on in the place to which the facsimile communication is sent it will be taken to have been received at the commencement of business on the next day in which business is generally carried on in that place;

(d) in the case of an email, when the receiving party effectively acknowledges receipt by return email to the sending party's Email Account.

8 Relationship between the parties, information sharing

8.1 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.

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

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

8.3 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.

8.4 If Approved Sponsor is constituted by more than one legal entity (such as a partnership or an unincorporated

association), each of those legal entities will be jointly and severally liable for the performance of all of the Approved Sponsor's obligations under this Agreement

- 8.5 The Approved Sponsor must comply with any reasonable request by the Commonwealth for information to enable the Commonwealth to meet its obligations under this Agreement.
- 8.6 The Approved Sponsor consents to information concerning it which is relevant to the operation of this Agreement being shared between the Commonwealth and the State/Territory in which the Approved Sponsor conducts business, and between relevant Commonwealth agencies, including the Department of Immigration and Citizenship, the Department of Education, Employment and Workplace Relations, the Office of the Fair Work Ombudsman, Fair Work Australia, the Australian Taxation Office and the Australian Federal Police.

9 Termination

- 9.1 If the Commonwealth contends that the Approved Sponsor is in default under this Agreement, the Commonwealth may, without prejudice to any right of action or remedy which has accrued or which may accrue (including the Commonwealth's entitlement to terminate in accordance with clause 9.4):
- (a) serve reasonable notice on the Approved Sponsor, requiring the Approved Sponsor to rectify to the satisfaction of the Commonwealth, those aspects of the Approved Sponsor's performance which are of concern to the Commonwealth;
 - (b) suspend this Agreement in whole or in part if the Approved Sponsor does not comply with the notice; and
 - (c) terminate this Agreement without prejudice to any right of

action or remedy which has accrued or which may accrue.

- 9.2 If the Approved Sponsor is in breach of a sponsorship obligation in the *Migration Regulations*, the Approved Sponsor will be taken to be in default under this Agreement as if the statutory obligation was a contractual obligation of the Approved Sponsor, provided the Commonwealth elects to serve a notice under clause 9.1 in relation to the breach.
- 9.3 For the avoidance of doubt, a breach of the Approved Sponsor's warranty given in clause 3.4 with respect to pre-contractual information, will entitle the Commonwealth to serve a notice under clause 9.1 and/or to take any other contractual redress in accordance with this Agreement.
- 9.4 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.
- 9.5 For the avoidance of doubt, if this Agreement is terminated for any reason or for no reason:
- (a) the Approved Sponsor's approval as a sponsor for the purposes of this Agreement will thereby be automatically terminated.
- 9.6 In the event this Agreement is terminated early for any reason, or for no reason:
- (a) the Approved Sponsor will continue to pay the employed

visa holders for 28 days, during which time:

- (1) the Approved Sponsor will use its best endeavours to assist the visa holders to find an alternative sponsor in accordance with their wishes; and
 - (2) the Commonwealth will, at its discretion, facilitate such transfers, or
- (b) the Approved Sponsor will assist the visa holders to apply for another type of appropriate substantive visa in accordance with their wishes; and
- (c) this sub-clause will survive the early termination.
- 9.7 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.

10 Dispute resolution

10.1 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 details of the dispute;
- (b) the parties will use their best 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 select some alternative dispute resolution procedure; and
- (d) if there is no resolution or agreement then a party may propose mediation or arbitration, or commence legal proceedings or

terminate this Agreement.

- 10.2 The parties acknowledge that the Migration Review Tribunal and Administrative Appeals Tribunal may have jurisdiction to review certain visa decisions and that the Migration Review Tribunal may have jurisdiction to review nomination decisions under this Agreement. This Agreement does not abrogate any rights of a merits review by the Migration Review Tribunal or the Administrative Appeals Tribunal.

11 Assurances, counterparts and assignment

- 11.1 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.
- 11.2 This Agreement may be executed in any number of counterparts.
- 11.3 A party cannot assign or otherwise transfer its rights under this Agreement without the prior written consent of the other party.

12 Variation and entire agreement

- 12.1 A provision of this Agreement can only be varied by a later written document executed by or on behalf of all parties.
- 12.2 Except as provided in the Annexure, 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.

13 Fettering and publishing

- 13.1 Nothing in this Agreement fetters or detracts from the Commonwealth's discretions, functions or powers under the *Migration Act*, the *Migration Regulations*, Workplace

- law or other relevant Commonwealth laws.
- 13.2 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.
- 14 Legal expenses**
- 14.1 Each party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Agreement.
- 14.2 The Approved Sponsor must pay any stamp duty assessed on or in relation to this Agreement and any instrument or transaction required by or necessary to give effect to this Agreement.
- 15 Invalidity and waiver**
- 15.1 A word or provision must be read down if:
- (a) this Agreement is void, voidable, or unenforceable if it is not read down;
 - (b) this Agreement will not be void, voidable or unenforceable if it is read down; and
 - (c) the provision is capable of being read down.
- 15.2 A word or provision must be severed if:
- (a) despite the operation of clause 15.1, the provision is void, voidable or unenforceable if it is not severed; and
 - (b) this Agreement will be void, voidable or unenforceable if it is not severed.
- 15.3 The remainder of this Agreement has full effect even if clause 15.2 applies.
- 15.4 A right or remedy created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delay 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.
- 16 Survival after termination or expiration**
- 16.1 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 commercial-in-confidence information, and the Approved Sponsor's sponsorship obligations.
- 16.2 For the purposes of specifying the period for when visas granted on the basis of the Agreement remain in effect under the *Migration Regulations*, all visas granted on the basis of this Agreement permit the visa holder to remain in Australia for a period of not more than four years from the date upon which the visa was granted.
- 17 Governing law and jurisdiction**
- 17.1 The laws applicable in the Australian Capital Territory govern this Agreement.
- 17.2 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.
- 18 Sanctions**
- 18.1 Instead of terminating this Agreement, the Commonwealth may, in its discretion, bar the Approved Sponsor, for a specified period, from making further nominations under this Agreement.
- 18.2 The Commonwealth may, in its discretion, instead of terminating this Agreement or in addition to

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- terminating this Agreement, take action against the Approved 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 under the *Migration Act* for failing to satisfy a sponsorship obligation.
- 18.4 The criteria that the Commonwealth may take into account in determining what enforcement action (if any) to take for a breach of contract by the Approved Sponsor are:
- (a) the past and present conduct of the Approved Sponsor in relation to Workplace law, and immigration laws regulating employment of the Approved Sponsor's sponsored overseas workers;
 - (b) the number of occasions on which the Approved Sponsor has failed to satisfy the sponsorship obligation;
 - (c) the nature and severity of the circumstances relating to the failure to satisfy the sponsorship obligation, including the period of time over which the failure has occurred;
 - (d) the period of time over which the Approved Sponsor has been an approved sponsor;
 - (e) whether, and the extent to which, the failure to satisfy the sponsorship obligation has had a direct or indirect impact on another person;
 - (f) whether, and the extent to which, the failure to satisfy the sponsorship obligation was intentional, reckless or inadvertent;
 - (g) whether, and the extent to which, the Approved Sponsor has cooperated with the Commonwealth including whether the Approved Sponsor informed the Commonwealth of the failure;
 - (h) the steps (if any) the Approved Sponsor has taken to rectify the failure to satisfy the sponsorship obligation, including whether the steps were taken at the request of the Commonwealth or otherwise;
 - (i) the processes (if any) the Approved Sponsor has implemented to ensure future compliance with the sponsorship obligation;
 - (j) the number of other sponsorship obligations that the Approved Sponsor has failed to satisfy, and the number of occasions on which the Approved Sponsor has failed to satisfy other sponsorship obligations; and
 - (k) any other relevant factors.
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Schedule 1 Parties, period and other matters

Item 1 The Commonwealth's particulars

Name: Department of Immigration and Citizenship
 Address: 6 Chan Street, BELCONNEN ACT 2617
 Telephone Number:³ 02 6264 1111 Fax Number: 02 6264 1006
 Email Address: on-hire.industry@immi.gov.au
 Contact officer:⁴ The Director, Labour Agreements & 457 Policy Section

Item 2 The Approved Sponsor

Name: XXXXXXXXX Pty Ltd
 ACN: XXXXXX
 ABN: XXXXXXXX
 Business structure:⁵ Australian Proprietary Company, Limited By Shares

Item 3 The Approved Sponsor's particulars

Address:
 Telephone Number:⁶ Fax Number:
 Email Address:
 Contact officer:⁷

Item 4 The Approved Sponsor's business

Industry segment: On-Hire

Item 5 Commencement and period

Effective Date:⁸ The date signed by the Commonwealth
 Cease Date:⁹ Three years from the date signed by the Commonwealth

Item 6 On-hire

Is On-hire allowed?¹⁰ Yes.

³ Include the contact officer's mobile number, if appropriate.

⁴ The contact officer's name and title.

⁵ Describe the Approved Sponsor's business structure (for example: corporation, sole trader, partnership, unincorporated association) use terminology as detailed in ASIC.

⁶ Include the contact officer's mobile number, if appropriate.

⁷ The contact officer's name and title.

⁸ Insert the same date above the "Parties" section of this Agreement.

⁹ Specify a period in years and/or months. If no period is specified, the period will be 3 years.

¹⁰ Specify "Yes" or "No". If nothing is specified, the default response will be "No".

Item 7	Commercial-in-confidence information
Party: ¹¹	The Department of Immigration and Citizenship on behalf of the Commonwealth XXXXXX Pty Ltd The terms of this Agreement All information provided to request and secure access to a Labour Agreement
Item 8	Occupations
Occupation type: ¹²	
Business sites: ¹³	Various
Annual maximum: ¹⁴	
	Year 1 To be negotiated
	Year 2 To be negotiated
	Year 3 To be negotiated

Before the subsequent years of the term of operation commence, the Approved Sponsor may negotiate with the Commonwealth the ceiling for the subsequent year.

The Commonwealth reserves the right to make the final decision as to the ceiling for each year of the Agreement.

¹¹ Specify the party who has provided or produced the confidential information, and the party's commercial-in-confidence information. Such information might be "This Agreement".

¹² Describe any limitation on the type of occupation, program or activity that may be nominated by the Approved Sponsor.

¹³ Describe any limitation on the location of business sites where nominee visa holders may work.

¹⁴ Describe any maximum number of primary sponsored persons that the Approved Sponsor may sponsor in each year of the period of the Agreement.

Schedule 2 Definitions specific to on-hire

“Australian Apprentices” includes all formal apprentices and trainees who have signed a training contract which is registered with the relevant State or Territory Government authority. Australian Apprenticeships lead to nationally accredited qualifications, may combine time worked with training and can be full-time, part-time or school-based.

“Client Organisation” means a client of the Company other than a related business of the Company to whom a primary sponsored person has been on-hired to perform certain specified duties for a specified period in return for a fee payable by the Client Organisation.

“Former Sanctioned Sponsor”/ “Sanctioned Sponsor” means a person who:

- (i) was ever the subject of an action pursuant to Section 140M of the *Migration Act 1958* as in force from 28 April 2000 to 13 September 2009; or
- (ii) was ever the subject of cancellation action under Section 137B of the *Migration Act 1958*.

“Gross Wages Expenditure” includes all payments to Australian and overseas temporary employees (including permanent, casual, full-time, part-time and contract/on-hire employees etc) before tax and other items (such as employee contributions to superannuation) are deducted. It includes ordinary time and overtime earnings; over-award payments; penalty payments, shift and other remunerative allowances; commissions and retainers; bonuses and similar payments; payments under incentive or piecework; payments under profit-sharing schemes; leave loadings; annual and long service leave payments; sick leave payments; advance and retrospective payments; salaries and fees paid to working company directors, members of boards, committees, commissions, councils etc; amounts paid to employees on workers’ compensation who continue to be paid through the payroll; and severance, termination and redundancy payments.

“Indigenous Worker” includes all workers in Australia who are of Aboriginal and Torres Strait Islander descent, identify as being of Aboriginal and/or Torres Strait Islander descent or are accepted as an Aboriginal and/or Torres Strait Islander by the community in which they live or have lived.

“Informal Trainees” includes Australians employed in entry-level positions who are not Australian Apprentices or recent Australian graduates but who are receiving supervised and structured workplace based training which results in the acquisition of new or higher level skills and includes a formal assessment by a supervisor.

“Recent Australian Graduates” includes Australians who completed higher education (university) courses in the last 12 months.

“Scholarship” means financial contribution by the company to a scholarship, prize, bursary or award administered by an organisation which is acceptable to the Commonwealth and which is targeted at Australians completing courses appropriate to employment in occupations included in this agreement unless otherwise varied.

“Structured Training” means all training activities which have a specified content or predetermined plan designed to develop employment related skills and competencies. It includes, without limitation, instruction or a combination of instruction and monitored and assessed practical work such as: workshops, lectures, tutorials and seminars; computer-assisted training, training by correspondence and monitored self-paced training.

“Training Expenditure” means expenditure by the Company on Structured Training for Australian citizens and Australian permanent residents (it includes the wages and salaries of Australian Apprentices, but excludes the wages and salaries of other workers receiving training) where there is a link to skills development it includes the training delivered by Australian registered training organisations and financial contributions to Scholarships as defined for the purposes of this Agreement.

“Workforce” means all permanent and contract workers with the company including Australians, skilled overseas workers and other overseas temporary workers.

Schedule 3 Nominations and approvals**Item 1 Further information to be supplied with a nomination**

The Approved Sponsor must provide the following information in support of a nomination, in addition to the information specified in the Migration Regulations:

- 1 A certification by the Approved Sponsor as part of the nomination, in writing, that the qualifications and experience of the applicant or proposed applicant in relation to the nominated occupation are commensurate with the qualifications and experience specified for the nominated occupation.

Item 2 Further requirements for a nomination

The Approved Sponsor must meet the following requirements before a nomination will be approved:

- 1 The Approved Sponsor has certified as part of the nomination, in writing, that the qualifications and experience of the applicant or proposed applicant in relation to the nominated occupation are commensurate with the qualifications and experience specified for the nominated occupation.
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Schedule 4 Variation of sponsorship obligations

Item 1 Obligation to cooperate with inspectors

The obligation in regulation 2.78 of the *Migration Regulations* is varied in accordance with the following provisions.

No variation.

Item 2 Obligation to ensure equivalent terms and conditions of employment

The obligation in regulation 2.79 of the *Migration Regulations* is varied in accordance with the following provisions.

- 1 Wages and salary must be paid to the primary sponsored person directly by the Approved Sponsor.
- 2 Wages and salary must be paid to the primary sponsored person in Australia and in Australian dollars and at least fortnightly (unless equivalent Australian workers in the persons' workplace at the same location are paid on a weekly or monthly basis).
- 3 Primary sponsored persons must be employed in on-going full-time positions. A full-time position is one in which hours worked equate to those worked by equivalent Australian full-time workers in the persons' workplace at the same location. Where there is no equivalent full-time Australian worker, a full-time position equates to a 38 hour working week.
- 4 Primary sponsored person must be paid the market salary rate. The market salary rate must be greater than the Temporary Skilled Migration Income Threshold (TSMIT).

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

The obligation in regulation 2.80 of the *Migration Regulations* is varied in accordance with the following provisions.

1. The Sponsor must pay travel costs in accordance with Regulation 2.80 of the Migration Regulations in circumstances where the written request to pay travel costs is made while the person whose travel will be funded, is a person who is:
 - (a) a Primary Sponsored Person; or
 - (b) a Secondary Sponsored Person.

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* is varied in accordance with the following provisions.

No variation.

Item 5 Obligation to keep records

The obligation in regulation 2.82 of the *Migration Regulations* is varied in accordance with the following provisions.

No variation.

Item 6 Obligation to provide records and information to the Commonwealth

The obligation in regulation 2.83 of the *Migration Regulations* is varied in accordance with the following provisions.

No variation.

Item 7 Obligation to provide information to the Commonwealth when certain events occur

The obligation in regulation 2.84 of the *Migration Regulations* is varied in accordance with the following provisions.

No variation.

Item 8 Obligation to ensure primary sponsored person does not work in an occupation other than an approved occupation

The obligation in regulation 2.86 of the *Migration Regulations* is varied in accordance with the following provisions.

No variation.

Item 9 Obligation not to recover certain costs from a primary sponsored person or secondary sponsored person

The obligation in regulation 2.87 of the *Migration Regulations* is varied in accordance with the following provisions.

No variation.

Schedule 5 Training requirements

1. The Approved Sponsor and its Directors must continue to be of good standing, including that they have a good record of complying with Commonwealth and State/Territory laws, and where they are party to a Federal Industrial Instrument, have a satisfactory record of compliance with Federal workplace relations laws.
 2. The Company must have demonstrated to the satisfaction of the Commonwealth:
 - (i) they require Skilled Overseas Workers, with skills or experience not available within the Australian labour market for occupations listed on the Gazetted List of Occupations as specified in the Legislative Instrument by the Commonwealth for the Subclass 457 visa program;
 - (ii) they have a satisfactory record of training, as assessed against information provided in accordance with guidelines issued by the Commonwealth in relation to accessing this Agreement; and
 - (iii) they have a satisfactory record of compliance with Commonwealth and State/Territory workplace law and practice.
 3. The Company and its Directors must for the Term of Operation continue to be an employer with a good record of training Australians including through the provision of employment, training, and career progression to Australians.
 4. The Company must, and in accordance with the definitions appearing at Schedule 2 for each year of the Term of Operation satisfy at least one of the following training standards:
 - (i) if the Company has a workforce that is predominantly ANZSCO skill level 1 or 2, the Commonwealth is satisfied that 5 per cent of its skilled workforce is Recent Australian graduates (with less than 12 months post-qualification employment experience) and that these graduates are provided with training linked to professional development and licensing requirements;
 - (ii) if the Company has a predominant trade workforce, the Commonwealth is satisfied that 15 per cent of its trade workforce is Australian Apprentices or recent Australian Apprentices (with less than 12 months post-qualification employment experience) including those under contract to Group Training Organisations but whose placements are coordinated by the business; or
 - (iii) has training expenditure equating to 2.0 per cent of total gross wages on training Australians.
 5. The Company shall through the Term of Operation conduct recruitment campaigns targeted at Australians (including in newspapers, professional journals, the Internet and with Job Services Australia members) for the occupations covered by this Agreement.
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Schedule 6 Further sponsorship obligations

- 1 Immediately on arrival in Australia, the Approved Sponsor must provide primary sponsored persons and secondary sponsored persons:
 - (a) appropriate on-arrival assistance, including transport from the airport, assistance with finding accommodation and establishing household; and
 - (b) information on how to contact their local community groups and assistance.
- 2 Following their arrival in Australia, regardless of whether the Approved Sponsor has been requested by a primary sponsored person or a secondary sponsored person to do so, the Approved Sponsor must use its best endeavours to assist primary sponsored persons and secondary sponsored persons to establish links with the broader community, especially with respect to:
 - (a) services of health professionals, schools and libraries; and
 - (b) relevant religious organisations, mothers' groups, child care providers and migrant services.
- 3 When recruiting primary sponsored persons or secondary sponsored persons, the Approved Sponsor must make all reasonable inquiries to satisfy itself that the primary sponsored person or secondary sponsored persons do not owe money as a result of being recruited.
- 4 The Approved Sponsor must not nominate primary sponsored persons or secondary sponsored persons who it has assessed, reasonably suspects or ought reasonably suspect of owing money as a result of being recruited.
- 5 The Commonwealth may, from time to time, audit the Approved Sponsor's performance of its obligations in this Agreement and the Approved Sponsor will cooperate with the Commonwealth for the purpose of such audits.
- 6 The Approved Sponsor must ensure that all Primary Sponsored Persons' English language proficiency is at least the level of English Language proficiency that is prescribed in paragraph 457.223(4)(eb) of Schedule 2 of the *Migration Regulations* in circumstances where sub-paragraphs 457.223(4)(eb)(i), (ii) and (iii) do not apply.
- 7 Without limiting the generality of the preceding clause, the Approved Sponsor will:
 - (c) liaise with and provide information to the Commonwealth as reasonably required by the Commonwealth for the purposes of such audits;
 - (d) comply with the Commonwealth's reasonable requests or requirements for the purposes of such audits.
- 8 The Approved Sponsor acknowledges that it has provided:
 - (a) the information set out in the Annexure (if any);
 - (b) the documents attached to the Annexure (if any),
 to the Commonwealth for the purpose of demonstrating:
 - (c) the Approved Sponsor's corporate background if the Approved Sponsor is a body corporate, or the Approved Sponsor's business background otherwise;
 - (d) the Approved Sponsor's industry background;

- (e) benefits to Australia;
 - (f) the skill level and occupations sought;
 - (g) evidence of shortage of skills sought;
 - (h) English language levels required;
 - (i) salaries and employment conditions offered for the full-time positions (including but not limited to a Letter of Offer to be provided to prospective employees to be nominated under this Agreement, setting out the terms and conditions of their employment); and
 - (j) evidence of the training, employment and career progression opportunities provided to Australian citizens.
- 9 The Approved Sponsor acknowledges that the Commonwealth has relied on the information and/or documents (if any) referred to in the Annexure when deciding to enter into this Agreement.
- 10 The Approved Sponsor warrants that the information and/or documents (if any) referred to in the Annexure were true and correct at the date of this Agreement.
- 11 The Approved Sponsor will notify the Commonwealth as soon as the Approved Sponsor becomes aware that any information or documents in the Annexure has changed or is no longer true and correct.
- 12 Unless specified otherwise in the Migration Act or the *Migration Regulations*, the Approved Sponsor will retain all records generated for the purposes of this Agreement for seven (7) years from the date of expiration or termination of this Agreement.
- 13 The Approved Sponsor acknowledges that:
- (a) The rights of the Commonwealth under this Agreement are in addition to any relevant power, right or entitlement of the Auditor-General or the Privacy Commissioner; and
 - (b) Nothing in this Agreement reduces, limits, restricts or derogates from in any way any relevant function, power, right or entitlement of the Auditor-General or the Privacy Commissioner.
- 14 The Approved Sponsor will allow:
- (a) the Commonwealth;
 - (b) the Australian National Audit Office; and
 - (c) the Ombudsman's Office,
- to access the Approved Sponsor's premises at all reasonable times and to inspect and copy all relevant documentation and records, however stored, in the Approved Sponsor's possession or control, with respect to the Approved Sponsor's performance of its obligations under the Agreement.
- 15 The Commonwealth's rights in the preceding clause are subject to:
- (a) the provision of reasonable prior notice to the Approved Sponsor;
 - (b) compliance with the Approved Sponsor's reasonable security procedures;

- (c) each party bearing its own cost arising out of or in connection with any access, audit or inspection; and
 - (d) if appropriate, entering into a deed of confidentiality relating to non-disclosure of the Approved Sponsor's confidential information.
- 16 The Approved Sponsor will ensure that any other agreements that it enters into with anyone else for the purpose of this Agreement, contains an equivalent clause granting the rights of access as specified in this Schedule. This clause will survive for seven (7) years from the date of expiration or termination of this Agreement.
- 17 In carrying out its rights and obligations under this Agreement, the Approved Sponsor may use a migration agent but must only use the services of migration agents who are registered with the Migration Agents Registration Authority (MARA).
- 18 The Approved Sponsor must not cause or permit a change in control of the Approved Sponsor that would reasonably be regarded as inimical to the Approved Sponsor's capacity to perform its obligations under this Agreement.
- 19 The Commonwealth may grant or refuse to grant consent, in its absolute discretion, to any application by the Approved Sponsor for consent to a change in control of the Approved Sponsor that may be inimical to the Approved Sponsor's capacity to perform its obligations under this Agreement, and the Commonwealth may attach such conditions on a consent as the Commonwealth sees fit.
- 20 The Approved Sponsor must, within seven (7) days of receiving notice from the Commonwealth, provide such information and supporting evidence as the Commonwealth may request in relation to a change in control of the Approved Sponsor that would reasonably be regarded as inimical to the Approved Sponsor's capacity to perform its obligations under this Agreement, including but not limited to:
- (a) shareholdings;
 - (b) issued shares;
 - (c) board of Directors;
 - (d) board of management;
 - (e) executive officers;
 - (f) voting rights;
 - (g) partnership composition, if applicable; and
 - (h) the executive committee of an unincorporated association, if applicable,
- of the Approved Sponsor, including the dates of any changes to those matters.
- 21 The Approved Sponsor releases the Commonwealth for liability arising out of this Agreement whether for an alleged breach of contract, negligence or other cause of action. To avoid doubt, the Commonwealth will not be liable to the Approved Sponsor for Damages or compensation, including loss of profits for actions or omissions in relation to the Commonwealth's obligations under this Agreement.
- 22 The Approved Sponsor must ensure that primary sponsored persons are placed in a work environment that complies with all relevant Commonwealth and State/Territory Workplace law

including, but not limited to, Occupational Health & Safety and workers compensation laws for the duration of their employment.

- 23 The Approved Sponsor must not place a primary sponsored person in a workplace owned, operated and or managed by a Sanctioned Sponsor.
 - 24 The Approved Sponsor must not place a primary sponsored person in a workplace owned, operated and or managed by a Former Sanctioned Sponsor without the written permission of DIAC.
 - 25 The Approved Sponsor must not continue to place its primary sponsored persons in the workplace of a Client Organisation who is or has become a Sanctioned Sponsor.
 - 26 The Approved Sponsor will for each primary sponsored person, enter and maintain a contract with the Client Organisation. Any such contract must not be inconsistent with the terms and conditions of this Agreement.
 - 27 An Approved Sponsor may not deduct an amount from an amount payable to a primary sponsored person unless:
 - a. the deduction is authorised in writing by the employee and is principally for the employee's benefit; or
 - b. the deduction is authorised by the employee in accordance with an enterprise agreement; or
 - c. the deduction is authorised by or under a modern award or an Fair Work Act order; or
 - d. the deduction is authorised by or under a law of the Commonwealth, a State or a Territory, or an order of a court.
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Signing page

Commonwealth Signature

Signed for and on behalf of the Commonwealth under the written authority of the Minister for Immigration and Citizenship:

.....
Name of Authorised Person

.....
Position of Authorised Person

.....
Signature of Authorised Person

Date of signing:/...../.....

.....
Name of Witness

.....
Signature of Witness

Approved Sponsor Signature

Signed for and on behalf of XXXXXX Pty Ltd in accordance with section 127 of the *Corporations Act 2001* by:

.....
Name and details of Director/Secretary¹⁵

.....
Signature of Director/Secretary

Date of signing:/...../.....

.....
Name and details of Director/Secretary

.....
Signature of Director/Secretary

Date of signing:/...../.....

¹⁵ Unless the Approved Sponsor is a sole Director who is also the Company Secretary, at least two Directors or a Director and a Company Secretary must sign the Labour Agreement.

Annexure

Information

Documents
