



Australian Government
Department of Home Affairs

LABOUR AGREEMENT – DAIRY INDUSTRY

Under the *Migration Act 1958*

Between

**Commonwealth of Australia as represented by the
Minister for Citizenship and Multicultural Affairs
(Minister)**

and

XXXXXXXXXXXXXXXXXXXX

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Labour Agreement

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

Parties

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

AND

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

Background

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

Operative Part

1. Definitions

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

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

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.

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

AQF means the Australian Qualifications Framework.

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

Base Rate of Pay has the same meaning as in the Migration Regulations. That is, it means the rate of pay payable to an employee for his or her full time ordinary hours of work, but not including any of the following:

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

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

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

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

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

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

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

but does not include information:

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

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

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

Earnings has the same meaning as in the Migration Regulations.

Employment period means the stay period that an Approved 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**.

IELTS means the International English Language Testing System.

List of eligible skilled occupations means the list of occupations available for the Subclass 457 or TSS visa programs included in the relevant current legislative instrument.

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

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

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

Minister means "the Minister" for Citizenship and Multicultural Affairs, the Assistant Minister, and his or her authorised representative performing relevant functions as the Minister under the Migration Legislation.

Nominate means to lodge a nomination for a Subclass 457 or a TSS 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 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 Subclass 457 or a TSS visa.

Postal Address means the address to which mail is delivered.

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

Standard Temporary Skilled visa program requirements refers to the legislative requirements that must be met for the Subclass 457 or the TSS visa program (once introduced in March 2018) if the sponsor is a standard business sponsor.

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

TSS visa means the Temporary Skill Shortage (TSS) visa.

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

The Department means the Department of Home Affairs.

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*, and relevant laws of the Commonwealth and of the relevant State or Territory relating to industrial, equal employment opportunity, unlawful discrimination and workplace health and safety legislation regulating the employment by the Approved Sponsor of its Primary Sponsored Persons.

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

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

2. Interpretation

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

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

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

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

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

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

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

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.

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

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

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

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

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

3. Agreement period

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

3.2 Unless terminated earlier in accordance with 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 Approved Sponsor warrants that information supplied to the Commonwealth with respect to the Approved Sponsor being a fit and proper person to enter into this Agreement and upon which the Commonwealth relied, was true and correct.

Nomination of Overseas Workers

5. Nomination requirements

5.1 The Approved Sponsor may only nominate an Overseas Worker for:

- (a) Occupations outlined in **Schedule 2**;
- (b) up to the Nomination Ceiling specified in **Schedule 2**; and
- (c) an Occupation to be performed in a location listed in **Schedule 2**.

5.2 The Approved Sponsor acknowledges that the Minister may, in his/her absolute discretion, vary the:

- (a) Nomination Ceilings up or down;
- (b) Concessions; or
- (c) Occupations.

5.3 If the Approved 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.

5.4 The Approved Sponsor acknowledges 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.

5.5 Before they nominate a Nominee under this Agreement, the Approved Sponsor must take all reasonable steps to ensure that:

- (a) it recruits suitably skilled Australians who are available, including undertaking Labour Market Testing where specified in **Schedule 3**;
- (b) the Overseas Worker will be able to meet any revised visa requirements outlined at **Schedule 4**; and
- (c) the Overseas Worker will hold relevant licensing/registration or certification were required for the nominated occupation, when performing the occupation.

- 5.6 The Approved Sponsor will aim to ensure that:
- (a) in any one Year period overseas workers do not comprise more than a third of their Workforce; and
 - (b) their reliance on overseas workers decreases during the life of this Agreement.
- 5.7 In addition to Subclass 457 nomination requirements outlined in the Migration Regulations, the Approved Sponsor must demonstrate, through written evidence, when lodging a Subclass 457 nomination, that the Nominee will be:
- (a) engaged full time;
 - (b) paid a Base Rate of Pay that is equal to or greater than the TSMIT, unless varied in **Schedule 2**; and
 - (c) receive Terms and Conditions of Employment which are no less favourable than the terms or conditions of employment that are, or would be provided, to an Australian performing equivalent work in the Approved Sponsor's workplace at the same location.
- 5.8 In addition to TSS nomination requirements outlined in the Migration Regulations, the Approved Sponsor must demonstrate, through written evidence, when lodging a TSS nomination that the standard skilled visa requirements as outlined in the Migration Regulations in relation to the TSMIT, Earnings and/or working hours, are met unless varied in **Schedule 2**.
- 5.9 The Approved Sponsor must comply with any additional requirements for nomination that are stipulated by the Minister in **Schedule 3**.

6. Visa requirements

- 6.1 The Approved 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. This may include requirements that the Nominee has:
- (a) the sufficient skills, experience and English proficiency to perform the nominated occupation; and
 - (b) demonstrated this where requested by the Department.
- 6.2 In most cases, these requirements mirror Standard Temporary Skilled visa program requirements.
- 6.3 Where variations to regulatory or policy requirements apply for visa applicants who are being sponsored under this Agreement, because the Minister has agreed to certain Concessions, these are specified in **Schedule 4**.

7. Subclass 457 Visa Applications

- 7.1 No new Subclass 457 visa applications will be able to be lodged from March 2018 onwards, when the TSS visa is introduced.
- 7.2 Subclass 457 visas already granted will remain in effect.
- 7.3 Subclass 457 visa applications lodged prior to the introduction of the TSS will continue to be processed under the existing Subclass 457 regulatory framework.

8. Visa period

TSS visa

- 8.1 The Approved Sponsor acknowledges that when nominating an Overseas Worker for a TSS visa the Approved Sponsor will select a proposed employment period of up to a maximum of four (4) years. If approved, the TSS visa for the Nominee will be granted for the requested period, unless a different or more restricted period is specified in **Schedule 4**.

Subclass 457 visa

8.2 The visa period for Subclass 457 visas granted under this Agreement is as follows:

(a) For Subclass 457 visa holders who are Primary Sponsored Persons

Pursuant to the Migration Regulations, the period specified for a Subclass 457 visa granted to the Primary Sponsored Person is a period of four (4) years from the date of grant of the Subclass 457 visa.

(b) For Subclass 457 visa holders who are Secondary Sponsored Persons (other than subsequent entrants)

Pursuant to the Migration Regulations, the period specified for a Subclass 457 visa granted to a person who:

- (i) made a combined application with a person who satisfied the primary criteria; and
- (ii) satisfied the secondary criteria on the basis of being a member of the family unit of the person who satisfied the primary criteria;

is a period of four (4) years from the date of grant of the Subclass 457 visa.

(c) For subsequent entrants who satisfied the secondary criteria

Pursuant to the Migration Regulations, the period specified for a Subclass 457 visa granted to a person who:

- (i) did not make a combined application with a person who satisfied the primary criteria; and
- (ii) satisfied the secondary criteria on the basis of being a member of the family unit of the person who satisfied the primary criteria;

is the remainder of the visa period of the Subclass 457 visa held by the person who satisfied the primary criteria.

9. Sponsorship obligations

9.1 The Approved Sponsor must satisfy its sponsorship obligations in the Migration Regulations as varied, if at all, in **Schedule 5**.

9.2 The Approved Sponsor must satisfy:

- (a) additional obligations imposed in accordance with subsection 140H(3) of the Migration Act.
- (b) 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).

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

10. Reporting

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

11. Review

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

12. Audits of this Agreement

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

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

- (a) liaise with and provide information and assistance to the Minister as reasonably required by the Minister for the purposes of such audits;
- (b) comply with the Minister's reasonable requests or requirements for the purposes of such audits.

- 12.3 Unless specified otherwise in the Migration Legislation, the Approved Sponsor will retain all records generated for the purposes of this Agreement for seven (7) years from the date of expiration or termination of this Agreement.

Miscellaneous Provisions

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.

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 Minister may, in his/her absolute discretion, suspend this Agreement, in whole or in part, including in situations where Adverse Information regarding the Approved Sponsor has been received, is being investigated and is not considered reasonable to disregard.
- 15.2 The Approved Sponsor and other third parties are not entitled to any compensation or payments as a result of the Minister suspending this Agreement under clause 15.1.
- 15.3 Where the Minister suspends this Agreement in accordance with clause 15.1 the Minister will notify the Approved Sponsor in writing.
- 15.4 For the avoidance of doubt, where the Minister notifies that this Agreement has been suspended in accordance with clause 15.3, the suspension shall take effect at the time the notice is taken to be received by the Approved Sponsor, in accordance with clause 13.
- 15.5 Where the Minister suspends this Agreement in accordance with clause 15.1, the 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 Minister may, at his/her absolute discretion, choose to resume this Agreement by notifying the Approved Sponsor in writing.
- 15.7 Where the Minister chooses to resume this Agreement in accordance with clause 15.6 and notifies the

Approved 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 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 Approved Sponsor and it is not considered reasonable to disregard.

16.2 The Approved Sponsor will not be entitled to any compensation or payments as a result of the Minister terminating this Agreement under clause 16.1.

16.3 Otherwise, if the Minister contends that the Approved Sponsor is in default under this Agreement, the Minister may, without prejudice to any right of action or remedy which has accrued or which may accrue (including the Minister's entitlement to terminate in accordance with clause 16.1):

- (a) suspend this Agreement in whole or in part; and
- (b) serve notice on the Approved Sponsor, advising that this Agreement is suspended and requiring the Approved Sponsor to rectify to the satisfaction of the Minister, those aspects of the Approved Sponsor's performance which are of concern to the Commonwealth; or
- (c) terminate this Agreement without prejudice to any right of action or remedy which has accrued or which may accrue.

16.4 If the Approved Sponsor is in breach of a sponsorship obligation in the Migration Legislation 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.

16.5 For the avoidance of doubt, a breach of the Approved Sponsor's warranty given in clause 4.1 with respect to pre-contractual information, will entitle the Minister to suspend this Agreement and serve a notice under clause 16.3 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 sub-clause:

- (a) need not specify a reason for serving the notice;
- (b) may withdraw the notice before the 28 days have elapsed; and
- (c) will not be liable to compensate the other party for costs or damages that may arise from the early termination.

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

- (a) the Approved Sponsor's approval as a sponsor for the purposes of this Agreement will thereby be automatically terminated; and
- (b) visas granted pursuant to this Agreement will be subject to the operation of the Migration Legislation.

16.8 A waiver by a party in respect of any breach of a condition or provision of this Agreement will not be deemed to be a waiver in respect of any continuing or subsequent breach of that provision, or breach of any other provision. The failure of a party to enforce at any time any of the provisions of this Agreement will in no way be interpreted as a waiver of such provision.

17. Sanctions

17.1 Instead of terminating this Agreement:

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

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

17.3 The Commonwealth may, in its discretion, instead of taking any enforcement action under this Agreement or in addition to taking such enforcement action, pursue a civil penalty or issue an infringement notice under the Migration Legislation for failing to satisfy a sponsorship obligation.

18. Relationship between the parties

18.1 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.

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

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

18.3 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.

18.4 If the Approved Sponsor is constituted by more than one legal entity (such as a partnership or an unincorporated association), each of those legal entities will be jointly and severally liable for the performance of all of the Approved Sponsor's obligations under this Agreement.

19. Assurances, counterparts and assignment

19.1 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.

19.2 This Agreement may be executed in any number of counterparts.

19.3 A party cannot assign or otherwise transfer its rights under this Agreement without the prior written consent of the other party.

20. Dispute resolution

20.1 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.

20.2 The Parties acknowledge that the Migration Review Tribunal and 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 Migration Review Tribunal or the Administrative Appeals Tribunal.

21. Confidential information and information sharing

21.1 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.

21.2 The Approved Sponsor consents to information concerning it which is relevant to the operation of this Agreement being shared by the Minister with:

- (a) State or Territory government agencies in the State or Territory in which the Approved Sponsor conducts business, where those agencies have regulatory or other relevant interests in the operation of this Agreement;
- (b) Commonwealth agencies with regulatory or other relevant interests in the operation of this Agreement, including the Department of Employment.

21.3 The Approved Sponsor will allow the disclosure of information related to this Agreement for various reporting and Commonwealth disclosure obligations. These disclosures include:

- (a) disclosure of procurement information for the Department's annual reporting purposes;
- (b) disclosure to the Parliament and its committees, as appropriate, in line with the Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters;
- (c) disclosure of information consistent with the Freedom of Information Act 1982;
- (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.

21.4 The Approved Sponsor acknowledges 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.

21.5 The Approved Sponsor must comply with any reasonable request by the Commonwealth for information to enable the Commonwealth to meet its obligations in this Agreement.

21.6 Clause 21.3 survives the termination or expiration of this Agreement.

22. Fettering and publishing

22.1 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.

22.2 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.

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

23. Legal expenses

- 23.1 Each party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Agreement.
- 23.2 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.

24. Survival after termination

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

25. Governing law and jurisdiction

- 25.1 The laws applicable in the Australian Capital Territory govern this Agreement.
- 25.2 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.

26. Indemnity

- 26.1 The Approved Sponsor agrees to indemnify the Minister from and against any:
- (a) cost or liability incurred by the Minister; or
 - (b) loss or expense incurred by the Minister in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Minister,
- arising from:
- (c) any act or omission by the Approved Sponsor or its Personnel in connection with this Agreement; or
 - (d) any breach by the Approved Sponsor of its obligations or warranties under this Agreement;
- irrespective of whether there was fault on the part of the person whose conduct gave rise to that liability, loss or damage, or loss or expense.
- 26.2 The Approved Sponsor's liability to indemnify the Minister under clause 26.1 will be reduced proportionately to the extent that any breach of this Agreement by the Minister or any act or omission involving fault on the part of the Minister contributed to the relevant cost, liability, loss, damage, or expense.
- 26.3 The right of the Minister to be indemnified under clause 26.1 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Minister is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage, or expense.
- 26.4 In clause 26.1:
- (a) "the Minister" includes officers, employees and agents of the Minister; and
 - (b) "Personnel" means a party's officers, employees, agents, contract staff or professional advisers engaged in, or in relation to, the performance or management of this Agreement;
- 26.5 Clause 26.1 will survive six (6) years from the expiration or termination of this Agreement.

Schedule 1 Particulars

Item 1

Commonwealth Particulars

Name: Department of Home Affairs
Address: 6 Chan Street, BELCONNEN ACT 2617
Telephone Number: (02) 6264 2903
Email Address: labour.agreement.section@homeaffairs.gov.au
Contact officer: Director, Economic and Skilled Visa Program Branch

Item 2

The Approved Sponsor's Particulars

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

Item 3

The Approved Sponsor's Business

Industry segment: Dairy 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.

Schedule 2 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. It also specifies the nomination ceilings per year for these Occupations, and where the nominated positions should be based (i.e. location of work).

Occupation	Occupation Code	Nomination Ceilings					Location of work
		Year 1	Year 2	Year 3	Year 4	Year 5	
Senior dairy cattle farm worker	070499	X	X	X	X	X	X

Note:

- The Minister may vary the ceiling number and Occupations at any time, with ceiling numbers subject to annual review.
- If the Approved Sponsor wishes to increase the ceilings specified above, they must seek a variation to this Agreement as outlined at clause 5.3 to this Agreement.

Item 2 Concession to Occupation Tasks

The tasks of a Senior dairy cattle farm worker under this agreement as follows:

- Plan all aspects of milk production processes including management and coordination of milking shed routines.
- Coordinate and implement reproductive programs, including artificial insemination and herd fertility management, detection of oestrous and pregnancy.
- Assist in controlled breeding experiments to develop improved livestock strains.
- Implement calving procedures, including the ability to physically conduct unsupervised internal assessments to minimise the incidence of still births or injuries to cow or calf.
- Plan and manage pastures and crops for livestock production and develop livestock feeding plans.
- Analyse produce to set and maintain standards of quality.
- Supervise animal health programs, handle sick or injured animals and maintain an optimal environment for the wellbeing of livestock consistent with the Australian Animal Welfare Standards and Guidelines – Cattle.
- Supervise work routines and staff performance of less experienced employees such as an assistant farmhand.
- Implement and monitor quality assurance procedures, ensuring compliance and that all relevant documentation is kept current.
- Operate milking plant and equipment in a safe manner, undertake multiple functions including reading and recording instrument information e.g. milk vat temperatures and cow numbers and matching cow ID to calves to produce a quality milk outcome.
- Operate a dairy recycling system.
- Calf feeding, including tubing colostrum
- Assisting with and/or performing irrigation works.
- Inspect livestock to gauge the effectiveness of feed formulae.
- Transport, handle and store chemicals; prepare and apply chemicals.
- Operate farm and dairy shed-related vehicles, plant and equipment.
- Identify and report equipment not operating normally; maintenance of plant and machinery.

- Where appropriately qualified, perform maintenance works on sheds, fixtures and fittings, fences and surrounds and install new or replacement equipment or fittings.
- Transport stock, feed and equipment, if appropriately licensed.
- Maintain records to ensure accurate information for stock and inventory control.
- Ensure food safety regulatory requirements are met.
- Contribute to and implement OHS requirements.
- Operate computer equipment and software packages requiring set-up and basic function operation.
- Coordinate the response to emergencies for both occupational health and safety emergencies and animal welfare emergencies.
- Participate in enterprise/industry training sessions and workshops as required.

Item 3 Concessions regarding salary requirements

Subclass 457

Standard Temporary Skilled visa requirements are varied to allow the Base Rate of Pay to be calculated including up to seven hours of overtime, subject to:

- the overseas worker working a maximum of 180 hours over a four (4) week period;
- the six hours of overtime being guaranteed within the employment contract of the overseas worker;
- the hours worked being consistent with the National Employment Standards.

TSS visa

Nil concessions

Schedule 3 Additional requirements for nomination

Subclass 457 visa

Item 1 Evidence of salary arrangements

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

TSS visa

Item 2 Labour market testing requirements

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 skilled visa program requirements.

Schedule 4 Concessions relating to visa criteria covered by this Agreement

Item 1 Qualifications and Experience

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 have the qualifications and experience outlined in the table below for each available occupation.

Occupation	ANZSCO	Required Qualifications and Experience
Senior Dairy Cattle Farm Worker	070499	(a) at least an AQF certificate III (or equivalent) and at least three (3) years recent and relevant work experience; or (b) at least five (5) years of recent and relevant work experience.

Item 2 English Language

Nil concessions

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

Subclass 457 visa holders

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

- (a) the Base Rate of Pay, under the terms and conditions of employment must be equal to or greater than TSMIT;
- (b) up to seven hours of guaranteed overtime can be counted towards the Base Rate of Pay.

TSS visa holders

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 Minister

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

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

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

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

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

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

The obligation in regulation 2.87 of the Migration Regulations applies and is not varied. For clarity, the Approved Sponsor must not charge employees for services.

Schedule 6 Additional sponsorship obligations specific to this Agreement

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

- (a) is granted a further substantive visa that is:
 - (i) not a Subclass 457 or TSS 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 Training obligations

1. An Approved Sponsor must comply with the following training obligations up until the implementation of any new requirements to pay a contribution to the Skilling Australia Fund (SAF) at the time of nomination for a TSS visa.
2. The Approved Sponsor must, over the term of each Year of the Agreement, ensure that it meets at least one of the training obligations outlined below:
 - (a) Training expenditure* equating to 2.0 per cent of payroll of the business paid to an industry training fund; or
 - (b) Training expenditure* equating to 1.0 per cent of total gross wages on training Australians.

*Expenditure that may count towards training expenditure for the purposes of this Agreement is training expenditure that may count towards the 'training benchmarks' under Standard Temporary Skilled visa program requirements, as varied from time to time. These are currently outlined in Legislative Instrument IMMI 17/045.

Schedule 7 Information to be provided to the Department

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

Signing page

Signed for and on behalf of the Commonwealth)
under the written authority of the Minister for)
Citizenship and Multicultural Affairs:)

Senior Director
Economic & Skilled Visa Program Branch
Print name and details of the Authorised Person

.....
Signature of the Authorised Person

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

.....
Signature of Witness

.....
Print name of Witness

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

Signed for and on behalf of **XXX Pty Ltd**.....)
ABN xx xxx xxx xxx

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

.....
Signature of director/Authorised Person

.....
Signature of Director/Secretary

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

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

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

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

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

.....
Signature of Witness

.....
Print name of Witness

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