



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 Immigration, Citizenship, Migrant Services and
Multicultural Affairs
(Minister)**

and

XXXXXXX Pty Ltd

Table of Contents

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

Schedule 5	Variation of sponsorship obligations	21
Schedule 6	Additional sponsorship obligations specific to this Agreement	23
Schedule 7	Information to be provided to the Department	24
Signing page	25

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 Immigration, Citizenship, Migrant Services and Multicultural Affairs. The Commonwealth’s particulars are set out in **Item 1 of Schedule 1**.

AND

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

Background

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

Operative Part

1. Definitions

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

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

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

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

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

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

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

AQF means the Australian Qualifications Framework.

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

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

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

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

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

but does not include information:

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

Concessions means any variations to the requirements prescribed in the Migration Legislation in relation to the age, skills, qualifications, employment background, level of English Language proficiency and the TSMIT required for the nomination and grant of a TSS, SESR or ENS visa.

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

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

Earnings has the same meaning as in the Migration Regulations.

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

Effective Date means:

- (a) the date (if any) specified in **Item 4 of Schedule 1**;
- (b) if no such date is specified, the date on which this Agreement is signed by the parties, or if signed on separate days, the date of the last signature.

Email Account means a party's email address set out in **Schedule 1**.

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

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

IELTS means the International English Language Testing System.

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

Migration Act means the *Migration Act 1958 (Cth)*.

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

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

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

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

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

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

Nominee means the Overseas Worker specified in a nomination.

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

On-hire¹ means a person's business activities which include activities relating to either or both of:

- (a) the recruitment of labour for supply to another business; and
- (b) the hiring of labour to another business;
- (c) the reference to 'another business' in paragraph (a) and (b) above, includes any other business that is related to a person's business.

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

Postal Address means the address to which mail is delivered.

Primary Sponsored Person means the Overseas Worker that is the holder of a TSS, SESR or ENS visa that was granted under this Agreement.

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

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

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

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

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

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

Standard Skilled visa program requirements refers to the legislative requirements that must be met for the Medium-term stream of the TSS visa program, the Employer Sponsored stream of the SESR visa program or the TRT stream of the ENS visa program.

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

TSS visa means the Temporary Skill Shortage (Subclass 482) visa, which is a temporary visa within the meaning of the Migration Act.

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

The Department means the Department of Home Affairs.

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

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

Workplace Law means the *Fair Work Act 2009 (Cth)*, and relevant laws of the Commonwealth and of the relevant State or Territory relating to equal employment opportunity, unlawful discrimination and workplace health and safety legislation regulating the employment by the Sponsor of its overseas worker.

Workforce Plan means a report that outlines the current, and where requested, projected future composition of an Approved Sponsor's workforce. It should include details of the total number of

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.

Australian workers (including permanent residents) and temporary visa holders engaged by the Sponsor.

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

2. Interpretation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Agreement period

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

3.2 Unless terminated earlier in accordance with clause 15 of this Agreement, the period of this Agreement will be the time specified in **Item 4 of Schedule 1**.

4. Pre-contractual representations

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

5. Acknowledgements

- 5.1 The parties acknowledge and agree that:
- (a) the Commonwealth may, in its absolute discretion, by notice in writing, at any time:
 - (i) amend or update the occupations, maximum numbers, and concessions for the purposes of this Agreement; or
 - (ii) amend, update or replace any other content in the Schedules of this Agreement;
 - (b) nothing in this Agreement fetters or detracts from the discretions, functions or powers of the Commonwealth under Law.

Nomination of an Overseas Worker

6. Nomination requirements

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

7. Visa requirements

- 7.1 The Sponsor acknowledges that as part of the visa application process, the Nominee will need to meet the criteria for grant of a visa as outlined in the Migration Regulations.
- 7.2 This may include:
- (a) requirements that the Nominee has the sufficient skills, experience and English proficiency to perform the nominated occupation, and has demonstrated this where requested by the Department; and
 - (b) if applying for the SESR or ENS visa, any age requirements.
- 7.3 In most cases, these requirements mirror Standard skilled visa program requirements.
- 7.4 Where variations to regulatory or policy requirements apply for visa applicants who are being sponsored under this Agreement, because the Minister has agreed to certain Concessions, these are specified in **Schedule 4**.

8. Visa period

TSS visa

- 8.1 The Sponsor acknowledges and agrees that when nominating an Overseas Worker for a TSS visa, the 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.

SESR visa

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

ENS visa

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

9. Sponsorship obligations

- 9.1 The Sponsor must satisfy:
- (a) its sponsorship obligations in the Migration Regulations, including where varied (if at all), as outlined in **Schedule 5**;
 - (b) any additional obligations imposed in accordance with subsection 140H(3) of the Migration Act specified in **Schedule 6**.
- 9.2 The Sponsor must comply with Workplace Law, the Migration Legislation and any other immigration laws regulating employment of the Sponsor's sponsored Overseas Worker.

10. Reporting

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

11. Review

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

12. Audits of this Agreement

- 12.1 The Minister may, from time to time, audit the Sponsor's performance of its obligations under this Agreement and the Sponsor will cooperate with the Minister for the purpose of such audits.
- 12.2 Without limiting the generality of the preceding clause, the Sponsor will:
- (a) liaise with and provide information and assistance to the 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 Sponsor will retain all records generated for the purposes of this Agreement for seven (7) years from the date of expiration or termination of this Agreement.
- 12.4 Clause 11 survives the termination or expiration of this Agreement.

Miscellaneous Provisions

13. Notices

- 13.1 Any notice, demand, consent or other communication given or made under this Agreement:
 - (a) must be clearly readable;
 - (b) must, unless it is sent by email, be signed by the party giving or making it (or signed on behalf of that party by its authorised representative);
 - (c) must, unless it is sent by email, be left at the Address or sent by pre-paid security post (air mail if outside Australia) to the Business Address of the recipient; and
 - (d) may be sent by email to the receiving party's Email Account.
- 13.2 A notice to be served on the Commonwealth will be taken to be served if it is served on the Department's address in **Item 1 of Schedule 1**.
- 13.3 A party may change its Business Address, Postal Address or Email Account for the purpose of service by giving notice of that change to the other party in accordance with clause 12.1.
- 13.4 Any communication will be taken to be received by the recipient:
 - (a) in the case of a letter, on the third (seventh, if sent outside the country in which the letter is posted) Business Day after the date of posting;
 - (b) in the case of an email, at the end of the day in which the email is transmitted, providing that the sender does not receive an email delivery failure notification in respect of the email.

14. Variation and entire agreement

- 14.1 The contents of this Agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this Agreement, whether orally or in writing.
- 14.2 Unless otherwise specified in this Deed, a provision of this Agreement can only be varied by a written document executed by or on behalf of all parties.

15. Suspension

- 15.1 The Minister may, in his/her absolute discretion, suspend this Agreement, in whole or in part, including in situations where Adverse Information regarding the Sponsor has been received, is being investigated and is not considered reasonable to disregard.
- 15.2 The Sponsor and other third parties are not entitled to any compensation or payments as a result of the Minister suspending this Agreement under clause 14.1.
- 15.3 Where the Minister suspends this Agreement in accordance with clause 15.1 the Minister will notify the Sponsor in writing.
- 15.4 For the avoidance of doubt, where the Minister notifies that this Agreement has been suspended in accordance with clauses 14.1 and 14.3, the suspension shall take effect at the time the notice is taken to be received by the Sponsor, in accordance with clause 12.
- 15.5 Where the Minister suspends this Agreement in accordance with clause 14.1, 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 Sponsor in writing.
- 15.7 Where the Minister chooses to resume this Agreement in accordance with clause 14.6 and notifies the Sponsor, the Agreement will resume at the time the notice is taken to be received, in accordance with clause 12.
- 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 Sponsor and it is not considered reasonable to disregard.
- 16.2 The Sponsor will not be entitled to any compensation or payments as a result of the Minister terminating this Agreement under clause 15.1.
- 16.3 Otherwise, if the Minister contends that the 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 15.1):
 - (a) suspend this Agreement in whole or in part; and
 - (b) serve notice on the Sponsor, advising that this Agreement is suspended and requiring the Sponsor to rectify to the satisfaction of the Minister, those aspects of the Sponsor's performance which are of concern to the Commonwealth; or
 - (c) terminate this Agreement without prejudice to any right of action or remedy which has accrued or which may accrue.
- 16.4 If as an Approved Sponsor, the Sponsor is in breach of a sponsorship obligations under the Migration Legislation, the Sponsor will be taken to be in default under this Agreement as if the statutory obligation was a contractual obligation of the Sponsor.
- 16.5 For the avoidance of doubt, a breach of the Sponsor's warranty given in clause 4.1 with respect to pre-contractual information, will entitle the Minister to suspend this Agreement and serve a notice under clause 15.3 and/or to take any other contractual redress in accordance with this Agreement.
- 16.6 A party may, in its discretion, terminate this Agreement early by giving 28 days' notice to the other party, whereupon this Agreement will be terminated with effect 28 days after the notice of termination is served. A party serving a notice of termination under this clause:
 - (a) need not specify a reason for serving the notice;
 - (b) may withdraw the notice before the 28 days have elapsed; and
 - (c) will not be liable to compensate the other party for costs or damages that may arise from the early termination.
- 16.7 For the avoidance of doubt if this Agreement is terminated for any reason, or for no reason:
 - (a) the Sponsor will no longer be an Approved Sponsor under Migration Legislation and their approval as a sponsor for the purposes of this Agreement will be automatically terminated; and
 - (b) visas granted pursuant to this Agreement will be subject to the operation of the Migration Legislation.

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

17. Sanctions

- 17.1 Instead of terminating this Agreement:

- (a) the Commonwealth may, in its discretion, prevent or 'bar' the Sponsor from making further nominations under this Agreement for a specified period, or
- (b) the 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 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 Sponsor is constituted by more than one legal entity (such as a partnership or an unincorporated association), each of those legal entities will be jointly and severally liable for performance under this Agreement.

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 Administrative Appeals Tribunal may have jurisdiction to review decisions in relation to nomination applications and visa applications. This Agreement does not abrogate any rights of a merits review by the Administrative Appeals Tribunal.

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 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 Sponsor conducts business, where those agencies have regulatory or other relevant interests in the operation of this Agreement;
- (b) Commonwealth agencies with regulatory or other relevant interests in the operation of this Agreement, including the Department of Education, Skills and Employment.

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

- (a) disclosure of procurement information for the Department's annual reporting purposes;
- (b) disclosure to the Parliament and its committees, as appropriate, in line with the Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters;
- (c) disclosure of information consistent with the *Freedom of Information Act 1982 (Cth)*;
- (d) disclosure of discoverable information that is relevant to a case before a court; and
- (e) disclosure of information as required under other legislation or Commonwealth policy.

21.4 The Sponsor acknowledges and agrees that the Department will publish information on its website regarding this Agreement, with more sensitive business information contained in labour agreement requests and agreements, as specified at **Item 5 of Schedule 1** to remain confidential.

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

21.6 Clause 20.3 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 Sponsor for consent to a change in control of the Sponsor that may be inimical to the Sponsor's performance under this Agreement, and the Commonwealth may attach such conditions on a consent as the Commonwealth sees fit.

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 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 any sponsorship obligations as an Approved Sponsor.

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 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 Sponsor or its Personnel in connection with this Agreement; or
 - (d) any breach of its Sponsorship obligations as an Approved Sponsor or warranties under this Agreement;
- irrespective of whether there was fault on the part of the person whose conduct gave rise to that liability, loss or damage, or loss or expense.
- 26.2 The Sponsor's liability to indemnify the Minister under clause 25.1 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 25.1 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 25.1:
- (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 25.1 will survive six (6) years from the expiration or termination of this Agreement.

27. Severability, Waiver

- 27.1 If any provision of this Agreement is held to be unlawful, invalid, unenforceable or in conflict with any Law, it is to be severed so that the validity and enforceability of the remaining provisions are not affected.
- 27.2 A right or remedy created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delays by a party in exercising a right or remedy does not constitute a waiver of

that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

28. Conflict Of Interest

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

Schedule 1 Particulars

Item 1 Commonwealth Particulars

Name: Department of Home Affairs

Address: 6 Chan Street, BELCONNEN ACT 2617

Telephone Number: (02) 6264 2706

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

Contact officer: Director, Employer Sponsored Program Management

Item 2 The Approved Sponsor's Particulars

Name:

ACN

ABN:

Business structure:

Business Address:

Postal Address:

Telephone Number:

Email Address:

Contact officer:

Item 3 The 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 Ceilings and concessions relating to nomination criteria covered by this Agreement

Item 1 Occupations, Nomination Ceiling and Location

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

SESR nomination ceilings

Occupation	Code	Nomination Ceilings					Location of work
		Year 1	Year 2	Year 3	Year 4	Year 5	
Dairy Cattle Farm Worker	070499	X	X	X	X	X	X

TSS nomination ceilings

Occupation	Code	Nomination Ceilings					Location of work
		Year 1	Year 2	Year 3	Year 4	Year 5	
Dairy Cattle Farm Worker	070499	X	X	X	X	X	

Subclass 186 nomination ceilings

Occupation	Code	Nomination Ceilings					Location of work
		Year 1	Year 2	Year 3	Year 4	Year 5	
Dairy Cattle Farm Worker	070499	X	X	X	X	X	

Note:

- The Minister may vary the above ceiling numbers and Occupations at any time, with ceiling numbers subject to annual review.
- If the Sponsor wishes to increase the ceilings specified above, they must seek a variation to this Agreement as outlined at clause 5.3 to this Agreement.
- There is currently no ANZSCO code for the occupation of 'Senior dairy cattle farm worker'. For administration purposes only, Sponsors should use code 070499 when nominating this position.

Item 2 Concession to Occupation Tasks

The tasks of a Senior Dairy Cattle Farm Worker (Code: 070499) for the purposes of this agreement is 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 Occupational Health and Safety (OH&S) 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

Nil concessions.

In addition to meeting Standard skilled visa requirements, the Sponsor must:

- employ Overseas Workers in full-time positions only;
- ensure that if the Overseas Worker is paid via an Annualised Salary that they receive a Top-Up if, over an annual period, an Australian worker performing equivalent work in the Sponsor's workplace at the same location under different salary arrangements receives a higher amount.

Schedule 3 Additional requirements for nomination

Item 1 Labour market testing requirements

TSS and SESR visas

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

ENS visa

Item 2 Time period required to hold temporary skilled visa

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

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

Schedule 4 Concessions relating to visa criteria covered by this Agreement

Item 1 Qualifications and Experience

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.

Note: Overseas skilled workers nominated for:

- a TSS or SESR visa must meet English language proficiency in place for the Short-term stream of the TSS visa
- an ENS visa meet standard ENS English language requirements.

Schedule 5 Variation of sponsorship obligations

Item 1 Obligation to cooperate with inspectors

The obligation in regulation 2.78 of the Migration Regulations applies and is not varied.

Item 2 Obligation to ensure equivalent terms and conditions of employment

The obligation in regulation 2.79 of the Migration Regulations applies and is not varied.

The obligation in regulation 2.79 of the Migration Regulations applies and is varied to include the following **additional** obligations.

The Approved Sponsor must:

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

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

The obligation in regulation 2.80 of the Migration Regulations applies and is not varied.

Item 4 Obligation to pay costs incurred by the Commonwealth to locate and remove unlawful non-citizens

The obligation in regulation 2.81 of the Migration Regulations applies and is not varied.

Item 5 Obligation to keep records

The obligation in regulation 2.82 of the Migration Regulations applies and is not varied.

Item 6 Obligation to provide records and information to the Minister

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

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

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

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

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

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

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

Item 10 Obligation not to engage in discriminatory work practices

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

Schedule 6 Additional sponsorship obligations specific to this Agreement

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

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

Item 1 Obligations not to recruit where money owed

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

Item 2 Information on workplace rights

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

Item 3 Obligations to pay salary directly

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

Item 4 Obligations regarding salary deductions

An Approved Sponsor may not deduct an amount from an amount payable to a primary sponsored person unless the deduction is authorised:

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

Item 5 Obligations regarding charging for fees for services provided

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

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 OF AUSTRALIA under
the written authority of the **Minister for Immigration,
Citizenship, Migrant Services and Multicultural Affairs**
by its duly authorised delegate in the presence of

Signature of delegate

Signature of witness

Name and position of delegate

Name of witness

Date *dd/mm/yyyy*

Date *dd/mm/yyyy*

EXECUTED by **XXXXXX Pty Ltd**

ABN: XX XXX XXX XXX

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

Signature of director

Signature of director/company secretary

Name of director

Name of director/company secretary

Date *dd/mm/yyyy*

Date *dd/mm/yyyy*