



Australian Government
Department of Home Affairs

LABOUR AGREEMENT – RESTAURANT (FINE DINING)

Under the *Migration Act 1958*

Between

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

and

XXXXXXXXXXXXXX

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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 Immigration, Citizenship, Migrant Services 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 “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 (“the Department”) 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 overseas workers who are intended to be employed or engaged by the Sponsor as holders of Temporary Skill Shortage (TSS) visas or Employer Nomination Scheme (ENS) visa in its business undertaking as described in **Item 3 of Schedule 1**.
- D. For the purposes of the TSS visa program, 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.

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

Approved 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.

Caveat means a condition that excludes an occupation from use under a visa program in certain circumstances. A summary of these caveats is provided on the Department's website. For the specific wording of each caveat, see the legislative instrument for the relevant visa program as outlined on the Department's website.

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 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 TSS or an ENS 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.

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.

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

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

ENS visa means an Employer Nomination Scheme (ENS) (Subclass 186) visa.

IELTS means the International English Language Testing System.

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 Immigration, 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 application for a TSS or ENS visa under the Migration Legislation.

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

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

Nominee means the Overseas Worker specified in a nomination.

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

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

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

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

Postal Address means the address to which mail is delivered.

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

TSS visa means the Temporary Skill Shortage (TSS) (Subclass 482) 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 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 equal employment opportunity, unlawful discrimination and workplace health and safety legislation regulating the employment by the Sponsor of its Overseas Workers.

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

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

2. Interpretation

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

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

(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.

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.

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

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

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

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

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

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

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

3. Agreement period

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

3.2 Unless terminated earlier in accordance with clause 16 of this Agreement, the period of this Agreement will be the time specified in **Item 4 of Schedule 1**.

4. Pre-contractual representations

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

Nomination of Overseas Workers

5. Nomination requirements

5.1 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**.

5.2 The 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 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 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 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 where required for the nominated occupation, when performing the occupation.
- 5.6 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; and
 - (b) their reliance on overseas workers decreases during the life of this Agreement.
- 5.7 In addition to TSS or ENS nomination requirements outlined in the Migration Regulations, the Sponsor must demonstrate, through written evidence, when lodging a TSS or ENS nomination application 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**.
- 5.8 In addition to TSS nomination requirements outlined in the Migration Regulations, the Sponsor may only nominate an Overseas Worker, for a position which will be full time, ongoing and available for at least two years.
- 5.9 The Sponsor must comply with any additional requirements for nomination that are stipulated by the Minister in **Schedule 3**.

6. Visa requirements

- 6.1 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. This may include requirements that the Nominee has:
- (a) the sufficient skills, experience and English proficiency to perform the nominated occupation, and demonstrated this where requested by the Department; and
 - (b) if applying for permanent residence, any age requirements.
- 6.2 In most cases, these requirements mirror Standard 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. Visa period

TSS visa

- 7.1 The Sponsor acknowledges 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, unless a different or more restricted period is specified in **Schedule 4**.

ENS visa

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

8. Sponsorship obligations

- 8.1 The Sponsor, as an Approved Sponsor, must satisfy its sponsorship obligations in the Migration Regulations as varied, if at all, in **Schedule 5**.
- 8.2 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).
- 8.3 The Approved Sponsor must comply with Workplace law, and immigration laws regulating employment of the Approved Sponsor's sponsored overseas workers.

9. Reporting

9.1 The 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.

10. Review

10.1 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.

11. Audits of this Agreement

11.1 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.

11.2 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.

11.3 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.

Miscellaneous Provisions

12. Notices

12.1 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.

12.2 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**.

12.3 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.

12.4 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.

13. Variation and entire agreement

13.1 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.

13.2 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.

14. Suspension

14.1 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.

- 14.2 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.
- 14.3 Where the Minister suspends this Agreement in accordance with clause 14.1 the Minister will notify the Sponsor in writing.
- 14.4 For the avoidance of doubt, where the Minister notifies that this Agreement has been suspended in accordance with clause 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.
- 14.5 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.
- 14.6 After a period of suspension, the Minister may, at his/her absolute discretion, choose to resume this Agreement by notifying the Sponsor in writing.
- 14.7 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.
- 14.8 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**.

15. Termination

- 15.1 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.
- 15.2 The Sponsor will not be entitled to any compensation or payments as a result of the Minister terminating this Agreement under clause 15.1.
- 15.3 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.
- 15.4 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.
- 15.5 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 16.3 and/or to take any other contractual redress in accordance with this Agreement.
- 15.6 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.

15.7 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.

15.8 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.

16. Sanctions

16.1 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.

16.2 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.

16.3 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.

17. Relationship between the parties

17.1 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.

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

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

17.3 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.

17.4 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 performance of all of the Approved Sponsor's obligations under this Agreement.

18. Assurances, counterparts and assignment

18.1 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.

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

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

19. Dispute resolution

19.1 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.

19.2 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.

20. Confidential information and information sharing

20.1 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.

20.2 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 Jobs and Small Business.

20.3 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;
- (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.

20.4 The 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.

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

20.6 Clause 20.3 survives the termination or expiration of this Agreement.

21. Fettering and publishing

21.1 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.

- 21.2 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.
- 21.3 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.
- 22. Legal expenses**
- 22.1 Each party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Agreement.
- 22.2 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.
- 23. Survival after termination**
- 23.1 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.
- 24. Governing law and jurisdiction**
- 24.1 The laws applicable in the Australian Capital Territory govern this Agreement.
- 24.2 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.
- 25. Indemnity**
- 25.1 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.
- 25.2 The 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.
- 25.3 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.
- 25.4 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.
- 25.5 Clause 25.1 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
Email Address: labour.agreement.section@homeaffairs.gov.au
Contact officer: Director, Employer Sponsored Program Management

Item 2

The Sponsor's Particulars

Name: XXXXXXXXXXXXXXX
ABN:
Business structure: Australian Private Company
Business Address:
Postal Address:
Telephone Number:
Email Address:
Contact officer:

Item 3

The Sponsor's Business

Industry segment: Restaurant (Fine Dining)

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).

TSS nomination ceilings

Occupation	Code	Nomination Ceilings					Location of work
		Year 1	Year 2	Year 3	Year 4	Year 5	
Chef	351311	X	X	X	X	X	X
Cook	351411	X	X	X	X	X	X
Trade Waiter	070499	X	X	X	X	X	X

ENS nomination ceilings

Occupation	Code	Nomination Ceilings					Location of work
		Year 1	Year 2	Year 3	Year 4	Year 5	
Chef	351311	X	X	X	X	X	X
Cook	351411	X	X	X	X	X	X
Trade Waiter	070499	X	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 'Trade Waiter'. For administration purposes only, Sponsors should use code 070499 when nominating this position.

Item 2 Concession to Occupation Tasks

There are no Concessions to the tasks expected to be undertaken by Nominees employed as Chefs (ANZSCO 351311) or Cooks (ANZSCO 351411) under this Agreement, with the tasks expected to align with those outlined in ANZSCO.

Tasks of a **Trade Waiter (Code 070499)** under this agreement, which include the duties of the ANZSCO occupation of Waiter, along with certain duties as outlined under the *Restaurant Industry Award 2010*, are:

- setting and arranging tables;
- taking reservations, greeting customers and presenting them with menus and beverage lists;
- recommending dishes and wines to complement food (particularly in fine-dining establishments);
- taking orders and relaying them to kitchen and bar staff;
- serving food and beverages;
- opening bottles and pouring beverages including mixing liquor and assisting in the cellar;
- clearing tables and returning dishes and cutlery to the kitchen;
- removing empty bottles and used glasses from tables, and refilling and replacing glasses;
- collecting payments for sales and operating point of sales machines and cash registers.

Item 3 Concessions regarding salary requirements

Standard Temporary Skilled visa requirements are varied to require the Earnings of the Nominee and the equivalent Australian worker to only be equal to or greater than 90% of the TSMIT.

Schedule 3 Additional requirements for nomination

TSS visa

Item 1 Labour market testing requirements

Evidence of labour market testing must accompany nominations 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 32 Time period required to hold temporary skilled visa

The Sponsor may only nominate an Overseas Worker who has been employed as a Primary subclass 457 or TSS visa holder in the nominated occupation, for at least:

- *Chef or Cook: two years.*
- *Trade Waiters: three and a half years.*

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/CODE	Required Qualifications and Experience
Chef	351311	Nil concessions – as per ANZSCO
Cook	351411	Nil concessions – as per ANZSCO
Trade Waiter	070499	AQF certificate III in Hospitality (Restaurant Front of House), or equivalent qualification as assessed by a Registered Training Organisation (RTO) AND at least three years' experience.

Item 2 English Language

For a TSS visa, the Nominee **must** meet English language proficiency in place for the Short-term stream of the TSS visa

For an ENS visa, the Nominee **must** meet standard ENS English language requirements.

Item 3 Age requirements

Nil

Schedule 5 Variation of sponsorship obligations

Item 1 Obligation to cooperate with inspectors

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

Item 2 Obligation to ensure equivalent terms and conditions of employment

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

- (a) the Earnings of the nominee and the equivalent Australian worker must be equal to or greater than 90% of the TSMIT.

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

The obligation in regulation 2.80 of the Migration Regulations 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 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 Sponsor must provide the following documentation to the Department when requested or when seeking additional Nomination Ceilings:

- (a) updated Workforce Plans;
- (b) evidence of labour market testing that has been undertaken during the last 12 months;
- (c) evidence that the Sponsor has a strong record of, or a demonstrated commitment to, employing local labour and non-discriminatory employment practices;
- (d) evidence of salary arrangements for, and amounts paid to, Primary Sponsored Persons;
- (e) details of any breaches of immigration or other Commonwealth or State laws;
- (f) the dates and numbers and occupations of any and all Australian workers who have been retrenched or made redundant in the past 12 month period; and
- (g) any additional information requested by the 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 **XXX XXX XXX Pty Ltd**

ABN XX XXX XXX XXX

in accordance with section 127 of the *Corporations
Act 2011* (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*