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**Australian Government**  
**Department of Immigration and Border Protection**

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**LABOUR AGREEMENT – MEAT INDUSTRY**

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Under the Migration Act 1958

Between

**Commonwealth of Australia as represented by the  
Minister for Immigration and Border Protection  
(Minister)**

and

**Kimberley Meat Company Pty Ltd**

Released by Department of Home Affairs  
under the Freedom of Information Act 1982

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Released by Department of Home Affairs  
under the Freedom of Information Act 1982

# Labour Agreement

**Effective Date:** Date signed by the Commonwealth.

## Parties

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

## AND

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

## Background

- A. This labour agreement (the “Agreement”) is a “labour agreement” as defined in the Migration Regulations. This Agreement will be administered by the Department of Immigration and Border Protection (“DIBP or the Department”) on behalf of the Commonwealth.
- B. This Agreement sets out the terms and conditions by which the Approved Sponsor may recruit, employ or engage the services of overseas workers who are intended to be employed or engaged by the Approved Sponsor as holders of Subclass 457 Temporary Work (Skilled) or Subclass 186 Employer Nomination Scheme visas in its business undertaking as described in **Item 3** of **Schedule 1**.
- C. The Approved Sponsor is an “approved sponsor”, as defined in subsection 5(1) of the Migration Act by virtue of entering into this Agreement.

## Operative Part

### 1 Definitions

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

**Accredited English Language Training** means for the purpose of this Agreement English language training that is undertaken through a Registered Training Organisation.

**Accredited Training Institution** means for the purpose of this Agreement a Registered Training Organisation. Registered Training Organisations are registered by State and Territory training authorities to deliver nationally recognised training.

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

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

**Annual Salary** means for the purpose of this Agreement remuneration paid to a Primary Sponsored Person on an annualised basis and is calculated from the date the Primary Sponsored Person commences employment, excluding those periods when the Primary Sponsored Person is offshore on approved leave without pay.

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

**AQF** means the Australian Qualifications Framework.

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

**Base rate of pay** means the rate of pay payable to an employee for his or her full time ordinary hours of work, but not including any of the following:

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

Ordinary hours of work is determined under the relevant industrial award or agreement.

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

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

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

**Ceiling number** means the number of primary Subclass 457 or Subclass 186 Employer Nomination Scheme visas that can be nominated as defined in **Schedule 3**. Nominations made but withdrawn prior to a decision are not included in the ceiling number.

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

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

but does not include information:

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

**Concessions** means any variations to the requirements prescribed in the Migration Legislation in relation to the skills, qualifications, employment background, level of English Language proficiency and the Temporary Skilled Migration Income Threshold (TSMIT) required for the nomination and grant of a Subclass 457 or Subclass 186 Employer Nomination Scheme 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.

**Deductions Plan** means a plan submitted by the Approved Sponsor to the Commonwealth, seeking approval of fair, reasonable and lawful deductions from the gross salary of Skilled Meat Workers (other than deductions required by Australian law or statute), which if approved by the Commonwealth, could be made available to the Company's Skilled Meat Workers should they freely choose to avail themselves of this opportunity to which the deductions relate.

**DIBP** means the Department of Immigration and Border Protection ("the Department").

**Effective Date** means:

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

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

**IELTS** means the International English Language Testing System.

**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.

**Meat Processing Company** means a company registered, licensed or accredited by the relevant Commonwealth or State/Territory authority to operate an abattoir and/or boning room and which is a Party to this Agreement and the direct employer of Skilled Meat Workers.

**Meat Processing Establishment** means for the purpose of this Agreement an establishment wholly or predominately concerned with any one or more of the activities of killing, dressing, boning, slicing, preparation and/or packing of fresh meat and is owned and operated by the Approved Sponsor at which Primary Sponsored Persons are to be employed.

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

**Migration Legislation** means the Migration Act and/or the Migration Regulations.

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

**Minister** means "the Minister" for Immigration and Border Protection, the Assistant Minister, and his or her authorised representative performing relevant functions as the Minister under the Migration Legislation.

**MINTRAC** means the Meat Industry National Training Advisory Council.

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

**Nominee** means the holder of, or an applicant or proposed applicant for, a Subclass 457 or Subclass 186 Employer Nomination Scheme visa.

**On-hire**<sup>1</sup>, under a labour agreement, 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.

**Occupations** means those occupations prescribed in **Schedule 3**.

**Postal Address** means the address to which mail is delivered.

**Primary Sponsored Person** takes the same meaning as in the Migration Regulations.

**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.

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<sup>1</sup> 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.

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

**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”.

**Terms and conditions of employment** takes the same meaning as Regulation 2.57 of the Migration Regulations.

**The Department** means the Department of Immigration and Border Protection.

**Top Up** is defined for the purpose of this Agreement as an amount needed to restore the Skilled Meat Worker’s salary to the Temporary Skilled Migration Income Threshold as prescribed under **Schedule 6, Item 2, Clause 2**.

**TSMIT** means the Temporary Skilled Migration Income Threshold specified in an instrument made under regulation 2.72(10)(cc) of the Migration Regulations, as routinely indexed.

**TSMIT Fortnightly Rate** means the (annual salary x 12) divided by 313.

**TSMIT Hourly Rate** means the TSMIT Weekly Rate divided by 38.

**TSMIT Weekly Rate** means the (annual salary x 6) divided by 313.

**Workforce** means the total number of Australian workers (including permanent residents), subclass 457 visa holders, and other temporary visa holders engaged by the Approved Sponsor.

**Workplace law** means the *Fair Work Act 2009 (Cth)*, and any other law of the Commonwealth, a State or a Territory that regulates the relationships between employers and employees (including by dealing with occupational health and safety matters).

**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), subclass 457 visa holders, and other temporary visa holders engaged by the Approved Sponsor.

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

## 2 Interpretation

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

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

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

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

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

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

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



**(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 Period**

- 3.1 This Agreement commences from the date signed by the Commonwealth specified in **Item 4 of Schedule 1**.
- 3.2 Unless terminated earlier in accordance with clause 19 of this Agreement, the period of this Agreement will be the time specified in **Item 4 of Schedule 1**.
- 3.3. For the purpose of Migration Regulation 457.511, the end of the period specified for a Subclass 457 visa granted pursuant to this Agreement, will be
  - (a) in the case of a holder who is in Australia at the time of grant - to remain in Australia for a period of not more than four (4) years from the date of grant; and
  - (b) in the case of a holder who is outside Australia at the time of grant - to remain in Australia for a period of not more than four (4) years from the date of entry that is specified by the Minister.

### **4 Pre-contractual representations**

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

## **Sponsorship and nomination of overseas workers**

### **5 On-hire prohibited**

- 5.1 On-hire is prohibited under this Agreement. Specifically:
  - (a) the Approved Sponsor must not nominate a proposed occupation for a Nominee, for On-hire;
  - (b) any such nominations will not be approved under this Agreement; and
  - (c) the Approved Sponsor must not utilise the services of a visa-holder engaged pursuant to a nomination under this Agreement, for On-hire.

### **6 Labour market need**

- 6.1 The Approved Sponsor must take all reasonable steps to ensure it recruits suitably skilled Australians who are available before nominating a Nominee under this Agreement.

## **PART A – Subclass 457**

### **7 Nomination**

- 7.1 A nomination under this Part means a nomination referred to in section 140GB of the Migration Act.



- 7.2 The Approved Sponsor acknowledges the general requirements of the Subclass 457 visa programme and agrees that Primary Sponsored Persons engaged through this Agreement may only be engaged in occupations, and with concessions referred to in **Schedules 3 and 4**.
- 7.3 The Approved Sponsor may only nominate Nominees for:
- (a) Occupations and Concessions outlined in **Schedule 3 and 4**; and
  - (b) up to the Ceiling Number specified in **Schedule 3**; and
  - (c) an Occupation to be performed in a location listed in **Item 1 of Schedule 3**.
- 7.4 The Approved Sponsor will ensure that the number of nominations made under this Agreement in the occupations listed in **Schedule 3** does not exceed:
- (a) the Ceiling Number identified in **Schedule 3**; or
  - (b) where one or more ceiling numbers have been approved by a subsequent variation, the most recently approved Ceiling Number.
- 7.5 The Approved Sponsor acknowledges that the Minister may, in his/her absolute discretion:
- (a) vary the Ceiling Numbers up or down;
  - (b) vary the Concessions;
  - (c) vary the Occupations.
- 7.6 In addition to the information specified in the Migration Regulations, the Approved Sponsor must provide written certification that the Nominee:
- (a) has the commensurate qualifications and experience in relation to the nominated occupation as specified in **Item 2 of Schedule 3**;
  - (b) unless varied in accordance with **Item 4 of Schedule 3**,
    - i. has undertaken a test of English language proficiency and achieved the score specified for the relevant test in the instrument made under paragraph 457.223(4)(eb) of the Migration Regulations; or
    - ii. is the current holder of a valid passport issued by:
      - A. Canada; or
      - B. New Zealand; or
      - C. the Republic of Ireland; or
      - D. the United Kingdom; or
      - E. the United States of America; or
    - iii. has completed at least five (5) years of full-time study in a secondary and/or higher education institution where instruction was conducted in English; or
    - iv. will be paid a Base Rate of Pay which is at least the level of salary worked out in the way specified in the instrument made under paragraph 457.223(6)(a) of the Migration Regulations;
  - (c) will, when engaged under this Agreement, hold any licence, registration and /or membership that is required by Australian law to perform the Nominee's nominated occupation.
- 7.7 In addition to the information specified in the Migration Regulations, the Approved Sponsor must demonstrate, through written evidence, at nomination, that the Nominee will:
- (a) be engaged full time and will receive terms and conditions of employment which are no less favourable than the terms or conditions of employment that are, or would be provided, to an Australian performing equivalent work in the Approved Sponsor's workplace at the same location, and

- (b) receive a Base Rate of Pay, under the terms and conditions of employment referred to in clause 7.7 (a) that is equal to or greater than the TSMIT, unless varied in **Item 3 of Schedule 3**.

7.8 Where no Australian is performing equivalent work in the Approved Sponsor's workplace at the same location, the Approved Sponsor must, in addition to the information specified in the Migration Regulations, demonstrate through written evidence, at nomination that:

- (a) the Nominee will be engaged on a full-time basis; and
- (b) the terms and conditions of employment received by the Nominee will be no less favourable than that paid to an Australian performing equivalent work; and
- (c) the Nominee will receive a Base Rate of Pay, under the terms and conditions of employment referred to in clause 7.8 (b) that is equal to or greater than TSMIT, unless varied in **Item 3 of Schedule 3**.

7.9 In addition to the information in the Migration Regulations, the Approved Sponsor must provide written certification; that the following information provided in support of a nomination application, is true and correct:

- (a) that the Approved Sponsor has taken all reasonable steps to ensure it recruits suitably skilled Australians, before engaging Primary Sponsored Persons under this Agreement; and
- (b) that the tasks of the position include a significant majority of the tasks of the nominated occupation as described in ANZSCO, unless varied in **Schedule 4**; and
- (c) that the Nominee will complete a skills assessment where:
  - i. such is required in accordance with the standard subclass 457 visa programme as prescribed in the Migration Legislation; or
  - ii. where the Minister specified that a skills assessment is required in **Item 1 of Schedule 5**.

7.10 The Approved Sponsor must comply with any additional requirements for nomination that are stipulated by the Minister in **Item 1 of Schedule 5**.

## **8 Approval of nominations**

- 8.1 The Minister will approve nominations in accordance with the Migration Legislation.
- 8.2 The Minister will notify the Approved Sponsor of a decision on the nomination application.
- 8.3 The period of an approval of a nomination will be in accordance with the Migration Legislation.

## **9 Sponsorship obligations**

- 9.1 The Approved Sponsor must satisfy its sponsorship obligations in Division 2.19 of Part 2A of the Migration Regulations and in Migration Legislation.
- 9.2 The Approved Sponsor is specifically required to meet the following obligations in the Migration Regulations and as varied, if at all, in **Schedule 6**, as follows:
  - (a) to cooperate with inspectors (Regulation 2.78);
  - (b) to ensure equivalent terms and conditions of employment (Regulation 2.79);
  - (c) to pay travel costs to enable sponsored persons to leave Australia (Regulation 2.80);
  - (d) to pay costs incurred by the Commonwealth to locate and remove unlawful non-citizen (Regulation 2.81);
  - (e) to keep records (Regulation 2.82);
  - (f) to provide records and information to the Minister (Regulation 2.83);

- (g) to provide information to the Minister when certain events occur (Regulation 2.84);
- (h) to ensure a Primary Sponsored Person does not work in an occupation other than an approved occupation (Regulation 2.86);
- (i) not to recover certain costs (Regulation 2.87).

9.3 The Approved Sponsor must meet the following additional obligations which are imposed in accordance with subsection 140H(3) of the Migration Act:

- (a) ensure that every Primary Sponsored Person engaged under this Agreement holds any licence, registration and/or membership that is required by Australian law to perform the Primary Sponsored Person's approved occupation (the occupation listed in the most recently approved nomination);
- (b) as at the commencement date provide information to the Commonwealth that is true and correct with respect to matters dealt with in this Agreement and/or matters relevant to the Approved Sponsor's sponsorship of Primary Sponsored Persons pursuant to this Agreement;
- (c) pay wages and salary directly to the Primary Sponsored Person;
- (d) ensure all Primary Sponsored Persons are engaged on a full-time basis and will receive terms and conditions of employment which are no less favourable than the terms and conditions of employment that are, or would be, provided to an Australian performing equivalent work in the Approved Sponsor's workplace at the same location;
- (e) ensure any payments (including, but not limited to, repayments of salary advances made to the Primary Sponsored Person at the discretion of the Approved Sponsor) deducted from the Primary Sponsored Person's salary may only be made with the consent and written permission of the Primary Sponsored Person and must be consistent with Workplace Laws and the requirements of the relevant award; and
- (f) any other additional obligations specified in **Item 10 of Schedule 6**.

9.4 The obligation in paragraph 9.3(a) is applicable and commences when the Primary Sponsored Person commences his or her employment or engagement with the Approved Sponsor, and ends on the earlier of:

- (a) the day on which the Primary Sponsored Person is granted a further substantive visa that:
  - i. is not a Subclass 457 visa; and
  - ii. is in effect; and
- (b) the day on which the Primary Sponsored Person ceases employment or engagement with the Approved Sponsor.

9.5 The obligations in paragraphs 9.3(c), (d), (e) and (f) commence and end in accordance with subregulation 2.79(4) of the Migration Regulations.

9.6 The Approved Sponsor must comply with Workplace law.

## PART B – Subclass 186

### 10 Nominations

10.1 A nomination under this Part means a nomination referred to in Migration Regulations for a permanent residence visa specified in **Item 5 of Schedule 3**.

10.2 The Approved Sponsor acknowledges the general requirements for permanent residence and agrees that Primary Sponsored Persons engaged through this Agreement may only be engaged in occupations, and with concessions referred to in **Schedules 3 and 4**.

10.3 The Approved Sponsor may only nominate Nominees for:

- (a) occupations as specified in **Item 1 of Schedule 3**;

- (b) up to the ceiling number specified in **Schedule 3**
  - (c) an occupation to be performed in a location listed in **Item 1 of Schedule 3**.
- 10.4 The Approved Sponsor will ensure that the number of nominations made under this Agreement in the occupations listed in **Schedule 3** does not exceed:
- (a) the Ceiling Number identified in **Schedule 3**; or
  - (b) where one or more ceiling numbers have been approved by a subsequent variation, the most recently approved Ceiling Number.
- 10.5 The Approved Sponsor acknowledges that the Minister may, in his/her absolute discretion:
- (a) vary the Ceiling Numbers up or down;
  - (b) vary the Concessions;
  - (c) vary the Occupations.
- 10.6 The Approved Sponsor must make nominations in accordance with the approved forms and form 1395 (elodgment nomination form).
- 10.7 The Approved Sponsor must provide, as part of the nomination:
- (a) the information required in the Migration Regulations;
  - (b) the fee specified in the Migration Regulations.
- 10.8 The Commonwealth may refund the fee in accordance with the circumstances for such a refund in the Migration Regulations.
- 10.9 The Approved Sponsor must comply with any additional requirements for a permanent residence nomination that is stipulated by the Minister in **Item 2 of Schedule 5**.
- 10.10 The Approved Sponsor may only nominate a Nominee who:
- (a) has the commensurate qualifications and experience in relation to the nominated occupation as specified in **Item 2 of Schedule 3**;
  - (b) unless varied in accordance with **Item 4 of Schedule 3**:
    - i. has undertaken a test of English language proficiency and achieved the score specified for the relevant test in the instrument made under paragraph 186.222(a) of the Migration Regulations; or
    - ii. is a class of person who is specified in an instrument made under paragraph 186.222(b) of the Migration Regulations as being exempt from the English language requirement;
  - (c) has not turned 50 years of age at time of nomination, unless varied in **Item 5 of Schedule 3**; and
  - (d) has been employed under a subclass 457 visa for the previous three (3) years and six (6) months in the occupations specified in **Item 1 of Schedule 3**;
  - (e) holds any licence, registration and/or membership that is required by Australian law to perform the Nominee's nominated occupation.
- 10.11 The Approved Sponsor must demonstrate, through written evidence, at nomination, that the Nominee will:
- (a) be engaged full time and will receive terms and conditions of employment which are no less favourable than the terms or conditions of employment that are, or would be provided, to an Australian performing equivalent work in the Approved Sponsor's workplace at the same location, and
  - (b) receive a Base Rate of Pay, under the terms and conditions of employment referred to in clause 10.11 (a) that is equal to or greater than the TSMIT, unless varied in **Item 3 of Schedule 3**.

10.12 Where no Australian is performing equivalent work in the Approved Sponsor's workplace at the same location, the Approved Sponsor must, in addition to the information specified in the Migration Regulations, demonstrate through written evidence, at nomination that:

- (a) the Nominee will be engaged on a full-time basis; and
- (b) the terms and conditions of employment received by the Nominee will be no less favourable than that paid to an Australian performing equivalent work; and
- (c) the Nominee will receive a Base Rate of Pay, under the terms and conditions of employment referred to in clause 10.12 (b) that is equal to or greater than TSMIT, unless varied in **Item 3 of Schedule 3**.

10.13 The Approved Sponsor must provide written certification that the following information provided in support of a nomination application, is true and correct:

- (a) that the tasks of the position include a significant majority of the tasks of the nominated occupation as described in ANZSCO, unless varied in **Schedule 4**;
- (b) that the position will be ongoing for at least two (2) years.

10.14 The Approved Sponsor must comply with any additional requirements for nomination that are stipulated by the Minister in **Item 2 of Schedule 5**.

## **11 Approval of nominations**

11.1 The Minister will approve nominations in accordance with this Agreement, including any requirements specified in **Item 2 of Schedule 5**.

11.2 The Minister will notify the Approved Sponsor of a decision on the nomination application.

11.3 The period of an approval of a nomination will be in accordance with the Migration Legislation.

## **PART C: Other provisions**

### **12 Training and recruitment of Australian workers**

12.1 The Approved Sponsor must comply with the training and recruitment obligations outlined in **Schedule 2**.

12.2 The Approved Sponsor may carry out the training obligations itself or through contracted service providers.

12.3 The Approved Sponsor warrants that the training provided will be fit for any purpose express or implied.

### **13 Supporting Primary Sponsored Persons**

13.1 The Approved Sponsor will be responsible for ensuring that all Primary Sponsored Persons engaged under this Agreement are supplied with workplace rights information.

13.2 The information referred to in clause 13.1 should be provided within seven (7) days of the date the Primary Sponsored Person commences employment in the nominated Occupation with the Approved Sponsor.

### **14 Reporting obligations**

14.1 Unless varied in **Schedule 7**:

- (a) the Approved Sponsor must provide a report to the Department within 30 days following a request by the Minister or when requesting a variation to **Schedule 3**;
- (b) the report must include:

- i. updated Workforce Plans; and
- ii. evidence of efforts to recruit domestically, using the template provided in **Schedule 8**; and
- iii. evidence of the Base Rate of Pay as defined at **Item 3** of **Schedule 3**, for Primary Sponsored Persons; and
- iv. evidence of compliance with the training obligations defined in **Schedule 2**; and
- v. details of any breaches of immigration or other Commonwealth or State laws; and
- vi. 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
- vii. any additional information requested by the Minister.

## 15 Monitoring

- 15.1 The Minister may, from time to time, audit the Approved Sponsor's performance of its obligations in this Agreement and the Approved Sponsor will cooperate with the Minister for the purpose of such audits.
- 15.2 Without limiting the generality of the preceding clause, the Approved Sponsor will:
- (a) liaise with and provide information and assistance to the Minister as reasonably required by the Minister for the purposes of such audits;
  - (b) comply with the Minister's reasonable requests or requirements for the purposes of such audits.
- 15.3 Unless specified otherwise in the Migration Legislation, the Approved Sponsor will retain all records generated for the purposes of this Agreement for seven (7) years from the date of expiration or termination of this Agreement.

## Miscellaneous Provisions

### 16 Relationship between the parties

- 16.1 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.
- 16.2 A party cannot in any way or for any purpose:
- (a) bind another party; or
  - (b) contract in the name of another party.
- 16.3 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.
- 16.4 If the Approved Sponsor is constituted by more than one legal entity (such as a partnership or an unincorporated association), each of those legal entities will be jointly and severally liable for the performance of all of the Approved Sponsor's obligations under this Agreement.

### 17 Confidential information and information sharing

- 17.1 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, or in accordance with clause 17.3 of this Agreement.



- 17.2 The Approved Sponsor must comply with any reasonable request by the Commonwealth for information to enable the Commonwealth to meet its obligations in this Agreement.
- 17.3 The Approved Sponsor consents to information concerning it which is relevant to the operation of this Agreement being shared by the Minister with:
- (a) State or Territory government agencies in the State or Territory in which the Approved Sponsor conducts business, where those agencies have regulatory or other relevant interests in the operation of this Agreement;
  - (b) Commonwealth agencies with regulatory or other relevant interests in the operation of this Agreement.
- 17.4 The Approved Sponsor will allow the disclosure of information related to this Agreement for various reporting and Commonwealth disclosure obligations. These disclosures include:
- (a) disclosure of procurement information for the Department's annual reporting purposes;
  - (b) disclosure to the Parliament and its committees, as appropriate, in line with the Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters;
  - (c) disclosure of information consistent with the Freedom of Information Act 1982 (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.
- 17.5 Clause 17.3 survives the termination or expiration of this Agreement.

## **18 Suspension**

- 18.1 The Minister may, in his/her absolute discretion, suspend this Agreement in whole or in part.
- 18.2 The Approved Sponsor and other third parties are not entitled to any compensation or payments as a result of the Minister suspending this Agreement under clause 18.1.
- 18.3 Where the Minister suspends this Agreement in accordance with clause 18.1 the Minister will notify the Approved Sponsor in writing.
- 18.4 For the avoidance of doubt, where the Minister notifies that this Agreement has been suspended in accordance with clause 18.3, the suspension shall take effect at the time the notice is taken to be received by the Approved Sponsor, in accordance with clause 27.

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under the Freedom of Information Act 1982



- 18.5 Where the Minister suspends this Agreement in accordance with clause 18.1, 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.
- 18.6 After a period of suspension, the Minister may, at his/her absolute discretion, choose to resume this Agreement by notifying the Approved Sponsor in writing.
- 18.7 Where the Minister chooses to resume this Agreement in accordance with clause 18.6 and notifies the Approved Sponsor, the Agreement will resume at the time the notice is taken to be received, in accordance with clause 27.
- 18.8 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**.

## 19 Termination

- 19.1 The Minister may, in his/her absolute discretion, terminate this Agreement at any time including for reasons of public interest where there is a change in policy or a change in government which results in a change in policy settings.
- 19.2 The Approved Sponsor will not be entitled to any compensation or payments as a result of the Minister terminating this Agreement under clause 19.1.
- 19.3 Otherwise, if the Minister contends that the Approved Sponsor is in default under this Agreement, the Minister may, without prejudice to any right of action or remedy which has accrued or which may accrue (including the Minister's entitlement to terminate in accordance with clause 19.6):
- (a) suspend this Agreement in whole or in part; and
  - (b) serve notice on the Approved Sponsor, advising that this Agreement is suspended and requiring the Approved Sponsor to rectify to the satisfaction of the Minister, those aspects of the Approved Sponsor's performance which are of concern to the Commonwealth; or
  - (c) terminate this Agreement without prejudice to any right of action or remedy which has accrued or which may accrue.
- 19.4 If the Approved Sponsor is in breach of a sponsorship obligation in the Migration Regulations the Approved Sponsor will be taken to be in default under this Agreement as if the statutory obligation was a contractual obligation of the Approved Sponsor.
- 19.5 For the avoidance of doubt, a breach of the Approved Sponsor's warranty given in clause 4.1 with respect to pre-contractual information, will entitle the Minister to suspend this Agreement and serve a notice under clause 19.3 and/or to take any other contractual redress in accordance with this Agreement.
- 19.6 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.
- 19.7 For the avoidance of doubt if this Agreement is terminated for any reason, or for no reason:
- (a) the Approved Sponsor's approval as a sponsor for the purposes of this Agreement will thereby be automatically terminated; and

- (b) visas granted pursuant to this Agreement will be subject to the operation of the Migration Legislation.

19.8 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.

## **20 Sanctions**

20.1 Instead of terminating this Agreement:

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

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

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

## **21 Dispute resolution**

21.1 The Parties will deal with any dispute arising during the course of this Agreement as follows:

- (a) the party claiming that there is a dispute must notify the other party of the dispute;
- (b) the parties will use reasonable endeavours to resolve the dispute by direct negotiation;
- (c) the parties must allow 28 days from notification of the dispute to reach a resolution or to agree to refer the dispute to mediation in accordance with, and subject to, The Institute of Arbitrators and Mediators Australia Mediation Rules or some other form of alternative dispute resolution procedure agreed to in writing by the Parties; and
- (d) in the event that:
  - i. the Parties have attended mediation, or some other form of alternative dispute resolution procedure; and
  - ii. no written settlement agreement is executed within 15 Business Days (or such extended time as the Parties may agree in writing before the expiration of the 15 Business days) of the conclusion of the mediation or some other form of alternative dispute resolution procedure

then either Party may commence legal proceedings or terminate this Agreement.

21.2 The Parties acknowledge that the Migration Review Tribunal and Administrative Appeals Tribunal may have jurisdiction to review decisions in relation to nomination applications and visa applications made under this Agreement. This Agreement does not abrogate any rights of a merits review by the Migration Review Tribunal or the Administrative Appeals Tribunal.

## **22 Assurances, counterparts and assignment**

22.1 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.

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

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

## **23 Variation and entire agreement**

- 23.1 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.
- 23.2 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.

## **24 Fettering and publishing**

- 24.1 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.
- 24.2 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.
- 24.3 The Commonwealth may grant or refuse to grant consent, in its absolute discretion, to any application by the Approved Sponsor for consent to a change in control of the Approved Sponsor that may be inimical to the Approved Sponsor's capacity to perform its obligations under this Agreement, and the Commonwealth may attach such conditions on a consent as the Commonwealth sees fit.

## **25 Legal expenses**

- 25.1 Each party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Agreement.
- 25.2 The Approved Sponsor must pay any stamp duty assessed on or in relation to this Agreement and any instrument or transaction required by or necessary to give effect to this Agreement.

## **26 Survival after termination**

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

## **27 Notices**

- 27.1 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.
- 27.2 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**.

- 27.3 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 27.1.
- 27.4 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.

## **28 Governing law and jurisdiction**

- 28.1 The laws applicable in the Australian Capital Territory govern this Agreement.
- 28.2 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.

## **29 Indemnity**

- 29.1 The Approved Sponsor agrees to indemnify the Minister from and against any:
- (a) cost or liability incurred by the Minister; or
  - (b) loss or expense incurred by the Minister in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Minister,
- arising from:
- (c) any act or omission by the Approved Sponsor or its Personnel in connection with this Agreement; or
  - (d) any breach by the Approved Sponsor of its obligations or warranties under this Agreement;
- irrespective of whether there was fault on the part of the person whose conduct gave rise to that liability, loss or damage, or loss or expense.
- 29.2 The Approved Sponsor's liability to indemnify the Minister under clause 29.1 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.
- 29.3 The right of the Minister to be indemnified under clause 29.1 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.
- 29.4 In clause 29.1:
- (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;
- 29.5 Clause 29.1 will survive six (6) years from the expiration or termination of this Agreement.

## Schedule 1 Particulars

### Item 1

#### Commonwealth Particulars

Name: Department of Immigration and Border Protection

Address: 6 Chan Street, BELCONNEN ACT 2617

Telephone Number: s22(1)(a)(ii)

Email Address: s22(1)(a)(ii)

Contact officer: Director, Labour Agreement Section

### Item 2

#### The Approved Sponsor's Particulars

Name: Kimberley Meat Company Pty Ltd

ACN: 159 933 392

ABN: 64 159 933 392

Business structure: Australian Proprietary Company

Business Address: Unit 2/3 Farrell Street, BROOME WA 6725

Postal Address: PO Box 2724 BROOME WA 6725

Telephone Number: s47F

Email Address:

Contact officer: s47F

### Item 3

#### The Approved Sponsor's Business

Business Undertaking: Meat Processing

Industry segment: Agriculture, Forestry and Fishing

### Item 4

#### Commencement and period

Effective Date: The date signed by the Commonwealth.

Cease Date: Five (5) years from date of effect

### Item 5

#### Commercial-in-Confidence Information

Party: The Department of Immigration and Border Protection on behalf of the Commonwealth

Kimberley Meat Company Pty Ltd

The terms of this Agreement

All information provided to request and secure access to a Labour Agreement

## Schedule 2 Training and recruitment obligations

1. The Approved Sponsor must, throughout the term of this agreement, demonstrate a commitment to the provision of employment, training and career progression opportunities to Australians through compliance with this Schedule.
2. It is an obligation of the Agreement that the Approved Sponsor must undertake recruitment activities which afford Australians the first opportunity for employment, prior to nomination of positions covered by this Agreement.
3. It is an obligation of this Agreement that the Approved Sponsor must, over the term of each Year of the Agreement, ensure that:
  - (a) payments equivalent to at least two (2) per cent of the gross payroll of the Approved Sponsor are made to an industry training fund that operates in the same industry as the Approved Sponsor; or
  - (b) payments equivalent to at least one (1) per cent of the gross payroll of the Approved Sponsor are made for the provision of structured training for the Australian employees of the Approved Sponsor.
4. Expenditure that may count towards training expenditure for the purposes of this Agreement is outlined in Legislative Instrument IMMI 13/030, as varied from time to time.



## Schedule 3 Occupations; Ceiling numbers; Location; Qualifications and Experience; and other Concessions covered by this Agreement

### Item 1 Occupations, Ceiling Numbers, and Location

Occupation	ANZSCO	Ceiling numbers of Primary Sponsored Persons : subclass 457					Location of Work	Ceiling numbers of Primary Sponsored Persons : subclass 186				
		Year 1	Year 2	Year 3	Year 4	Year 5		Year 1	Year 2	Year 3	Year 4	Year 5
Skilled Meat Worker	070-299	s47										

- The Minister may vary the ceiling number and occupation at any time.
- Before the subsequent years of the term of operation commence, the Approved Sponsor may request a ceiling for the subsequent year. The Commonwealth reserves the right to make the final decision as to the ceiling for each year of the Agreement.

### Item 2 Qualifications and Experience:

The Approved Sponsor may only nominate a nominee who holds the following qualifications and experience:

**Skilled Meat Worker** (code 070-299 – (occupation unknown)) who:

- has been assessed and verified by a MINTRAC registered assessor, or an assessor approved by the Commonwealth, with a Certificate IV in Training and Assessment experienced in meat processing, to be Skilled Meat Workers with a minimum skill level commensurate with the MINTRAC referenced AQF Certificate III in meat processing; and
- either:
  - demonstrates a minimum of three (3) years skilled work experience obtained at a meat processing establishment acceptable to the Parties; or
  - has been working in Australia on a Subclass 457 visa at an Australian Meat Processing Establishment acceptable to the Parties for at least nine (9) months prior to being nominated.



### **Item 3 Concessions to TSMIT**

Clauses 7.7(b), 7.8(c), 10.8(b) and 10.8(c) are varied as follows:

The Nominee will be paid, under the terms and conditions of employment referred to in clauses 7.7(a), 7.8(b), 10.8(a) and 10.8(b) respectively, no less than the TSMIT. Payments that can be considered for the purpose of meeting the TSMIT include any payments that are provided for under the Relevant Industrial Instrument, or the Migration Regulations, excluding bonus payments and payments for all time worked outside the ordinary working hours (including overtime and shifts) on any day. Payments of worker's compensation benefits to Primary Sponsored Person as compensation for loss of ordinary earnings and payments that are based on activity levels can also be considered for the purpose of meeting the TSMIT.

### **Item 4 Concessions to English language requirement**

1. Clause 7.6(b) is varied to include:
  - (a) has achieved a minimum average score of at least five (5) on an IELTS test with no minimum test score; or
  - (b) is a Primary Sponsored Person who was not required to meet English language levels under previous meat industry labour agreements or a Standard Business Sponsorship
2. Clause 10.10(b) is varied to include:
  - (a) has achieved a minimum average score of at least five (5) on an IELTS test with no minimum test score; or
  - (b) for subclass 457 visa holders **who were not required** to provide evidence of English language proficiency at the time of grant of their subclass 457 visa, has completed, and provides evidence as prescribed in the Migration Regulations for meeting functional English..

### **Item 5 Concessions to age requirement (permanent residence)**

Nil

## Schedule 4 Concessions to tasks of occupations in ANZSCO

The duties and tasks of a skilled meat worker reflect the duties and tasks referenced by a National Meat Industry Training Advisory Council (MINTRAC) Certificate III. A skilled meat worker cannot be employed in a labouring position or undertake labouring or unskilled duties other than to the extent of circumstances prescribed below.

Tasks of a skilled meat worker, which include the duties of ANZSCO occupations Slaughterer and Meat Boner and Slicer, are:

- stuns and kills livestock, and prepares carcasses for further processing by removing internal organs and hides;
- operating switching controls to direct and drop carcasses and meat cuts from supply rails to boning tables;
- cutting meat to separate meat, fat and tissue from around bones;
- washing, scraping and trimming foreign material and blood from meat;
- cutting sides and quarters of meat into standard meat cuts, such as rumps, flanks and shoulders, and removing internal fat, blood clots, bruises and other matter to prepare them for packing and marketing;
- operating restrainer and stunning equipment;
- severing jugular veins of stunned animals to drain blood and facilitate dressing;
- trimming and removing head meat and severing animal heads;
- slitting open, eviscerating and trimming animal carcasses; and
- may slaughter livestock according to procedures required by religious customs.

## Schedule 5 Additional requirements for nomination

### Item 1 Subclass 457

The Approved Sponsor must meet the following requirements to the Commonwealth's satisfaction before a nomination will be approved:

1. The Approved Sponsor has attested as part of the nomination, in writing, that it has a strong record of, or a demonstrated commitment to employing local labour, and non-discriminatory employment practices.
2. The Approved Sponsor has certified as part of the nomination, in writing, that it has not:
  - i. permanently terminated the employment of not more than five percent of its Australia workforce at the Meat Processing Establishment approved under this Agreement (except in circumstances of demonstrated misconduct or unlawful conduct) within a period of three (3) months prior to the date of the nomination application; and
  - ii. stood down its workforce at the Meat Processing Establishment approved under this Agreement for more than seven (7) consecutive days at any single given time over a three (3) month period prior to the date of the nomination application; and
  - iii. reduced the shifts of its workforce at the Meat Processing Establishment approved under this Agreement to less than 50 per cent of the regular shift quota within a period of three (3) months prior to the date of the nomination application.
3. The requirement to make a certification does not apply if the Commonwealth is satisfied that compelling circumstances exist (for example, a natural disaster) which warrant the Approved Sponsor undertaking any of the actions outlined in Schedule 5, Item 1, Clause 2.
4. The Approved Sponsor must only make a nomination application in respect of a nominee that would work directly for them at a Meat Processing Establishment.
5. The Sponsor must provide evidence of labour market testing for skilled meat worker vacancies for the nominated occupation.

### Item 2: Subclass 186

1. The Approved Sponsor may only nominate a Primary Sponsored Person who has been employed as a Primary 457 visa holder in the nominated occupation, for at least three (3) years and six (6) months before the nomination is made, and
2. The Approved Sponsor must only make a nomination application in respect of a Primary Sponsored Person that would work directly for them at a Meat Processing Establishment.

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under the Freedom of Information Act 1982

## Schedule 6 Variation of sponsorship obligations<sup>2</sup>

### 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, in accordance with subsection 140H(2) of the Migration Act, is varied in the following way:

Subregulation 2.79 (3A) does not apply, and the following applies:

1. The Primary Sponsored Person will be paid no less than the TSMIT over an Annual Salary period. Payments that can be considered for the purpose of meeting the TSMIT include any payments that are provided for under the Relevant Industrial Instrument, or the Migration Regulations, excluding bonus payments and payments for all time worked outside the ordinary working hours (including overtime and shifts) on any day. Payments of worker's compensation benefits to Primary Sponsored Person as compensation for loss of ordinary earnings and payments that are based on activity levels can also be considered for the purpose of meeting the TSMIT.
2. Where a Primary Sponsored Person is not provided with work for a period of time, whether because of a Stand Down, insufficient work or any other reason, the Approved Sponsor must pay the Primary Sponsored Person as follows<sup>3</sup> :
  - (a) if the Primary Sponsored Person is not provided with work for any period within a fortnight, and the Primary Sponsored Person does not earn an amount equal to one-half (50%) of the fortnightly TSMIT amount, then the Approved Sponsor must pay to the Primary Sponsored Person the difference between the amount actually earned and one-half (50%) of the fortnightly TSMIT amount;
  - (b) if the Primary Sponsored Person is not provided with work for a period greater than a fortnight, then the Approved Sponsor must pay to the Primary Sponsored Person an amount equal to one-half (50%) of the fortnightly TSMIT amount for the length of the Stand Down and to pay any shortfall of TSMIT calculated over an Annual Salary period ('Top up');
  - (c) A Top up payment will generally be made on an annual basis. However, where Primary Sponsored Person not being provided with work has resulted in the payment to a Primary Sponsored Person of less than the pro-rata TSMIT in three consecutive months, then the Commonwealth reserves the right to request that the Sponsor pay the Top up for that three month period at any time, and any balance owing for the period of time for which the Primary Sponsored Person was not provided with work, calculated over an Annual Salary period, at a later date as determined by the Commonwealth.
3. All other terms and conditions of this Agreement should be consistent with the Relevant Industrial Instrument. The Approved Sponsor must meet all their obligations under the Relevant Industrial Instrument and applicable Workplace law. To the extent that the Agreement provides additional benefits to the Primary Sponsored Person as an employee it operates in conjunction with the Relevant Industrial Instrument and applicable Workplace Law.

<sup>2</sup> A summary of sponsorship obligations can be found at: <http://www.border.gov.au/Trav/Visa-1/457->

<sup>3</sup> If sufficient work for the Primary Sponsored Person to be engaged on a full-time and ongoing basis is not available for an extended period of time, Approved Sponsors should consider whether the Primary Sponsored Person should continue to be employed.

**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 varied in accordance with the following provisions:

1. The Approved Sponsor must ensure that the Primary Sponsored Persons are Skilled Meat Workers and that they will be employed only in skilled meat processing occupations except:
  - (a) where the Skilled Meat Worker is required to undertake suitable duties pursuant to the requirements of applicable Workers Compensation laws; or
  - (b) where the requirement is made for bona fide OH&S reasons to provide a worker with restricted duties consistent with existing medical opinion. The Meat Processing Company must notify the Commonwealth immediately if any period of restricted duties exceeds one week; or
  - (c) where a Skilled Meat Worker has completed his or her ordinary working hours, other duties outside of the 'Skilled Meat Worker' duties, including duties offered as part of Overtime, may be considered.

**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 varied in accordance with the following provisions. In addition to clause 7.87(1a), 7.57(1):

1. The Approved Sponsor cannot recover costs including but not limited to;
  - (a) the Approved Sponsor's recruitment costs;
  - (b) public health costs (or insurance to cover public health costs) for both Primary and Secondary Visa Holders where the visa grant was prior to 14 September 2009; and
  - (c) English language testing and/or training for Primary Sponsored Person;
2. Where the Approved Sponsor provides accommodation and/or board:
  - (a) it must not be compulsory for the Primary Sponsored Person to accept the accommodation and/or board;
  - (b) it can only be charged at a fair and reasonable market rate; and



- (c) charges for accommodation and/or board must satisfy the Commonwealth as being fair and reasonable and meet workplace laws;
- 3. The Approved Sponsor must only permit the Skilled Meat Workers to authorise the Approved Sponsor to make deductions from their gross salary where those authorised deductions are consistent with the Deductions Plan approved by the Commonwealth for that Approved Sponsor and is consistent with relevant State/Territory legislation and workplace laws;
- 4. The Approved Sponsor must be responsible for the costs incurred in accordance with **Schedule 6, Item 9 clause 1(c)**, as they relate to Primary Sponsored Person, and English language training to enable the Primary Sponsored Person to either achieve the English language level prescribed under clause 7.6 (b) or to complete a total of 500 actual hours of tuition in accredited English language training through an accredited training institution.

#### **Item 10 Other sponsorship obligations**

1. The Approved Sponsor must ensure that all Primary Sponsored Persons:
  - (a) are subject to integrity verification processes, including:
    - i. videotaping of the assessment undertaken; or
    - ii. where exceptional circumstances render videotaping impossible or impracticable; and a digital photograph of the Primary Sponsored Person submitted with the nomination and visa application. The Commonwealth may require the Approved Sponsor to provide evidence of the exceptional circumstances which render videotaping impossible or impracticable. Where the Commonwealth is not satisfied with the evidence the Approved Sponsor provides, the Commonwealth may impose conditions; and
  - (b) have skills and work experience as defined by Skilled Meat Worker, **Schedule 3**; and
  - (c) undergo induction training on arrival, which should cover specific processes, knowledge of equipment, production speed, OH&S requirements specific to the Meat Processing Establishment at which they are employed.
2. The Approved Sponsor must ensure that:
  - (a) for a Skilled Meat Worker who is the holder of a Subclass 457 visa and whose application for that visa was:
    - i. made and determined before 12 September 2009; or
    - ii. made on the basis that the employer was a Standard Business Sponsor;
  - (b) nominate the Skilled Meat Worker within 4 weeks of the effective date of this Agreement.
3. The Approved Sponsor must ensure that the integrity of the assessment process is maintained, including through:
  - (a) verifying within two (2) days of the Primary Sponsored Person's arrival that the Primary Visa Holder is the same person assessed in **Schedule 6, Item 10, Clause 2(a)** and in the digital photograph submitted with the nomination and visa application; and notifying the Commonwealth immediately of any inconsistency;
  - (b) notifying the Commonwealth within one (1) month of the Primary Sponsored Person's arrival where a Primary Visa Holder does not meet the requirements and, if those requirements are not met, proposing remedial action to the Commonwealth;

- (c) complying with any Commonwealth request for the Approved Sponsor to obtain at the Approved Sponsor's expense an independent audit, by an independent authority specified by the Commonwealth, such as use the services of any assessor associated with a skills assessment failure; and
  - (d) reassessing any Primary Sponsored Person assessed by an assessor associated with a skills assessment failure.
4. The Approved Sponsor must ensure that nominees can provide evidence of health insurance cover at time of application.
  5. Where a Primary Sponsored Person's English language proficiency is below the level of English language proficiency that is prescribed in clause 7.6 (b) or **Schedule 3, Item 4(1)**, the Approved Sponsor must continue to pay for accredited English language training for the Primary Sponsored Person until such time as the Primary Sponsored Person's English language proficiency is at least the level of English language proficiency that is prescribed in clause 7.6(b) or **Schedule 3, Item 4(1)**; except where:
    - (a) the Primary Sponsored Person is in Australia and holds a Subclass 457 visa, or is in Australia and the last substantive visa they held was a Subclass 457 visa, the Approved Sponsor must ensure that the Primary Sponsored Person's English language proficiency is at least the level of English language proficiency that is prescribed in clause 7.6(b) or **Schedule 3, Item 4(1)** in circumstances where sub-paragraphs 457.223(4)(eb)(i), (ii) and (iii) do not apply.
  6. When recruiting primary sponsored persons or secondary sponsored persons, the Approved Sponsor must make all reasonable inquiries to satisfy itself that the primary sponsored person or secondary sponsored persons do not owe money as a result of being recruited.
  7. The Approved Sponsor must not nominate a nominee or secondary nominee who it has assessed, reasonably suspects or ought to reasonably suspect of owing money as a result of being recruited.
  8. The Approved Sponsor must not cause or permit a change in control of the Approved Sponsor that would reasonably be regarded as inimical to the Approved Sponsor's capacity to perform its obligations under this Agreement.



## Schedule 7 Variations to Reporting Requirements

None

## Schedule 8 Domestic Recruitment Efforts Template

### Summary of domestic recruitment efforts by Kimberley Meat Company Pty Ltd:

List each occupation sought under the labour agreement	ANZSCO code (order numerically from lowest to highest)	List all advertising or recruitment efforts by your organisation in the last six months for the occupation <sup>4</sup>	Period of advertising or recruitment	Geographical target audience	Number of applications received	Number of applicants that were hired	Reasons that candidates were not successful	How many Australians do you currently employ in this occupation?

I declare that the information I have provided in this document is true and correct and I am aware of the penalties for providing misleading or false information to the Commonwealth under section 137 of the *Criminal Code Act 1995*.

Signature: \_\_\_\_\_

Name and position of authorised person: \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_

<sup>4</sup> One method per table cell (e.g. Seek.com advertising). Please replicate the row if multiple methods have been used. You must attach examples of your efforts to recruit for each occupation.

**Signing page**

Signed for and on behalf of the Commonwealth )  
 under the written authority of the Minister for )  
 Immigration and Border Protection: )

s22(1)(a)(ii)

.....  
 \_\_\_\_\_

Print name and details of the Authorised Person

s22(1)(a)(ii)

.....  
 \_\_\_\_\_

Signature of the Authorised Person

Date of signing: 9 / 3 / 16  
 dd/mm/yyyy

s22(1)(a)(ii)

.....  
 \_\_\_\_\_

Signature of Witness

s22(1)(a)(ii)

.....  
 \_\_\_\_\_

Print name of Witness

Date of signing: 9 / 3 / 16  
 dd/mm/yyyy

**Signed** for and on behalf of Kimberley Meat  
 Company Pty Ltd.....)

ABN 64 159 933 392 .....

In accordance with section 127 of the *Corporations  
 Act 2001* by: s47F.....)

.....  
 \_\_\_\_\_  
 Signature of director/Authorised Person

s47F

.....  
 \_\_\_\_\_

Print name and details of the Authorised Person

Date of signing: 26 / 2 / 16  
 dd/mm/yyyy

.....  
 \_\_\_\_\_  
 Signature of Director/Secretary

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

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

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

s47F

.....  
 \_\_\_\_\_

Signature of Witness

s47F

.....  
 \_\_\_\_\_

Print name of Witness

Date of signing: 26 / 02 / 2016



**Australian Government**  
**Department of Home Affairs**

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**LABOUR AGREEMENT – MEAT INDUSTRY**

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Under the *Migration Act 1958*

Between

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

and

**Kimberley Meat Company Pty Ltd**

Released by Department of Home Affairs  
under the *Freedom of Information Act 1982*

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# Labour Agreement

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

## Parties

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

## AND

The party specified in **Item 2 of Schedule 1** (the "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 Approved Sponsor as holders of Temporary Work (Skilled) visas (Subclass 457), Temporary Skill Shortage (TSS) visas or Employer Nomination Scheme (ENS) visa (Subclass 186) in its business undertaking as described in **Item 3 of Schedule 1**.
- D. For the purposes of the subclass 457 and 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 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.

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

- (a) incentive-based payments and bonuses;
- (b) loadings;



- (c) monetary allowances;
- (d) overtime or penalty rates;
- (e) any other separately identifiable amounts.

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

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

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

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

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

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

but does not include information:

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

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

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

**Deductions Plan** means a plan submitted by the Approved Sponsor to the Commonwealth, seeking approval of fair, reasonable and lawful deductions from the gross salary of Skilled Meat Workers (other than deductions required by Australian law or statute), which if approved by the Commonwealth, could be made available to the Company's Skilled Meat Workers should they freely choose to avail themselves of this opportunity to which the deductions relate.

**Earnings** has the same meaning as in the Migration Regulations.

**Employment period** means the stay period that an Approved Sponsor requests for the Nominee in a Subclass 457 or TSS 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**.

**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.

**MPE** means a Meat Processing Establishment wholly or predominately concerned with any one or more of the activities of killing, dressing, boning, slicing, preparation and/or packing of fresh meat.

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

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

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

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

**MINTRAC** means the Meat Industry National Training Advisory Council.

**Nominate** means to lodge a nomination for a Subclass 457, TSS or Subclass 186 visa under Migration Legislation.

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

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

**Nominee** means the Overseas Worker specified in a nomination.

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

**On-hire<sup>1</sup>** means a person’s business activities which include activities relating to either or both of:

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

**Overseas Worker** means the holder of, or an applicant or proposed applicant for, a Subclass 457, TSS or Subclass 186 visa, whether onshore or offshore.

**Postal Address** means the address to which mail is delivered.

**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.

**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 Subclass 457 or the TSS visa program (once introduced in March 2018) if the sponsor is a standard business sponsor, or under the Subclass 186 visa program if applying for permanent residence.

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

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

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

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

**The Department** means the Department of Home Affairs.

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

<sup>1</sup> 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.

**TSMIT** means the Temporary Skilled Migration Income Threshold, as amended from time to time, specified in an instrument made under the Migration Regulations.

**TSMIT Fortnightly Rate** means the (annual salary x 12) divided by 313.

**TSMIT Hourly Rate** means the TSMIT Weekly Rate divided by 38.

**TSMIT Weekly Rate** means the (annual salary x 6) divided by 313.

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

**Workplace Law** means the *Fair Work Act 2009*, and relevant laws of the Commonwealth and of the relevant State or Territory relating to equal employment opportunity, unlawful discrimination and workplace health and safety legislation regulating the employment by the Approved Sponsor of its Primary Sponsored Persons.

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

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

## 2. Interpretation

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

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

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

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

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

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

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

(**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; and
  - (b) the Overseas Worker will be able to meet any revised visa requirements outlined at **Schedule 4**.
- 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;
  - (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.
- 5.7 In addition to Subclass 457 nomination requirements outlined in the Migration Regulations, the Sponsor must demonstrate, through written evidence, when lodging a Subclass 457 nomination prior to the introduction of the TSS visa, that the Nominee will be:
- (a) engaged full time;
  - (b) paid a Base Rate of Pay that is equal to or greater than the TSMIT, unless varied in **Schedule 2**; and
  - (c) receive Terms and Conditions of Employment which are no less favourable than the terms or conditions of employment that are, or would be provided, to an Australian performing equivalent work in the Approved Sponsor's workplace at the same location.
- 5.8 In addition to TSS or Subclass 186 nomination requirements outlined in the Migration Regulations, the Sponsor must demonstrate, through written evidence, when lodging a TSS or Subclass 186 nomination that the Standard skilled visa requirements as outlined in the Migration Regulations in relation to the TSMIT, Earnings and/or working hours, are met unless varied in **Schedule 2**.
- 5.9 The 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.



6.2 This may include:

- (a) requirements that the Nominee has 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.

6.3 In most cases, these requirements mirror Standard skilled visa program requirements

6.4 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**.

## 7. Subclass 457 Visa Applications

7.1 No new Subclass 457 visa applications will be able to be lodged from March 2018 onwards, when the TSS visa is introduced.

7.2 Subclass 457 visas already granted will remain in effect.

7.3 Subclass 457 visa applications lodged prior to the introduction of the TSS will continue to be processed under the existing Subclass 457 regulatory framework.

## 8. Visa period

### *TSS visa*

8.1 The 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**.

### *Subclass 457 visa*

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

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

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

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

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

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

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

**(c) For subsequent entrants who satisfied the secondary criteria**

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

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

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

### *Subclass 186 visa*

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

## 9. Sponsorship obligations

- 9.1 In relation to any subclass 457 and TSS visa holders, as an Approved Sponsor, the Sponsor must satisfy:
- (a) it's 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, and immigration laws regulating employment of the Sponsor's sponsored Overseas Workers.

## 10. Reporting

- 10.1 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.

## 11. Review

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

## Miscellaneous Provisions

### 13. Notices

- 13.1 Any notice, demand, consent or other communication given or made under this Agreement:
- (a) must be clearly readable;
  - (b) must, unless it is sent by email, be signed by the party giving or making it (or signed on behalf of that party by its authorised representative);
  - (c) must, unless it is sent by email, be left at the Address or sent by pre-paid security post (air mail if outside Australia) to the Business Address of the recipient; and
  - (d) may be sent by email to the receiving party's Email Account.
- 13.2 A notice to be served on the Commonwealth will be taken to be served if it is served on the Department's address in **Item 1 of Schedule 1**.
- 13.3 A party may change its Business Address, Postal Address or Email Account for the purpose of service by giving notice of that change to the other party in accordance with clause 13.1.
- 13.4 Any communication will be taken to be received by the recipient:
- (a) in the case of a letter, on the third (seventh, if sent outside the country in which the letter is posted) Business Day after the date of posting;
  - (b) in the case of an email, at the end of the day in which the email is transmitted.

#### 14. Variation and entire agreement

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

#### 15. Suspension

- 15.1 The Minister may, in his/her absolute discretion, suspend this Agreement, in whole or in part, including in situations where Adverse Information regarding the 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 15.1.
- 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 clause 15.3, the suspension shall take effect at the time the notice is taken to be received by the Sponsor, in accordance with clause 13.
- 15.5 Where the Minister suspends this Agreement in accordance with clause 15.1, the Minister may, in determining the order for considering and disposing of nomination applications and visa applications, give the lowest priority to applications made under this Agreement.
- 15.6 After a period of suspension, the Minister may, at his/her absolute discretion, choose to resume this Agreement by notifying the Sponsor in writing.
- 15.7 Where the Minister chooses to resume this Agreement in accordance with clause 15.6 and notifies the Sponsor, the Agreement will resume at the time the notice is taken to be received, in accordance with clause 13.
- 15.8 For the avoidance of doubt, any period of suspension will have no impact on and will not amend the period of this Agreement. The period of this Agreement will remain as specified in **Item 4 of Schedule 1**.

#### 16. Termination

- 16.1 The 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 16.1.
- 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 16.1):
  - (a) suspend this Agreement in whole or in part; and
  - (b) serve notice on the Sponsor, advising that this Agreement is suspended and requiring the Sponsor to rectify to the satisfaction of the 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 16.3 and/or to take any other contractual redress in accordance with this Agreement.
- 16.6 A party may, in its discretion, terminate this Agreement early by giving 28 days' notice to the other party, whereupon this Agreement will be terminated with effect 28 days after the notice of termination is served. A party serving a notice of termination under this sub-clause:
- (a) need not specify a reason for serving the notice;
  - (b) may withdraw the notice before the 28 days have elapsed; and
  - (c) will not be liable to compensate the other party for costs or damages that may arise from the early termination.
- 16.7 For the avoidance of doubt if this Agreement is terminated for any reason, or for no reason:
- (a) the 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 Migration Review Tribunal and Administrative Appeals Tribunal may have jurisdiction to review decisions in relation to nomination applications and visa applications. This Agreement does not abrogate any rights of a merits review by the Migration Review Tribunal or the Administrative Appeals Tribunal.

## 21. Confidential information and information sharing

21.1 If a party's information is specified as Confidential Information in **Item 5 of Schedule 1**, the other party will not disclose the information without the first party's prior written consent, except when disclosure of the information is required by law, statutory or portfolio duties.

21.2 The 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.

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;
- (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 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 21.3 survives the termination or expiration of this Agreement.

## 22. Fettering and publishing

- 22.1 Nothing in this Agreement fetters or detracts from the Commonwealth's discretions, functions or powers under the Migration Legislation, Workplace Law or other relevant Commonwealth laws.
- 22.2 In the event the Commonwealth has published an outline of this Agreement, the published outline is an invitation to treat with prospective sponsors and is not an offer to enter into contractual relations with any such sponsor on the basis of the published outline.
- 22.3 The Commonwealth may grant or refuse to grant consent, in its absolute discretion, to any application by the 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 26.1 will be reduced proportionately to the extent that any breach of this Agreement by the Minister or any act or omission involving fault on the part of the Minister contributed to the relevant cost, liability, loss, damage, or expense.
- 26.3 The right of the Minister to be indemnified under clause 26.1 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Minister is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage, or expense.
- 26.4 In clause 26.1:
  - (a) "the Minister" includes officers, employees and agents of the Minister; and
  - (b) "Personnel" means a party's officers, employees, agents, contract staff or professional advisers engaged in, or in relation to, the performance or management of this Agreement;
- 26.5 Clause 26.1 will survive six (6) years from the expiration or termination of this Agreement.

**Schedule 1****Particulars****Item 1****Commonwealth Particulars**

Name:

Department of Home Affairs

Address:

6 Chan Street, BELCONNEN ACT 2617

Telephone Number:

s22(1)(a)(ii)

Email Address:

Contact officer:

Director, Economic and Skilled Visa Program Branch

**Item 2****The Sponsor's Particulars**

Name:

Kimberley Meat Company Pty Ltd

ACN

159 933 392

ABN:

64 159 933 392

Business Structure:

Australian Private Company

Business Address:

Unit 2/3 Farrell Street Broome WA 6725

Postal Address:

PO Box 2724 Broome WA 6725

Telephone Number:

s47F

Email Address:

Contact Officer:

**Item 3****The Sponsor's Business**

Industry segment:

Meat Industry

**Item 4****Commencement and period**

Effective Date:

The date signed by the Commonwealth being the last party to sign the Agreement was **9 March 2016**

Cease Date:

**8 March 2021****Item 5****Commercial-in-Confidence Information**

The company specific information (i.e. non-template text) contained in the Schedules to this Agreement.

All information provided to request and secure access to this Agreement.



## Schedule 2 Concessions relating to nomination criteria covered by this Agreement

### Item 1 Occupations, Nomination Ceiling and Location

The table below outlines the occupations that can be utilised under this Agreement 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).

#### Subclass 457 and/or TSS nomination ceilings

Occupation	Code	Nomination Ceilings					Location of work
		Year 1	Year 2	Year 3	Year 4	Year 5	
Skilled Meat Worker	070499	s47					

#### Subclass 186 nomination ceilings

Occupation	Code	Nomination Ceilings					Location of work
		Year 1	Year 2	Year 3	Year 4	Year 5	
Skilled Meat Worker	070499	s47					

#### Note:

- The Minister may vary the ceiling number 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.

### Item 2 Concession to Occupation Tasks

A Skilled Meat Work (Code: 070499) for the purposes of this agreement is responsible for undertaking the following tasks, which include the duties of the ANZSCO occupations Slaughterer and Meat Boner and Slicer:

- stuns and kills livestock
- prepares carcasses for further processing by removing internal organs and hides;
- operates switching controls to direct and drop carcasses and meat cuts from supply rails to boning tables;
- cuts meat to separate meat, fat and tissue from around bones;
- washes, scrapes and trims foreign material and blood from meat;
- cuts sides and quarters of meat into standard meat cuts, such as rumps, flanks and shoulders, and removing internal fat, blood clots, bruises and other matter to prepare them for packing and marketing;
- operates restrainer and stunning equipment;
- severs jugular veins of stunned animals to drain blood and facilitate dressing;
- trims and removes head meat and severs animal heads;
- slits open, eviscerates and trims animal carcasses; and
- may slaughter livestock according to procedures required by religious customs.

**Important:** A skilled meat worker employed under this Agreement may **not** undertake labouring, or unskilled duties, other than to the extent of circumstances prescribed above or where relevant in the context of the circumstances outlined in **Item 8 of Schedule 5** to this Agreement. This Agreement does not allow Overseas Workers to be placed in unskilled labouring positions.

### Item 3 Concessions regarding salary requirements

#### *Subclass 457*

Payments that can be considered for the purpose of meeting the TSMIT include any payments that are provided for under the Relevant Industrial Instrument, or the Migration Regulations, excluding bonus payments and payments for all time worked outside the ordinary working hours (including overtime and shifts) on any day.

Payments of worker's compensation benefits to Primary Sponsored Person as compensation for loss of ordinary earnings and payments that are based on activity levels can also be considered for the purpose of meeting the TSMIT.

#### *TSS and Subclass 186 visas*

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

- (a) employ Overseas Workers in full-time positions only;
- (b) 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 arrangements**

##### *Subclass 457 and TSS visas*

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

#### **Item 2      Local workforce requirements**

##### *Subclass 457 and TSS visas*

Unless otherwise agreed by both Parties, the Sponsor must provide a statement, in writing, together with any nomination application lodged, which indicates that at the MPE approved under this Agreement, within a period of three months prior to the date of the application, they have **not** done any of the following:

- permanently terminated the employment of more than five percent of its Australian workforce (except in circumstances of demonstrated misconduct or unlawful conduct);
- stood down its Australian workforce for more than seven consecutive days at any single given time; or
- reduced the shifts of its Australian workforce to less than 50 per cent of the regular shift quota and/or to part-time hours unless requested by the Australian employees.

#### **Item 3      Direct Employment**

##### *All visas*

The Sponsor must only make a nomination application in respect of a nominee that would work directly for them at an MPE.

#### **Item 4      Time period required to hold temporary skilled visa**

##### *Subclass 186 visa*

The Sponsor may only nominate an Overseas Worker for a Subclass 186 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 years before the nomination is made.

#### **Item 5      Digital image required**

##### *All visas*

The Sponsor must attach a digital photograph of the applicant to the nomination application in *ImmiAccount*.



## Schedule 4 Concessions relating to visa criteria covered by this Agreement

### Item 1 Qualifications and Experience

Overseas Workers nominated under this agreement must:

- (a) have been assessed and verified by a MINTRAC registered assessor, or an assessor approved by the Commonwealth, with a Certificate IV in Training and Assessment experienced in meat processing, to be Skilled Meat Workers with a minimum skill level commensurate with the MINTRAC referenced AQF Certificate III in meat processing; and
- (b) either:
  - (i) demonstrate a minimum of three years skilled work experience obtained at an MPE acceptable to the Parties; or
  - (ii) have been working in Australia on a Subclass 457 or TSS visa at an Australian MPE acceptable to the Parties for at least nine months prior to being nominated.

### Item 2 English Language

#### *Subclass 457 and TSS visas*

Overseas Workers nominated under this Agreement, who are unable to meet Standard skilled visa program requirements, can be considered to have sufficient English to perform the nominated occupation if:

- they demonstrate an International English Language Testing System (IELTS) overall test score of at least 5.0 with no minimum test score;
- or
- was not required to provide evidence of English language proficiency at the time of the grant of their most recent subclass 457 visa under previous meat industry labour agreements.

#### *Subclass 186 visa*

Overseas Workers nominated under this Agreement, who are unable to meet Standard skilled visa program requirements, can be considered to have sufficient English to perform the nominated occupation if:

- they demonstrate an International English Language Testing System (IELTS) overall test score of at least 5.0 with no minimum test score;
- or
- are a current Subclass 457 visa holder who was not required to provide evidence of English language proficiency at the time of grant of their Subclass 457 visa; and
- provides evidence as prescribed in the Migration Regulations for meeting functional English.

### Item 3 Age

The Sponsor may only nominate an Overseas Worker for a Subclass 186 visa who is under 50 years of age at the time of nomination and visa application lodgement.

## Schedule 5 Variation of sponsorship obligations

### Item 1 Obligation to cooperate with inspectors

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

### Item 2 Obligation to ensure equivalent terms and conditions of employment

#### *Subclass 457 visa holders*

The obligation in regulation 2.79 of the Migration Regulations applies and, in accordance with subsection 140H(2) of the Migration Act, is varied in the following way:

1. The Primary Sponsored Person will be paid no less than the TSMIT over an Annual Salary period.
2. Payments that can be considered for the purpose of meeting the TSMIT include:
  - (i) any payments that are provided for under the Relevant Industrial Instrument, or the Migration Regulations, **excluding** bonus payments and payments for all time worked outside the ordinary working hours (including overtime and shifts) on any day;
  - (ii) payments of worker's compensation benefits to Primary Sponsored Person as compensation for loss of ordinary earnings and payments that are based on activity levels can also be considered for the purpose of meeting the TSMIT.
3. Where a Primary Sponsored Person is not provided with work for a period of time, whether because of a Stand Down, insufficient work or any other reason, the Approved Sponsor must pay the Primary Sponsored Person as follows:
  - (i) if the Primary Sponsored Person is not provided with work for any period within a fortnight, and the Primary Sponsored Person does not earn an amount equal to one-half (50%) of the fortnightly TSMIT amount, then the Approved Sponsor must pay to the Primary Sponsored Person the difference between the amount actually earned and one-half (50%) of the fortnightly TSMIT amount;
  - (ii) if the Primary Sponsored Person is not provided with work for a period greater than a fortnight, then the Approved Sponsor must pay to the Primary Sponsored Person an amount equal to one-half (50%) of the fortnightly TSMIT amount for the length of the Stand Down and to pay any shortfall of TSMIT calculated over an Annual Salary period ('Top up');
  - (iii) A Top up payment will generally be made on an annual basis. However, where Primary Sponsored Person not being provided with work has resulted in the payment to a Primary Sponsored Person of less than the pro-rata TSMIT in three consecutive months, then the Commonwealth reserves the right to request that the Sponsor pay the Top up for that three month period at any time, and any balance owing for the period of time for which the Primary Sponsored Person was not provided with work, calculated over an Annual Salary period, at a later date as determined by the Commonwealth.
4. The Approved Sponsor must meet all their obligations under the Relevant Industrial Instrument and applicable Workplace law.

#### **TSS visa holders**

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 varied in accordance with the following provisions.

The Approved Sponsor must ensure that the Primary Sponsored Persons are Skilled Meat Workers and that they will only be employed in the nominated occupations. Other duties can, however, be undertaken where an Overseas Worker:

- (a) is required to undertake other suitable duties pursuant to the requirements of applicable Workers Compensation laws; or
- (b) has been placed on restricted duties for a maximum period of a week (unless the Department has been notified and a longer period is agreed to) for bona fide OH&S reasons consistent with existing medical opinion.

**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 varied to include the following **additional** obligations.

1. The Approved Sponsor cannot recover costs including but not limited to:
  - (a) the Approved Sponsor's recruitment costs; and
  - (b) English language testing and/or training for Primary Sponsored Person.

2. Where the Approved Sponsor provides accommodation and/or board:
  - (a) it must not be compulsory for the Primary Sponsored Person to accept the accommodation and/or board;
  - (b) it can only be charged at a fair and reasonable market rate; and
  - (c) charges for accommodation and/or board must satisfy the Commonwealth as being fair and reasonable and meet workplace laws.
3. The Approved Sponsor must only permit the Skilled Meat Workers to authorise the Approved Sponsor to make deductions from their gross salary where those authorised deductions are consistent with the Deductions Plan approved by the Commonwealth for that Approved Sponsor and is consistent with relevant State/Territory legislation and workplace laws.

## **Schedule 6 Additional sponsorship obligations specific to this Agreement**

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

- (a) is granted a further substantive visa that is:
  - (i) not a Subclass 457 or TSS visa; and
  - (ii) in effect; and
- (b) ceases employment or engagement with the Approved Sponsor.

### **Item 1 Obligations not to recruit where money owed**

The Approved Sponsor must not nominate primary sponsored persons or secondary sponsored persons who it has assessed, reasonably suspects or ought reasonably suspect of owing money as a result of being recruited.

### **Item 2 Obligations to pay salary directly**

An Approved Sponsor must pay the nominee directly, including taxes and superannuation. These payments must be made from the organisation's Australian bank account.

### **Item 3 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 4 Induction Training**

The Approved Sponsor must ensure that all Overseas Workers undergo induction training on arrival, which should cover specific processes, knowledge of equipment, production speed, OH&S requirements specific to the MPE at which they are employed.

### **Item 5 Verification requirements**

The Approved Sponsor must:

- (a) ensure that skills assessments undertaken by Overseas Workers are videotaped unless exceptional circumstances render this impossible or impracticable, and understand that the Department may request evidence of such exceptional circumstances;
- (b) verify within two days of a Primary Sponsored Person's arrival that the Primary Visa Holder is the same person for which a visa application was lodged and a digital photograph was provided;
- (c) notify the Commonwealth immediately if there is any inconsistency identified in terms of the identity of the Primary Visa Holder;
- (d) notify the Commonwealth within one month if the Primary Sponsored Person does not have the skills required to work in the nominated position and propose remedial action to address any identified issues with the skills assessment process;
- (e) comply with any Commonwealth request by the Department for the Approved Sponsor to obtain at the Approved Sponsor's expense an independent audit, by an independent authority specified by the Commonwealth, such as use the services of any assessor associated with a skills assessment failure;



- (f) re-assess any Primary Sponsored Person assessed by an assessor associated with a skills assessment failure; and
- (g) ensure that Primary Sponsored Persons and any Secondary Sponsored Persons have adequate arrangements for health insurance in place from their date of arrival in Australia.

#### **Item 6 Labour hire providers and employment arrangements**

The Approved Sponsor must ensure that where they utilised a labour hire or recruitment company to source Overseas Workers that such providers are licensed in accordance with any relevant state or territory legislation.

The Approved Sponsor must also ensure that any Overseas Workers work directly for them once employed.

#### **Item 7 Training obligations**

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

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

## Schedule 7 Information to be provided to the Department

The 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 )  
under the written authority of the Minister for )  
Citizenship and Multicultural Affairs: )

s22(1)(a)(ii)

A/g Senior Director

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

s22(1)(a)(ii)

*Signature of Witness*

s22(1)(a)(ii)

*Print name of Witness*

s22(1)(a)(ii)

*Signature of the Authorised Person*

Date of signing: 4 4 2018

dd/mm/yyyy

Date of signing: 4 4 2018

dd/mm/yyyy

Signed for and on behalf of Kimberley Meat )  
Company Pty Ltd.....)

ABN 64 159 933 392.....)

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

s47F

*Signature of director/Authorised Person*

s47F

*Print name and details of the Authorised Person*

Date of signing: 31.3.18  
dd/mm/yyyy

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

*Signature of Witness**Print name of Witness*

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

*Signature of Director/Secretary**Print name and details of the Authorised Person*

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

Released by Department of Home Affairs  
under the Freedom of Information Act 1982



**Australian Government**  
**Department of Home Affairs**

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**DEED OF VARIATION No. 1**

**BETWEEN**

**COMMONWEALTH OF AUSTRALIA**

**AND**

**KIMBERLEY MEAT COMPANY PTY LTD**  
**(ABN 64 159 933 392)**

Released by Department of Home Affairs  
under the Freedom of Information Act 1982

## DEED OF VARIATION

### BETWEEN

**COMMONWEALTH OF AUSTRALIA** (the Commonwealth) represented by the Department of Home Affairs, of 6 Chan Street, Belconnen, ACT 2617 (the Department)

and

**KIMBERLEY MEAT COMPANY PTY LTD** (the Contractor)  
ABN 64 159 933 392 Unit 2/3 Farrell Street, Broome WA 6725

### RECITALS:

- (a) The Parties entered into a contract dated **9 March 2016** (the Agreement) to enable the sponsorship of overseas workers.
- (b) The Parties have agreed to certain variations to the rights and obligations contained in the Agreement.
- (c) The Parties wish to formally record those variations in the form of this Deed of Variation (No. 1).

### IT IS AGREED:

#### 1. This Deed:

- (a) is interpreted and adopts the definitions as specified in the Agreement;
- (b) is a part of the entire agreement between the parties in relation to the subject matter of the Agreement; and
- (c) commences on the day and year this Deed is signed by the Department.

2. This Deed makes the following variations to the Agreement:

(a) Remove Schedule 2 Item 1 Occupations, Nomination Ceiling and Location:

Occupation	ANZSCO	Visa	Year					Locations
			1	2	3	4	5	
Skilled Meat Worker	070499	TSS	s47					
		186						

(b) Replace Schedule 2 Item 1 Occupations, Nomination Ceiling and Location:

Occupation	ANZSCO	Visa	Year					Locations
			1	2	3	4	5	
Skilled Meat Worker	070499	TSS	s47					
		186						

3. In all other respects the terms and conditions of the Agreement remain unaltered.

**Signed as a Deed** for and on behalf of the  
Commonwealth under the written authority of the  
Minister for Immigration, Citizenship, Migrant  
Services and Multicultural Affairs

s22(1)(a)(ii)

**A/g Director**  
**Employer Sponsored Program Management**  
\_\_\_\_\_  
*Name and Position of Authorised Person*

s22(1)(a)(ii)

\_\_\_\_\_  
*Signature of Authorised Person*

Date of signing: 20/09/2019

s22(1)(a)(ii)

\_\_\_\_\_  
*Name of Witness*

s22(1)(a)(ii)

\_\_\_\_\_  
*Signature of Witness*


---

### Approved Sponsor Signature

**Signed for and on behalf of Kimberley Meat  
Company Pty Ltd**

ABN: 64 159 933 392.....

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

s47F

\_\_\_\_\_  
*Name and details of Director/Secretary<sup>1</sup>*

s47F

\_\_\_\_\_  
*Signature of Director/Secretary*

s47F

\_\_\_\_\_  
*Name and details of Director/Secretary/Witness*

s47F

\_\_\_\_\_  
*Signature of Director/Secretary/Witness*

Date of signing: 18/9/19

<sup>1</sup> Unless the Approved Sponsor is a sole Director who is also the Company Secretary, at least two Directors or a Director and a Company Secretary must sign the Labour Agreement. If the Approved Sponsor is a sole Director who is also the Company Secretary, a witness signature must be provided.