



Australian Government
Department of Home Affairs

FAR NORTH QUEENSLAND DAMA
LABOUR AGREEMENT

Under the *Migration Act 1958*

Between

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

and

Veterinary Emergency Treatment Services Pty Ltd

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Labour Agreement

Parties

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

AND

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

Background

- A. This labour agreement (the “Agreement”) is a “labour agreement” as defined in the Migration Regulations.
- B. This Agreement will be administered by the Department of Home Affairs (“the Department”) on behalf of the Commonwealth.
- C. This Agreement sets out the terms and conditions by which the Approved Sponsor may recruit, employ or engage the services of Overseas Workers under conditions specified in the Designated Area Migration Agreement dated 04/04/2019 between the Commonwealth and the Cairns Chamber of Commerce Incorporated in relation to Far North Queensland (“FNQ DAMA”).
- D. This Agreement sets out the terms and conditions by which the Approved Sponsor may recruit, employ or engage the services of Overseas Workers who are intended to be employed or engaged by the Approved Sponsor as holders of Temporary Skill Shortage (“TSS”) or Employer Nomination Scheme (“ENS”) visas in its business undertaking as described in **Item 4** of **Schedule 1**.
- E. The Approved Sponsor has been endorsed by a party to the FNQ DAMA (“the Designated Area Representative”).
- F. The Approved Sponsor is an “approved sponsor” as defined in the Migration Act by virtue of entering into this Agreement.

Operative Part

1. Definitions

1.1 In this Agreement:

Address means a party’s address set out in **Item 1** and **Item 2** of **Schedule 1**.

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

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

ANZSCO has the same meaning as in the Migration Regulations.

AQF means the Australian Qualifications Framework.

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

Business Day means a day that is not a Saturday, Sunday or public holiday in the Australian Capital Territory or Queensland.

Cease Date means the cease date specified in **Item 5** of **Schedule 1**.

Commonwealth includes the Department or the Minister, as applicable.

Concessions means any variations to the requirements prescribed in the Migration Legislation in relation to the approval of a Nomination and the grant of a TSS or ENS visa.

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 6** of **Schedule 1**; or
- (c) in the case of the Commonwealth's Confidential Information, 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.

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

Department means the Department of Home Affairs.

Designated Area means the area defined in **Item 3** of **Schedule 1**.

Earnings and **Annual Earnings** have the meanings given in **Schedule 5** of this Agreement.

Effective Date means:

- (a) the date (if any) specified in **Item 5** of **Schedule 1**;
- (b) if no such date is specified, the date on which this Agreement is signed by the parties, or if signed on separate days, the date of the last signature.

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

FNQ DAMA means the Designated Area Migration Agreement between the Commonwealth and the Cairns Chamber of Commerce Incorporated in relation to Far North Queensland, its schedules and attachments and any documents incorporated by reference in that agreement, dated 04/04/2019.

Law means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law as applicable from time to time, including the Migration Legislation.

Maximum Numbers mean the Maximum Numbers of approved Nominations for an Occupation in the Designated Area as specified in **Schedule 2**. This is also referred to as a 'Nomination Ceiling'.

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

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

Migration Regulations means the *Migration Regulations 1994* (Cth).

Minister means a reference to a "Minister" appointed to administer the Department and includes where relevant, delegates performing relevant functions as the Minister under the Migration

Legislation.

Nominate means to lodge a nomination in relation to a TSS or ENS visa under the Migration Legislation.

Nomination means a nomination referred to in section 140GB of the Migration Act or regulation 5.19 of the Migration Regulations.

Nominee means the Overseas Worker identified in a nomination.

Occupations means those Occupations specified in **Schedule 2**.

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

TSS visa means the Temporary Skill Shortage (TSS) (Subclass 482) visa.

TSMIT means the Temporary Skilled Migration Income Threshold specified in an instrument made under the Migration Regulations.

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

Work Health and Safety Legislation means:

- (a) *Work Health and Safety Act 2011* (Cth); and
- (b) *Work Health and Safety Regulations 2011* (Cth); and

any “corresponding WHS law” within the meaning of section 4 of the *Work Health and Safety Act 2011* (Cth) and regulation 6A of the *Work Health and Safety Regulations 2011* (Cth).

Workplace Law means the *Fair Work Act 2009* (Cth), and relevant laws of the Commonwealth and of the relevant State or Territory relating to equal employment opportunity, unlawful discrimination and the Work Health and Safety Legislation.

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

2. Interpretation

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

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

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

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

(person) a reference to a person includes a natural person, corporation, statutory corporation, body politic, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns.

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

(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.

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

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

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

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

(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.

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

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

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

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

(day) 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.

3. Agreement period

3.1 This Agreement commences from the Effective Date.

3.2 Unless terminated earlier in accordance with clause 16 of this Agreement, the period of this Agreement ends on the Cease Date.

4. Pre-contractual representations

4.1 The Approved Sponsor warrants that the information supplied to the Commonwealth and the Designated Area Representative in its application to enter into this Agreement, upon which the Commonwealth and the Designated Area Representative have relied, was true and correct.

5. Acknowledgements

5.1 The parties acknowledge and agree that:

- (a) the Commonwealth may, in its absolute discretion, by notice in writing, at any time:
 - (i) amend or update the Occupations, Maximum Numbers, and Concessions for the purposes of this Agreement; or
 - (ii) amend, update or replace any other content in the Schedules of this Agreement;
- (b) nothing in this Agreement fetters or detracts from the discretions, functions or powers of the Commonwealth under Law.

Nomination of Overseas Workers for TSS and ENS visas

6. Nomination requirements

6.1 The Approved Sponsor may only Nominate a Nominee up to the nomination ceiling specified in **Schedule 2** for an Occupation:

- (a) outlined in **Schedule 2**; and
- (b) to be performed in a location listed in **Schedule 2**.

6.2 If the Approved Sponsor wishes to increase the nomination ceilings in any year during the period of this Agreement as set out in **Schedule 2** to this Agreement, they must provide the Commonwealth with the information detailed in **Schedule 11**.

6.3 The Approved Sponsor acknowledges and agrees that there is no guarantee that additional Nominations and increases in the nomination ceilings will be agreed to, and that the Commonwealth reserves the right to make the final decision as to the nomination ceiling for each year of the Agreement.

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

- (a) it recruits suitably skilled Australians who are available, including undertaking labour market testing where specified in **Schedule 8**;
- (b) the Nominee will be able to meet any requirements outlined in the **Schedules** of this Agreement; and
- (c) the Nominee will hold relevant licensing/registration or certification where required for the Nominated Occupation, when performing the Occupation.

6.5 In addition to the nomination requirements outlined in the Migration Regulations, the Approved Sponsor must demonstrate, through written evidence, when lodging a nomination, that:

- (a) the Nominee will be engaged full time;
- (b) the Approved Sponsor will meet the requirements set out in **Schedule 5** (which relate to TSMIT, Annual Market Salary Rate and Annual Earnings); and
- (c) the Nominee 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.

6.6 The Approved Sponsor must comply with any additional requirements for nomination in the Schedules to this Agreement.

7. Visa requirements for TSS and ENS visas

7.1 The Approved Sponsor acknowledges that as part of the TSS and ENS visa application process, the Nominee will need to meet the criteria for grant of a visa as outlined in the Migration Regulations. In addition to health and character requirements, this may include requirements that

the Nominee:

- (a) has the sufficient skills, experience and English proficiency to perform the Nominated Occupation;
- (b) can demonstrate this where requested by the Minister; and
- (c) meets any other visa requirements in the Schedules to this Agreement.

8. Visa period

TSS visa

- 8.1 The Approved Sponsor acknowledges and agrees that when nominating an Overseas Worker for a TSS visa the Approved Sponsor will select a proposed period of stay of up to four (4) years.

9. Sponsorship obligations

- 9.1 The Approved Sponsor must satisfy its sponsorship obligations in the Migration Regulations as varied, if at all, in **Schedule 9**.
- 9.2 The Approved Sponsor must satisfy the additional sponsorship obligations specified in **Schedule 10**.
- 9.3 The Approved Sponsor must comply with Workplace Law, the Migration Legislation and any other applicable immigration laws regulating employment of the Approved Sponsor's sponsored Overseas Workers.
- 9.4 Clause 9 survives the termination or expiration of this Agreement.

10. Reporting

- 10.1 The Approved Sponsor must provide a report within 30 days following a request by the Commonwealth. This report must include the items outlined at **Schedule 11**.

11. Review

- 11.1 This Agreement will be reviewed after three years and/or on an annual basis where additional nominations increasing the nomination ceilings are sought by the Approved Sponsor.

12. Audits of this Agreement

- 12.1 The Commonwealth may, from time to time, audit the Approved Sponsor's performance of its obligations in this Agreement and the Approved Sponsor will cooperate with the Commonwealth for the purpose of such audits.
- 12.2 Without limiting the generality of the preceding clause, the Approved Sponsor will:
- (a) liaise with and provide information and assistance to the Commonwealth as reasonably required by the Commonwealth for the purposes of such audits; and
 - (b) comply with the Commonwealth's reasonable requests or requirements for the purposes of such audits.
- 12.3 Unless specified otherwise in the Migration Legislation, the Approved Sponsor will retain all records generated for the purposes of this Agreement for seven (7) years from the date of expiration or termination of this Agreement.
- 12.4 Clause 12 survives the termination or expiration of this Agreement.

Miscellaneous Provisions

13. Notices

- 13.1 Any notice, demand, consent or other communication given or made under this Agreement must

be signed by the party giving or making it (or signed on behalf of that party by its authorised representative) except in the case of an email; and

- (a) left at, or sent by ordinary or pre-paid post to, the Business Address of the recipient; or
- (b) sent to the Email Address of the recipient.

13.2 A party may change its Business Address or Email Address for the purpose of service by giving notice of that change to the other party in accordance with clause 13.

13.3 Any communication will be taken to be received by the recipient:

- (a) in the case of a letter, on the third Business Day after the date of posting;
- (b) in the case of an email, at the end of the day in which it is transmitted, providing the sender does not receive an email delivery failure notification in respect of the email.

14. Variation and entire agreement

14.1 The contents of this Agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this Agreement, whether orally or in writing.

14.2 Unless otherwise specified in this Agreement, 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 Commonwealth may, in its absolute discretion, suspend this Agreement, in whole or in part, including in situations where Adverse Information regarding the Approved Sponsor has been received, is being investigated and is not considered reasonable to disregard.

15.2 The Approved Sponsor and other third parties are not entitled to any compensation or payments as a result of the Commonwealth suspending this Agreement under clause 15.1.

15.3 Where the Commonwealth suspends this Agreement in accordance with clause 15.1 the Commonwealth will notify the Approved Sponsor in writing.

15.4 For the avoidance of doubt, where the Commonwealth notifies that this Agreement has been suspended in accordance with clauses 15.1 and 15.3, the suspension shall take effect at the time the notice is taken to be received by the Approved Sponsor, in accordance with clause 13.

15.5 Where the Commonwealth suspends this Agreement in accordance with clause 15.1, the Commonwealth 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 Commonwealth may, at its absolute discretion, choose to resume this Agreement by notifying the Approved Sponsor in writing.

15.7 Where the Commonwealth chooses to resume this Agreement in accordance with clause 15.6 and notifies the Approved Sponsor, the Agreement will resume at the time the notice is taken to be received, in accordance with clause 13.

15.8 For the avoidance of doubt, any period of suspension will have no impact on and will not amend the period of this Agreement. The period of this Agreement will remain as specified in **Item 5 of Schedule 1**.

16. Termination

16.1 The Commonwealth may, in its 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 Commonwealth regarding the Approved Sponsor and it is not considered reasonable to disregard.
- 16.2 The Approved Sponsor will not be entitled to any compensation or payments as a result of the Commonwealth terminating this Agreement under clause 16.1.
- 16.3 Otherwise, if the Commonwealth contends that the Approved Sponsor is in default under this Agreement, the Commonwealth may, without prejudice to any right of action or remedy which has accrued or which may accrue (including the Commonwealth's entitlement to terminate in accordance with clause 16.1):
- (a) suspend this Agreement in whole or in part; and
 - (b) serve notice on the Approved Sponsor, advising that this Agreement is suspended and requiring the Approved Sponsor to rectify to the satisfaction of the Commonwealth, those aspects of the Approved Sponsor's performance which are of concern to the Commonwealth; or
 - (c) terminate this Agreement without prejudice to any right of action or remedy which has accrued or which may accrue.
- 16.4 If the Approved Sponsor is in breach of a sponsorship obligation in the Migration Legislation the Approved Sponsor will be taken to be in default under this Agreement as if the statutory obligation was a contractual obligation of the Approved Sponsor.
- 16.5 For the avoidance of doubt, a breach of the Approved Sponsor's warranty given in clause 4.1 with respect to pre-contractual information, will entitle the Commonwealth 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 clause:
- (a) need not specify a reason for serving the notice;
 - (b) may withdraw the notice before the 28 days have elapsed; and
 - (c) will not be liable to compensate the other party for costs or damages that may arise from the early termination.
- 16.7 For the avoidance of doubt if this Agreement is terminated for any reason, or for no reason:
- (a) the Approved Sponsor's approval as a sponsor for the purposes of this Agreement will thereby be automatically terminated; and
 - (b) visas granted pursuant to this Agreement will be subject to the operation of the Migration Legislation.
- 16.8 A waiver by a party in respect of any breach of a condition or provision of this Agreement will not be deemed to be a waiver in respect of any continuing or subsequent breach of that provision, or breach of any other provision. The failure of a party to enforce at any time any of the provisions of this Agreement will in no way be interpreted as a waiver of such provision.

17. Sanctions

- 17.1 Instead of terminating this Agreement:
- (a) the Commonwealth may, in its absolute discretion bar the Approved Sponsor, for a specified period, from making further nominations under this Agreement, or
 - (b) the Minister may, in his or her absolute discretion, give the lowest processing priority to nomination applications and visa applications made under this Agreement.
- 17.2 The Commonwealth may, in its absolute discretion, instead of terminating this Agreement or in addition to terminating this Agreement, take action against the Approved Sponsor for a breach of contract to recover damages and/or for injunctive relief.
- 17.3 The Commonwealth may, in its absolute discretion, instead of taking any enforcement action under

this Agreement or in addition to taking such enforcement action, pursue a civil penalty or issue an infringement notice under the Migration Legislation for failing to satisfy a sponsorship obligation.

18. Relationship between the parties

18.1 Nothing in this Agreement:

- (a) constitutes a partnership between the parties; or
- (b) except as expressly provided, makes a party an agent of another party for any purpose.

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

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

18.3 If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

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

19. Assurances, counterparts and assignment

19.1 Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Agreement.

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

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

20. Dispute resolution

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

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

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

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

21. Confidential information and information sharing

21.1 If a party's information is specified as Confidential Information in **Item 6 of Schedule 1**, the other party will not disclose the information without the first party's prior written consent, except when

disclosure of the information is required by law, statutory or portfolio duties.

- 21.2 The Approved Sponsor consents to information concerning it which is relevant to the operation of this Agreement being shared by the Commonwealth 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.
- 21.3 The Approved Sponsor will allow the disclosure of information related to this Agreement for various reporting and Commonwealth disclosure obligations. These disclosures include:
- (a) disclosure of procurement information for the Commonwealth's annual reporting purposes;
 - (b) disclosure to the Parliament and its committees, as appropriate, in line with the Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters;
 - (c) disclosure of information consistent with the *Freedom of Information Act 1982* (Cth);
 - (d) disclosure of discoverable information that is relevant to a case before a court; and
 - (e) disclosure of information as required under other legislation or Commonwealth policy.
- 21.4 The Approved Sponsor acknowledges and agrees that the Commonwealth 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 6 of Schedule 1** to remain confidential.
- 21.5 The Approved Sponsor must comply with any reasonable request by the Commonwealth for information to enable the Commonwealth to meet its obligations in this Agreement.
- 21.6 Clause 21 survives the termination or expiration of this Agreement.

22. Fettering and publishing

- 22.1 Nothing in this Agreement fetters or detracts from the Commonwealth's discretions, functions or powers under the Migration Legislation, Workplace Law or other relevant Commonwealth laws.
- 22.2 In the event the Commonwealth has published an outline of this Agreement, the published outline is an invitation to treat with prospective sponsors and is not an offer to enter into contractual relations with any such sponsor on the basis of the published outline.
- 22.3 The Commonwealth may grant or refuse to grant consent, in its absolute discretion, to any application by the Approved Sponsor for consent to a change in control of the Approved Sponsor that may be inimical to the Approved Sponsor's capacity to perform its obligations under this Agreement, and the Commonwealth may attach such conditions on a consent as the Commonwealth sees fit.

23. Legal expenses

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

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.

25. Governing law and jurisdiction

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

- 25.2 The parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and any courts competent to hear appeals from those courts.

26. Indemnity

- 26.1 The Approved Sponsor agrees to indemnify the Commonwealth from and against any:

- (a) cost or liability incurred by the Commonwealth; or
- (b) loss or expense incurred by the Commonwealth 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 Commonwealth,

arising from:

- (c) any act or omission by the Approved Sponsor or its Personnel in connection with this Agreement; or
- (d) any breach by the Approved Sponsor of its obligations or warranties under this Agreement; irrespective of whether there was fault on the part of the person whose conduct gave rise to that liability, loss or damage, or loss or expense.

- 26.2 The Approved Sponsor's liability to indemnify the Commonwealth under clause 26.1 will be reduced proportionately to the extent that any breach of this Agreement by the Commonwealth or any act or omission involving fault on the part of the Commonwealth contributed to the relevant cost, liability, loss, damage, or expense.

- 26.3 The right of the Commonwealth 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 Commonwealth 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 "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 will survive six (6) years from the expiration or termination of this Agreement.

27. Severability, Waiver

- 27.1 If any provision of this Agreement is held to be unlawful, invalid, unenforceable or in conflict with any Law, it is to be severed so that the validity and enforceability of the remaining provisions are not affected.

- 27.2 A right or remedy created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delays by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

28. Conflict Of Interest

- 28.1 Each party warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement no conflict of interest exists or is likely to arise under this Agreement.

- 28.2 If, during the period of this Agreement, a party becomes aware of a conflict of interest or a risk of conflict of interest arising, each party undertakes to notify the other party immediately in writing of that conflict or risk.

Schedule 1 Particulars

Item 1 Commonwealth Particulars

Name: Department of Home Affairs

Business Address: 6 Chan Street, BELCONNEN ACT 2617

Telephone Number: (02) 6264 2706

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

Contact officer: Senior Director, Employer Sponsored Program Management

Item 2 The Approved Sponsor's Particulars

Name: Veterinary Emergency Treatment Services Pty Ltd

ACN: 618 062 749

ABN: 83 474 199 054

Business structure: Discretionary Trading Trust

Business Address: 124 Anderson Street
MANUNDA CAIRNS QLD 4870

Telephone Number: 07 4015 3459

Email Address: s. 47F(1)

Contact officer: s. 47F(1)

Item 3 The Designated Area

The Far North QLD Region comprising the QLD Local Government Areas of Cairns, Cassowary Coast, Douglas, Mareeba and Tablelands. Specifically this includes the following postcode ranges;

4852	4854-4856	4858-4861
4865	4868-4873	4877-4883
4885-4886		

Item 4 The Approved Sponsor's Business

Industry segment: Professional, Scientific and Technical

Item 5 Commencement and period

Effective Date: The date signed by the Commonwealth being the last party to sign the Agreement

Cease Date: Five (5) years from the Effective Date

Item 6 Confidential Information of Approved Sponsor

Schedule 2 Occupations, Nomination Ceiling and Location

Item 2.1 Maximum Number of approved Nominations

The table below outlines the Occupations that can be Nominated under this Agreement. It also specifies the maximum number of approved nominations (i.e. ceiling) per year for these Occupations, and where the Nominated positions are based (i.e. location of work).

TSS Nomination Ceilings

ANZSCO or 6 digit code	Occupation	Nomination Ceilings					Location of work
		Year 1	Year 2	Year 3	Year 4	Year 5	
361311	Veterinary Nurse	1	0	0	0	0	Cairns, QLD 4870

ENS Nomination Ceilings

ANZSCO or 6 digit code	Occupation	Nomination Ceilings					Location of work
		Year 1	Year 2	Year 3	Year 4	Year 5	
361311	Veterinary Nurse	0	0	0	0	0	Cairns, QLD 4870

Note:

- The Minister may vary the maximum number of approved nominations and Occupations at any time, with Maximum Numbers subject to annual review.
- If the Approved Sponsor wishes to increase the Maximum Numbers specified above, they must seek a variation to this Agreement as outlined at clause 6.2 to this Agreement.

Item 2.1 Caveats not applicable

None of the matters specified in an instrument made under subregulation 2.72(9) of the Migration Regulations, for the purpose of determining whether an Occupation applies to a Nominee, (called 'caveats' in Departmental policy instructions) applies to any Occupation specified in this Agreement.

Schedule 3 Occupations not in ANZSCO

The parties agree to the inclusion of the following Occupations, not listed in ANZSCO, in this Agreement. For the purposes of nomination application and assessment, the tasks and relevant 6-digit codes for these Occupations are outlined below:

None approved

Schedule 4 Qualifications and Experience

The following skills, qualifications, experience and employment background requirements apply to the Occupations listed in the tables below in relation to subclass 482 Temporary Skill Shortage (TSS) and, where eligible under the permanent residence pathway, subclass 186 Employer Nomination Scheme (ENS) visas.

Item 4.1 Occupations with no skills, qualifications or post-qualification work experience Concessions (ANZSCO Skill Level 1-3)

For the Occupations specified in Tables 1 to 4, the following skills, qualifications, experience and employment background criteria will apply to any nomination for these Occupations or any application for a TSS or ENS visa made under the Migration Legislation.

Skills Assessment

Qualifications are to be assessed by VETASSESS as being at least equivalent to the relevant Australian Qualifications Framework (AQF) qualification detailed for the relevant tables below, in order to assist the Minister's decision as to whether the visa applicant has the necessary qualifications for the position.

A skills assessment is required for applications lodged for the Occupations listed in Tables 1 to 4.

Table 1: ANZSCO Skill Level 1-3 Occupations (with no Concessions to skills, qualifications or post-qualification work experience)

ANZSCO or 6 digit Code	Occupation	ANZSCO Skill Level
361311	Veterinary Nurse	3

For the Occupations listed in Table 1, the following skill and experience requirements apply. The visa applicant must:

- undergo a skills assessment conducted by VETASSESS; and
- meet the skill level requirements as defined in ANZSCO; and
- have at least two years post qualification experience (38 plus hours per week).

Non-ANZSCO Occupations

Table 2: Specified Non-ANZSCO (equivalent Skill Level 3) Occupation

ANZSCO or 6 digit Code	Occupation	Equivalent ANZSCO Skill Level
	None approved	

Item 4.2 ANZCSO Skill Level 4 Occupations

General ANZSCO Skill Level 4 Occupations

Table 3: General ANZSCO Skill Level 4 Occupations

ANZSCO or 6 digit Code	Occupation	ANZSCO Skill Level
	None approved	

Specified ANZSCO Skill Level 4 Occupations

Table 4: Specified ANZSCO Skill Level 4 Occupations

ANZSCO or 6 digit Code	Occupation	Equivalent ANZSCO Skill Level
	None approved	

Schedule 5 Concession to the Temporary Skilled Migration Income Threshold (TSMIT)

In relation to the nomination of Occupations for TSS visas and ENS visas, the following additional requirements must be met by an Approved Sponsor.

- 'Non-concessional Occupation' means an Occupation that may be Nominated under this Agreement but is not specified in Table 5.
- 'Concessional Occupation' means an Occupation specified in Table 5.

For both concessional and non-concessional Occupations:

- 'Annual Market Salary Rate' has the same meaning as in the Migration Regulations, and is determined in accordance with the instrument which specifies the method for determining the Annual Market Salary Rate for an Occupation Nominated under section 140GB of the Migration Act or an Occupation in relation to which a position is Nominated under regulation 5.19 of the Migration Regulations.
- 'Annual Earnings' means an Overseas Worker's Earnings calculated on an annual basis.

Non-concessional Occupations

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

In relation to an Overseas Worker who is Nominated for a non-concessional Occupation in relation to a TSS visa, the Approved Sponsor must meet the legislative requirements relating to TSMIT, Annual Market Salary Rate and Annual Earnings which would apply if the Overseas Worker were Nominated in relation to the Short-term stream or Medium-term stream in the standard TSS visa program.

In relation to an Overseas Worker who is identified for a non-concessional Occupation in relation to an ENS visa, the Approved Sponsor must meet the legislative requirements relating to TSMIT, Annual Market Salary Rate and Annual Earnings which would apply if the Overseas Worker were identified in relation to the Temporary Residence Transition stream or the Direct Entry stream in the standard ENS visa program.

Concessional Occupations

In relation to an Overseas Worker who is Nominated/identified for a concessional Occupation in relation to a TSS visa or an ENS visa, in accordance with the applicable concession type set out below, the nominating Approved Sponsor must provide the Overseas Worker with an amount of Annual Earnings which is equal to or greater than:

- the Annual Market Salary Rate; and
- Reduced TSMIT (for TSMIT concession type 1) or TSMIT (for TSMIT concession types 2-4).

'Reduced TSMIT' means 90% of TSMIT.

The Designated Area Representative has specified in their endorsement letter, whether a TSMIT Concession applies to each endorsed concessional Occupation.

Table 5: Occupations to which TSMIT Concessions may apply

ANZSCO or 6 digit Code	Occupation	ANZSCO Skill Level	Concession Type
	There are no concessional Occupations approved under this agreement		

Schedule 6 Concession to English language requirement

In this Schedule, **IELTS** means the International English Language Testing System or the equivalent in another accepted English language test.

Other accepted English language tests are:

- Occupational English Test (OET);
- Test of English as a Foreign Language internet-based test (TOEFL iBT);
- Pearson Test of English (PTE) Academic test; or
- Cambridge English: Advanced (CAE) test.

The English language requirements may be met if a visa applicant would be regarded as an 'exempt applicant' for the purpose of the legislative instruments applicable to TSS and ENS visas.

For any Occupations that are not listed in Table 6 below, the Overseas Worker is required to meet the minimum standard English language requirements applicable to the TSS and ENS non-labour agreement visa streams under the Migration Regulations.

For the Occupations listed in Table 6 below, the following English language Concessions apply:

- **TSS concession:** average score of IELTS 5.0 with no component being less than IELTS 4.0 or equivalent (unless registration or licensing requires a higher level of English).
- **ENS concession:** no concession. The minimum standard English language requirements applicable to the ENS non-labour agreement visa streams under the Migration Regulations apply.

Table 6: Occupations to which English language concession applies

ANZSCO or 6 digit Code	Occupation	ANZSCO Skill Level
	There are no concessional Occupations approved under this agreement	

Schedule 7 Permanent Residency Pathway

A permanent residency pathway for Overseas Workers is available through the Employer Nomination Scheme (ENS) Subclass 186 visa program, where endorsed in writing by the Designated Area Representative, for the Occupations in Table 7 below.

The following conditions apply to any Nomination in relation to an ENS visa (in addition to the ENS requirements outlined in the Migration Legislation).

1. The Approved Sponsor must certify, in writing, that:
 - (a) at the time of an application for approval of the Nomination in relation to an ENS visa ("the ENS Nomination"), the Overseas Worker holds a TSS visa granted in connection with the Designated Area Migration Agreement between the Commonwealth of Australia and the Cairns Chamber of Commerce Incorporated in relation to Far North Queensland ("FNQ DAMA"), dated 4 April 2019; and
 - (b) the Overseas Worker has been employed on a full-time basis for a period of at least 3 years before the ENS Nomination is made, by one or more parties to a labour agreement in association with the FNQ DAMA, in the ENS Nominated Occupation or an Occupation in the same ANZSCO 4 digit level, being an Occupation specified in the FNQ DAMA; and
 - (c) for the whole time that the Overseas Worker was employed in accordance with paragraph (b):
 - (i) he or she must have held a TSS visa granted in connection with FNQ DAMA; and
 - (ii) he or she must have worked in the Designated Area outlined in Schedule 1 of this Agreement.
2. The Approved Sponsor undertakes, in writing, that:
 - (a) the Overseas Worker engaged by the Approved Sponsor will be employed on a full-time basis in the position for at least 2 years; and
 - (b) the terms and conditions of employment of the Overseas Worker will not include an express exclusion of the possibility of extending the period of employment.
3. The Approved Sponsor may only Nominate a position in relation to an Occupation, as set out in Table 7 before, which was the subject of the most recently approved TSS visa.

Table 7: Occupations eligible for permanent resident pathway

ANZSCO or 6 digit Code	Occupation	ANZSCO Skill Level
361311	Veterinary Nurse	3

Schedule 8 Additional requirements for Nomination

Item 8.1 Labour market testing requirements

Evidence of labour market testing must accompany TSS Nominations lodged in accordance with this Agreement. The evidence provided should be equivalent to that required under standard TSS Nomination requirements.

Item 8.2 Settlement information package

The Approved Sponsor is to provide an undertaking that prior to engaging an Overseas Worker under this Agreement, the Approved Sponsor will provide that person with a package of settlement information produced by the Designated Area Representative, which includes information on:

- (a) workplace rights and entitlements;
- (b) local area services such as health, emergency and educational services;
- (c) community activities and religious services;
- (d) living costs in the Designated Area; and
- (e) English language services (education and translating and interpreting services (TIS National)).

Schedule 9 Variation of sponsorship obligations

Item 9.1 Obligation to cooperate with inspectors

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

Item 9.2 Obligation to ensure equivalent terms and conditions of employment

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

Item 9.3 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 9.4 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 9.5 Obligation to keep records

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

Item 9.6 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 9.7 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 9.8 Obligation to ensure Primary Sponsored Person works or participates in Nominated Occupation, program or activity

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

Item 9.9 Obligation not to recover, transfer or take actions that would result in another person paying for certain costs

The obligation in regulation 2.87 of the Migration Regulations applies and is not varied. For clarity, the Approved Sponsor must not charge employees for services (see Schedule 10 of this Agreement).

Schedule 10 Additional sponsorship obligations specific to this Agreement

The additional obligations listed below are applicable and commence when the Overseas Worker commences his or her employment or engagement with the Approved Sponsor, and end on the earlier of the day on which the Overseas Worker:

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

Item 10.1 Obligations not to Nominate where money owed

The Approved Sponsor must not Nominate Overseas Workers or members of their family unit who it has assessed, reasonably suspects or ought to reasonably suspect of owing money as a result of being recruited.

Item 10.2 Information on workplace rights

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

Item 10.3 Obligations to pay salary directly

An Approved Sponsor must pay the Overseas Worker directly.

Item 10.4 Obligations regarding salary deductions

An Approved Sponsor may not deduct an amount from an amount payable to an Overseas Worker unless the deduction is authorised:

- (a) in writing by the employee and is principally for the employee's benefit; or
- (b) by the employee in accordance with an enterprise agreement; or
- (c) by or under a modern award or a *Fair Work Act 2009* (Cth) order; or
- (d) by or under a law of the Commonwealth, a State or a Territory, or an order of a court.

Item 10.5 Obligations regarding charging for fees for services provided

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

Item 10.6 Obligations regarding Annual Earnings

An Approved Sponsor must provide an Overseas Worker with Annual Earnings worked out in accordance with **Schedule 5** for their Occupation.

Schedule 11 Information to be provided to the Commonwealth

The Approved Sponsor must provide the following documentation to the Commonwealth when requested or when seeking additional Nomination ceilings:

- (a) updated Workforce Plan, which must outline the current, and where requested, projected future composition of an Approved Sponsor's workforce. It must also include details of the total number of Australian workers (including permanent residents) and temporary visa holders engaged by the Approved Sponsor;
- (b) evidence of labour market testing that has been undertaken during the last 12 months;
- (c) evidence of salary arrangements for, and amounts paid to, persons who are or were Overseas Workers;
- (d) details of any breaches of immigration or other Commonwealth or State laws by the Approved Sponsor;
- (e) the dates and numbers and Occupations of any and all Australian workers who have been retrenched or made redundant in the past 12 month period; and
- (f) any additional information requested by the Commonwealth.

Signing page

Executed as a Deed

SIGNED, SEALED AND DELIVERED for and on behalf of the
COMMONWEALTH OF AUSTRALIA under
the written authority of the **Minister for Immigration, Citizenship, Migrant Services and
Multicultural Affairs** by its duly authorised Departmental official
in the presence of

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

Signature of witness

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

Name of witness

7/6/2021
Date

7/6/2021
Date

Executed as a Deed by **VETERINARY EMERGENCY TREATMENT SERVICES PTY LTD** ABN
83 474 199 054
in accordance with section 127 of the *Corporations Act 2001* (Cth)

S. 47F(1)

23.05.2021
Date

24/5/21
Date

15-81-11