

# **DEED OF AGREEMENT FOR THE SEASONAL WORKER PROGRAMME**

**Commonwealth of Australia** represented by the  
Department of Employment and Workplace Relations

ABN 96 584 957 427

**^Party 2 Name^**

**^Party 2 ABN/ACN as appropriate^**

SAMPLE

## **Table of Contents**

Interpretation .....	6
1. Definitions .....	6
2. Interpretation.....	13
3. Entire Agreement and Severance.....	16
4. Term.....	16
Principal Obligations .....	17
5. General .....	17
6. General Notification .....	18
7. Specific Things You must Notify Us of .....	19
8. Reporting .....	20
9. Work Health and Safety.....	20
10. Placements and Host Organisations .....	22
11. Accommodation and Accommodation Providers .....	23
12. Welfare and Wellbeing Support Person/s, Providers and Plan.....	23
13. Providers and Subcontractors.....	24
14. Subcontractors .....	25
15. Records .....	25
16. Access to Premises and Records .....	26
17. Freedom of Information and Access to Documents .....	27
18. Disclosure of Information .....	27
19. Privacy .....	28
20. Intellectual Property.....	29
21. Indemnity .....	29
22. Insurance .....	30
23. Dispute resolution.....	31
24. Specified Events and subsequent actions .....	32
25. Termination Without Costs.....	34
26. Termination With Costs .....	35
27. Termination By Agreement.....	35
28. Negation of employment, partnership and agency .....	35
29. Waiver.....	35
30. Variation.....	36
31. Notices .....	36
32. Assignment, novation and Change in Control.....	36
33. Survival of Clauses .....	36
34. Applicable law.....	36
35. Transition arrangements.....	36
SCHEDULE 1 - Your Obligations as an Approved Employer .....	38
A. General.....	38

<b>B.</b>	<b>Recruitment and selection .....</b>	<b>39</b>
<b>C.</b>	<b>Offer of Employment .....</b>	<b>41</b>
<b>D.</b>	<b>Employment .....</b>	<b>41</b>
<b>E.</b>	<b>Expenses and deductions .....</b>	<b>42</b>
<b>F.</b>	<b>Welfare and Wellbeing of Seasonal Workers .....</b>	<b>44</b>
<b>G.</b>	<b>Accommodation for Seasonal Workers .....</b>	<b>45</b>
<b>H.</b>	<b>Transportation for Seasonal Workers .....</b>	<b>45</b>
<b>I.</b>	<b>Pre-Departure Briefing for Seasonal Workers .....</b>	<b>46</b>
<b>J.</b>	<b>Arrival Briefings for Seasonal Workers .....</b>	<b>46</b>
<b>K.</b>	<b>Banking, taxation and superannuation .....</b>	<b>47</b>
<b>L.</b>	<b>Departure to sending country .....</b>	<b>47</b>
	<b>SCHEDULE 2 .....</b>	<b>48</b>
	<b>SCHEDULE 3 - Restart Seasonal Workers .....</b>	<b>49</b>

SAMPLE

## DEED OF AGREEMENT – SEASONAL WORKER PROGRAMME

### Date

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This Deed is made on the Commencement Date.

### Parties

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This Deed is made between and binds the following Parties:

1. **Commonwealth of Australia ('Commonwealth', 'Us', 'We' or 'Our')** represented by and acting through the Department of Employment and Workplace Relations ABN 96 584 957 427 (**'Department of Employment and Workplace Relations'**)
2. **^ Insert Approved Employer Name^** ('You' or 'Your' or 'Your Organisation') **^Insert Approved Employer ABN and ACN/ARBN if applicable^**  
**^Insert Approved Employer Address^**

### Recitals

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Whereas:

- A. The Seasonal Worker Programme is a whole-of-government program led by the Department of Employment and Workplace Relations. We manage the program in partnership with other Australian Government agencies including the Department of Foreign Affairs and Trade, the Department of Home Affairs and the Fair Work Ombudsman;
- B. The key objectives of the Seasonal Worker Programme are to contribute to the economic development of Pacific Island countries and Timor-Leste, and to offer a reliable, returning workforce to Australian employers who, despite their commitment to employing Australian job seekers, have an unmet demand for labour;
- C. Arrival of Seasonal Workers from overseas under the Seasonal Worker Programme was paused in March 2020 because of necessary COVID-19 pandemic international travel restrictions;
- D. It is proposed that the overseas recruitment of Seasonal Workers from Participating Countries will recommence in those States and Territories that opt-in to participate in the restart of the Seasonal Worker Programme, subject to those States and Territories agreeing that they have health and quarantine system capacity;
- E. Additional measures associated with the restart of overseas recruitment of Seasonal Workers under the Seasonal Worker Programme will be required to be observed by Approved Employers under the terms of the Deed. These include the introduction of health and other measures applying to any new recruitments due to the COVID-19 pandemic. These measures are adopted in order to protect the health and wellbeing of other Seasonal Workers and Australians;
- F. Seasonal Workers who are recruited while these additional measures apply will be Restart Seasonal Workers under this Deed, and Schedule 3 (in addition to the other provisions of this Deed) will apply to these Restart Seasonal Workers in accordance with clause 2.8. Seasonal Workers who are recruited when these additional measures do not apply will not be Restart Seasonal Workers, and Schedule 3 will not apply to those

Seasonal Workers. In respect of Seasonal Workers who are recruited when the additional measures do not apply, Schedule 1 (in addition to the other provisions of this Deed) will apply and shall not be read as having been amended by Schedule 3 in respect of those Seasonal Workers;

- G. You have applied to be an Approved Employer for the purposes of the Seasonal Worker Programme;
- H. In order to participate in the Seasonal Worker Programme, You must be approved as a Temporary Activities Sponsor by the Department of Home Affairs; and
- I. You agree to participate in the Seasonal Worker Programme as an Approved Employer, subject to the terms of this Deed.

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## Interpretation

### 1. Definitions

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1.1. In this Deed, unless the context indicates otherwise:

**Accommodation Arrangement** means any legally binding arrangement entered into by You with an Accommodation Provider in relation to the Seasonal Worker Programme.

**Accommodation Plan** means a plan for the accommodation of one or more Seasonal Workers as amended from time to time and completed in accordance with the Guidelines.

**Accommodation Provider** means any organisation providing accommodation for one or more Seasonal Workers under an Accommodation Arrangement.

**Alternative Approved Employer** means an organisation other than Your Organisation that is an Approved Employer for the purposes of the Seasonal Worker Programme, unless otherwise specified in Item M of Schedule 1 (as amended by Schedule 3).

**Approved Employer** means a party who is:

- i. approved by Us as an employer for the purposes of the Seasonal Worker Programme;
- ii. participating in the Seasonal Worker Programme by recruiting and employing Seasonal Workers subject to the terms of this Deed; and
- iii. approved as a Temporary Activities Sponsor by the Department of Home Affairs.

**Approved Recruitment** means a Recruitment Application in relation to the Seasonal Worker Programme which has been approved by Us under Item B of Schedule 1.

**Arrival Briefing** means the briefing given to Seasonal Workers following their arrival in Australia in accordance with Item J of Schedule 1 and the Guidelines.

**Auditor-General** means the officer appointed under section 7 of the *Auditor-General Act 1997* (Cth).

**Australian Federal Police** means the Australian Federal Police established under the *Australian Federal Police Act 1979* (Cth) and includes any other entity that may, from time to time, perform the functions of the Australian Federal Police.

**Australian Taxation Office** means the Commissioner of Taxation, the Second Commissioners of Taxation, their delegates, and the Australian Taxation Office established under the *Taxation Administration Act 1953* (Cth), including any other entity that may, from time to time, perform the functions of the Commissioner of Taxation, the Second Commissioners of Taxation, their delegates, and the Australian Taxation Office.

**Business Day** means in relation to the doing of any action in a place, any day other than a Saturday, Sunday or public holiday in the Australian Capital Territory.

**Calendar Day** means in relation to the doing of any action in a place, any day including a Saturday, Sunday or public holiday in the Australian Capital Territory.

**Change in Control** means:

- i. subject to paragraph (ii) below, in relation to a Corporation, a change in any of the following:
  1. Control of more than one half of the voting rights attaching to shares in the Corporation, whether due to one or a series of transactions occurring together or on different occasions;
  2. Control of more than one half of the issued share capital of the Corporation, whether due to one or a series of transactions occurring together or on different occasions, excluding any part of the issued share capital which carries no right to participate beyond receipt of an amount in the distribution of either profit or capital; or
  3. Control of more than one half of the voting rights attaching to membership of the Corporation, where the Corporation does not have any shareholders;
- ii. in relation to a Corporation which is owned or controlled by a trustee company, any change as set out in paragraph (i) above in relation to either that Corporation or its corporate trustee; or
- iii. in relation to a partnership:
  1. the sale or winding up or dissolution of the business by the partners;
  2. a change in any of the partners; or
  3. the retirement, death, removal or resignation of any of the partners.

**Commencement Date** means the later of:

- i. 1 January 2020; and
- ii. the date on which this Deed is executed by Us.

**Commissioner** has the same meaning given to that term section 6 of the *Privacy Act 1988* (Cth).

**Commonwealth** means the Commonwealth of Australia as constituted by the *Commonwealth of Australia Constitution Act 1900* (Cth).

**Completion Date** means:

- i. subject to paragraph ii, the day after the later of the following:
  1. 31 March 2023; or
  2. the expiry of an extension agreed under clause 4; or
- ii. the day after the day on which this Deed is terminated, including by agreement.

**Control** has the meaning given to that term in section 50AA of the *Corporations Act 2001* (Cth).

**Corporation** has the meaning given to that term in section 57A of the *Corporations Act 2001* (Cth).

**Deed** means:

- i. this Deed, including the Schedules; and
- ii. the Guidelines, which is incorporated into the Deed by reference under clause 2.2.

**Department of Employment and Workplace Relations** means the Commonwealth Department of Employment and Workplace Relations and includes any department, agency or authority of the Commonwealth which is, from time to time, responsible for administering this Deed.

**Department of Foreign Affairs and Trade** means the Commonwealth Department of Foreign Affairs and Trade, including any other entity that may, from time to time, perform the functions of the Department of Foreign Affairs and Trade.

**Department of Home Affairs** means the Commonwealth Department of Home Affairs and includes any department, agency or authority of the Commonwealth which is, from time to time, responsible for administration of the *Migration Act 1958* (Cth), as varied from time to time.

**Departure Briefing** means the briefing given to a Seasonal Worker, prior to their departure from Australia, in accordance with Item L3 of Schedule 1 and the Guidelines.

**Email** has the same meaning given to electronic communication in section 5 of the *Electronic Transactions Act 1999* (Cth).

**Fair Work Instrument** has the meaning given to that term in the *Fair Work Act 2009* (Cth).

**Fair Work Ombudsman** means the Fair Work Ombudsman established under the *Fair Work Act 2009* (Cth) and includes any other entity that may, from time to time, perform the functions of the Fair Work Ombudsman.

**Guidelines** means guidelines made available by Us and marked as such, in relation to the obligations and responsibilities of Approved Employers under the Seasonal Worker Programme, as amended from time to time.

**Host Organisation** means a third party organisation that provides work to the Seasonal Workers in accordance with a Host Organisation Arrangement.

*Note: The Seasonal Workers must remain employed by You at all times and You remain responsible for the Seasonal Workers employment conditions.*

**Host Organisation Arrangement** means any legally binding, written arrangement entered into by You with a Host Organisation in relation to the Seasonal Worker Programme.

**Implementation Arrangements** means the arrangements published by the Department of Employment and Workplace Relations pursuant to the Memorandum of Understanding between the Commonwealth and the Participating Countries.

*Note: The Implementation Arrangements will be made available to You on the Seasonal Worker Programme website, as updated from time to time.*

**Intellectual Property Rights** means:

- i. all copyright (including rights in relation to phonograms and broadcasts);
- ii. all rights in relation to inventions (including patent rights), trademarks (including service marks), designs, circuit layouts; and
- iii. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields,

but does not include:



- iv. Moral Rights;
- v. the non-proprietary rights of performers; or
- vi. rights in relation to confidential information.

**Material** includes documents, equipment, software (including source code and object code), goods, information and data stored by any means including all copies and extracts of the same.

**Memorandum of Understanding** means the agreement, substantially in the form of the sample agreement published by Us, between the Commonwealth and a Participating Country, which sets out the arrangements for sending and receiving workers from that country, in support of the Seasonal Worker Programme.

**Moral Rights** has the meaning given to that term by the *Copyright Act 1968* (Cth).

**Net Financial Benefit** means the amount of earnings that Seasonal Workers are expected to have left, after tax and permitted deductions have been taken from their gross pay.

**Notice, Notify, Notified or Notification** means notice in accordance with clause 31.

**Offer of Employment** means the document which sets out the details of an offer of employment for a Seasonal Worker, in accordance with Item C of Schedule 1.

**Office of the Australian Information Commissioner** means the independent statutory agency established under the *Australian Information Commissioner Act 2010* (Cth) and includes any other entity that may, from time to time, perform the functions of the Office of the Australian Information Commissioner.

**'One-Way International Airfare'** means the cost of the flight transporting a Restart Seasonal Worker from the relevant Participating Country to their Port of Arrival, or from their Port of Departure to the relevant Participating Country.

**Our Confidential Information** means information:

- i. that We identify, by Notice to You after the Commencement Date, as confidential information for the purposes of this Deed; or
- ii. that You know or ought to know is confidential;

and includes:

- iii. all Reports, Records and other Material provided by You to Us under this Deed; and
- iv. all responses to Notices issued by Us under the Deed.

**Our Representative** means any of the persons nominated in Item A5 of Schedule 1 or as otherwise Notified by Us to You.

**Participating Country** means a country that is a party to a current Memorandum of Understanding with the Commonwealth in support of the Seasonal Worker Programme as varied from time to time.

**Participating Industry** means an employment industry, identified and defined in writing by Us from time to time, in which Seasonal Workers may be employed.

*Note: Participating Industries may be limited to certain locations.*

*The Participating Industries will be made available to You online on the Seasonal Worker Programme website.*

**Participating Sector** means an employment sector, identified and defined in writing by Us from time to time, in which Seasonal Workers may be employed.

*Note: Participating Sectors may be limited to certain locations.*

*The Participating Sectors will be made available to You online on the Seasonal Worker Programme website.*

**Party** means a party to this Deed.

**Personal Information** has the same meaning given in section 6 of the *Privacy Act 1988* (Cth).

**Personnel** means:

- i. in relation to You, any natural person who is an officer, employee, agent, volunteer or professional advisor of You;
- ii. in relation to Us, any natural person who is an officer, employee, agent, volunteer or professional advisor of Us; and
- iii. in relation to any other entity, any natural person who is an officer, employee, agent, volunteer or professional advisor of the entity.

**Piece Rate** means the 'base rate of pay' for a 'piecemaker' as defined in section 16 of the *Fair Work Act 2009* (Cth).

**Placement** means any work location where a Seasonal Worker will carry out work in accordance with their Offer of Employment, (including with a Host Organisation if applicable).

**Pre-Departure Briefing** means the briefing given to a Seasonal Worker, prior to their departure to Australia from the relevant Participating Country, in accordance with Item 1 of Schedule 1 and the Guidelines.

**Provider** means any entity that is one or more of the following:

- i. an Accommodation Provider;
- ii. a Host Organisation; and
- iii. a Welfare and Wellbeing Provider.

**Provider Arrangement** means any of one or more of the following:

- i. an Accommodation Arrangement;
- ii. a Host Organisation Arrangement; and
- iii. a Welfare and Wellbeing Arrangement.

**Port of Arrival** means the place at which a Seasonal Worker enters Australia for immigration purposes.

**Port of Departure** means the place at which a Seasonal Worker departs Australia for immigration purposes.

**Privacy Act** means the *Privacy Act 1988* (Cth) as varied from time to time.

**Program Assurance Activities** means any activities that may be conducted by Us at any time to determine whether You are meeting Your obligations under this Deed, including in relation to the Seasonal Workers, Providers and Subcontractors.

**Records** means all documents, information and data stored by any means and all copies and extracts of the same, and includes all Reports and other Material, held by You, Your Personnel, Providers and Subcontractors under or in connection with the Seasonal Worker Programme. "Records" may include Your Confidential Information, Our Confidential Information and Personal Information.

**Recruitment Application** means any application completed by You in accordance with Item B of Schedule 1 and the Guidelines.

**Region** means a geographical region for which You are approved by Us for participation in the Seasonal Worker Programme under this Deed:

- i. as specified in Schedule 2 to this Deed; or
- ii. in relation to an Approved Recruitment.

**Regulations** means the *Migration Regulations 1994* (Cth) as varied from time to time.

**Relevant Agency** means the Department of Home Affairs, the Fair Work Ombudsman, the Department of Foreign Affairs and Trade, the Australian Federal Police, the Australian Taxation Office, the Auditor-General, the Office of the Australian Information Commissioner, any Commonwealth, State or Territory work health and safety authority, and any other agencies Notified by Us to You from time to time.

**Report** means any Material You are required to produce for Us for the purposes of reporting on the Seasonal Worker Programme under this Deed, including the 'Arrival Report', 'Departure Report', 'Initial Arrival Report' and 'Subsequent Arrival Report' and any other reporting required under the Guidelines or SWP Online, and any other report as Notified by Us to You in accordance with clause 8.

**Restart Seasonal Worker** means a Seasonal Worker who is recruited from overseas from a Participating Country for the Seasonal Worker Programme during the period:

- i. commencing on the Commencement Date; and
- ii. ending on the date specified in Our Notice to You under clause 2.9.

**Return International Airfare** means the cost of the flight transporting a Seasonal Worker from the relevant Participating Country to their Port of Arrival and from their Port of Departure to the relevant Participating Country.

**Schedule** means a schedule to this Deed.

**Seasonal Worker** means a citizen of a Participating Country who satisfies the Seasonal Worker Programme eligibility criteria outlined in the Implementation Arrangements to the Memoranda of Understanding, and who is granted a Subclass 403 (Temporary Work (International Relations)) visa in the Seasonal Worker Program stream (or such other Subclass visa as specified by the Commonwealth). To avoid doubt, 'Seasonal Worker' includes a 'Restart Seasonal Worker'.

**Seasonal Worker Programme** means the program established by the Commonwealth to provide citizens of a Participating Country with the opportunity to undertake seasonal work within Australia where there is demonstrated unmet demand for labour.

**Specified Events** means the events specified in clause 24.2 and clause 24.3.

**Subclass 403 (Temporary Work (International Relations)) visa in the Seasonal Worker Program stream** has the meaning given in the Regulations as varied from time to time.

**Subcontract** means any arrangement entered into by You by which some or all of Your obligations under this Deed are provided by another party, but does not include:

- i. any Provider Arrangement; or
- ii. any arrangement entered into by You for the purposes of transporting a Seasonal Worker into Australia or within Australia.

**Subcontractors** means any party which has entered into a Subcontract with You.

**SWP Online** means Our computer system accessible by Approved Employers, delivered as web-browser applications and through which information is exchanged between Approved Employers and Us in relation to the Seasonal Worker Programme.

**Temporary Activities Sponsor** means a party approved as a sponsor in relation to the temporary activities sponsor class under the *Migration Act 1958* (Cth) (as that Act is varied from time to time).

**Term of this Deed** means the period specified in clause 4.1 of this Deed.

**Welfare and Wellbeing Arrangement** means any legally binding, written, arrangement entered into by You with a Welfare and Wellbeing Provider in relation to the Seasonal Worker Programme.

**Welfare and Wellbeing Plan** means a Welfare and Wellbeing Plan as amended from time to time and completed in accordance with the Guidelines.

**Welfare and Wellbeing Provider** means any organisation or individual, other than You, that is engaged by You, to provide welfare and wellbeing support to Seasonal Workers.

*Note: To avoid doubt, You may decide to appoint Your Personnel as Welfare and Wellbeing Support Persons and may therefore not engage a Welfare and Wellbeing Provider.*

**Welfare and Wellbeing Support Person** means any person who is appointed by You to provide welfare and wellbeing support to Seasonal Workers and meets the requirements of clause 12.2.

*Note: You may appoint or engage more than one Welfare and Wellbeing Support Person.*

**Your Confidential Information** means the following information:

- i. Records of the Seasonal Workers employed by You;
- ii. Records of Providers; and
- iii. Records of Subcontractors.

**Your Representative** means the person nominated in Item A7 of Schedule 1 to this Deed or as otherwise Notified to You by Us.

## **2. Interpretation**

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### 2.1. In this Deed:

- (a) a reference to:
  - i. Us or Our includes (where the context permits) reference to Us, Our Representative, Our Personnel, or anybody else acting on Our behalf;
  - ii. You or Your includes (where the context permits) reference to You, Your Representative, Your Personnel, or anybody else acting on Your behalf; and
  - iii. a clause or item in this Deed or Schedule includes, where the context permits, any subclause, sub-item or subparagraph within that clause;
- (b) a reference to a person includes a partnership and/or a body whether corporate or otherwise;
- (c) a reference to an entity includes an association of legal persons, however constituted, governed by deed, an incorporated body, an unincorporated association, a partnership and/or a trust;
- (d) a reference to a statute or statutory provision includes a statutory modification or re-enactment of it or a statutory provision substituted for it, and each ordinance, by-law, regulation, rule and statutory instrument (however described) issued under it;
- (e) clause headings and notes are inserted for convenience only, and have no effect in limiting or extending the language of provisions of this Deed;
- (f) any uncertainty or ambiguity in the meaning of a provision of this Deed is not to be interpreted against a Party just because that Party prepared the provision;
- (g) a reference to a document (including this Deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (h) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5.00 pm on that day, it is taken to have occurred or been done on the next day;
- (i) a reference to an internet site or webpage includes those internet sites or webpages as amended from time to time;
- (j) a reference to the Guidelines, a form or other document is to the Guidelines, form or other document as revised or reissued from time to time;
- (k) where a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (l) words denoting the singular includes the plural and vice versa;
- (m) words denoting a gender include other genders;
- (n) unless otherwise expressly provided, a reference to a clause or a paragraph, is a clause or paragraph of this Deed;
- (o) "month" means a calendar month; and
- (p) "includes" in any form is not a word of limitation.

- 2.2. You agree that by virtue of this clause, the terms of the Guidelines are incorporated by reference into this Deed.
- 2.3. Unless the contrary intention appears, if there is any conflict or inconsistency between any part of:
- (a) clauses 1 to 35 (inclusive) of this Deed;
  - (b) Schedule 3 (which applies only in respect of Restart Seasonal Workers);
  - (c) Schedule 1;
  - (d) Schedule 2;
  - (e) any Guidelines;
  - (f) the terms of any relevant Memorandum of Understanding; or
  - (g) the Implementation Arrangements,
- then the material mentioned in any one of clause 2.3(a) to clause 2.3(g) above has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.
- 2.3A Without limiting clause 2.3:
- (a) You must Notify Us in the event that You consider there to be any conflict or any inconsistency between the documents specified at clauses 2.3(a) to 2.3(g) (inclusive); and
  - (b) in response to any such Notification under clause 2.3A(a), We will Notify You of how any such inconsistency or conflict shall be resolved.
- 2.4. Notwithstanding clause 30.1 We may, in Our absolute discretion, by Notice to You unilaterally amend:
- (a) the Guidelines; or
  - (b) the terms of this Deed to comply with any relevant Memorandum of Understanding or the Implementation Arrangements (or each, as the case may be), as amended from time to time,
- or both, as the case may be.
- 2.5. You acknowledge and agree that the terms and conditions of this Deed or the Guidelines (as the case may be) will be deemed to be amended in accordance with Our Notice under clause 2.4.
- 2.6. We will, to the extent it is reasonably practicable to do so, consult with You prior to amending the terms of this Deed in accordance with clause 2.4.
- 2.7. You acknowledge and agree that Our exercise or failure to exercise any right under or in connection with this Deed or otherwise under statute, at law or in equity, does not limit or otherwise affect Our rights under any other agreement We may have with You in relation to the Seasonal Worker Programme or the Seasonal Worker Programme Regional Pilot.
- 2.8. The Parties acknowledge and agree that:
- (a) on and from the Commencement Date:

- i. Schedule 3 applies to Restart Seasonal Workers only (in addition to the other provisions of this Deed);
  - ii. Schedule 1 of this Deed as amended by Schedule 3 also applies in respect of Restart Seasonal Workers;
  - iii. a reference to a provision of Schedule 1 in this Deed is to be read as a reference to Schedule 1 as amended by Schedule 3 in respect of Restart Seasonal Workers; and
  - iv. for the avoidance of doubt, in respect of a Seasonal Worker who is not a Restart Seasonal Worker, Schedule 3 shall not apply and Schedule 1 shall not be read as having been amended by Schedule 3; and
- (b) You may only recruit Restart Seasonal Workers:
- i. from Participating Countries that have agreed to the restart arrangements, as advised to You by Us; and
  - ii. in respect of Placements located in such States and Territories that:
    1. allow Restart Seasonal Workers to participate in the Seasonal Worker Programme; and
    2. have agreed that they have the health and quarantine system capacity to support Restart Seasonal Workers, as notified to You by Us.

2.9. We may, in Our absolute discretion:

- (a) direct that You do not recruit any new Restart Seasonal Workers if We consider that it is no longer necessary or appropriate to provide for special arrangements in relation to the COVID-19 pandemic, and:
  - i. on and from the date specified in Our Notice under clause 2.9(a), You must comply with that direction and not recruit any new Restart Seasonal Workers;
  - ii. the terms and conditions applicable to any Restart Seasonal Workers after the date specified in the Notice under clause 2.9(a) shall be on the terms and conditions of this Deed excluding Schedule 3, unless otherwise specified by Us in the Notice. For clarity, We may specify that some provisions of Schedule 3 remain for one or more Restart Seasonal Workers; and
- (b) subsequent to issuing a direction under clause 2.9(a), direct that You may recruit new Restart Seasonal Workers if We consider that it is necessary or appropriate to recommence special arrangements in relation to the COVID-19 pandemic, and:
  - i. on and from the date specified in Our Notice under clause 2.9(b), You may recruit new Restart Seasonal Workers, subject to any conditions specified in Our Notice; and
  - ii. the terms and conditions applicable to any Seasonal Workers who are recruited after the date specified in the Notice under clause 2.9(b) shall be as if a direction under clause 2.9(a) had not been issued.

### **3. Entire Agreement and Severance**

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- 3.1. This Deed (as varied from time to time) records the entire agreement between the Parties in relation to its subject matter.
- 3.2. If a court or tribunal finds any provision of this Deed has no effect or interprets a provision to reduce an obligation or right, this does not invalidate, or restrict the operation of, any other provision.

### **4. Term**

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- 4.1. This Deed takes effect from the Commencement Date and, unless terminated earlier pursuant to clause 25, 26 or 27, expires on the Completion Date.
- 4.2. We may, at Our sole option, offer You extensions of the Term of this Deed:
  - (a) for a period as determined by Us; and
  - (b) if We determine in Our absolute discretion, on the basis of additional terms and conditions, or variations to existing terms and conditions,by giving Notice to You not less than twenty Business Days prior to the end of the Term of the Deed.
- 4.3. Subject to clause 4.2, if You accept Our offer to extend the Term of this Deed, the Term of this Deed will be so extended and all terms and conditions of this Deed continue to apply, unless otherwise agreed in writing between the Parties.
- 4.4. On or prior to the Completion Date, We may, in Our absolute discretion, by Notice to You direct that some or all of Your Seasonal Workers be transferred to an Alternative Approved Employer under the Seasonal Worker Programme. Our direction (if any) under this clause 4.4 is subject to such transfer being permitted by the relevant Seasonal Worker's visa conditions.
- 4.5. Nothing in clause 4.4 limits or otherwise affects Our absolute discretion under Item B5 of Schedule 1 in determining whether or not to approve a Recruitment Application. To avoid doubt, We may reject a Recruitment Application with planned recruitment extending beyond the Completion Date.
- 4.6. You agree that We provide no guarantee of:
  - (a) the number or length of Recruitment Applications We may approve;
  - (b) the number of Seasonal Workers You may receive approval to recruit or that may accept any Offers of Employment from You;
  - (c) the type of work Seasonal Workers may be able to perform; or
  - (d) that the Seasonal Workers will be available and/or remain in Australia for the length of any Approved Recruitment.
- 4.7. You agree that if You do not make a Recruitment Application in accordance with Item B of Schedule 1 within 24 months from the date of Your approval as an Approved Employer, We may at Our absolute discretion terminate this Deed under clause 25.



## **Principal Obligations**

### **5. General**

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#### **Your principal obligations**

- 5.1. You must perform all of Your obligations as specified in this Deed, including Schedule 1:
- (a) in good faith towards Us and the Seasonal Workers;
  - (b) in a manner that maintains the good reputation of the Commonwealth, Us, and the Seasonal Worker Programme; and
  - (c) in accordance with the Guidelines, even if a particular clause does not expressly refer to any Guidelines.
- 5.2. You must comply, and must take all steps to ensure that You, and Your Personnel, Providers and Subcontractors comply, with any request, advice, direction or Notice given by Us under this Deed, including under clause 5.9, clause 5.10 or clause 5.11.
- 5.3. You must prepare, maintain and deliver Reports and Records in accordance with any Notice issued by Us under clause 5.9, clause 8, or clause 15 (as the case may be), and as required under the Guidelines.
- 5.4. You must ensure that all Reports and Records delivered by You to Us under this Deed are true, accurate and complete.
- 5.5. You must only recruit Seasonal Workers in accordance with an Approved Recruitment and otherwise in accordance with this Deed.
- 5.6. You must work collaboratively and cooperatively, and take all reasonable steps to ensure that Your Personnel, Providers and Subcontractors work collaboratively and cooperatively with Us, at all times, including Our Representative and Our other Personnel or any other person authorised in writing by Us.
- 5.7. During the Term of this Deed You must comply, and must ensure that Your Personnel, Providers and Subcontractors, comply with all Australian laws and the laws of any other country that apply to any and all activities You, Your Personnel, Providers or Subcontractors are engaged in in connection with the Seasonal Worker Programme.

*Note: 'activities You are engaged in in connection with the Seasonal Worker Programme' includes Your recruitment of Seasonal Workers in Participating Countries.*

- 5.8. Without limiting clause 5.7, You must obtain and maintain all necessary accreditations, licences, approvals and permits required by all Australian laws and the laws of any other country in relation to Your activities under or in connection with this Deed and the Seasonal Worker Programme.

#### **Our rights**

- 5.9. We may, in Our absolute discretion, issue any advice, direction or Notice to You, Your Personnel, Providers or Subcontractors.
- 5.10. We may request the preparation and delivery of any Records, Reports or other Material in connection with the Seasonal Worker Programme from You by issuing Notice to You, including in relation to:
- (a) Your participation in the Seasonal Worker Programme;

- (b) Your performance of this Deed;
  - (c) Your Personnel; or
  - (d) any Provider or Subcontractor.
- 5.11. We may, in Our absolute discretion, conduct Program Assurance Activities. We will provide Notice of the conduct of Program Assurance Activities if We consider that it is appropriate and practicable to provide such Notice in the circumstances.
- 5.12. You acknowledge that We may publish the following details about Your Organisation on SWP Online, on Our website, or elsewhere as Notified by Us to You:
- (a) Your Organisation's name;
  - (b) Your participation in the Seasonal Worker Programme as an Approved Employer (including whether Your Organisation is a labour hire company or contractor); and
  - (c) the Regions in which You have been approved to participate in for the purposes of the Seasonal Worker Programme.
- 5.13. We will exercise Our rights under this Deed in good faith. To avoid doubt, this obligation does not oblige Us to make decisions which are detrimental to Our interests, the interests of the Seasonal Worker Programme or the Seasonal Workers.

## **6. General Notification**

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- 6.1. You must Notify Us as soon as possible, but no later than the next Business Day:
- (a) when You are knowingly in breach of, or may be in breach of, any of Your obligations under this Deed;
  - (b) when there is any change in circumstances that may affect Your capacity to meet Your obligations under this Deed; or
  - (c) without limiting or otherwise affecting clause 6.1(a) or clause 6.1(b):
    - i. of any matter or incident which could affect, or has affected:
      - 1. the welfare of any of Your Seasonal Workers; or
      - 2. the reputation of the Seasonal Worker Programme, Us or the Commonwealth; or
    - ii. of receiving any notice or other communication from a Provider or a Subcontractor under clauses in Your Provider Arrangements and Subcontracts which are equivalent to this clause 6, clause 7, or clause 9. You must also provide Us with a copy of that notice or communication.
- 6.2. You must Notify Us as soon as possible, and within 24 hours of the relevant circumstance occurring, of:
- (a) the death of a Seasonal Worker; or
  - (b) the serious injury of a Seasonal Worker.

- 6.3. If You issue Us a Notice under clause 6.2, You do not need to issue a further Notice under clause 7.1(h).
- 6.4. In addition to the Notification requirements under this Deed, You must Notify or otherwise inform Us:
- (a) of any other circumstances required by Us from time to time; and
  - (b) as required in accordance with the Guidelines. For clarity, where the Guidelines specify that informing Us of any particular circumstance is required immediately via telephone call, then You must comply with that requirement in addition to the Notification requirements of this Deed.

## **7. Specific Things You must Notify Us of**

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- 7.1. Without limiting or otherwise affecting clause 6, You must Notify Us as soon as possible, but no later than the next Business Day, when You become aware of any of the following circumstances:
- (a) a Seasonal Worker has breached one or more of the conditions of their Subclass 403 (Temporary Work (International Relations)) visa in the Seasonal Worker Program stream (or such other Subclass visa specified by the Commonwealth);
  - (b) You intend to terminate the employment of a Seasonal Worker (You must also provide the reasons why You intend to take this action);
  - (c) when You have terminated the employment of a Seasonal Worker;
  - (d) when You have an inability to pay or fully pay a Seasonal Worker;
  - (e) when You are under investigation for, charged with, or found to have breached any Australian laws in connection with the Seasonal Worker Programme;
  - (f) when a Seasonal Worker is under investigation for, charged with, or found to have breached any Australian laws;
  - (g) when a Seasonal Worker ceases, or intends to cease, their employment with You;
  - (h) subject to clause 6.3, any work health and safety incidents involving Seasonal Workers which require contacting an emergency service, accessing medical services, health services, and/or claiming under any insurance, and the outcome of those incidents;

*Note: Reporting a work health and safety incident under clause 7.1(h) does not override any of Your obligations under this Deed, including under clause 9, or relevant WHS legislation.*

*Without limitation, under clause 7.1(h), You must notify Us of an incident contemplated by Items F1(c), F1(e) or F1(f) of Schedule 1.*

- (i) any concerns held by You or expressed to You by Seasonal Workers regarding the wellbeing or welfare of one or more Seasonal Workers;
- (j) You have engaged in misleading or deceptive conduct, including if You have provided false or misleading information to Us or any Relevant Agency;
- (k) You have delivered a Report or Record to Us which is not true, complete and accurate; and

(l) if You are in breach of the Guidelines.

7.2. If You issue a Notice to Us under this clause 7 in respect of a circumstance, You do not need to Notify Us under clause 6 for the same circumstance.

## 8. Reporting

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- 8.1. You must prepare all Reports in accordance with the Guidelines, and any other requirements Notified by Us.
- 8.2. You must Report in writing to Our Representative, or any other person nominated in writing by Our Representative:
- (a) within twenty Business Days after the arrival in Australia:
    - i. of Seasonal Workers (other than Restart Seasonal Workers) employed by You by providing an 'Arrival Report' under the Guidelines; and
    - ii. of Restart Seasonal Workers employed by You by providing an 'Initial Arrival Report' as required under this Deed;
  - (b) within 20 Business Days of the Restart Seasonal Workers finishing their quarantine period, a 'Subsequent Arrival Report' as required under this Deed;
  - (c) within ten Business Days after the departure from Australia of the Seasonal Workers employed by You by providing a 'Departure Report' under the Guidelines; and
  - (d) at any time within five Business Days of receiving a Notice from Us requesting a Report on any other matter in relation to the Seasonal Worker Programme, or such other timeframe specified by Us in the relevant Notice.
- 8.3. You must promptly prepare such updates and amendments to Reports delivered under this clause 8 where such Reports are not to Our satisfaction.
- 8.4. Nothing in this clause 8 limits or otherwise affects the Parties' respective rights and obligations under clause 5.3, 5.4 and 5.9.

## 9. Work Health and Safety

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9.1. In this clause 9:

<b>Approved Code of Practice</b>	means a practical guide to achieving the standards of health, safety and welfare that is approved pursuant to section 274 of the WHS Act.
<b>Inspector</b>	has the meaning given to it under the WHS Act.
<b>Non-Disturbance Notice</b>	has the meaning given to it under the WHS Act.
<b>Notifiable Incident</b>	has the meaning given to it under the WHS Act.
<b>Provisional Improvement Notice</b>	has the meaning given to it under the WHS Act.
<b>Prohibition Notice</b>	has the meaning given to it under the WHS Act.

<b>Regulator</b>	has the meaning given to it under the WHS Act.
<b>Section 155 Notice</b>	means a notice issued under section 155 of the WHS Act.
<b>Section 171 Notice</b>	means a direction issued under section 171 of the WHS Act.
<b>WHS Undertaking</b>	has the meaning given to it under the WHS Act.
<b>Worker</b>	has the meaning given to it under the WHS Act. For the avoidance of any doubt the Parties agree the term 'Worker' includes a Seasonal Worker as defined in this Deed.
<b>WHS Act</b>	means the <i>Work Health and Safety Act 2011 (Cth)</i> .
<b>WHS legislation</b>	means the WHS Act, any regulations made under that Act and any 'corresponding WHS law' within the meaning of section 4 of the WHS Act and Regulation 6A of the <i>Work Health and Safety Regulations 2011 (Cth)</i> .

9.2. You must carry out Your obligations under this Deed in a safe manner, including by:

- (a) complying with, and ensuring Your Workers comply with, all relevant WHS legislation and Approved Codes of Practice relating to work health and safety;
- (b) providing a safe work environment for all of Your Workers, including providing necessary personal protective equipment to all Your Workers at no cost to those Workers;
- (c) ensuring, as far as is reasonably practicable, Your Workers understand and comply with all Your applicable instructions, directions, policies and procedures relating to work health and safety;
- (d) where the health and safety of any person may be affected, consulting, cooperating and coordinating with Us and any other relevant duty holders and Your Workers in relation to health and safety issues;
- (e) Notifying Us, as soon as practicable, of:
  - (i) any concern You have regarding work health and safety in relation to Your Workers;
  - (ii) any Notifiable Incident arising and providing Us with a copy of any written notice given to the Regulator, the results of any investigation into the cause and any recommendation You have for prevention in the future;
  - (iii) any breach or suspected breach of the WHS legislation in relation to this Deed;
  - (iv) a cessation of work or direction to cease work from any person having a right or power under the WHS legislation to do so, due to unsafe work or any other reason;
  - (v) entry by an Inspector to any place where Your Workers are performing Work or a Provisional Improvement Notice, Non-Disturbance Notice, Section 155

Notice, Section 171 Direction or Prohibition Notice is issued or WHS Undertaking provided to the Regulator; and

(vi) proceedings against, decision by the Regulator in relation to, or request from the Regulator to You or Your Workers under the WHS Act; and

(f) ensuring that any Provider Arrangement or Subcontract entered into by You pursuant to clause 13 of this Deed imposes obligations on the Providers or Subcontractors equivalent to the obligations You have under this clause.

9.3. In the event of any inconsistency between:

- (a) any of the policies, procedures or legislation referred to in this clause; and
- (b) WHS legislation,

You will comply with the policies, procedures and/or legislation that comply with the WHS legislation and Notify Us of any such inconsistency.

9.4. To the extent permitted by law, We are not liable to You for any loss in connection with work health and safety in relation to Your Workers.

## **10. Placements and Host Organisations**

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10.1. You must arrange a Placement with:

- (a) Your Organisation; or
- (b) a Host Organisation,

for each Seasonal Worker employed by You in accordance with the Guidelines, Your Approved Recruitment and Offer of Employment.

10.2. You must have, or obtain, Our written approval of Your Organisation or a proposed Host Organisation prior to a Seasonal Worker commencing a Placement with Your Organisation or the Host Organisation (as the case may be). For the purposes of this clause 10.2, such approval will be provided via SWP Online through approval of the Recruitment Application or otherwise in writing.

10.3. If You intend to alter a Placement with Your Organisation or a Host Organisation as outlined in Your Approved Recruitment, You must submit Your proposed changes to Us and receive Our written approval of the proposed changes via SWP Online or otherwise in writing prior to implementing those changes.

10.4. Prior to entering into a Host Organisation Arrangement for the purposes of clause 10.1(b), You must:

- (a) conduct the necessary due diligence activities to ensure that the Host Organisation is in a position to comply with the proposed Host Organisation Arrangement;
- (b) assess and manage risks associated with the proposed Host Organisation and the Placement of Seasonal Workers appropriately; and
- (c) prepare Records of the activities and assessment conducted under clauses 10.4(a) and 10.4(b).

## **11. Accommodation and Accommodation Providers**

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- 11.1. You must:
- (a) provide accommodation; or
  - (b) arrange accommodation with an Accommodation Provider,
- for each Seasonal Worker employed by You in accordance with the Guidelines, Your Approved Recruitment and Offer of Employment.
- 11.2. You must submit an Accommodation Plan for Our review in accordance with the Guidelines.
- 11.3. We may, in Our absolute discretion, approve or reject an Accommodation Plan by issuing written advice to You via SWP Online or otherwise in writing.
- 11.4. In approving any Accommodation Plan, We may, in Our absolute discretion, require any amendments or impose any terms and conditions on the Accommodation Plan.
- 11.5. You must, in relation to any accommodation You provide or arrange under clause 11.1:
- (a) ensure that such accommodation is safe and secure and is fit for occupation and use for each Seasonal Worker employed by You; and
  - (b) comply with any work health and safety legislation or state and territory Government and local government legislation and codes that may apply to such accommodation.
- 11.6. A Seasonal Worker may elect to arrange her or his own accommodation, in which case You are prohibited from making any deductions for accommodation from that Seasonal Worker's wages and clause 11.1 does not apply.
- 11.7. You must have, or obtain, Our prior written approval of any accommodation that You propose to arrange to be used by Seasonal Workers. For the purposes of this clause 11.7, such approval will be provided via SWP Online through approval of the Accommodation Plan or otherwise in writing.
- 11.8. If You intend to alter any aspect of Your approved Accommodation Plan, You must submit Your proposed changes to Us and receive Our written approval of the proposed changes via a SWP Online or otherwise in writing prior to implementing those changes.

## **12. Welfare and Wellbeing Support Person/s, Providers and Plan**

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- 12.1. You must appoint suitable Welfare and Wellbeing Support Person/s from:
- (a) Your Organisation; or
  - (b) a Welfare and Wellbeing Provider,
- to meet the requirements of this clause 12, the Guidelines and Item F of Schedule 1.
- 12.2. You must ensure that any Welfare and Wellbeing Support Person appointed under clause 12.1:
- (a) is a fit and proper person to be involved in the Seasonal Worker Programme, which should include appropriate background checks, including, but not limited to, police checks; and

- (b) is suitably experienced to provide welfare and wellbeing support to Seasonal Workers.
- 12.3. You must have, or obtain, Our written approval, of each Welfare and Wellbeing Support Person prior to that person providing any welfare and wellbeing support for the relevant placement. For the purposes of this clause 12.3, such approval will be provided via SWP Online through approval of the relevant Recruitment Application or otherwise in writing.
- 12.4. Prior to recruiting Seasonal Workers under this Deed, You must first submit a Welfare and Wellbeing Plan in accordance with the Guidelines, and receive confirmation of Our approval in writing of the Welfare and Wellbeing Plan under clause 12.5.
- 12.5. We may, in Our absolute discretion, approve or reject a Welfare and Wellbeing Plan by issuing written advice to You via SWP Online or otherwise in writing.
- 12.6. In approving any Welfare and Wellbeing Plan, We may, in Our absolute discretion, require any amendments or impose any terms and conditions on the Welfare and Wellbeing Plan.
- 12.7. If You intend to alter any aspect of Your Welfare and Wellbeing Plan or change an approved Welfare and Wellbeing Support Person, You must submit Your proposed changes to Us and receive Our written approval of the proposed changes via SWP Online or otherwise in writing prior to implementing those changes.

### **13. Providers and Subcontractors**

---

- 13.1. You must not engage any third parties to perform Your obligations or to provide services to You or to Seasonal Workers in connection with this Deed except in accordance with this clause 13 and as otherwise required under this Deed.
- 13.2. You must ensure that all Host Organisation Arrangements, Welfare and Wellbeing Arrangements and Subcontracts:
  - (a) are legally binding and in writing;
  - (b) contain provisions which are equivalent to clauses 5, 6, 7, 9, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 31, 33, and 34; and
  - (c) contain provisions which are equivalent to the items in Schedule 1 where relevant to the particular Host Organisation Arrangement, Welfare and Wellbeing Arrangement or Subcontract.
- 13.3. You must ensure that Accommodation Providers You engage:
  - (a) acknowledge that they are accommodating workers that are participating in the Seasonal Worker Programme;
  - (b) agree that, from time to time, they may be required to assist You, Us or a Relevant Agency to comply with relevant laws or this Deed; and
  - (c) where required by Us, enter into written Accommodation Arrangements.
- 13.4. You agree that:
  - (a) notwithstanding anything in clause 10 or this clause 13, You must employ Seasonal Workers directly and are fully responsible for the Seasonal Worker's employment conditions;



- (b) Your engagement of any Host Organisations, Welfare and Wellbeing Providers and Subcontractors does not limit or otherwise affect Your obligations under this Deed;
  - (c) Your engagement of any Accommodation Providers, whether or not in writing, does not limit or otherwise affect Your obligations under this Deed; and
  - (d) You are fully responsible and liable for:
    - (i) any act or omission of Your Providers and Subcontractors in relation to the Seasonal Worker Programme, including any Seasonal Worker;
    - (ii) each Provider's and Subcontractor's compliance with the relevant Provider Arrangement or Subcontract; and
    - (iii) any cost, expense, damage, loss or liability arising under or in connection with clause 13.4(d)(i) or clause or 13.4(d)(ii).
- 13.5. We may publicly disclose the names of any Provider or Subcontractor engaged to perform any of Your obligations under this Deed.

#### **14. Subcontractors**

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- 14.1. You may only enter into a Subcontract for the performance of Your obligations under this Deed with Our prior written approval.

#### **15. Records**

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- 15.1. You must maintain true, accurate and complete Records about the following:
- (a) the performance of Your obligations under this Deed, including the Guidelines;
  - (b) relevant details of each Seasonal Worker You employ including, their hours worked, their Placement and accommodation locations, pay and conditions, work history and pay slips;
  - (c) any matters required to support the reporting in clause 8;
  - (d) relevant details of the face to face, in person, discussions conducted under Item F of Schedule 1 to the Deed; and
  - (e) any other matters required by law or Notified by Us, to You, from time to time.

*Note: the obligation to create and maintain Records about the hours worked by Seasonal Workers includes hours worked by Seasonal Workers to which a Piece Rate agreement applies.*

- 15.2. Subject to clause 19.2(a)(viii), You must keep Records created under the Deed for the longer of the periods below:
- (a) as required by law;
  - (b) 7 years from the date they are created; or
  - (c) any reasonable longer period as Notified by Us.

## **16. Access to Premises and Records**

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16.1. You must give, and must take all reasonable steps to ensure that Your Personnel, Providers and Subcontractors give, Our Personnel, any Relevant Agency and any other person authorised in writing by Us:

- (a) access to:
  - (i) Your Personnel, Providers and Subcontractors in connection with the Seasonal Worker Programme;
  - (ii) Your Personnel's, Providers' and Subcontractors' workplaces, sites and equipment in connection with the Seasonal Worker Programme;
  - (iii) the workplaces, sites and equipment of any Placements for Your Seasonal Workers;
  - (iv) premises occupied by You;
  - (v) without limiting clauses 16.1(a)(i) and 16.1(a)(ii), accommodation where Seasonal Workers are placed; and
  - (vi) all Records, Reports and other Material held by You, Your Personnel, Providers and Subcontractors; and
- (b) assistance to:
  - (i) inspect the performance of Your obligations under this Deed;
  - (ii) to locate and inspect Records, Reports and other Material; and
  - (iii) make copies of Records, Reports and other Material and remove those copies, relevant to the Seasonal Worker Programme.

*Note: You should note that there are additional rights of access in favour of the Fair Work Ombudsman under the Fair Work Act 2009, the Commonwealth under the Ombudsman Act 1976 (Cth) and the Privacy Commissioner under the Privacy Act 1988 (Cth).*

16.2. The rights referred to in clause 16.1 are subject to:

- (a) the provision of reasonable prior Notice to You; and
- (b) compliance with Your reasonable work health and safety, security and biosecurity procedures (if any),

where We consider it is practicable and appropriate to provide such Notice, or comply with such work health and safety, security and biosecurity procedures (if any), in the circumstances.

16.3. Notwithstanding clause 31.2, 'Notice' under clause 16.2 may be provided by Us to You:

- (a) in writing, including via Email or SWP Online; or
- (b) verbally, over the phone, via text message or in person.

16.4. Without limiting clause 16.2, if a matter is being investigated which, in Our opinion, may involve an actual or suspected breach of the law or this Deed, or We are conducting Program Assurance Activities, clause 16.2(a) will not apply.

16.5. The requirement for access specified in clause 16.1 does not in any way reduce Your responsibility to perform Your obligations under this Deed.

## 17. Freedom of Information and Access to Documents

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17.1. In this clause 17:

<b>Commonwealth Contract</b>	has the same meaning as it has in section 4 of the <i>Freedom of Information Act 1982</i> (Cth)
<b>Document</b>	has the same meaning as it has in section 4 of the <i>Freedom of Information Act 1982</i> (Cth)

17.2. You acknowledge that this Deed is a Commonwealth Contract.

17.3. Where We have received a request for access to a Document created by, or in the possession of, You, Your Providers or Subcontractors that relates to the performance of this Deed (but not to the entry into this Deed), We may, at any time by written Notice, require You to provide the Document to Us and You must, at no additional cost to Us promptly comply with the Notice.

17.4. Nothing in this clause 17 limits or otherwise affects clause 16.

## 18. Disclosure of Information

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18.1. Subject to this clause 18.1 and 18.5:

- (a) You must not, without Our prior written approval, disclose any of Our Confidential Information to a third party; and
- (b) We must not, without Your prior written approval, disclose any of Your Confidential Information to a third party outside the Commonwealth, except where such disclosure to the third party is considered by Us, acting reasonably, to be in the interests of the Seasonal Worker Programme or Pacific labour mobility (or both, as the case may be).

18.2. In giving written approval to disclosure of Confidential Information, a Party may impose conditions as it thinks fit, and the other party agrees to comply with the conditions.

18.3. We may at any time give Notice requiring You to arrange for any person engaged in, or in relation to, the performance or management of this Deed to give written undertakings, in a form required by Us, relating to the non-disclosure of Our Confidential Information.

18.4. If You receive Notice under clause 18.3, You must promptly arrange for all undertakings to be given.

18.5. The obligations on the Parties under clause 18.1 will not be breached if information:

- (a) is disclosed by Us to the responsible Minister;
- (b) is disclosed to relevant Commonwealth departments and agencies (including the Department of Home Affairs, the Fair Work Ombudsman, Department of Foreign Affairs and Trade, Australian Federal Police and Australian Taxation Office or any Commonwealth or State work health and safety authority) and the governments of a Participating Country as required for the purposes of this Deed;
- (c) is disclosed by Us, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (d) is authorised or required by law to be disclosed; or

- (e) is in the public domain otherwise than due to a breach of clause 18.1.

## 19. Privacy

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### 19.1. Interpretation

In this clause 19:

<b>Agency</b>	has the same meaning as it has in section 6 of the Privacy Act.
<b>Australian Privacy Principle (APP)</b>	has the same meaning as it has in section 6 of the Privacy Act.
<b>Contracted Service Provider</b>	has the same meaning as it has in section 6 of the Privacy Act.
<b>Eligible Data Breach</b>	has the same meaning as it has in section 6 of the Privacy Act.
<b>Consent Form</b>	means the Seasonal Worker Programme Privacy Notification and Consent Form issued by Us and available on Our website or elsewhere as Notified by Us to You.
<b>Records</b>	has the same meaning as in section 6 of the Privacy Act.

### 19.2. Your obligations in relation to privacy

- (a) You agree:
- (i) not to do any act or engage in any practice which, if done or engaged in by Us, would be a breach of the Privacy Act including the APPs;  
*Note: the Privacy Act and the APPs apply to Us as an 'agency'.*
  - (ii) that nothing in this Deed authorises You to do any act or engage in any practice which, if done or engaged in by Us, would be a breach of the Privacy Act including the APPs;
  - (iii) to ensure that nothing in a Subcontract authorises a Subcontractor of Yours to do any act or engage in any practice which, if done or engaged in by Us, would be a breach of the Privacy Act including the APPs;
  - (iv) for each Seasonal Worker, obtain a Consent Form declared by the Seasonal Worker at or before that Seasonal Worker's Arrival Briefing;
  - (v) without limiting clause 19.2(a)(iv), following a direction given by Us in accordance with clause 5.9 to accept a Seasonal Worker in a transfer from an Alternative Approved Employer, that You will obtain a Consent Form, declared by the transferring Seasonal Worker;
  - (vi) to co-operate with reasonable demands or inquiries made by Us or the Commissioner in relation to the management of Personal Information;
  - (vii) to comply with policy guidelines laid down by Us (including the Guidelines) from time to time relating to the handling of Personal Information;

- (viii) if requested by Us, at the end of the Term of this Deed, to deliver all Records containing Personal Information to Us;
  - (ix) to Your name being published in reports by the Commissioner;
  - (x) to keep Us informed of any developments in relation to an Eligible Data Breach; and
  - (xi) to keep Us informed of any developments in relation to an approach to You by the Commissioner or by a person claiming that their privacy has been interfered with.
- (b) Subject to clause 19.2(a) You must immediately Notify Us if You become aware:
- (i) of a breach of Your obligations under this clause 19;
  - (ii) that a disclosure of Personal Information may be required by law;
  - (iii) of an approach to You by the Commissioner or by a person claiming that their privacy has been interfered with;
  - (iv) of any unauthorised access to or unauthorised disclosure of relevant Personal information, or a loss of relevant Personal information, that You hold; or
  - (v) of any developments concerning the events in clause 19.2(b)(i) to (iv) (inclusive) subsequent to Your Notice under this clause 19.2(b).

*Note: more information about the Privacy Act, the Australian Privacy Principles and the Notifiable Data Breach Scheme is available at <http://www.oaic.gov.au/> Your obligations under this clause 19 require You to act in accordance with the Privacy Act and the APPs as if You were an 'agency'.*

## **20. Intellectual Property**

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- 20.1. You grant Us, or must ensure that We are granted, an irrevocable, royalty-free, non-exclusive, world-wide licence, including the right to sublicense, to exercise all Intellectual Property Rights, in any Material delivered or otherwise obtained by Us under this Deed or in connection with the Seasonal Worker Programme, for any Australian Government purpose in the interests of the Seasonal Worker Programme or Pacific labour mobility (or both, as the case may be).
- 20.2. A licence granted under clause 20.1 does not permit Us or any of Our sublicensees to exploit the Intellectual Property Rights in return for the payment of a royalty or a commercial return.
- 20.3. You represent and warrant that exercising Our rights under clause 20.1 will not infringe any third party's Intellectual Property Rights or Moral Rights.

## **21. Indemnity**

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- 21.1. In this clause 21:

<b>fault</b>	means any negligent or unlawful act or omission or wilful misconduct.
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- 21.2. You indemnify Us from and against any:

- (a) cost or liability incurred by Us

- (b) loss or damage to Our property; or
- (c) loss or expense incurred by Us in dealing with any claim against Us including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by Us,

arising from any one or more of the following:

- (d) personal injury or death in respect of any person (including a Seasonal Worker) involved in the Seasonal Worker Programme;
- (e) the exercise by Us of any of Our rights under this Deed in relation to a Seasonal Worker, Your Personnel, a Provider or a Subcontractor;
- (f) a breach by You of this Deed, including Your contravention of any workplace relations or work health and safety laws;
- (g) any publication of information by Us where such information relates to:
  - (i) Your performance of this Deed; or
  - (ii) best practice by You,
 and where the published information was provided by You to Us; and
- (h) an act or omission involving fault on the part of You, Your Personnel, a Provider or a Subcontractor in connection with:
  - (i) this Deed, the Provider Arrangement or the Subcontract (as the case may be);
  - (ii) the provision of accommodation or other services to Seasonal Workers; or
  - (iii) Your, Your Personnel's, the Provider's or the Subcontractor's participation in the Seasonal Worker Programme.

21.3. Your liability to indemnify Us under clause 21.1 will be reduced proportionately to the extent that any act or omission involving fault on the part of Us or Our Personnel contributed to the relevant cost, liability, loss, damage or expense.

21.4. Our right to be indemnified under this clause 21 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but We are not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

## **22. Insurance**

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22.1. You must, throughout the Term of this Deed, effect and maintain, or cause to be effected and maintained, all insurance policies, with limits of indemnity, to adequately cover Your risks and liabilities arising under or in connection with this Deed and Your participation in the Seasonal Worker Programme in accordance with the Guidelines.

22.2. You must, for the Term of this Deed, effect and maintain insurance, including the following insurances:

- (a) public liability insurance;
- (b) professional indemnity insurance, if appropriate;
- (c) workers' compensation insurance as required by law; and
- (d) any other insurance that may be reasonably required by Us from time to time.

*Note: it is Your responsibility to ensure that You effect and maintain insurances that are appropriate for Your organisation's circumstances, based on independent advice. This may include additional types of insurance not specified in this Deed which may be appropriate and/or necessary, depending on Your organisations' circumstances.*

- 22.3. You must, on receipt of a Notice requesting You to do so, provide to Us certificates of currency, and a copy of the terms, for the insurance policies held by You in accordance with this clause 22.

## **23. Dispute resolution**

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- 23.1. Subject to clause 23.3, the Parties agree not to commence any legal proceedings in respect of any dispute arising under this Deed, which cannot be resolved by informal discussion, until the procedure set out in clause 23.2 has been followed.
- 23.2. The Parties agree that any dispute between the Parties arising under this Deed will be dealt with as follows:
- (a) the Party claiming that there is a dispute will send the other Party a Notice setting out the nature of the dispute;
  - (b) the Parties will try to resolve the dispute through direct negotiation themselves, or by persons to whom they have given authority to resolve the dispute; and
  - (c) the Parties have twenty Business Days from the receipt of the Notice to reach a resolution or to agree that the dispute is to be submitted to mediation or other alternative dispute resolution procedures.
- 23.3. If after twenty Business Days from the receipt of the Notice:
- (a) there is no resolution of the dispute;
  - (b) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or
  - (c) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within fifteen Business Days of that submission, or extended time as the Parties may agree in writing before the expiration of the fifteen Business Days,
- then, either Party may commence legal proceedings.
- 23.4. Clauses 23.1 and 23.2 do not apply if:
- (a) either Party commences legal proceedings for urgent interlocutory relief;
  - (b) action is taken by Us under clause 25 or clause 26; or
  - (c) an authority of the Commonwealth, a State or Territory is investigating a breach or suspected breach of the law by You.
- 23.5. Unless otherwise agreed, the Parties agree to share equally the cost of any submission of a dispute to mediation or other alternative dispute resolution procedure, in accordance with clause 23.2.
- 23.6. Despite the existence of a dispute, both Parties must (unless requested in writing by the other Party not to do so) continue to perform their obligations under this Deed.

- 23.7. The Parties note that the Migration Review Tribunal has jurisdiction to review certain visa decisions. This Deed does not abrogate any rights of review to the Migration Review Tribunal or any other Tribunal performing a similar role in the future.

## **24. Specified Events and subsequent actions**

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### **Specified Events**

- 24.1. You acknowledge and agree that, without limiting or otherwise affecting any of Our other rights in this Deed, We may, in Our absolute discretion:
- (a) issue You a Notice under clause 24.4 (Subsequent action in response to a Specified Event), if We consider, in Our absolute discretion, that any of the Specified Events set out in clause 24.2 or clause 24.3 below are occurring or have occurred; or
  - (b) issue You a Notice under clause 25 (Termination without costs), if We consider, in Our absolute discretion, that any of the Specified Events set out in clause 24.3 below are occurring or have occurred.
- 24.2. The Parties acknowledge and agree that each of the following is a "Specified Event":
- (a) We do not have confidence in Your ability to perform Your obligations under this Deed; or
  - (b) We consider that You are failing to perform Your obligations under this Deed to Our satisfaction.
- 24.3. Without limiting or otherwise affecting clause 24.2, the Parties acknowledge and agree that each of the following is a "Specified Event":
- (a) Your approval as a Temporary Activities Sponsor with the Department of Home Affairs ceases to be in effect, is suspended, cancelled or is barred;
  - (b) We are satisfied that at any time You have engaged in misleading or deceptive conduct, including where You have provided false or misleading information to Us or any Relevant Agency;
  - (c) We consider that You have provided Us or any Relevant Agency with a Report, Record or other Material which is not true, accurate and complete;
  - (d) You fail to deliver Reports or Records (or both, as the case may be) in accordance with this Deed, including the specified time requirements;
  - (e) without limiting any other Specified Event in this clause 24.3, We consider that You are in breach of any of Your obligations under this Deed and where such a breach is capable of remedy, You do not remedy the breach within five Business Days of receiving a Notice in writing from Us to do so, or another timeframe as agreed between the Parties;
  - (f) We consider that You are in breach of an obligation under this Deed and the breach is not capable of remedy;
  - (g) You fail to respond within five Business Days to a Notice sent by Us to You identifying actual or potential breaches of Your obligations under this Deed;
  - (h) You are issued with three breach Notices in a 12 month period in relation to this Deed, irrespective of whether You remedy those breaches;
  - (i) without limiting clause 24.3(n), You fail to pay any of Your workers, including a Seasonal Worker, any amount (in whole or in part) in accordance with the relevant Fair Work Instrument;



- (j) You are unable to pay all Your debts when they become due;
- (k) any of the following occurs at any time during the Term of this Deed:
  - i. You fail to comply with a statutory demand within the meaning of section 459F of the Corporations Act 2001 (Cth);
  - ii. proceedings are initiated to obtain an order for Your winding up or any shareholder, member or director convenes a meeting to consider a resolution for Your winding up;
  - iii. You come under one of the forms of external administration referred to in Chapter 5 of the Corporations Act 2001 (Cth) or equivalent provisions in other legislation, or an order has been made to place You under external administration; or
  - iv. notice is served on You or proceedings are taken to cancel Your incorporation or registration or to dissolve You as a legal entity;
- (l) if You are an individual, You become bankrupt or enter into a scheme of arrangement with creditors or are found to be non-compliant with any other Australian laws; or
- (m) You cease to carry on a business relevant to the performance of this Deed;
- (n) We are of the opinion that You have failed to comply with any Australian law or the law of any other country that applies to activities You are engaged in in connection with the Seasonal Worker Programme;
- (o) without limiting clause 24.3(n), You admit to, are under investigation for, or are charged with, a breach of any of Your statutory obligations (including under the *Fair Work Act 2009* (Cth) or other relevant workplace laws, any relevant Commonwealth, state and territory work health and safety legislation or the *Migration Act 1953* (Cth));
- (p) You fail to Notify Us prior to undergoing a Change in Control, or You undergo a Change in Control which We consider affects Your ability to participate in the Seasonal Worker Programme; or
- (q) You are subject to a criminal investigation or are charged with a criminal offence.

**Subsequent action in response to a Specified Event**

24.4. If clause 24.1(a) applies, We may, in Our absolute discretion, issue a Notice to You do any one or more of the following:

- (a) reduce the scope of an Approved Recruitment;
- (b) direct You to immediately suspend all future recruitment under an Approved Recruitment and not issue any Offers of Employment;
- (c) direct You to immediately suspend the employment of one or more Seasonal Workers under an Approved Recruitment;
- (d) amend an Approved Recruitment, or approve a Recruitment Application subject to conditions, including in relation to:
  - (i) the recruitment of Seasonal Workers, including the number of Seasonal Workers in each Approved Recruitment;
  - (ii) the employment of Seasonal Workers, including one or more of the following:
    - 1. the number of Seasonal Workers You can employ at any one time;

2. the Regions in which You can employ Seasonal Workers;
  3. the Participating Industries in which You can employ Seasonal Workers; and
  4. the Participating Sectors in which You can employ Seasonal Workers;
- (iii) the accommodation of Seasonal Workers, including:
1. the types of accommodation You can arrange for Seasonal Workers to occupy; or
  2. the location of accommodation You can arrange for Seasonal Workers to occupy,
- or both, as the case may be; or
- (iv) the arrangements for the welfare and wellbeing of Seasonal Workers;
- (e) terminate an Approved Recruitment;
  - (f) direct You to terminate or reduce the scope of a Provider Arrangement or a Subcontract;
  - (g) direct that You stop any of Your Personnel from interacting with Seasonal Workers or from being involved in activities relevant to the Seasonal Worker Programme, and, if We consider it appropriate, immediately organise a suitable replacement to Our satisfaction;
  - (h) without limiting clause 24.4(g), direct that You remove a Welfare and Wellbeing Support Person and, if We consider it appropriate, immediately organise a suitable replacement to Our satisfaction;
  - (i) direct You to remove Seasonal Workers from a Provider;
  - (j) direct that You place Seasonal Workers with a new Provider;
  - (k) direct You to arrange transport for Seasonal Workers to another location as specified by Us at Your cost;
  - (l) reduce the number of Seasonal Workers You are approved to employ or recruit, permanently or temporarily;
  - (m) direct You or a Provider to undertake specified training or accreditation; or
  - (n) exercise any of Our other rights under this Deed.
- 24.5. You must comply with any conditions imposed by Us under clause 24.4.
- 24.6. Nothing in this clause 24 limits or otherwise affects any of Our other rights under this Deed and otherwise under statute, at law or in equity.

## **25. Termination Without Costs**

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- 25.1. If clause 24.1(b) applies, We may, in Our absolute discretion, immediately, or at a later date as specified by Us, terminate this Deed by issuing Notice to You, without the payment of any costs.
- 25.2. To avoid doubt, We are not obliged to exercise any of Our other rights under clause 24.4 or otherwise under this Deed, prior to exercising Our right to terminate under clause 25.1.

## **26. Termination With Costs**

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- 26.1. We may at any time and in Our absolute discretion, by Notice, terminate this Deed, effective from a date specified in the Notice.
- 26.2. Subject to clause 26.3, if We terminate the Deed under clause 26.1, We will only be liable for reasonable, unavoidable costs actually incurred and substantiated by You and directly attributable to the termination of the Deed.
- 26.3. If We exercise Our rights under clause 26.1, We will not be liable for:
- (a) loss of prospective profits attributable to the termination;
  - (b) loss of benefits that would have been conferred upon You, had a termination not occurred;
  - (c) loss of any unpaid expenses incurred under this Deed that have not been recovered from Seasonal Workers pursuant to this Deed; and
  - (d) payment of any wages or benefits, that are payable to Seasonal Workers by You.

## **27. Termination By Agreement**

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- 27.1. The Parties may at any time agree to terminate this Deed on such terms and conditions as agreed between the Parties in writing, pursuant to clause 30.

## **28. Negation of employment, partnership and agency**

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- 28.1. You will not, by virtue of this Deed be, or for any purpose be deemed to be, Our employees, officers, partners or agents.
- 28.2. You must not represent Yourself, and must ensure that Your Personnel, partners, Providers and Subcontractors do not represent themselves, as being Our employees, officers, partners or agents.

## **29. Waiver**

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- 29.1. If either Party does not exercise (or delays in exercising) any rights under this Deed (including rights or remedies provided by this Deed and otherwise under statute, at law or in equity), that failure or delay does not operate as a waiver of those rights.
- 29.2. A waiver by either Party of any rights under this Deed does not prevent the further exercise of any other right.
- 29.3. Waiver of any provision of, or right under, this Deed:
- (a) must be in writing and signed by the Party entitled to the benefit of that provision or right; and
  - (b) is effective only to the extent set out in the written waiver.

### **30. Variation**

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- 30.1. Except for action We are expressly authorised to take elsewhere in this Deed, no variation of this Deed is binding unless it is agreed in writing and signed by the Parties.

### **31. Notices**

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- 31.1. A Party giving Notice under this Deed must do so in English and be in writing or by Email, and:
- (a) if given by You, sent by Your Representative and marked for the attention of Our Representative at their nominated postal or Email address in Item A5 of Schedule 1; and
  - (b) if given by Us, sent by Our Representative and marked for the attention of Your Representative at their nominated postal or Email address in Item A7 of Schedule 1.
- 31.2. A Notice given under clause 31.1 is taken to be received:
- (a) if sent by Email, including an Email generated through SWP Online, when the Email enters the recipient's information system;
  - (b) if hand delivered, on delivery to the relevant address; and
  - (c) if sent by pre-paid post, five Business Days after the date of posting.

### **32. Assignment, novation and Change in Control**

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- 32.1. You must not assign any of Your rights under this Deed without Our prior written approval.
- 32.2. You must not enter into an arrangement that will require the novation of this Deed, without Our prior written approval.
- 32.3. You must provide Notification to Us immediately upon becoming aware of any proposed Change in Control.

### **33. Survival of Clauses**

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- 33.1. Clauses 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 28, 31, and 32 and all Items in Schedule 1 survive the expiration or earlier termination of this Deed and any provisions that are expressly specified as surviving or by implication from their nature, are intended to continue past the expiration or early termination of this Deed.
- 33.2. Clause 15 survives for 7 years from the expiry or earlier termination of this Deed.

### **34. Applicable law**

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- 34.1. The laws of New South Wales apply to this Deed and, subject to clause 23, the Parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales in relation to any dispute under this Deed.

### **35. Transition arrangements**

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- 35.1. The Parties acknowledge that this clause 35 applies if:

- (a) prior to the Commencement Date, a previous deed of agreement in relation to the Seasonal Worker Programme was entered into by the Parties (**Old Deed**);
- (b) under Item B of Schedule 1 to the Old Deed, We approved recruitments for You to recruit Seasonal Workers (**Old Recruitments**); and
- (c) the duration of one or more Old Recruitments, as approved by Us, extends beyond the Commencement Date of this Deed (each being a **Transition Recruitment**).

35.2. By virtue of this clause, the Parties acknowledge and agree that, on and from the Commencement Date:

- (a) all Transition Recruitments are deemed to be approved by Us under Item B of Schedule 1 of this Deed and are "**Approved Recruitments**" under this Deed;
- (b) accordingly, the terms and conditions of this Deed apply to all Transition Recruitments; and
- (c) to the extent of any inconsistency between a Transition Recruitment and this Deed (including the Guidelines), the requirements of this Deed apply to the Transition Recruitment unless otherwise notified by Us in writing or via SWP Online.

35.3. Nothing in this clause 35 limits or otherwise affects the Parties' respective rights and obligations arising under or in connection with the Old Deed prior to the Commencement Date in relation to the Old Recruitments.

## SCHEDULE 1 - Your Obligations as an Approved Employer

### A. General

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- A1. In addition to the terms and conditions outlined in this Deed and Schedule, You must:
- (a) act in a manner that maintains the good reputation of the Seasonal Worker Programme;
  - (b) act in a manner that supports Australia's strong bilateral relationships with Participating Countries; and
  - (c) perform all obligations as required by You as a Temporary Activities Sponsor with the Department of Home Affairs.
- A2. For the avoidance of doubt, subject to clause 26.2 of the Deed, no money is payable to You, or to any third party on Your behalf, by Us under this Deed.

### Guidelines

- A3. Guidelines will be made available to You online, through the Seasonal Worker Programme website, SWP Online or otherwise Notified by Us to You.
- A4. You must:
- (a) make yourself aware of any Guidelines; and
  - (b) comply with any Guidelines in the performance of Your obligations under this Deed.

### Representatives

- A5. Our Representative is: Director, Seasonal Worker Programme of the Department of Employment and Workplace Relations, at the following address: Department of Employment and Workplace Relations, GPO Box 9828 CANBERRA ACT 2601 or by Email at [seasonalworker@dewr.gov.au](mailto:seasonalworker@dewr.gov.au).
- A6. Our Representative has full authority and power to represent Us under this Deed and to issue Notices in accordance with clause 31 of the Deed.
- A7. Your Representative is: **[Insert Name, Position, Address and e-mail]**
- A8. Your Representative has full authority and power to represent You under this Deed and to issue Notices in accordance with clause 31 of the Deed.

### COVID-19 Pandemic

- A9. You must abide, and ensure that Your Personnel, Providers and Subcontractors abide by all laws, directions and advice provided by the Australian Government and State and Territory Governments concerning the COVID-19 pandemic, including in respect of any applicable COVID-19 management plan and COVID-19 safe plan that You are required to have in place in relation to Seasonal Workers.
- A10. Without limiting Item A9, You must work with the relevant State and Territory Governments in relation to, and to ensure that, all Seasonal Workers undertake any required quarantine (or similar) arrangements in Australia.

## **B. Recruitment and selection**

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- B1. You must only recruit workers for participation in the Seasonal Worker Programme:
- (a) from Participating Countries;
  - (b) that meet the Seasonal Worker Programme eligibility requirements set out in the Implementation Arrangements;
  - (c) who are granted a Subclass 403 (Temporary Work (International Relations)) visa in the Seasonal Worker Program stream (or such other Subclass visa as specified by the Commonwealth);
  - (d) who have declared a genuine intention to return to their home country following their participation in the Seasonal Worker Programme and prior to the cessation of their Subclass 403 (Temporary Work (International Relations)) visa in the Seasonal Worker Program stream (or such other Subclass visa as specified by the Commonwealth);
- and, in accordance with:
- (e) the Implementation Arrangements;
  - (f) the Memorandum of Understanding; and
  - (g) this Deed, including the Guidelines.

### **Recruitment**

- B2. To recruit Seasonal Workers under this Deed, You must first submit a Recruitment Application and receive Our approval in writing of the Recruitment Application under Item B5.
- B3. A Recruitment Application must adhere to the Guidelines and include the following information:
- (a) Your level of demand for Seasonal Workers and evidence of labour market testing;
  - (b) Your intended recruitment arrangements for Seasonal Workers, (as required in accordance with clauses 10 and 11 of the Deed and the Guidelines);
  - (c) the estimated gross pay and likely deductions for Seasonal Workers if Your Recruitment Application is approved;
  - (d) the details of any Welfare and Wellbeing Support Persons appointed in accordance with clause 12.1 who may be providing welfare and wellbeing support under Item F of Schedule 1 in relation to Your proposed recruitment;
  - (e) the Offer of Employment to be sent to each Seasonal Worker You will employ (in accordance with Item C); and
  - (f) any other information Notified to You by Us.

*Note: Our approval of a Recruitment Application (i.e., under an Approved Recruitment) can be referred to as "approved recruitment".*

- B4. We may, via SWP Online or otherwise in writing, require You to provide further information or detail in relation to any aspect of a Recruitment Application.
- B5. We may, in Our absolute discretion, approve or reject a Recruitment Application via SWP Online or by otherwise informing You in writing of such approval or rejection.
- B6. In approving any Recruitment Application, We may, in Our absolute discretion, require any amendments or impose any terms and conditions on the relevant Approved Recruitment, including setting a date for the expiry of any Approved Recruitment.

#### **Alterations to Recruitment arrangements**

- B7. If You intend to alter Your arrangements for Seasonal Workers, as outlined in Your Approved Recruitment, including the Offer of Employment, You must submit Your proposed changes to Us for Our approval via SWP Online or otherwise in writing in accordance with Guidelines.
- B8. Any proposed change relating to amendments to the existing employment conditions of Seasonal Workers must be in accordance with Australian law, including any applicable modern award and are subject to the written agreement of any Seasonal Worker affected by the amendments.

#### **Meaning of approval under this Item**

- B9. For the avoidance of doubt:
  - (a) the granting of Approved Recruitment is at Our discretion and nothing in this Deed shall be taken to give rise to an expectation that a Recruitment Application will be approved; and
  - (b) Our approval is for the purposes of the Seasonal Worker Programme requirements only, and does not relieve You of any obligation You have to ensure that those documents and the terms and conditions of employment they prescribe are in accordance with Your obligations under Australian law, including Australia's workplace laws.

#### **Compliance with Approved Recruitment and Offer of Employment**

- B10. You must:
  - (a) only recruit in accordance with Your Approved Recruitment pursuant to Item B2; and
  - (b) only employ Seasonal Workers in accordance with terms and conditions consistent with Your Offer of Employment, outlined at Item C (as such terms may be amended from time to time in accordance with Item B7).

*Note: Item B10(b) does not override Your obligation to comply with Australian laws.*

- B11. You must not recruit Seasonal Workers:
  - (a) after the termination or expiration of Your Approved Recruitment;
  - (b) the termination or expiration of this Deed; or
  - (c) in the event Your approval as a Temporary Activities Sponsor with the Department of Home Affairs ceases to be in effect, is cancelled or is barred.



### **C. Offer of Employment**

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- C1. All Offers of Employment to a Seasonal Worker must be made in writing, in a form specified by Us and must comply with the requirements set out in this Item C and under Australian law.
- C2. All Offers of Employment must contain:
- (a) the Seasonal Worker's pay rate or Piece Rate and conditions;
  - (b) details of the Fair Work Instrument that the Seasonal Worker will be employed under;
  - (c) the commencement and end date of the employment;
  - (d) Your commitment to provide a minimum average of 30 hours work per week over the duration of the Seasonal Worker's employment;
  - (e) a notification that employment is subject to the Seasonal Worker candidate being successful in their application for a Subclass 403 (Temporary Work (International Relations)) visa in the Seasonal Worker Program stream (or such other Subclass visa as specified by the Commonwealth);
  - (f) details of travel arrangements for the Seasonal Worker, including the proposed date of travel to and from the Participating Country;
  - (g) the location and contact details of their workplace, as a minimum;
  - (h) details of their compulsory health insurance (including details of coverage);
  - (i) details of Accommodation Arrangements You are offering to Seasonal Workers at their location;
  - (j) information about community contacts and opportunities for recreation and religious observance at their location;
  - (k) specific information about the deductions You propose to make (subject to the Seasonal Worker's agreement) from the Seasonal Worker's wages; and
  - (l) any other information Notified to You by Us.

### **D. Employment**

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- D1. You must:
- (a) employ Seasonal Workers under a Fair Work Instrument in accordance with the *Fair Work Act 2009* (Cth);
  - (b) engage Seasonal Workers as employees in accordance with Australia's workplace laws, including:
    - (i) ensuring that the Seasonal Workers You employ hold any licence, registration or membership that is mandatory for the performance of the specific work they will perform in Australia;
    - (ii) in accordance with Australian superannuation legislation in relation to Your employment of Seasonal Workers;
    - (iii) ensuring that tax instalments are deducted from the wages of Seasonal Workers and paid in accordance with Australian taxation laws; and

- (iv) ensuring all statutory charges in relation to the Seasonal Workers, including workers' compensation insurance, are paid;
- (c) ensure that:
  - (i) if employed on an hourly wage or Piece Rate, Seasonal Workers are employed for a minimum average of 30 hours work per week for the duration of a Seasonal Workers' employment, in Participating Sectors; and
  - (ii) the rate of pay provided to the Seasonal Workers must in all circumstances meet the relevant legal standards such as the minimum requirements set out in the relevant Fair Work Instrument;

*Note: Approved Employers who employ Seasonal Workers under Piece Rate agreements may be requested to Report to Us on actual hours worked and payments made to those Seasonal Workers, from time to time.*

- (d) demonstrate to Us upon request that Seasonal Workers will gain a reasonable Net Financial Benefit during their stay, in accordance with the Guidelines;
- (e) employ Seasonal Workers in accordance with the Guidelines;
- (f) only engage Seasonal Workers as outlined in the Approved Recruitment;
- (g) subject to Item B7, only engage Seasonal Workers as outlined in the initial Offer of Employment approved by Us and signed by the Seasonal Worker;
- (h) provide information, instructions, training and supervision to Seasonal Workers in a format and language that can be understood by the Seasonal Workers; and
- (i) as part of Your welfare and wellbeing responsibilities, provide a reasonable level of assistance to Seasonal Workers in the event that Seasonal Workers are unable to afford medical treatment, or are under circumstances that pose a risk to a Seasonal Workers' welfare and wellbeing. The assistance provided must be fair, transparent, and agreed to by the Seasonal Worker.

## **E. Expenses and deductions**

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- E1. You must arrange and must pay upfront for the full costs of the Return International Airfare for the Seasonal Workers.
- E2. You must arrange and must pay for the following:
  - (a) the full costs of transporting Seasonal Workers from their Port of Arrival in Australia to their work location or accommodation;
  - (b) the full costs of transporting Seasonal Workers from their work location or accommodation to the Port of Departure from Australia; and
  - (c) the full costs of relocating Seasonal Workers from one work location to another, where a new work location requires new accommodation arrangements for Seasonal Workers as specified in the Guidelines. This Item E2(c) does not apply to the relocation costs which were contemplated in the Approved Recruitment and relevant Offers of Employment for such Seasonal Workers.
- E3. Without limiting or otherwise affecting clause 13 of the Deed, You must not relinquish Your obligations under Item E1 to others, including to:
  - (a) Participating Countries;

- (b) Seasonal Workers;
- (c) Providers;
- (d) Subcontractors;
- (e) recruitment agents; or
- (f) financiers.

#### **Recoupment of International and Domestic Transportation**

- E4. You may only recoup from each Seasonal Worker the costs over the amount (if any), specified in the Guidelines, for the Return International Airfare and domestic transportation for which You are deemed responsible for meeting under the Deed.

#### **Other expenses and deductions**

- E5. You must assist all Seasonal Workers You employ by paying for reasonable initial living expenses on their arrival, prior to the Seasonal Worker receiving their first payment of wages. Reasonable expenses include:
- (a) reasonable clothing and equipment required to participate in employment;
  - (b) reasonable food and incidentals that are provided to a Seasonal Worker, prior to them receiving their first pay;
  - (c) subject to Item G2, accommodation, including any bond;
  - (d) subject to Item H2, transport to and from work;
  - (e) medical costs;
  - (f) health insurance; or
  - (g) any other expense that is authorised:
    - (i) by law;
    - (ii) a Fair Work Instrument;
    - (iii) under this Deed, including under the Guidelines; or
    - (iv) by Us in writing.
- E6. You may assist Seasonal Worker candidates and Seasonal Workers with the following expenses, where appropriate:
- (a) passport;
  - (b) visa application charge;
  - (c) health check and/or x-ray; or
  - (d) police and/or character check.
- E7. Subject to Item E8, You may recoup the expenses specified in Items E2(a), E2(b), E4, E5 and E6 by reasonable instalments, in the form of a deduction from the Seasonal Worker's wages during their period of employment.
- E8. You must ensure that any deduction, including any alteration to a deduction, from the wages paid to Seasonal Workers:
- (a) is consistent with the relevant Approved Recruitment;

- (b) is lawful and reasonable;
  - (c) has been explained to and agreed to by the Seasonal Worker in writing;
  - (d) does not exceed the cost of the expense the deduction is made for; and
  - (e) does not result in Seasonal Workers having an inadequate amount of money remaining each week with which to pay for reasonable living expenses.
- E9. Notwithstanding anything else in this Item E, You must not charge Seasonal Workers, or deduct or withhold from Seasonal Workers' wages, any expenses that are not authorised pursuant to this Item E, or expenses that are incurred meeting Your statutory obligations and Your obligations under this Deed. Such expenses include expenses in relation to:
- (a) the selection, recruitment and arrangement of accommodation and transport for Your Seasonal Workers;
  - (b) travel to Participating Countries;
  - (c) obtaining a license to recruit from a Participating Country;
  - (d) using a recruitment agent to recruit on Your behalf and any associated costs incurred or on-charged by the recruitment agent;
  - (e) welfare and wellbeing costs, unless expressly authorised under the Guidelines;
  - (f) uniforms or any branded clothing and/or apparel;
  - (g) measures, training and personal protective equipment for work health and safety; and
  - (h) administrative expenses incurred by You in relation to participation in the Seasonal Worker Programme, including time spent arranging pay slips, briefings, dispute resolution and community engagement for Seasonal Workers.
- E10. You must not offer Seasonal Workers any inducement other than what will be offered under the terms of the Offer of Employment and the assistance which must be provided to Seasonal Workers under this Deed.
- E11. You must provide regular payslips to Seasonal Workers in accordance with statutory requirements, which clearly set out gross pay, itemised deductions, tax, and net pay. You must instruct Seasonal Workers on how to correctly read their payslip.

## **F. Welfare and Wellbeing of Seasonal Workers**

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- F1. You must, in accordance with the Guidelines:
- (a) ensure that adequate arrangements are in place for the welfare and wellbeing of Seasonal Workers, as set out in Your approved Welfare and Wellbeing Plan (as amended from time to time under clause 12), Your Approved Recruitment and Your Offer of Employment (as amended from time to time under Item B7);
  - (b) not infringe upon Seasonal Workers' lawful ability to associate and move freely and unhindered outside of working hours;
  - (c) ensure that Seasonal Workers know how, and have the ability, to contact 000 and connect to the emergency service required;
  - (d) provide Seasonal Workers with a 24 hour per day, seven days per week emergency contact number and ensure the Seasonal Workers are aware that they can make

contact with You or Your Personnel assigned for out of hours contact (as relevant) at any time on that number;

- (e) assist Seasonal Workers to access medical and allied health services and to make claims under health insurance as contemplated by Item F1(f) as appropriate;
- (f) ensure that all Seasonal Workers have and maintain adequate arrangements for health insurance during the period of their stay in Australia. The health insurance must cover in-patient and out-patient care and meet Seasonal Workers' visa obligations;
- (g) assist Seasonal Workers to regularly access opportunities for recreation and religious observance;
- (h) assist Seasonal Workers to participate in approved Australian Government funded training while in Australia and allow Seasonal Workers to attend training sessions, as agreed with Us;
- (i) monitor the progress, placement and wellbeing of all Seasonal Workers employed on a regular basis;
- (j) take any additional reasonable steps to ensure the welfare and wellbeing of Seasonal Workers;
- (k) ensure that at all times an appointed Welfare and Wellbeing Support Person is located within 300 kilometres of each Placement and is available to provide welfare and wellbeing support to the Seasonal Workers in accordance with this Deed and the Guidelines;
- (l) conduct and keep records of fortnightly face to face, in person, discussions between any relevant Welfare and Wellbeing Support Persons and the Seasonal Workers. If a face to face, in person, discussion is not an option due to the COVID-19 pandemic, You must conduct the discussion virtually with the Seasonal Workers; and
- (m) take all reasonable steps to address and, where possible, resolve any issues relating to the welfare and wellbeing of Seasonal Workers as soon as practicable.

#### **G. Accommodation for Seasonal Workers**

---

- G1. Subject to clause 11 and in accordance with Your Approved Recruitment and Your Offer of Employment (as amended from time to time under Item B7), You must arrange accommodation that complies with any Guidelines and is fit for occupation and use for each Seasonal Worker employed by You.
- G2. A Seasonal Worker may elect to arrange her or his own accommodation, in which case You are prohibited from making any deductions for accommodation from that Seasonal Worker's wages.

#### **H. Transportation for Seasonal Workers**

---

- H1. Subject to Items H2 and H4 and in accordance with the Guidelines, You must arrange transport for Seasonal Workers:
  - (a) between their places of accommodation and their places of work;
  - (b) between their places of accommodation and shopping facilities; and
  - (c) to and from the airport within Australia,

which, in Our opinion, is:

- (d) appropriate in the circumstances;
  - (e) affordable for Seasonal Workers; and
  - (f) of a suitable standard of safety and comfort.
- H2. A Seasonal Worker may elect to arrange her or his own transport, in which case You must not make any deductions for transport from that Seasonal Worker's wages.
- H3. You must be aware of and comply with any work health and safety legislation or State and Territory Government and local government legislation and codes that may apply to the transport You arrange for Seasonal Workers.
- H4. Item H does not apply in relation to any Seasonal Worker who elects to make her or his own accommodation arrangements in accordance with Item G2.

#### **I. Pre-Departure Briefing for Seasonal Workers**

---

You must contribute information and materials relevant to Seasonal Workers You employ in accordance with any Guidelines (including information on the local area they will be living in while in Australia, the type of work to be performed, the place of employment of Seasonal Workers and what they can expect in Australia) to Pre-Departure Briefings for Seasonal Workers in the relevant Participating Country conducted by the government of that country.

#### **J. Arrival Briefings for Seasonal Workers**

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- J1. You must provide a face to face, in person, Arrival Briefing for Seasonal Workers in Australia and involve community groups or organisations in the area where appropriate, in accordance with this Item J. If a face to face, in person, Arrival Briefing is not an option due to the COVID-19 pandemic, You must conduct the Arrival Briefing virtually with the Seasonal Workers.
- J2. You must comply with the requirements for Arrival Briefings, in accordance with the Guidelines.
- J3. You must invite and use reasonable endeavours to accommodate attendance at Arrival Briefings of:
- (a) a representative from:
    - (i) the relevant union; and
    - (ii) the Fair Work Ombudsman; and
  - (b) if notified by Us, Our Personnel and other relevant persons,
- to address Seasonal Workers at the Arrival Briefing or at an alternative time within seven Calendar Days of the Seasonal Workers arriving in Australia.
- J4. In addition to the Arrival Briefing, You must ensure Seasonal Workers receive an induction on commencing work, which includes information on work health and safety arrangements and skills training, for each place of work.

## **K. Banking, taxation and superannuation**

---

- K1. To the extent permitted by law, You must facilitate access to personal banking for each Seasonal Worker, including assisting each Seasonal Worker with setting up an Australian personal bank account (if necessary).
- K2. You must assist each Seasonal Worker to apply for a tax file number and establish a superannuation account.
- K3. You must perform Your obligations under Items K1 and K2 within five Business Days of the relevant Seasonal Worker's arrival in Australia.

## **L. Departure to sending country**

---

- L1. You must assist Seasonal Workers to prepare to return home at the conclusion of their stay in Australia, including providing Seasonal Workers with information on how to claim their superannuation.
- L2. You must assist the Seasonal Workers You employ or have employed to depart Australia before their Subclass 403 (Temporary Work (International Relations)) visa in the Seasonal Worker Program stream (or such other Subclass visa as specified by the Commonwealth) expires.
- L3. You must provide Seasonal Workers with a face to face, in person, Departure Briefing that complies with the requirements in the Guidelines.

## SCHEDULE 2

**[Note: We will confirm any conditions which apply generally to You under this Deed in this Schedule. Other specific conditions may be imposed as a condition on an individual recruitment or in response to a Specified Event under clause 24.]**

Examples of conditions that may be imposed under this Schedule 2 include:

- a cap of seasonal workers You may recruit;
- requirement to advertise vacancies on [workforceaustralia.gov.au](http://workforceaustralia.gov.au);
- provide annual accountant prepared financial statements;
- only supply seasonal worker labour to certain companies;
- provide evidence of labour hire licence renewal annually (if applicable);
- only recruiting seasonal workers with relevant industry experience for certain types of work;
- invite the department to all on-arrival briefings at least 3 days prior to the briefing.

SAMPLE



## **SCHEDULE 3 - Restart Seasonal Workers**

In accordance with clause 2.8, the Parties acknowledge and agree that:

- (a) Schedule 1 is amended in accordance with this Schedule 3; and
- (b) Schedule 1 (as amended by this Schedule 3) applies in respect of Restart Seasonal Workers.

### **1. Insert new Items A11 and A12:**

---

A11. Without limiting Items A9 or A10, You must:

- (a) provide Us with written confirmation, prior to Us approving Your Recruitment Application for any Restart Seasonal Workers, that the relevant State and Territory Governments have approved/accepted Your COVID-19 management plan, including Your COVID-19 safe plan; and
- (b) work with the relevant State and Territory Governments in relation to, and to ensure that, all Restart Seasonal Workers undertake the required Quarantine Arrangements on arrival in Australia and when moving between a State or Territory, including if a longer quarantine period is required for any Restart Seasonal Worker.

A12. For the purposes of this Schedule 3, "Quarantine Arrangement" means any mandatory or recommended quarantine requirement specified under any law, direction or advice provided by the Australian Government or a State or Territory Government concerning the COVID-19 pandemic.

### **2. Insert new Items B2.A to B2.C preceding Item B2:**

---

B2.A. To recruit a Restart Seasonal Worker, You must submit a recruitment proposal to Us, in a form specified by Us, including the following information:

- (a) Your level of demand for Restart Seasonal Workers;
- (b) the Restart Seasonal Workers' expected date of arrival and Port of Arrival;
- (b) the preferred country of origin of the Restart Seasonal Workers;
- (c) the proposed flight arrangements (including any charter or regular scheduled flights) for the Restart Seasonal Workers;
- (d) location of the first Placement for Restart Seasonal Workers;
- (e) details of who is covering the costs of Quarantine Arrangements for the Restart Seasonal Workers;

*Note: Under Item E9(j), You must not charge Restart Seasonal Workers, or deduct or withhold from Seasonal Workers' wages, costs in relation to Quarantine Arrangements on arrival in Australia.*

- (f) a copy of Your relevant State or Territory COVID-19 management plan and COVID-19 safe plan which You are required to have in place under Item A9; and
- (g) any other information notified to You by Us, including information required by the relevant State or Territory Government (including the Chief Health Officer).

B2.B. We will provide Your recruitment proposal submitted under Item B2.A to the relevant State or Territory Government for assessment.

B2.C. If and when Your recruitment proposal is approved by the relevant State or Territory Government, We will Notify You and You may submit a Recruitment Application for that recruitment proposal under Item B5.

**3. Delete the 'and' after Item B3(e) and renumber Item B3(f) as Item B2(h).**

**4. Insert the following text at Items B3(f) and (g):**

---

- (f) the details of any State or Territory Government facilitation requirements, including domestic border exemption arrangements;
- (g) the details of domestic travel arrangements for the Restart Seasonal Workers if required; and

**5. Insert new Item B6.1 after Item B6:**

---

B6.1. Without limiting Our discretion under Items B5 or B6, prior to Us approving Your Recruitment Application for Restart Seasonal Workers, We will seek the endorsement of the relevant State or Territory Chief Health Officer, or their authorised delegate.

**6. Delete the 'and' after Item C2(k) and replace the full-stop at Item C2(l) with a semicolon and insert 'and'.**

**7. Insert the following text at Item C2(m):**

---

- (m) details of the Quarantine Arrangements, including:
  - (i) the location of the quarantine facility; and
  - (ii) a notification that the Restart Seasonal Workers will not be charged any costs associated with the Quarantine Arrangements on arrival in Australia.

**8. Delete text at Item E1 and replace with the following text, including new Item E1.1:**

---

E1 Where a Return International Airfare is available for a Restart Seasonal Worker, You must arrange and pay upfront the full costs of the Return International Airfare.

E1.1 If a Return International Airfare is not available for a Restart Seasonal Worker (or one has not been purchased if You are an Alternative Approved Employer) and You purchase a One-Way International Airfare, You must arrange and pay upfront the full costs of the One-Way International Airfare.

**9. Delete text at Item E2 and replace with the following text:**

---

E2. You must arrange and must pay for the following:

- (a) the full costs of transporting Restart Seasonal Workers:
  - (i) from their Port of Arrival in Australia to the quarantine facility;
  - (ii) between the quarantine facility and their work location or accommodation; and
  - (iii) from their work location or accommodation to their Port of Departure from Australia; and
- (b) the full costs of relocating Restart Seasonal Workers from one work location to another, where a new work location requires new accommodation arrangements for Restart Seasonal Workers as specified in the Guidelines. This Item E2(b) does not apply where the relevant new work location and new accommodation arrangements were contemplated in the Approved Recruitment and relevant Offers of Employment for such Restart Seasonal Workers.

*Note: If a new work location or new accommodation arrangement were not contemplated in the Approved Recruitment and relevant Offers of Employment, You must submit and receive approval for a new Recruitment Application under Item B2 (and any associated recruitment proposal under Item B2A) prior to relocating such Restart Seasonal Workers.*

**10. Amend the reference to "Item E1" in Item E3 to "Item E1 and Item E1.1".**

**11. Delete text at Item E4 and replace with the following text:**

---

E4 In respect of the Return International Airfares, One-Way International Airfares and domestic transportation for the Restart Seasonal Workers (other than those Restart Seasonal Workers who are redeployed to You from an Alternative Approved Employer, in which case Item M5 will apply), You:

- (a) are not entitled to recoup the first \$300 for the cost of travel (including in respect of the cost of any Return International Airfare or One-Way International Airfares) for each Restart Seasonal Worker in accordance with Your obligations under the Deed and Guidelines;
- (b) subject to Item E4(a), may recoup the actual cost of a Return International Airfare or any One-Way International Airfare, up to the relevant amount determined by Us and specified on SWP Online at the time of purchase of the relevant airfare, from each Restart Seasonal Worker through deductions from their wages; and

*Note: For example, under Items E4(a) and E4(b), if You pay \$300 for the first One-Way International Airfare purchased, You are entitled to recoup the actual cost of the second One-Way International Airfare purchased up to the relevant amount determined by Us and specified on SWP Online at the time of purchase without applying the \$300 reduction.*

- (c) must pay any remaining amount for the Return International Airfare or One-Way International Airfares, and domestic transportation for which You are deemed

responsible for meeting under the Deed, and must not recoup these amounts from the Restart Seasonal Workers.

**12. Delete 'E2(b),' from Item E7.**

**13. Delete the 'and' after Item E9(g) and replace the full-stop at Item E9(h) with a semicolon.**

**14. Insert the following text at Item E9(i) and (j):**

---

- (i) health insurance during the period a Restart Seasonal Worker is in Quarantine Arrangements on arrival in Australia; and
- (j) all costs in relation to a Restart Seasonal Worker's Quarantine Arrangements on arrival in Australia, including in respect of accommodation arrangements.

*Note: Subject to any arrangements made by the relevant State or Territory Governments, You may be required to cover some or all of the quarantine costs.*

**15. Delete text at Item F1(f) and replace with the following text:**

---

- (f) ensure that all Restart Seasonal Workers have and maintain adequate arrangements for health insurance during the period of their stay in Australia. This health insurance must include cover for the quarantine period on arrival and continue up to the date of departure from Australia. The health insurance must cover in-patient and out-patient care, repatriation costs for serious injury or death, and meet Restart Seasonal Workers' visa obligations;

**16. Replace the title of Item J as follows:**

---

**J. Arrival Briefings and Reports for Restart Seasonal Workers**

**17. Delete text at Item J3 and replace with the following:**

---

J3. You must invite and use reasonable endeavours to accommodate attendance (including virtual attendance if applicable) at Arrival Briefings of:

- (a) a representative from:
  - (i) the relevant union; and
  - (ii) the Fair Work Ombudsman; and
- (b) if notified by Us, Our Personnel and other relevant persons,

to address Restart Seasonal Workers at the Arrival Briefing or at an alternative time within seven Calendar Days of the Restart Seasonal Workers finishing their quarantine period following their arrival in Australia.

**18. Insert new Items J5. and J6. as follows:**

---

J5. Under clause 8.2(a)(ii), You must within twenty Business Days of the Restart Seasonal Workers arriving in Australia, provide a report ('**Initial Arrival Report**') to Us that includes:

- (a) the dates of arrival of the Restart Seasonal Workers in Australia, and if any did not arrive as expected, why;
  - (b) a list of the Restart Seasonal Workers' names, dates of birth, visa expiry dates and country of origin; and
  - (c) attached details of all domestic transfer costs.
- J6. Under clause 8.2(b), You must within twenty Business Days of the Restart Seasonal Workers finishing their quarantine period following their arrival in Australia, provide a report ('**Subsequent Arrival Report**') for those Restart Seasonal Workers that includes:
- (a) a pay summary for the Restart Seasonal Workers showing their gross and net pay after tax and deductions since they commenced work;
  - (b) confirmation that You have assisted the Restart Seasonal Workers with obtaining tax file numbers, and opening bank and superannuation accounts;
  - (c) confirmation the Arrival Briefing was delivered and covered all the essential subject matter as required under the Deed; and
  - (d) in respect of the Restart Seasonal Workers' Return International Airfares, either:
    - (i) attached details of the Restart Seasonal Workers' Return International Airfare including the receipt (proof of purchase), itinerary and confirmation of the airline flight details; or
    - (ii) if applicable, notification that You were unable to purchase an upfront Return International Airfare prior to the Restart Seasonal Workers departing for Australia.

**19. Delete text at Item K3 and replace with the following:**

---

- K3. You must perform Your obligations under Items K1 and K2 within five Business Days of the relevant Restart Seasonal Worker finishing their quarantine period following their arrival in Australia.

**20. Delete heading to Item L, and replace with the following:**

---

**L. Departure and Air Travel Requirements**

**21. Insert the following text at new Items L4 to L6:**

---

- L4. At least six weeks prior to the date when Restart Seasonal Workers are due to return to their home country, You must provide the following details to Us via SWP Online or otherwise in writing:
- (a) the intended date of departure for those Restart Seasonal Workers; and

- (b) if You have already purchased an international flight for the Restart Seasonal Workers to return to their home country, the relevant flight details (including the details of any applicable charter flight).
- L5. If You were unable to purchase a Return International Airfare for a Restart Seasonal Worker prior to their departure from their home country, then at least 6 weeks prior to the intended date of departure for the Restart Seasonal Worker to their home country (or such other timeframe as agreed in advance in writing by Us), You must:
- (a) purchase a One-Way International Airfare for the Restart Seasonal Worker to return to their home country; or
  - (b) if a charter flight is the only available option to support the intended date of departure, You must arrange the charter flight to return to their home country.
- L6. When You book international flights for the Restart Seasonal Workers (whether a Return International Airfare or a One-Way International Airfare), You must confirm with the relevant flight operator (including the charter flight operator where applicable) that:
- (a) a COVID-19 pandemic pre-boarding screening, questionnaire and temperature check will be undertaken;
  - (b) face masks will be provided for Restart Seasonal Workers during the flight;
  - (c) any other Australian Government and relevant State or Territory Government requirements for incoming or outgoing flights (as the case may be) to Australia are met; and
  - (d) for outgoing flights, any requirements of the receiving country for the flight in relation to the COVID-19 pandemic will be met.

**22. Insert the following text at new Item M:**

---

**M. Restart Seasonal Workers redeployed to Alternative Approved Employers**

- M1. For the purposes of this Item M and subject to Item M7, the Parties acknowledge that a Restart Seasonal Worker may only be redeployed to an Alternative Approved Employer where:
- (a) that redeployment has been agreed to by Us under an approved Recruitment Application with the Alternative Approved Employer; and
  - (b) the Restart Seasonal Worker has agreed to the redeployment with the Alternative Approved Employer via an updated Offer of Employment provided by the Alternative Approved Employer.
- M2. The Parties agree that:
- (a) unless otherwise specified, notified by Us or agreed by the Parties in writing, the provisions of this Deed apply to redeployed Restart Seasonal Workers in the same way as Restart Seasonal Workers; and

- (b) accordingly, if You are the Alternative Approved Employer who has accepted a redeployed Restart Seasonal Worker, You will be bound by the provisions of this Deed in respect of the redeployed Restart Seasonal Worker.
- M3. Without limiting Item M2, Item M4 applies if a Restart Seasonal Worker is being redeployed by You to an Alternative Approved Employer.
- M4. In respect of an outgoing flight for the redeployed Restart Seasonal Worker which You have purchased (whether a Return International Airfare or a One-Way International Airfare) for the Restart Seasonal Worker to return to their home country, You must inform the Alternative Approved Employer of the outgoing flight information, and provide to the Restart Seasonal Worker the physical ticket or booking reference (as applicable) for the outgoing flight.
- M5. Without limiting Item M2, Item M6 applies if You are the Alternative Approved Employer who has accepted a redeployed Restart Seasonal Worker.
- M6. In respect of any One-Way International Airfare purchased by You for a Restart Seasonal Worker to return to their home country, or domestic transportation purchased by You for the Restart Seasonal Worker, You:
  - (a) are not entitled to recoup the first \$300 for the cost of that travel (including in respect of the cost of any One-Way International Airfare) for each Restart Seasonal Worker in accordance with Your obligations under the Deed and Guidelines;
  - (b) subject to Item M6(a), may recoup the actual cost of any One-Way International Airfare paid for by You, up to the relevant amount determined by Us and specified on SWP Online at the time of purchase of the relevant airfare, from the Restart Seasonal Worker through deductions from their wages; and
  - (c) must pay any remaining amount for the One-Way International Airfare, and domestic transportation for which You are deemed responsible for meeting under the Deed, and must not recoup these amounts from the Restart Seasonal Worker.
- M7. Nothing in this Item M limits or otherwise affects the Parties' respective rights and obligations under the Deed in respect of the transfer of Seasonal Workers (including any Restart Seasonal Worker) to an Alternative Approved Employer.

## Signatures

EXECUTED by the Parties as a Deed.

SIGNED SEALED AND DELIVERED for and on behalf of the Commonwealth of Australia as represented by the Department of Employment and Workplace Relations by:

\_\_\_\_\_  
Name of signatory *Signature* *Date*

\_\_\_\_\_  
Position

In the presence of:

\_\_\_\_\_  
Name of witness *Signature of witness* *Date*

**NOTE:** Choose the appropriate signature block for the Approved Employer from the alternatives below and delete the others.

Where Approved Employer is a Trustee of a Trust use the following:

SIGNED SEALED AND DELIVERED by:

\_\_\_\_\_  
^Trustee of [insert Trust Name] **Approved Employer Name**^ *Signature* *Date*

In the presence of:

\_\_\_\_\_  
^Name of witness^ *Signature of witness* *Date*



Where Approved Employer is a **company** use the following:

SIGNED SEALED AND DELIVERED for and on behalf of (^insert company name) (^insert company ACN or ABN) in accordance with the requirements of section 127 of the *Corporations Act 2001* by:

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
*Signature* *Date*

In the presence of:

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
*Signature of witness* *Date*

And by

\_\_\_\_\_  
Name of Director/Secretary

\_\_\_\_\_  
*Signature* *Date*

In the presence of:

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
*Signature of witness* *Date*

Where Approved Employer is a **partnership** use the following:

SIGNED SEALED AND DELIVERED by:

\_\_\_\_\_  
Name of partner

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

who by signing warrants that they have authority to bind (^insert name of each co-partner(s) of partnership)

In the presence of:

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
*Signature of witness*

\_\_\_\_\_  
*Date*

Where Approved Employer is an **incorporated** association use the following:

SIGNED SEALED AND DELIVERED for and on behalf of (^insert Association name) (^insert ABN) by:

\_\_\_\_\_  
Name of Committee member

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

In the presence of:

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
*Signature of witness*

\_\_\_\_\_  
*Date*