LABOUR AGREEMENT

Under the Migration Act 1958

Between

The Department of Immigration and Border Protection

and

The Department of Defence
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Labour Agreement

Effective Date: Date signed by the Department of Immigration and Border Protection

Parties

The Department of Immigration and Border Protection ("DIBP") with DIBP’s particulars set out in Item 1 of Schedule 1.

AND

The Department of Defence ("Defence"), with Defence’s particulars set out in Item 2 of Schedule 1.

Background

A. This labour agreement (the “Agreement”) is a “labour agreement” as defined in the Migration Regulations. This Agreement will be administered by the Department of Immigration and Border Protection ("DIBP").

B. This Agreement sets out the terms and conditions by which the Department of Defence ("Defence") may recruit, employ or engage the services of overseas workers who are intended to be employed or engaged by Defence as holders of a Subclass 186 Employer Nomination Scheme visa in its business undertaking as described in Item 3 of Schedule 1.

C. Defence is an “Approved Sponsor”, as defined in subsection 5(1) of the Migration Act by virtue of entering into this Agreement.

D. Both parties are part of a single legal entity and accordingly all of the legal benefits and legal obligations under the Agreement remains with the Commonwealth of Australia. This agreement operates as the understanding between the parties in relation to their respective administrative responsibilities and is not intended to be legally binding. The parties will operate in the spirit of fairness and cooperation and will abide by the terms of this Agreement as if they were separate legal entities and as if this Agreement constituted a binding contractual arrangement between them.

Operative Part

1 Definitions

1.1 Unless the context indicates a contrary intention, words and phrases in this Agreement have the same meanings attributed to them in the Migration Act and the Migration Regulations.

1.2 In the event of any inconsistency between this Agreement and the Migration Act and the Migration Regulations, the Migration Act and the Migration Regulations will prevail.

1.3 In this Agreement:

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

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

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

Approved Sponsor means the Department of Defence ("Defence").
AQF means the Australian Qualifications Framework.

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

Authorised Delegate means a person who is an appropriate delegate according to the issues covered, occupying (at a minimum) a Senior Executive Service Band 1 level position.

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

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

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

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

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

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

Ceiling number means the number of primary Subclass 186 visas that can be nominated as defined in Schedule 3.

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

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

but does not include information:

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

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

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

Defence means the Department of Defence ("Defence").

DIBP means the Department of Immigration and Border Protection.

Effective Date means:

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

Email Account means a party’s email address set out in Schedule 1.
IELTS means the International English Language Testing System.

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

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

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

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

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

Nominee means the holder of, or an applicant or proposed applicant for, a Subclass 186 visa.

On-hire\(^1\), under a labour agreement, means a person’s business activities which include activities relating to either or both of:

(a) the recruitment of labour for supply to another business; and

(b) the hiring of labour to another business;

(c) the reference to ‘another business’ in paragraph (a) and (b) above, includes any other business that is related to a person’s business.

Occupations means those occupations prescribed in Schedule 3.

Postal Address means the address to which mail is delivered.

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

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

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

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

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

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

Workforce plan means a report that outlines the current, and where requested, projected future composition of an Approved Sponsor’s workforce. It should include details of the total number of Australian workers (including permanent residents), subclass 457 visa holders, and other temporary visa holders engaged by the Approved Sponsor.

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

\(^1\) An example of On-hire is where a person proposes to sponsor someone to come to Australia for the purpose of hiring out the visa holder’s services to client organisations, rather than to work directly in the person’s business.
2 Interpretation

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

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

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

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

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

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

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

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

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

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

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

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

3 Period

3.1 This Agreement commences from the date signed by the Commonwealth specified in Item 4 of Schedule 1.

3.2 Unless terminated earlier in accordance with clause 17 of this Agreement, the period of this Agreement will be the time specified in Item 4 of Schedule 1.

4 Pre-contractual representations

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

Sponsorship and nomination of overseas workers

5 On-hire prohibited

5.1 On-hire is prohibited under this Agreement. Specifically:

(a) the Approved Sponsor must not nominate a proposed occupation for a Nominee, for On-hire;

(b) any such nominations will not be approved under this Agreement; and

(c) the Approved Sponsor much not utilise the services of a visa-holder employed pursuant
to a nomination under this Agreement, for On-hire.

6 Labour market need

6.1 The Approved Sponsor must take all reasonable steps to ensure it recruits suitably skilled Australians who are available before engaging Primary Sponsored Persons under this Agreement.

7 Nominations

7.1 A nomination under this Part means a nomination referred to in clause 186.24 of the Migration Regulations for a Subclass 186 visa.

7.2 The Approved Sponsor acknowledges the general requirements for a Subclass 186 visa and agrees that Primary Sponsored Persons engaged through this Agreement may only be engaged in occupations, and with concessions referred to in Schedules 3 and 4.

7.3 The Approved Sponsor may only nominate Primary Sponsored Persons for:
   (a) occupations as specified in Item 1 of Schedule 3;
   (b) up to the ceiling number specified in Schedule 3; and
   (c) an occupation which will be full time, ongoing and available for at least three years.

7.4 The Approved Sponsor acknowledges that the Minister may, in his/her absolute discretion:
   (a) vary the Ceiling Numbers up or down;
   (b) vary the Concessions.

7.5 The Approved Sponsor must make nominations in accordance with approved forms and form 1395.

7.6 The Approved Sponsor must provide, as part of the nomination:
   (a) the information required in the Migration Regulations;
   (b) the fee specified in the Migration Regulations.

7.7 The Commonwealth may refund the fee in accordance with the circumstances for such a refund in the Migration Regulations.

7.8 The Approved Sponsor must comply with any additional requirements for a Subclass 186 visa nomination that is stipulated by the Minister in Item 2 of Schedule 5.

7.9 The Approved Sponsor may only nominate a Primary Sponsored Person who:
   (a) has at least three years relevant work experience and holds a positive valid skills assessment in the nominated occupation (the skill assessment must be conducted by the relevant assessing authority listed in the Consolidated Sponsored Occupation List (CSOL), unless varied in accordance with Item 2 of Schedule 3.
   (b) unless varied in accordance with in Item 4 of Schedule 3:
      i. has an IELTS score of at least 6.0 across each of the four test components (speaking, reading, writing and listening) that has been undertaken in the three years immediately prior to lodging the visa application, unless varied in accordance with Item 4 of Schedule 3; or
      ii. has achieved a score of at least 'B' in each of the four test components of an Occupational English Test (OET) that has been undertaken in the three years immediately prior to lodging the visa application, unless varied in accordance with Item 4 of Schedule 3; or
iii. has achieved the following minimum test scores in each of the four test components: 12 for listening, 13 for reading, 21 for writing and 18 for speaking, in a Test of English as a Foreign Language internet-based test (TOEFL iBT) test that has been undertaken in the three years immediately prior to lodging the visa application unless varied in accordance with Item 4 of Schedule 3; or

iv. has achieved a test score of at least 50 in each of the four test components (speaking, reading, listening and writing) in a Pearson Test of English (PTE) Academic that has been undertaken in the three years immediately prior to lodging the visa application unless varied in accordance with Item 4 of Schedule 3; or

v. has achieved a test score of at least 169 in each of the four test components (speaking, reading, listening and writing) in a Cambridge English: Advanced (CAE) test that has been undertaken on or after 1 January 2015 and prior to lodging the visa application unless varied in accordance with Item 4 of Schedule 3; or

vi. is a citizen of, and the current holder of a valid passport issued by, any of the following countries:
   A. Canada;
   B. New Zealand;
   C. the Republic of Ireland;
   D. the United Kingdom; or
   E. the United States of America; and.

(c) has not turned 50 years of age at time of nomination, unless varied in Item 5 of Schedule 3.

7.10 The Approved Sponsor must demonstrate, through written evidence, at nomination, that the visa applicant will:

(a) be employed full time and will receive terms and conditions of employment which are no less favourable than the terms or conditions of employment that are, or would be provided, to an Australian performing equivalent work in the Approved Sponsor’s workplace at the same location, and

(b) receive a Base Rate of Pay, under the terms and conditions of employment referred to in clause 7.10 (a) that is equal to or greater than the TSMIT, unless varied in Item 3 of Schedule 3.

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

(a) that the tasks of the position include a significant majority of the tasks of the nominated occupation as described in ANZSCO, unless varied in Schedule 4.

8. Approval of nominations

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

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

9 Training and recruitment of Australian workers

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

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

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

10 Supporting Primary Sponsored Persons

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

10.2 The information referred to in clause 10.1 should be provided within seven (7) days of the date the Primary Sponsored Persons commences employment in the nominated Occupation with the Approved Sponsor.

11 Reporting obligations

11.1 Unless varied in Schedule 6:

(a) the Approved Sponsor must provide a report to DIPB within 30 days following a request by the Minister or when requesting a variation to Schedule 3;

(b) the report must include:
   i. updated Workforce Plans; and
   ii. evidence of efforts to recruit domestically, using the template provided in Schedule 6; and
   iii. evidence of the Base Rate of Pay for Primary Sponsored Persons; and
   iv. evidence of compliance with the training obligations defined in Schedule 2; and
   v. details of any breaches of immigration or other Commonwealth or State laws; and
   vi. the dates and numbers and occupations of any and all Australian workers who have been retrenched or made redundant in the past twelve (12) month period.

12 Monitoring

12.1 The Minister may, from time to time, audit the Approved Sponsor’s performance of its obligations in this Agreement and the Approved Sponsor will cooperate with the Minister for the purpose of such audits.

12.2 Without limiting the generality of the preceding clause, the Approved Sponsor will:

(a) liaise with and provide information and assistance to the Minister as reasonably required by the Minister for the purposes of such audits;

(b) comply with the Minister’s reasonable requests or requirements for the purposes of such audits.

12.3 Unless specified otherwise in the Migration Legislation, the Approved Sponsor will retain all records generated for the purposes of this Agreement for seven (7) years from the date of expiration or termination of this Agreement.

Miscellaneous Provisions

13 Relationship between the parties

13.1 Nothing in this Agreement:

(a) constitutes a partnership between the parties; or

(b) except as expressly provided, makes a party an agent of another party for any purpose.

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

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

14 Confidential information and information sharing

14.1 Prohibition on disclosure:

(a) Either Party undertakes not to use or further disclose any information or material provided to it by the other party except for the purpose for which it was provided or as otherwise authorised by law.

(b) The Approved Sponsor must not, without the prior written consent of DIBP, disclose any DIBP Confidential Information to a third party.

(c) DIBP must not, without the prior written consent of the Approved Sponsor disclose any Department of Defence Confidential Information to a third party.

14.2 No reduction in privacy obligations

Nothing in this clause 14 derogates from any obligation which either party may have either under the Privacy Act 1988 (Cth) as amended from time to time, or under this Agreement, in relation to the protection of personal information.

14.3 Confidential Information

In this clause 14, Confidential Information means information that is by its nature confidential and:

(a) is designated by a party as confidential in Item 5 of Schedule 1; or

(b) a party knows or ought to know is confidential,

but does not include:

(c) information that is or becomes public knowledge otherwise than by breach of this Agreement or any other confidentiality obligation.

15 Suspension

15.1 The Minister may, in his/her absolute discretion, suspend this Agreement in whole or in part.

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

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

15.4 For the avoidance of doubt, where the Minister notifies that this Agreement has been suspended in accordance with clause 15.3, the suspension shall take effect at the time the notice is taken to be received by the Approved Sponsor, in accordance with clause 24.

15.5 Where the Minister suspends this Agreement in accordance with clause 15.1 the Minister may suspend consideration of all nomination and visa applications made in accordance with this Agreement.

15.6 After a period of suspension, the Minister may, at his/her absolute discretion, choose to resume this Agreement by notifying the Approved Sponsor in writing.

15.7 Where the Minister chooses to resume this Agreement in accordance with clause 15.6 and notifies the Approved Sponsor, the Agreement will resume at the time the notice is taken to be received, in accordance with clause 24.

15.8 For the avoidance of doubt, any period of suspension will have no impact on and will not amend
the period of this Agreement. The period of this Agreement will remain as specified in Item 4 of Schedule 1.

16 Termination

16.1 The Minister may, in his/her absolute discretion, terminate this Agreement at any time including for reasons of public interest where there is a change in policy or a change in government which results in a change in policy settings.

16.2 The Approved Sponsor will not be entitled to any compensation or payments as a result of the Minister terminating this Agreement under clause 16.1.

16.3 Otherwise, if the Minister contends that the Approved Sponsor is in default under this Agreement, the Minister may:

(a) suspend this Agreement in whole or in part; and

(b) serve notice on the Approved Sponsor, advising that this Agreement is suspended and requiring the Approved Sponsor to rectify to the satisfaction of the Minister, those aspects of the Approved Sponsor’s performance which are of concern to the Commonwealth; or

(c) terminate this Agreement.

16.4 If the Approved Sponsor is in breach of a sponsorship obligation in the Migration Regulations the Approved Sponsor will be taken to be in default under this Agreement as if the statutory obligation was an obligation of the Approved Sponsor under this Agreement.

16.5 For the avoidance of doubt, a breach of the Approved Sponsor’s warranty given in clause 4.1 with respect to pre-agreement information, will entitle the Minister to suspend this Agreement and serve a notice under clause 16.3, and/or to take any other redress in accordance with this Agreement.

16.6 A party may, in its discretion, terminate this Agreement early by giving 28 days’ notice to the other party, whereupon this Agreement will be terminated with effect 28 days after the notice of termination is served. A party serving a notice of termination under this sub-clause:

(a) need not specify a reason for serving the notice;

(b) may withdraw the notice before the 28 days have elapsed; and

(c) will not be liable to compensate the other party for costs or damages that may arise from the early termination.

16.7 For the avoidance of doubt if this Agreement is terminated for any reason, or for no reason:

(a) the Approved Sponsor’s approval as a sponsor for the purposes of this Agreement will thereby be automatically terminated; and

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

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

17 Sanctions

17.1 Instead of terminating this Agreement, the Commonwealth may, in its discretion:

(a) bar the Approved Sponsor, for a specified period, from making further nominations under this Agreement, or
(b) suspend consideration of any or all nomination and visa applications made pursuant to this Agreement.

18 Dispute resolution

18.1 DIBP and the Approved Sponsor recognise that it is in their mutual interest to express issues of concern to each other in a professional manner as a method of improving cooperation between them.

18.2 Despite the existence of a dispute, DIBP and the Approved Sponsor will continue to perform their roles under this Agreement unless requested not to do so by the other agency.

18.3 The resolution of disputes arising under this Agreement will be based on the following principles:
   (a) the agencies will initially seek to resolve a dispute within the functional areas of the agencies in which the dispute arose;
   (b) each agency will ensure it has appropriate mechanisms in place:
      i. for raising a dispute to higher levels of management in the event that the dispute is not resolved by the functional areas; and
      ii. to disseminate information regarding resolution of disputes to other areas in the organisation who would benefit from such information.

18.4 If discussions undertaken by functional areas and higher levels of management fail to resolve the dispute, the dispute will be referred to the Authorised Delegate of DIBP and the Authorised Delegate of the Approved Sponsor for further direction or final resolution.

18.5 Disputes will not be referred to any third party or tribunal.

18.6 The parties acknowledge that the Migration Review Tribunal and Administrative Appeals Tribunal may have jurisdiction to review certain visa decisions and that the Migration Review Tribunal may have jurisdiction to review nomination decisions under this Agreement. This Agreement does not abrogate any rights of a merits review by the Migration Review Tribunal or the Administrative Appeals Tribunal.

19 Assurances, counterparts and assignment

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

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

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

20 Variation and entire agreement

20.1 A provision of this Agreement can only be varied by a written document executed by or on behalf of all parties.

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

21 Fettering and publishing

21.1 Nothing in this Agreement fetters or detracts from the Commonwealth’s discretions, functions or powers under the Migration Legislation, Workplace law or other relevant Commonwealth laws.
21.2 In the event the Commonwealth has published an outline of this Agreement, the published outline is an invitation to treat with prospective sponsors and is not an offer to enter into contractual relations with any such sponsor on the basis of the published outline.

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

22 **Legal expenses**

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

22.2 The Approved Sponsor must pay any stamp duty assessed on or in relation to this Agreement and any instrument or transaction required by or necessary to give effect to this Agreement.

23 **Survival after termination**

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

24 **Notices**

24.1 Any notice, demand, consent or other communication given or made under this Agreement:

(a) must be clearly readable;

(b) must, unless it is sent by email, be signed by the party giving or making it (or signed on behalf of that party by its authorised representative);

(c) must, unless it is sent by email, be left at the Address or sent by pre-paid security post (air mail if outside Australia) to the Business Address of the recipient; and

(d) may be sent by email to the receiving party’s Email Account.

24.2 A notice to be served on the Commonwealth will be taken to be served if it is served on DIBP’s address in Item 1 of Schedule 1.

24.3 A party may change its Business Address, Postal Address or Email Account for the purpose of service by giving notice of that change to the other party in accordance with clause 24.1.

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

(a) in the case of a letter, on the third (seventh, if sent outside the country in which the letter is posted) Business Day after the date of posting;

(b) in the case of an email, at the end of the day in which the email is transmit.

25 **Governing law and jurisdiction**

25.1 The laws applicable in the Australian Capital Territory govern this Agreement.
Schedule 1  Particulars

Item 1  Department of Immigration and Border Protection’s Particulars
Name:  Department of Immigration and Border Protection
Address:  6 Chan Street, Belconnen ACT 2617
Telephone Number:  (02) 6264 1055
Email Address:  labour.agreement.section@immi.gov.au
Contact officer:  Director, Labour Agreement Section

Item 2  The Approved Sponsor’s Particulars
Name:  Department of Defence
ACN/ABN:  68 706 814 312
Business structure:  government department
Business Address:  Head People Capability
                 R1-1-C005
                 Defence People Group – DEPSEC DP Exec
                 Russell Offices  ACT  2601
Postal Address  PO Box 7909 ACT 2610
Telephone Number:  (02) 6127 2422
Email Address:  DPE.SOMPP#defence.gov.au
Contact officer:  Mr Russell Rolfe

Item 3  The Approved Sponsor’s Business
Business Undertaking:  Australian Defence Force
Industry segment:  Government

Item 4  Commencement and period
Effective Date:  The date signed by the Commonwealth.
Cease Date:  Five years following the effective date

Item 5  Confidential Information
Parties:  The Department of Immigration and Border Protection:
  • terms and conditions of this agreement
The Department of Defence:
  • all information provided to request and secure access to this
    Agreement; and
  • terms and conditions of this Agreement
Schedule 2  Training and recruitment obligations

1. The Approved Sponsor must demonstrate throughout the term of this agreement a commitment to the provision of employment, training and career progression opportunities to Australian’s through compliance with this Schedule.

2. It is an obligation of the Agreement that the Approved Sponsor must undertake recruitment activities which afford Australians the first opportunity for employment, prior to nomination of positions covered by this Agreement.

3. It is an obligation of this Agreement that the Approved Sponsor must, for each Year of the Agreement, ensure that:

   (a) payments equivalent to at least two (2) per cent of the gross payroll of the Approved Sponsor are made to the relevant training fund; or

   (b) payments equivalent to at least one (1) per cent of the gross payroll of the Approved Sponsor are made for the provision of structured training for the Australian employees of the Approved Sponsor.

4. Expenditure that may count towards training expenditure for the purposes of this Agreement is outlined in Legislative Instrument IMM1 13/030, as varied from time to time.
Schedule 3 Occupations; Ceiling numbers; Locations; Skills, Qualifications and Experience; and Concessions covered by this Agreement

Item 1 Occupations, Ceiling Numbers and Locations for permanent residence

Occupations: The Approved Sponsor may only nominate Primary Sponsored Persons in an occupation specified below which will be full-time and ongoing.

<table>
<thead>
<tr>
<th>Occupation</th>
<th>ANZSCO Code</th>
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<tbody>
<tr>
<td>Commissioned Defence Force Officer</td>
<td>139111</td>
</tr>
<tr>
<td>Defence Force Member – OR</td>
<td>441111</td>
</tr>
<tr>
<td>Defence Force Senior Officer</td>
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</tr>
<tr>
<td>Senior Non-Commissioned Defence Force Member</td>
<td>139211</td>
</tr>
<tr>
<td>Acoustic Warfare Analysts (AWA)</td>
<td>441111 / 139211</td>
</tr>
<tr>
<td>AEGIS Specialist</td>
<td>441111 / 139211</td>
</tr>
<tr>
<td>Aeronautical Engineer</td>
<td>233911</td>
</tr>
<tr>
<td>Aerospace Engineer – Aeronautical Engineer</td>
<td>233911</td>
</tr>
<tr>
<td>Aerospace Engineer – Airfield Engineer</td>
<td>233211</td>
</tr>
<tr>
<td>Aerospace Engineer – Armament Engineer</td>
<td>233911</td>
</tr>
<tr>
<td>Aerospace Engineer – Electronics Engineer (avionics or ground telecommunications)</td>
<td>233911</td>
</tr>
<tr>
<td>Air Combat Officer</td>
<td>231199</td>
</tr>
<tr>
<td>Aircraft Life Support Fitter</td>
<td>323113</td>
</tr>
<tr>
<td>Aircraft Structural Fitter / Technician (ASTFITT/TECH)</td>
<td>323113</td>
</tr>
<tr>
<td>Aircraft Surface Finisher (ASURFIN)</td>
<td>324311</td>
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<tr>
<td>Aircrewman</td>
<td>441111 / 139211</td>
</tr>
<tr>
<td>Air Force Police</td>
<td>441312</td>
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<tr>
<td>Air Intelligence Analyst - Geospatial Intelligence (AIA GEOINT)</td>
<td>224411</td>
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<tr>
<td>Air Intelligence Analyst - Operational Intelligence (AIA OPINT)</td>
<td>441111 / 139211</td>
</tr>
<tr>
<td>Air Intelligence Analyst - Signals Intelligence (AIA SIGINT)</td>
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</tr>
<tr>
<td>Air Traffic Controller</td>
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<tr>
<td>Ammunition Technician</td>
<td>399999</td>
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<tr>
<td>Amphibious Specialist</td>
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<td>Analyst Intelligence Operations</td>
<td>224999</td>
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<tr>
<td>Armament Technician (ARMTECH)</td>
<td>441111 / 139211</td>
</tr>
<tr>
<td>Artillery Command Systems Operator</td>
<td>441111 / 139211</td>
</tr>
<tr>
<td>Artillery Observer</td>
<td>139211</td>
</tr>
<tr>
<td>Artillery Officer</td>
<td>139111 / 111212</td>
</tr>
<tr>
<td>Artillery Operator Unmanned Aerial System Operator</td>
<td>441111 / 139211</td>
</tr>
<tr>
<td>Aviation-Maritime Warfare Officer</td>
<td>139111 / 111212</td>
</tr>
<tr>
<td>Aviation Support</td>
<td>323112</td>
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<tr>
<td>Aviation Technician Aircraft (ATA)</td>
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<tr>
<td>Aviation Technician Avionics (ATV)</td>
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<tr>
<td>Avionics Technician (AVTECH)</td>
<td>323111</td>
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<tr>
<td>Cargo Specialist</td>
<td>441111 / 139211</td>
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<tr>
<td>Cavalryman</td>
<td>441111</td>
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<tr>
<td>Chaplain</td>
<td>451816</td>
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<tr>
<td>Combat Engineer</td>
<td>139111 / 111212</td>
</tr>
<tr>
<td>Combat Systems Operator / Combat Systems Supervisor (CSO / CSS )</td>
<td>441111 / 139211</td>
</tr>
<tr>
<td>Commando</td>
<td>441111 / 139211</td>
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<tr>
<td>Communication Electronics Technician (CETECH)</td>
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<tr>
<td>Communication and Information Systems (CIS) and CIS Submariner (CISSSM)</td>
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<td>Communication &amp; Signal Officers</td>
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<td>Communications Systems</td>
<td>441111 / 139211 / 342312</td>
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<tr>
<td>Cryptological Linguist (CTL )</td>
<td>441111 / 139211</td>
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<td>Occupation</td>
<td>ANZSCO Code</td>
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<td>Cryptological Technical Systems (CTS) Electronic Warfare (EW) and EW Submariner (EWSM)</td>
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</tr>
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<td>Defence investigator</td>
<td>441311</td>
</tr>
<tr>
<td>Dentist</td>
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<td>Driver Specialist</td>
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<td>Electrical Engineer</td>
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<tr>
<td>Electrician</td>
<td>341111</td>
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<tr>
<td>Electronic Technical (ET) and Electronic Technical Submariner (ETSM)</td>
<td>342314</td>
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<tr>
<td>Explosive Ordnance Disposal</td>
<td>441111 / 139211</td>
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<tr>
<td>Fitter Armament</td>
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<tr>
<td>Geospatial Technician</td>
<td>441111</td>
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<tr>
<td>Ground Crew Air Support</td>
<td>733112</td>
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<tr>
<td>Ground Crewman Mission Support</td>
<td>441111 / 139211</td>
</tr>
<tr>
<td>Ground Defence Officer</td>
<td>139111 / 111212</td>
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<tr>
<td>Ground Support Equipment (GSE) Fitter / Technician</td>
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<tr>
<td>Helicopter Pilot</td>
<td>231114</td>
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<tr>
<td>Infantry Officer</td>
<td>139111 / 111212</td>
</tr>
<tr>
<td>Information Systems Technician</td>
<td>263212 / 313112</td>
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<tr>
<td>Intelligence Officer</td>
<td>224411</td>
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<tr>
<td>Loadmaster</td>
<td>441111 / 139211</td>
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<tr>
<td>Logistics Officer</td>
<td>139111 / 111212</td>
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<tr>
<td>Marine Amphibious Specialist</td>
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<tr>
<td>Marine Engineer</td>
<td>231212</td>
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<tr>
<td>Marine Technical (MT) and Marine Technical Submariner (MTSM)</td>
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<td>Maritime Warfare/Combat Officer</td>
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<td>Mechanical Engineer</td>
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<td>Mechanic Vehicle</td>
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<tr>
<td>Medical (MED) &amp; MED Submariner (MEDSM)</td>
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<td>Medical Officer</td>
<td>253999</td>
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<tr>
<td>Medical Officer</td>
<td>253111</td>
</tr>
<tr>
<td>Medical Operator</td>
<td>311299</td>
</tr>
<tr>
<td>Military Police Officer</td>
<td>441312</td>
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<tr>
<td>Operator Electronic Warfare (OP EW)</td>
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<tr>
<td>Operator Petroleum</td>
<td>441111</td>
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<tr>
<td>Operator Supply</td>
<td>441111 / 741111 / 139211</td>
</tr>
<tr>
<td>Personnel Capability Officer (Administration Officer)</td>
<td>132111</td>
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<tr>
<td>Pilot</td>
<td>231111</td>
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<tr>
<td>Pilot - Specialist Staff Officer</td>
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<tr>
<td>Recovery Mechanic</td>
<td>733115</td>
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<tr>
<td>Registered Nurse</td>
<td>254411</td>
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<tr>
<td>Rifleman (Sniper)</td>
<td>441111 / 139211</td>
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<tr>
<td>Scientific Officer</td>
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<tr>
<td>Security Police (Law Enforcement) (SECPOL(SLE))</td>
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</tr>
<tr>
<td>Special Air Services (SAS) Trooper</td>
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</tr>
<tr>
<td>Supervisor Building Services</td>
<td>312113</td>
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<tr>
<td>Supervisor Engineering Services</td>
<td>312113</td>
</tr>
<tr>
<td>Supervisor Platoon Operations</td>
<td>441111 / 139211</td>
</tr>
<tr>
<td>Technician Aircraft</td>
<td>323112</td>
</tr>
<tr>
<td>Technician Avionics</td>
<td>323111</td>
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<tr>
<td>Technician Electrical</td>
<td>312412</td>
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<tr>
<td>Technician Electronic Systems</td>
<td>341112</td>
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<tr>
<td>Telecommunications Systems</td>
<td>313199 / 342414</td>
</tr>
<tr>
<td>Weapons Aeronautical Engineer Officer</td>
<td>233311</td>
</tr>
<tr>
<td>Weapons Electrical Engineer</td>
<td>233911</td>
</tr>
</tbody>
</table>
Ceiling Numbers:

(i) the Approved Sponsor may only nominate Primary Sponsored Persons up to the ceiling number specified in each year of the agreement:

<table>
<thead>
<tr>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>430</td>
<td>430</td>
<td>430</td>
<td>430</td>
<td>430</td>
</tr>
</tbody>
</table>

(ii) the ceiling numbers may be subject to annual review. The Minister may vary the ceiling number at any time as per sub-clause 7.4;

(iii) the ceiling numbers may also be varied if the Approved Sponsor, in the six months prior to nomination of a Primary Sponsored Person in Years 2 to 5 of this Agreement, fails to undertake recruitment activities which afford Australians the first opportunity for employment in the nominated position.

Item 2 Skills, Qualifications and Experience:

(a) The Approved Sponsor may only nominate a Primary Sponsored Person who:

   (i) has at least three years military experience; and

   (ii) the Approved Sponsor has certified has the appropriate qualifications, skills and experience.

(b) The Approved Sponsor must provide written certification that the Primary Sponsored Person will meet all licensing and registration requirements required for that occupation.

Item 3 Concessions to TSMIT

For the purpose of meeting 7.10(b), the Base Rate of Pay is varied to include the Service Allowance: Permanent Force, where the Primary Sponsored Person is entitled to receive this allowance.

The Service Allowance: Permanent Force will be as approved by the Defence Force Remuneration Tribunal.

Item 4 Concessions to English language requirement

Nil. Sub-clause 7.9 applies.

Item 5 Concessions to age requirement

Nil. Sub-clause 7.9(c) applies.
Schedule 4   Concessions to tasks of occupations in ANZSCO

Nil. Sub-clause 7.11 applies.
Schedule 5  Additional requirements for nomination

The Approved Sponsor by entering into this Agreement, agrees to only nominate Primary Sponsored Persons:

(a) who are fully trained in their particular occupational group and require only limited conversion training for assimilation into the Australian Defence Force. Primary Sponsored Persons will also possess relevant military skills for the Service they are being recruited to; and

(b) whose Degree qualification (where held) will be verified by Australian Education International, through the National Office of Overseas Skills Recognition (NOOSR), to be the equivalent of at least a degree under the Australian Qualifications Framework, prior to submitting a visa application; and

(c) for whom documentary evidence provided by the Primary Sponsored Person to the Approved Sponsor has been confirmed and assessed against Australian Defence Force standards and verified through interview, as required, to ensure that the Primary Sponsored Person possesses the required skills, qualifications and experience to meet Service standards for the occupational group.
Schedule 6    Variations to Reporting Requirements

Nil. Clause 11 applies.
Schedule 7  Domestic Recruitment Efforts Template

Summary of domestic recruitment efforts by [organisation name]:

<table>
<thead>
<tr>
<th>List each occupations sought under the labour agreement</th>
<th>ANZSCO code (order numerically from lowest to highest)</th>
<th>List all advertising or recruitment efforts by your organisation in the last six months for the occupation(^1)</th>
<th>Period of advertising or recruitment</th>
<th>Geographical target audience</th>
<th>Number of applications received</th>
<th>Number of applicants that were hired</th>
<th>Reasons that candidates were not successful</th>
<th>How many Australians do you currently employ in this occupation?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

I declare that the information I have provided in this document is true and correct and I am aware of the penalties for providing misleading or false information to the Commonwealth.

Signature: ____________________________________________

Name and position of authorised person: ___________________________ Date ________________

---

\(^1\) One method per table cell (e.g. Seek.com advertising). Please replicate the row if multiple methods have been used. You must attach examples of your efforts to recruit for each occupation.
Signing page

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

[Signature]

Print name and details of the Authorised Delegate

[Signature]

Date of signing: [dd/mm/yyyy]

Signature of Witness

[Signature]

Print name of Witness

[Signature]

Signed on behalf of the Department of Defence:

[Signature]

Air Commodore Henrik Ehlers
A/Head People Capability
Authorised Delegate

[Signature]

Date of signing: [dd/mm/yyyy]

Signature of Authorised Delegate

[Signature]

Signature of Witness

Major Ruth Weir
Witness

Date of signing: [dd/mm/yyyy]