



Australian Government

WORK AGREEMENT

Under the *Migration Act 1958*

Between

Commonwealth of Australia

and

XXXXXX

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Work Agreement

Date **XXX/2010**

Parties

Commonwealth of Australia represented by the Department of Immigration and Citizenship (DIAC)
(**the Commonwealth**).

The Commonwealth's particulars are set out in **Item 1 of Schedule 1**.

The party specified in **Item 2 of Schedule 1 (the Approved Sponsor)**.

The Approved Sponsor's particulars are set out in **Item 3 of Schedule 1**.

Background

- A. This Agreement, as a "work agreement" as defined in the Migration Act, will be administered by DIAC on behalf of the Commonwealth.
- B. This Agreement is a labour agreement that authorises the Approved Sponsor to recruit, employ or engage the services of people who are intended to be employed or engaged by the Approved Sponsor as holders of Subclass 457 (Business (Long Stay)) visas.
- C. The Commonwealth's reasons for entering into this Agreement are to support the economic, health or security benefits to Australia through the temporary entry or stay in Australia of sponsored overseas workers.
- D. The Approved Sponsor, whose business undertaking is described in **Item 4 of Schedule 1**, has demonstrated to the Commonwealth that sufficient numbers of Australian workers with the required skills are not readily available for employment in Australia.
- E. The Approved Sponsor is an "approved sponsor" as defined in the Migration Act by virtue of entering into this Agreement.
- F. This Agreement sets out the terms and conditions of the Approved

Sponsor's authority to recruit, employ or engage the services of persons who are holders of Subclass 457 visas.

Operative part

1 Definitions and interpretation

- 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 work agreement, any schedules, attachments and any document incorporated into this work agreement by reference.

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

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

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

Effective Date means:

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

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

Fax Number means a party's facsimile number set out in **Schedule 1**.

Migration Act means the *Migration Act 1958*.

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

On-hire means a person's business activities which include activities relating to either or both of:¹

- (a) the recruitment of labour for supply to other unrelated businesses (the person's client organisations); and
- (b) the hiring of labour to other unrelated businesses (again, client organisations).

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

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

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

Workplace law means the *Fair Work Act 2009*, and relevant equal employment opportunity, unlawful discrimination and occupational health and safety legislation regulating the employment by the Approved Sponsor of its sponsored overseas workers.

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

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

(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.

(Minister) a reference to the Commonwealth as a party to this Agreement includes, where appropriate, a reference to the Minister for Immigration and Citizenship and his or her authorised representative performing relevant functions as the Minister under the *Migration Act* or the *Migration Regulations*.

(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

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.

between the parties means a written notice, request, consent, approval or agreement.

2 Period

- 2.1 This Agreement commences from the Effective Date.
- 2.2 Unless terminated earlier in accordance with section 9 of this Agreement, the period of this Agreement will be the time specified in **Item 5 of Schedule 1**.
- 2.3 If no such time is specified, the period will be three (3) years.
- 2.4 If the Approved Sponsor is entitled to an option in accordance with **Item 6 of Schedule 1**, the Approved Sponsor may exercise the option by giving one (1) month's notice to the Commonwealth before the end of the period, whereupon:
 - (a) this Agreement will be renewed on the same terms and conditions except for clauses **2.2**, - **2.4**;
 - (b) the period of the renewed Agreement will be the option period specified in Item 6 of Schedule 1.
- 2.5 To avoid doubt, if an option to renew is not granted in **Item 6 of Schedule 1**, there will be no option to renew.

3 On hire, commercial-in-confidence, pre-contractual representations

- 3.1 If On-hire is prohibited in **Item 7 of Schedule 1**:
 - (a) the Approved Sponsor must not nominate a proposed occupation for an applicant or a proposed applicant, for On-hire;
 - (b) any such nominations will not be approved under this Agreement; and
 - (c) the Approved Sponsor must not utilise the services of a visa holder employed pursuant to a nomination under this Agreement, for On-hire.
- 3.2 To avoid doubt, if On-hire is not specifically allowed in **Item 7 of**

Schedule 1, On-hire will be taken to be prohibited.

- 3.3 If a party's information is specified as commercial-in-confidence information in **Item 8 of Schedule 1**, the other party will not disclose the information without the first party's prior written consent, except when disclosure of the information is required by law, statutory or portfolio duties, or in accordance with clause **8.6** of this Agreement.
 - 3.4 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 (regardless of whether the information is included in the Annexure to this agreement) and upon which the Commonwealth relied, was true and correct.
- ## 4 Nominations
- 4.1 A nomination under this Agreement means a nomination referred to in section 140GB of the Migration Act.
 - 4.2 The Approved Sponsor may nominate:
 - (a) an applicant, or proposed applicant, for a Subclass 457 visa in relation to:
 - (1) the applicant or proposed applicant's proposed occupation;
 - (2) the program to be undertaken by the applicant or proposed applicant; or
 - (3) the activity to be carried out by the applicant or proposed applicant, or
 - (b) a proposed occupation, provided the applicant or proposed applicant for the Subclass 457 visa who will work in the nominated occupation, has been identified in the nomination.
 - 4.3 If a limitation on the type of occupation, program or activity is specified in **Item 9 of Schedule 1**, the

Approved Sponsor may only nominate for those occupation, program or activity types.

4.4 If a limitation on the location of business sites is specified in **Item 9 of Schedule 1**, the Approved Sponsor may only nominate for those locations and must employ visa holders only at those sites.

4.5 The Approved Sponsor may only employ primary sponsored persons up to the maximum number for particular years of this Agreement specified in **Item 9 of Schedule 1**.

4.6 The Approved Sponsor must make nominations in accordance with the approved forms.

4.7 The Approved Sponsor must provide, as part of the nomination:

(a) The information required in the *Migration Regulations* and any further information specified in **Item 1 of Schedule 3**;

(b) The fee specified in the *Migration Regulations*.

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

5 Approval of nominations

5.1 DIAC (for the Commonwealth) will approve nominations in accordance with the criteria specified in the *Migration Regulations* and any requirements specified in **Item 2 of Schedule 3**.

5.2 DIAC will notify the Approved Sponsor of a decision whether or not to approve a nomination in accordance with the *Migration Regulations*.

5.3 The period of an approval of a nomination will be in accordance with the *Migration Regulations*.

6 Sponsorship obligations

6.1 The Approved Sponsor must satisfy its sponsorship obligations in the

Migration Regulations as varied, if at all, in **Schedule 4**, as follows:

(a) The obligation to cooperate with inspectors specified in **Item 1 of Schedule 4**.

(b) The obligation to ensure equivalent terms and conditions of employment specified in **Item 2 of Schedule 4**.

(c) The obligation to pay travel costs to enable sponsored persons to leave Australia specified in **Item 3 of Schedule 4**.

(d) The obligation to pay costs incurred by the Commonwealth to locate and remove an unlawful non-citizen specified in **Item 4 of Schedule 4**.

(e) The obligation to keep records specified in **Item 5 of Schedule 4**.

(f) The obligation to provide records and information to the Commonwealth as specified in **Item 6 of Schedule 4**.

(g) The obligation to provide information to the Commonwealth when certain events occur as specified in **Item 7 of Schedule 4**.

(h) The obligation to ensure a primary sponsored person does not work in an occupation other than an approved occupation, as specified in **Item 8 of Schedule 4**.

(i) The obligation not to recover certain costs from a primary sponsored person or secondary sponsored person specified in **Item 9 of Schedule 4**.

6.2 The Approved Sponsor must satisfy the training obligations in **Schedule 5** (if any) regarding Australian citizens.

6.3 The Approved Sponsor may carry out the obligations in **Schedule 5** itself or through contracted service providers.

6.4 The Approved Sponsor warrants that the training provided will be fit for

any purpose express or implied in **Schedule 5**.

- 6.5 The Approved Sponsor must satisfy its sponsorship obligations in **Schedule 6** (if any), which are additional obligations to the sponsorship obligations in the *Migration Regulations* as varied (if at all) in **Schedule 4**.
- 6.6 The Approved Sponsor must comply with Workplace law, and immigration laws regulating employment of the Approved Sponsor's sponsored overseas workers.

7 Notices

7.1 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); and
- (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 Address or to the Fax Number of the recipient; and
- (d) may be sent by email to the receiving party's Email Account provided the receiving party effectively acknowledges receipt by return email to the sending party's Email Account.

7.2 A notice to be served on the Commonwealth will be taken to be served if it is served on DIAC's address in **Item 1** of **Schedule 1**.

7.3 A party may change its Address, Fax Number or Email Account for the purpose of service by giving notice of that change to the other party in accordance with clause 7.1.

7.4 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 a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile communication was sent in its entirety to the Fax Number of the recipient; and
- (c) if the time of dispatch of a facsimile is not on a day, or is after 5.00 pm (local time) on a day, in which business generally is carried on in the place to which the facsimile communication is sent it will be taken to have been received at the commencement of business on the next day in which business is generally carried on in that place;
- (d) in the case of an email, when the receiving party effectively acknowledges receipt by return email to the sending party's Email Account.

8 Relationship between the parties, information sharing

8.1 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.

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

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

8.3 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.

8.4 If Approved Sponsor is constituted by more than one legal entity (such as a

partnership or an unincorporated association), each of those legal entities will be jointly and severally liable for the performance of all of the Approved Sponsor's obligations under this Agreement

- 8.5 The Approved Sponsor must comply with any reasonable request by the Commonwealth for information to enable the Commonwealth to meet its obligations this Agreement.
- 8.6 The Approved Sponsor consents to information concerning it which is relevant to the operation of this Agreement being shared between the Commonwealth and the State/Territory in which the Approved Sponsor conducts business, and between relevant Commonwealth agencies, including the Department of Immigration and Citizenship, the Department of Education, Employment and Workplace Relations, the Office of the Fair Work Ombudsman, Fair Work Australia, the Australian Taxation Office and the Australian Federal Police.

9 Termination

- 9.1 If the Commonwealth contends that the Approved Sponsor is in default under this Agreement, the Commonwealth may, without prejudice to any right of action or remedy which has accrued or which may accrue (including the Commonwealth's entitlement to terminate in accordance with clause 9.4):
- (a) serve reasonable notice on the Approved Sponsor, requiring the Approved Sponsor to rectify to the satisfaction of the Commonwealth, those aspects of the Approved Sponsor's performance which are of concern to the Commonwealth;
 - (b) suspend this Agreement in whole or in part if the Approved Sponsor does not comply with the notice; and
 - (c) terminate this Agreement

without prejudice to any right of action or remedy which has accrued or which may accrue.

- 9.2 If the Approved Sponsor is in breach of a sponsorship obligation in the *Migration Regulations*, the Approved Sponsor will be taken to be in default under this Agreement as if the statutory obligation was a contractual obligation of the Approved Sponsor, provided the Commonwealth elects to serve a notice under clause 9.1 in relation to the breach.
- 9.3 For the avoidance of doubt, a breach of the Approved Sponsor's warranty given in clause 3.4 with respect to pre-contractual information, will entitle the Commonwealth to serve a notice under clause 9.1 and/or to take any other contractual redress in accordance with this Agreement.
- 9.4 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.
- 9.5 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) for the purposes of specifying the period for when visas granted on the basis of the Agreement remain in effect under the *Migration Regulations*, all visas

granted on the basis of this Agreement permit the visa holder to remain in Australia for a period of not more than six months from the date upon which the visa is granted.

9.6 In the event this Agreement is terminated early for any reason, or for no reason:

- (a) the Approved Sponsor will continue to pay the employed visa holders for 28 days, during which time:
 - (1) the Approved Sponsor will use its best endeavours to assist the visa holders to find an alternative sponsor in accordance with their wishes; and
 - (2) the Commonwealth will, at its discretion, facilitate such transfers, or
- (b) the Approved Sponsor will assist the visa holders to apply for another type of appropriate substantive visa in accordance with their wishes; and
- (c) this sub-clause will survive the early termination.

9.7 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.

10 Dispute resolution

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

- (a) the party claiming that there is a dispute must Notify the other party of the details of the dispute;
- (b) the parties will use their best

endeavours to resolve the dispute by direct negotiation;

- (c) the parties must allow 28 days from notification of the dispute to reach a resolution or to agree to select some alternative dispute resolution procedure; and
- (d) if there is no resolution or agreement then a party may propose mediation or arbitration, or commence legal proceedings or terminate this Agreement.

10.2 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.

11 Assurances, counterparts and assignment

- 11.1 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.
- 11.2 This Agreement may be executed in any number of counterparts.
- 11.3 A party cannot assign or otherwise transfer its rights under this Agreement without the prior written consent of the other party.

12 Variation and entire agreement

- 12.1 A provision of this Agreement can only be varied by a later written document executed by or on behalf of all parties.
- 12.2 Except as provided in the Annexure, the contents of this Agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or

arrangements made between the parties regarding the subject matter of this Agreement, whether orally or in writing.

13 Fettering and publishing

13.1 Nothing in this Agreement fetters or detracts from the Commonwealth's discretions, functions or powers under the *Migration Act*, the *Migration Regulations*, Workplace law or other relevant Commonwealth laws.

13.2 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.

14 Legal expenses

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

14.2 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.

15 Invalidity and waiver

15.1 A word or provision must be read down if:

- (a) this Agreement is void, voidable, or unenforceable if it is not read down;
- (b) this Agreement will not be void, voidable or unenforceable if it is read down; and
- (c) the provision is capable of being read down.

15.2 A word or provision must be severed if:

- (a) despite the operation of clause 15.1, the provision is void,

voidable or unenforceable if it is not severed; and

- (b) this Agreement will be void, voidable or unenforceable if it is not severed.

15.3 The remainder of this Agreement has full effect even if clause 15.2 applies.

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

16 Survival after termination

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 commercial-in-confidence information, and the Approved Sponsor's sponsorship obligations.

17 Governing law and jurisdiction

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

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

18 Sanctions

18.1 Instead of terminating this Agreement, the Commonwealth may, in its discretion, bar the Approved Sponsor, for a specified period, from making further nominations under this Agreement.

18.2 The Commonwealth may, in its discretion, instead of terminating this Agreement or in addition to terminating this Agreement, take action against the Approved

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- Sponsor for a breach of contract to recover damages and/or for injunctive relief.
- 18.3 The Commonwealth may, in its discretion, instead of taking any enforcement action under this Agreement or in addition to taking such enforcement action, pursue a civil penalty under the *Migration Act* for failing to satisfy a sponsorship obligation.
- 18.4 The criteria that the Commonwealth may take into account in determining what enforcement action (if any) to take for a breach of contract by the Approved Sponsor are:
- (a) the past and present conduct of the Approved Sponsor in relation to Workplace law, and immigration laws regulating employment of the Approved Sponsor's sponsored overseas workers;
 - (b) the number of occasions on which the Approved Sponsor has failed to satisfy the sponsorship obligation;
 - (c) the nature and severity of the circumstances relating to the failure to satisfy the sponsorship obligation, including the period of time over which the failure has occurred;
 - (d) the period of time over which the Approved Sponsor has been an approved sponsor;
 - (e) whether, and the extent to which, the failure to satisfy the sponsorship obligation has had a direct or indirect impact on another person;
 - (f) whether, and the extent to which, the failure to satisfy the sponsorship obligation was intentional, reckless or inadvertent;
 - (g) whether, and the extent to which, the Approved Sponsor has cooperated with the Commonwealth including whether the Approved Sponsor informed the Commonwealth of the failure;
 - (h) the steps (if any) the Approved Sponsor has taken to rectify the failure to satisfy the sponsorship obligation, including whether the steps were taken at the request of the Commonwealth or otherwise;
 - (i) the processes (if any) the Approved Sponsor has implemented to ensure future compliance with the sponsorship obligation;
 - (j) the number of other sponsorship obligations that the Approved Sponsor has failed to satisfy, and the number of occasions on which the Approved Sponsor has failed to satisfy other sponsorship obligations; and
 - (k) any other relevant factors.
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Schedule 1 Parties, period and other matters

Item 1 The Commonwealth's particulars

Name: Department of Immigration and Citizenship:
 Address: 6 Chan Street, BELCONNEN ACT 2617
 Telephone Number: (02) 6264 2129 Fax Number: (02) 6264 1006
 Email Address: labour.agreement.section@immi.gov.au
 Contact officer: The Director, Labour Agreement and 457 Policy Section

Item 2 The Approved Sponsor

Name:
 ABN:
 Business structure:

Item 3 The Approved Sponsor's particulars

Address:
 Telephone Number:
 Email Address:
 Contact officer:

Item 4 The Approved Sponsor's business

Business Snow Sport Industry
 undertaking:
 Industry segment: Arts and Recreation Services

Item 5 Commencement and period

Effective Date:
 Cease Date:

Item 6 Option

Is there an option? No
 Option period: Not applicable

Item 7 On-hire

Is On-hire allowed? No

Item 8 Commercial-in-confidence information

Party: The Department of Immigration and Citizenship on behalf of the Commonwealth.

XXXXXX

The terms of this Agreement

All information provided to request and secure access

Item 9 Occupations

Occupation type: Ski/snowboard instructor ASCO 3993-27 ANZSCO 452314
Ski patroller (medic) ASCO 6399-79 (with some duties from ASCO
8319-79 which form a minority proportion of the person's duties)
ANZSCO 451899
Ski technician ASCO 3399-79 (with some duties from ASCO 8319-79
which form a minority proportion of the person's duties) ANZSCO
149999
Snow groomer ASCO 7119-79 ANZSCO 721999
Lift operator ASCO 7122-11 ANZSCO 341113

Business sites:

Annual maximum:

Year 1

Year 2

Year 3

Before the subsequent years of the term of operation commence, the Approved Sponsor may negotiate with the Commonwealth the ceiling for the subsequent year of the term of operation.

The Commonwealth reserves the right to make the final decision as to the ceiling for each year of the Agreement.

Schedule 2 Additional Definitions for this Agreement

AQF means Australian Qualifications Framework;

Industrial Instrument means an instrument in force under a law of the Commonwealth or the State/Territory that regulates workplace relations and prescribes terms and conditions of employment, including, but not limited to, an award or agreement made under the Commonwealth Fair Work (Registered Organisations) Act 2009 and an award or agreement made by a relevant State/Territory industrial tribunal or court;

Lift operator means an employee who possesses;

- a) accreditation or certification issued by the manufacturer(s) appropriate to the machinery used in the operations of the employer; **or**
- b) a “statement of assessment” issued by a qualified workplace assessor or human resource manager with the Approved Sponsor, that the primary visa applicant or proposed applicant has training and/or work experience appropriate to employment in the occupation for which they have been nominated; **and**
- c) a copy of the “statement of assessment” which has been endorsed by the human resource manager or other executive with the Approved Sponsor should be attached to nominations lodged under this Agreement for this occupation; **and**
- d) possess a minimum of two ski seasons experience in the occupation.

Report means information provided by the Sponsor to the Commonwealth to demonstrate its compliance with the obligations under this agreement and in a format determined by the Commonwealth to be fit for this purpose;

Ski or Snowboard Instructor means an employee who possesses;

- a) an APSI level 1 or higher level qualification or an equivalent overseas qualifications acceptable to the employer and provided for under the Alpine Resort Award 2010; **and**
- b) a minimum of two seasons experience in the occupation.

Ski Patroller (medic) means an employee who possesses;

- a) an ASPA first aid certificate or an equivalent overseas qualification acceptable to the ASPA; **and**
- b) a minimum of two seasons experience in the occupation;

Ski Technician means an employee who possesses;

- a) accreditation or certification issued by ski tuning manufacturer(s) appropriate to the machinery used in the operations of the employer; **or**
- b) a “statement of assessment” issued by a qualified workplace assessor or human resource manager with the Approved Sponsor, that the primary visa applicant or proposed applicant has training and/or work experience appropriate to employment in the occupation for which they have been nominated; **and**
- c) a copy of the “statement of assessment” which has been endorsed by the human resource manager or other executive with the Approved Sponsor should be attached to nominations lodged under this Agreement for this occupation; **and**
- d) a minimum of two seasons experience in the occupation;

Snow Groomer means an employee who possesses;

- (a) qualifications or work experience that can be readily assessed as appropriate to employment in the occupation for which they have been recruited:
 - (i) in this context, DIAC will take into consideration a “statement of assessment” issued by a qualified workplace assessor or human resource manager with the Approved Sponsor, that the primary visa applicant or proposed applicant has training and/or work experience appropriate to employment in the occupation for which they have been nominated; **and**

- (ii) a copy of the “statement of assessment” which has been endorsed by the human resource manager or other executive with the Approved Sponsor should be attached to nominations lodged under this Agreement for this occupation, **and**
- (b) a minimum of two seasons experience in the occupation.

TSMIT means Temporary Skilled Migration Income Threshold;

TSMIT Hourly Rate means the TSMIT Weekly Rate Divided by 38; and

TSMIT Weekly Rate means the annual salary multiplied by 6 and divided by 313.

Schedule 3 Nomination Requirements

Item 1 Further information to be supplied with a nomination

The Approved Sponsor must provide the following information in support of a nomination, in addition to the information specified in the Migration Regulations:

A certification by the Approved Sponsor as part of the nomination, in writing, that the qualifications and experience of the applicant or proposed applicant in relation to the nominated occupation are commensurate with the qualifications and experience specified for the nominated occupation.

Item 2 Further requirements for a nomination

The Approved Sponsor must meet the following requirements before a nomination will be approved:

- 1 The Approved Sponsor has certified as part of the nomination, in writing, that the qualifications and experience of the applicant or proposed applicant in relation to the nominated occupation are commensurate with the qualifications and experience specified for the nominated occupation as defined under Schedule 2.
 - 2 The period of employment nominated is for a maximum of six (6) months.
 - 3 The Approved Sponsor has certified that the applicant or proposed applicant has sufficient English language proficiency to enable the applicant or proposed applicant to take reasonable care of:
 - (a) his or her own health and safety in the workplace;
 - (b) the health and safety of persons who may be affected by the acts or omissions of the applicant or proposed applicant in the workplace; and
 - (c) understands his or her workplace and employment conditions
 4. The Approved Sponsor has certified that they will provide, in the native language of the applicant or proposed applicant, information, instruction and training that may be necessary to ensure the health and safety of:
 - (a) the applicant or proposed applicant in the workplace; and
 - (b) persons who may be affected by the acts or omissions of the applicant or proposed applicant in the workplace.
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Schedule 4 Variation of sponsorship obligations

Item 1 Obligation to cooperate with inspectors

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

Item 2 Obligation to ensure equivalent terms and conditions of employment

The obligation in regulation 2.79 of the Migration Regulations is varied in accordance with the following provisions.

- 1 Where a primary sponsored person is a Ski Instructor or Snowboard Instructor who:
 - a. is employed on a part-time basis; or
 - b. has worked less than full-time hours in a particular week;

the Approved Sponsor must pay to the primary sponsored person the hourly market salary rate or the TSMIT Hourly Rate, whichever is greater.
- 2 For the avoidance of doubt, all other primary sponsored persons to whom this Agreement is applicable are to be employed on a full-time basis and paid the market salary rate or the TSMIT (which is indexed and updated annually), whichever is greater.
- 3 The market salary rate or the TSMIT (whichever is greater), must be paid to the primary sponsored person in Australia and in Australian dollars and at least fortnightly.
- 4 Any deductions must be approved in writing by the primary sponsored person.

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

The obligation in regulation 2.80 of the Migration Regulations is varied in accordance with the following provisions.

1. The Approved Sponsor must pay travel costs in accordance with Regulation 2.80 of the Migration Regulations in circumstances where the written request to pay travel costs is made while the person whose travel will be funded, is a person who is:
 - (a) a Primary Sponsored Person; or
 - (b) a Secondary Sponsored Person.

Item 4 Obligation to pay costs incurred by the Commonwealth to locate and remove unlawful non-citizens

The obligation in regulation 2.81 of the Migration Regulations is not varied.

Item 5 Obligation to keep records

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

Item 6 Obligation to provide records and information to the Commonwealth

The obligation in regulation 2.83 of the Migration Regulations is not varied.

Item 7 Obligation to provide information to the Commonwealth when certain events occur

The obligation in regulation 2.84 of the Migration Regulations is not varied.

Item 8 Obligation to ensure primary sponsored person does not work in an occupation other than an approved occupation

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

Item 9 Obligation not to recover certain costs from a primary sponsored person or secondary sponsored person

The obligation in regulation 2.87 of the Migration Regulations is not varied.

Schedule 5 Training Requirements

The Approved Sponsor and its Directors must continue to be:

- a) of good standing, including that they have a good record of complying with Commonwealth and State/Territory laws, and where they are a party to a Federal Industrial Instrument, have a satisfactory record of compliance with Federal workplace relations laws;
 - b) an employer with a good record of training Australians including provision of ongoing skills development and re-training opportunities to Australians.
1. The Approved Sponsor must over the Term of Operation of the Agreement continue to demonstrate a commitment to the provision of employment, training and career progression opportunities to Australians through:
 - a) the provision of a structured training strategy, with a focus on accredited training enabling Australians to progress from entry level to skilled and managerial positions thereby reducing the level of reliance on overseas workers. Structured training will include but is not limited to accredited in-house and external training courses, financial assistance to undertake training relevant to employment;
 - b) recruitment campaigns (in newspapers, professional journals and/or the internet) for the positions covered by this Agreement;
 - c) annual recruitment program for Australians and, if appropriate, recent Australian graduates (less than 12 months post-qualification experience);
 - d) provision of specialised training clinics and hiring clinics for snow sport instructors in preparation for the ski season and training for Australians seeking APSI certification;
 - e) facilitation of international employment opportunities for Australians through affiliated overseas companies; and
 - f) compliance with the competency and ethical standards of, and consultation with, relevant industry associations (including *APSI* and *ASPA*) on initiatives to promote employment and training opportunities for Australians.
 2. The Approved Sponsor must for each year of the term of operation, ensure that:
 - a) a minimum of 2 per cent of the payroll of the business will be expended on payments allocated to an industry training fund; **or**
 - b) a minimum of 1 per cent of the payroll of the business will be expended on the provision of training to employees of the business.
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Schedule 6 Further sponsorship obligations

- 1 Immediately on arrival in Australia, the Approved Sponsor must provide primary sponsored persons and secondary sponsored persons:
 - (a) appropriate on-arrival assistance, including transport from the airport, assistance with finding accommodation and establishing household; and
 - (b) information on how to contact their local community groups and assistance.
- 2 Following their arrival in Australia, regardless of whether the Approved Sponsor has been requested by a primary sponsored person or a secondary sponsored person to do so, the Approved Sponsor must use its best endeavours to assist primary sponsored persons and secondary sponsored persons to establish links with the broader community, especially with respect to:
 - (a) services of health professionals, schools and libraries; and
 - (b) relevant religious organisations, parents' groups, child care providers and migrant services.
- 3 When recruiting primary sponsored persons or secondary sponsored persons, the Approved Sponsor must make all reasonable inquiries to satisfy itself that the primary sponsored person or secondary sponsored persons do not owe money as a result of being recruited.
- 4 The Approved Sponsor must not nominate primary sponsored persons or secondary sponsored persons who it has assessed, reasonably suspects or ought reasonably suspect of owing money as a result of being recruited.
- 5 The Commonwealth may, from time to time, audit the Approved Sponsor's performance of its obligations in this Agreement and the Approved Sponsor will cooperate with the Commonwealth for the purpose of such audits.
- 6 Without limiting the generality of the preceding clause, the Approved Sponsor will:
 - (c) liaise with and provide information to the Commonwealth as reasonably required by the Commonwealth for the purposes of such audits;
 - (d) comply with the Commonwealth's reasonable requests or requirements for the purposes of such audits.
- 7 The Approved Sponsor acknowledges that it has provided:
 - (a) the information set out in the Annexure (if any);
 - (b) the documents attached to the Annexure (if any),
 to the Commonwealth for the purpose of demonstrating:
 - (c) the Approved Sponsor's corporate background if the Approved Sponsor is a body corporate, or the Approved Sponsor's business background otherwise;
 - (d) the Approved Sponsor's industry background;
 - (e) the skill level and occupations sought;
 - (f) evidence of shortage of skills sought;

- (g) salaries, employment and accommodation provisions for the specified position (including but not limited to a Letter of Offer to be provided to prospective employees to be nominated under this Agreement, setting out the terms and conditions of their employment); and
 - (h) evidence of the training, employment and career progression opportunities provided to Australian citizens.
- 8 The Approved Sponsor acknowledges that the Commonwealth has relied on the information and/or documents (if any) referred to in the Annexure when deciding to enter into this Agreement.
- 9 The Approved Sponsor warrants that the information and/or documents (if any) referred to in the Annexure were true and correct at the date of this Agreement.
- 10 The Approved Sponsor will notify the Commonwealth as soon as the Approved Sponsor becomes aware that any information or documents in the Annexure has changed or is no longer true and correct.
- 11 Unless specified otherwise in the Migration Act or the Migration Regulations, the Approved Sponsor will retain all records generated for the purposes of this Agreement for seven (7) years from the date of expiration or termination of this Agreement.
- 12 The Approved Sponsor acknowledges that:
- (a) The rights of the Commonwealth under this Agreement are in addition to any relevant power, right or entitlement of the Auditor-General or the Privacy Commissioner; and
 - (b) Nothing in this Agreement reduces, limits, restricts or derogates from in any way any relevant function, power, right or entitlement of the Auditor-General or the Privacy Commissioner.
- 13 The Approved Sponsor will allow:
- (a) the Commonwealth;
 - (b) the Australian National Audit Office; and
 - (c) the Ombudsman's Office,
- to access the Approved Sponsor's premises at all reasonable times and to inspect and copy all relevant documentation and records, however stored, in the Approved Sponsor's possession or control, with respect to the Approved Sponsor's performance of its obligations under the Agreement.
- 14 The Commonwealth's rights in the preceding clause are subject to:
- (a) the provision of reasonable prior notice to the Approved Sponsor;
 - (b) compliance with the Approved Sponsor's reasonable security procedures;
 - (c) each party bearing its own cost arising out of or in connection with any access, audit or inspection; and
 - (d) if appropriate, entering into a deed of confidentiality relating to non-disclosure of the Approved Sponsor's confidential information.
- 15 The Approved Sponsor will ensure that any other agreements that it enters into with anyone else for the purpose of this Agreement, contains an equivalent clause granting the rights of access as specified in this Schedule. This clause will survive for seven (7) years from the date of expiration or termination of this Agreement.

- 16 In carrying out its rights and obligations under this Agreement, the Approved Sponsor may use a migration agent but must only use the services of migration agents who are registered with the Migration Agents Registration Authority (MARA).
- 17 The Approved Sponsor must not cause or permit a change in control of the Approved Sponsor that would reasonably be regarded as inimical to the Approved Sponsor's capacity to perform its obligations under this Agreement.
- 18 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.
- 19 The Approved Sponsor must, within seven (7) days of receiving notice from the Commonwealth, provide such information and supporting evidence as the Commonwealth may request in relation to a change in control of the Approved Sponsor that would reasonably be regarded as inimical to the Approved Sponsor's capacity to perform its obligations under this Agreement, including but not limited to:
- (a) shareholdings;
 - (b) issued shares;
 - (c) board of Directors;
 - (d) board of management;
 - (e) executive officers;
 - (f) voting rights;
 - (g) partnership composition, if applicable; and
 - (h) the executive committee of an unincorporated association, if applicable,
- of the Approved Sponsor, including the dates of any changes to those matters.
- 20 The Approved Sponsor releases the Commonwealth for liability arising out of this Agreement whether for an alleged breach of contract, negligence or other cause of action. To avoid doubt, the Commonwealth will not be liable to the Approved Sponsor for Damages or compensation, including loss of profits for actions or omissions in relation to the Commonwealth's obligations under this Agreement.
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Signing page

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

.....)
Print name and details of the delegate

.....
Signature of Witness

.....
Print name of Witness

Date of signing:/...../.....

Signed by)

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

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Print name and details of Director

.....
Print name and details of Director/Secretary
Date of signing:/...../.....

Signed by:)

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

.....
Signature of Witness

.....
Print name of Witness

Date of signing:/...../.....

Signed by:)

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

.....
Signature of Witness

.....
Print name of Witness

Signed by:)

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

.....
Signature of Witness

Date of signing:/...../.....

.....
Print name of Witness

Annexure

Information

- 1 Business case for an Agreement from the employer
- 2 Conditions of employment for primary sponsored persons under this Agreement
- 3 Stakeholder consultation
- 4 Financial capacity to meet sponsorship obligations

Documents

- 1 Initial submission from the employer
 - 2 Letter of offer from the employer
 - 3a Letter to the Australian Workers' Union seeking comment on the proposed labour agreement
 - 3b Letters of support from the Australian Ski Patrol Association and Australian Professional Snowsport Instructors Inc.
 - 4 Letter from a Chartered or a Certified Practising Accountant stating that the employer has the financial viability to fulfil its obligations under the labour agreement.
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