



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

CostaExchange Pty Ltd T/A Costa (Berry Category)
(AG2019/2033)

COSTA (BERRY CATERGORY) ENTERPRISE AGREEMENT 2019 - 2023

Agricultural industry

COMMISSIONER BISSETT

MELBOURNE, 13 DECEMBER 2019

Application for approval of the Costa (Berry Category) Enterprise Agreement 2019 - 2023.

[1] An application has been made for approval of an enterprise agreement known as the *Costa (Berry Category) Enterprise Agreement 2019 - 2023* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Costa Exchange Pty Ltd T/A Costa (Berry Category). The Agreement is a single enterprise agreement. A decision¹ dealing with preliminary issues was issued by the Fair Work Commission on 6 December 2019.

[2] The Employer has provided written undertakings. A copy of the undertakings is attached in Annexure A. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and that the undertakings will not result in substantial changes to the Agreement.

[3] Pursuant to subsection 190(3) of the Act, I accept the Undertakings.

[4] Subject to the Undertakings, I am satisfied that each of the requirements of ss.186, 187, 188 and 190 as are relevant to this application for approval have been met.

[5] The Agreement lodged contained a typographical error at clause 13.8. On 20 September 2019 the applicant filed an amended page 8 to the Agreement pursuant to s.586 of the Act. I am satisfied that the corrections should be made and that it is appropriate to do so pursuant to s.586 of the Act

[6] The Australian Workers' Union, being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) I note that the Agreement covers the organisation.

[7] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 20 December 2019. The nominal expiry date of the Agreement is 30 June 2023.



COMMISSIONER

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Endnote:

¹ [2019] FWC 8291.

FWC Matter No.:

AG2019/2033

Applicant:

CostaExchange Pty Ltd

Undertaking- section 190

I, Billie Cassar, National HR Manager give the following undertaking with respect to the *Costa (Berry Category) Enterprise Agreement 2019 - 2023* ("the Agreement"):

1. I have the authority given to me by CostaExchange Pty Limited to provide this undertaking in relation to this application before the Fair Work Commission.

Casual Employees

2. Clause 25.2 will be deleted and replaced with:

In addition to the base rate of pay, casuals will receive a loading of 25%. The loading is paid instead of annual leave, personal/carer's leave, notice of termination, redundancy benefits and other full-time or part-time employment entitlements provided for in this Agreement. Nothing in this clause affects a casual employee's entitlement to unpaid leave in accordance with the NES

Annual Salary

3. Further to Schedule D, clause D.2(d) will be deleted and replaced with:
 - (i) The annual salary will be reviewed each 4 weeks to determine if the Employee in that period was paid more than if the Horticulture Award 2010 applied to them.
 - (ii) the audit will be conducted within 14 days of the end of the 4 week period in which the hours were worked
 - (iii) if the Employee was paid equal to or less than what the employee would have been paid under the Horticulture Award 2010 then Costa will reimburse the Employee for the difference plus 3%.

Minimum engagement – Casual Employees

4. A Casual Employee (including a Casual Pieceworker) will be engaged and paid for at least 2 consecutive hours of work on each occasion they are required to attend work.

Job Search Entitlement (Non-Redundancy)

5. A new clause 13.10 will be added:

- a) Where the Company has given notice of termination to an employee (other than a Casual Employee), the employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment.
- b) The time off under clause (a) is to be taken at times that are convenient to the employee after consultation with the Company.
- c) This clause 13.10 does not apply where clause 13.8 applies.

Higher Duties

6. Clause 38.1 is replaced with the following:

'An employee engaged for more than two hours during one day or shift on duties carrying a higher minimum wage than their ordinary classification will be paid the higher minimum wage for the whole day or shift'.

A new clause 38.2 will be added:

'If an employee is engaged for two hours or less during one day or shift on duties carrying a higher minimum wage than their ordinary classification, they must be paid the higher minimum wage for the time so worked'.

Accident Pay

7. Clause 20 of the Horticulture Award 2010 will apply to the Agreement:

20. Accident pay

20.1 Definitions

For the purposes of this clause, the following definitions will apply:

(a) Accident pay means a weekly payment made to an employee by the employer that is the difference between the weekly amount of compensation paid to an employee pursuant to the applicable workers' compensation legislation and the weekly amount that would have been received had the employee been on paid personal leave at the date of the injury (not including over award payments) provided the latter amount is greater than the former amount.

(b) Injury will be given the same meaning and application as applying under the applicable workers' compensation legislation covering the employer.

20.2 Entitlement to accident pay

The employer must pay accident pay where an employee suffers an injury and weekly payments of compensation are paid to the employee under the applicable workers' compensation legislation for a maximum period of 26 weeks.

20.3 Calculation of the period

(a) The 26 week period commences from the date of injury. In the event of more than one absence arising from one injury, such absences are to be cumulative in the assessment of the 26 week period.

(b) The termination by the employer of the employee's employment within the 26 week period will not affect the employee's entitlement to accident pay.

Annexure A

(c) For a period of less than one week, accident pay (as defined) will be calculated on a pro rata basis.

20.4 When not entitled to payment

An employee will not be entitled to any payment under this clause in respect of any period of paid annual leave or long service leave, or for any paid public holiday.

20.5 Return to work

If an employee entitled to accident pay under this clause returns to work on reduced hours or modified duties, the amount of accident pay due will be reduced by any amounts paid for the performance of such work.

20.6 Redemptions

In the event that an employee receives a lump sum payment in lieu of weekly payments under the applicable workers' compensation legislation, the liability of the employer to pay accident pay will cease from the date the employee receives that payment.

20.7 Damages independent of the Acts

Where the employee recovers damages from the employer or from a third party in respect of the said injury independently of the applicable workers' compensation legislation, such employee will be liable to repay to the employer the amount of accident pay which the employer has paid under this clause and the employee will not be entitled to any further accident pay thereafter.

20.8 Casual employees

For a casual employee, the weekly payment referred to in clause 20.1(a) will be calculated using the employee's average weekly ordinary hours with the employer over the previous 12 months or, if the employee has been employed for less than 12 months by the employer, the employee's average weekly ordinary hours over the period of employment with the employer. The weekly payment will include casual loading but will not include over award payments.

Overtime - Sunday

8. A new clause 30.8 will be added:

'All employees (other than a Casual employee) required to work overtime on a Sunday will be paid for a minimum of three hours'.

Jury Service

9. Clause 20.2 will be added:

20.2 Reimbursement for jury service

- a) A full-time employee required to attend for jury service during their ordinary hours of work must be reimbursed by the Company an amount equal to the difference between the amount paid to the employee in respect of the

employee's attendance for such jury service and the wages the employee would have received in respect of the ordinary hours the employee would have worked had the employee not been on jury service.

- b) Where a part-time employee is required to attend for jury service and such attendance coincides with a day on which the employee would normally be required to work, payment must be made to the employee in accordance with clause 20.2(a).

Leading Hand Allowance

- 10. No employee who is classified below a Level 4 in the classification structure will be allocated Leading Hand Duties unless they are paid for any relevant higher duties for (i.e. higher duties would be Level 4 or above).

Automatic Progression

- 11. Automatic progression after reaching the specified amount of service occurs *within* a Level (i.e. 1A to 1B) and not between Levels (i.e. not Level 1 to Level 2) – i.e. automatic progression from Level 1A to 1B occurs after 12 months service automatically. There is no automatic progression from Level 1B to 2A.

Allowances

- 12. **Wet work allowance**

Clause 35.5(b) will be added:

In the event the Company does not provide adequate wet weather protection, the employee must be paid an amount of 10% of the standard rate for each hour that they are required to work in the wet place.

Tool and equipment allowance

Clause 35.6(b) will be added:

Where the employer requires an employee to supply their own tools and equipment (i.e. where the employer does not provide the employee with tools and equipment), the employer must reimburse the employee for the cost of supplying such tools and equipment. The provisions of this clause do not apply where the tools and equipment are paid for by the employer.

Casual Overtime

- 13. Clause 15.4 of the Enterprise Agreement is 'struck out' and no longer forms part of the Enterprise Agreement.

Night Shift Allowance

- 14. Clause 36.4 of the Enterprise Agreement is 'struck out' and replaced by the following:

Where a full-time, part-time or maximum term employee is rostered for a shift where the shift end time is after 5:00pm and before 8:00am (excluding public holidays),

those employees will be paid a loading of 15% of the employee's base rate for that shift.

Schedule A Classification Structure

15. An employee's classification is to be determined by reference to the definitions set out A.1 of Schedule A. The classification table is indicative of where a particular role is classified at the time of the Enterprise Agreement but may be reviewed in line with the definitions set out in A.1 of Schedule A.

Schedule A.1 is amended/clarified as follows:

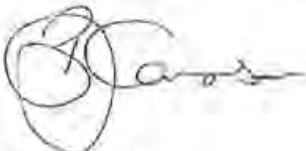
- (a) A Level 1 employee is required to:
- (i) have a *basic understanding of crop issues* (not a 'general understanding')
 - (ii) work under *direct supervision* (not 'general supervision').
- (b) A 'Lead Irrigator' (referred to in the classification table as a 'Level 3' in the 'Irrigation' section) is not required to take on any supervisory duties but is required to operate with less supervision, exercises a higher degree of discretion in their role and has skills and expertise over and above the skills and expertise expected of a Level 2 Irrigator.

16. No employee will be disadvantaged by the application of the classification structure in Schedule A to the Agreement in place of the classifications structure in Schedule B to the *Horticulture Award 2010*.

Employer name: CostaExchange Pty Limited

Authority to sign: National HR Manager

Signature:



Date: 17 October 2019

Note - this agreement is to be read together with an undertaking given by the employer. The undertaking is taken to be a term of the agreement. A copy of it can be found at the end of the agreement.

COSTA (BERRY CATEGORY) ENTERPRISE AGREEMENT 2019 – 2023



1. TITLE

- 1.1. This Agreement shall be known as the Costa (Berry Category) Enterprise Agreement 2019 – 2023 (the “Agreement”).

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3. AREA, INCIDENCE AND PARTIES BOUND

- 3.1.** This Agreement shall be binding upon CostaExchange Pty Ltd, trading as Costa (Berry Category) (the "Company") and all employees of the Company employed in classifications noted in Schedule A – Classification Structure and Definitions, of this Agreement, and that are covered by the Horticulture Award 2010, in all Costa (Berry Category) facilities in Australia, including any new Costa (Berry Category) operation that the Company may establish during the life of this Agreement.

4. DATE AND PERIOD OF OPERATION

- 4.1.** This Agreement shall commence in the first full pay period on or after 1 July 2019.
- 4.2.** The nominal expiry date of the Agreement is 30 June 2023. This Agreement shall remain in operation after the expiry date until replaced by another Agreement or terminated in accordance with the Fair Work Act (2009) (Cth).

5. RELATIONSHIP TO AWARDS AND STANDARDS

- 5.1.** This Agreement determines all of the terms and conditions of employment of the employees bound by it.
- 5.2.** The Fair Work Act (2009) (Cth) and the National Employment Standards (NES) apply to all employees covered by this Agreement except where this Agreement provides a more favourable outcome for the employees in a particular respect.
- 5.3.** A copy of this Agreement shall be accessible for all employees at their workplace.

6. NO EXTRA CLAIMS

- 6.1. It is a condition of this Agreement that no further claims of wages or other terms or conditions of employment will be pursued by the employees for the duration of this Agreement.

7. AIMS OF AGREEMENT

- 7.1. This Agreement aims to retain a berry industry in Australia that produces berries for the domestic and export market in peak condition and at world competitive prices. The parties agree that the conditions reflected in this Agreement will provide sustainable permanent and seasonal employment with the Company at a fair price that ensures security of employment in a viable agricultural industry.
- 7.2. The parties also agree that the objectives of this Agreement are to facilitate:
- a) the development and maintenance of the most productive and harmonious working relationship obtainable; and
 - b) workplace productivity; and
 - c) the profitable production of the highest possible quality product at the lowest possible cost.
- 7.3. It is recognised that an important factor in reaching the above objectives is the development of a working environment where all parties are involved in the decision making process. The parties commit to co-operating positively to increase the efficiency, productivity and competitiveness of the enterprise.

8. CONSULTATION

- 8.1. This term applies if the Company:
- a) has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
 - b) proposes to introduce a change to the regular roster or ordinary hours of work of employees.

Major Change

- 8.2. For a major change referred to in **subclause 8.1 (a)**:
- a) the Company must notify the relevant employees of the decision to introduce the major change; and
 - b) clauses 8.3 to 8.9 apply.
- 8.3. The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 8.4. The Company must recognise the representative if:
- a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - b) the employee or employees advise the Company of the identity of the representative.
- 8.5. As soon as practicable after making its decision, the Company must:
- a) discuss with the relevant employees:
 - i. the introduction of the change; and
 - ii. the effect the change is likely to have on the employees; and
 - iii. measures the Company is taking to avert or mitigate the adverse effect of the change on the employees; and

- b) for the purposes of the discussion - provide, in writing, to the relevant employees:
 - i. all relevant information about the change including the nature of the change proposed; and
 - ii. information about the expected effects of the change on the employees; and
 - iii. any other matters likely to affect the employees.
- 8.6. However, the Company is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 8.7. The Company must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- 8.8. If a term in this Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the Company, the requirements set out in **subclause 8.2 (a)** and **clauses 8.3** and **8.5** are taken not to apply.
- 8.9. In this term, a major change is likely to have a significant effect on employees if it results in:
 - a) the termination of the employment of employees; or
 - b) major change to the composition, operation or size of the Company's workforce or to the skills required of employees; or
 - c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
 - d) the alteration of hours of work; or
 - e) the need to retrain employees; or
 - f) the need to relocate employees to another workplace; or
 - g) the restructuring of jobs.
 - h) change to regular roster or ordinary hours of work
- 8.10. For a change referred to in **subclause 8.1 (b)**:
 - a) the Company must notify the relevant employees of the proposed change; and
 - b) clauses 8.11 to 8.15 apply.
- 8.11. The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 8.12. The Company must recognise the representative if:
 - a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - b) the employee or employees advise the Company of the identity of the representative.
- 8.13. As soon as practicable after proposing to introduce the change, the Company must:
 - a) discuss with the relevant employees the introduction of the change; and
 - b) for the purposes of the discussion—provide to the relevant employees:
 - i. all relevant information about the change, including the nature of the change; and
 - ii. information about what the Company reasonably believes will be the effects of the change on the employees; and
 - iii. information about any other matters that the Company reasonably believes are likely to affect the employees; and

- c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

- 8.14. However, the Company is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 8.15. The Company must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- 8.16. In this term **relevant employees** means the employees who may be affected by a change referred to in **clause 8.1**.

9. ACCEPTABLE BEHAVIOUR

- 9.1. The Company has established acceptable standards that all employees of the Company are expected to comply with.
- 9.2. These standards should be read as the minimum requirements expected of all employees in the day to day performance of their role with the Company.
- 9.3. Employees are expected to behave in such a way that upholds the values of the Company at all times.
- 9.4. Employees are required to adhere to all safe work practices, as set by the Company.
- 9.5. In carrying out their duties, employees shall take all necessary steps to ensure that the quality, accuracy and timeliness of any job or task is maintained to the satisfaction of management.
- 9.6. Employees are required to refrain from taking any action that might place their own safety, or that of others, at risk.
- 9.7. Employees shall not impose any restriction or limitations on the measurement or review of work methods or the utilisation of labour under the terms and conditions of this Agreement.
- 9.8. Employees must notify the Company of changes which may affect their ability to perform duties at work. This may include, but is not limited to:
 - a) Changes to functional capacity;
 - b) Inability to attend work, including incarceration;
 - c) Loss of relevant licenses; or
 - d) Criminal charges relevant to the role performed.

10. INDIVIDUAL FLEXIBILITY ARRANGEMENTS

- 10.1. The Company and employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement if:
 - a) the Agreement deals with one or more of the following matters:
 - i. arrangements about when work is performed;
 - ii. overtime rates;
 - iii. penalty rates;
 - iv. allowances;
 - v. leave loading; and
 - b) the arrangement meets the genuine needs of the Company and employee in relation to one or more of the matters mentioned in **subclause 10.1 (a)**; and
 - c) the arrangement is genuinely agreed to by the Company and employee.

- 10.2.** The Company must ensure that the terms of the individual flexibility arrangement:
- a) are about permitted matters under section 172 of the Fair Work Act 2009; and
 - b) are not unlawful terms under section 194 of the Fair Work Act 2009; and
 - c) result in the employee being better off overall than the employee would have been if no arrangement had been made.
- 10.3.** The Company must ensure that the individual flexibility arrangement:
- a) is in writing; and
 - b) includes the name of the Company and employee; and
 - c) is signed by the Company and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
 - d) includes details of:
 - i. the terms of the Agreement that will be varied by the arrangement; and
 - ii. how the arrangement will vary the effect of the terms; and
 - iii. how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - e) states the day on which the arrangement commences.
- 10.4.** The Company must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 10.5.** The Company or employee may terminate the individual flexibility arrangement:
- a) by giving no more than 28 days of written notice to the other party to the arrangement; or
 - b) if the Company and employee agree, in writing at any time.

11. GRANDFATHERING PROVISIONS

- 11.1.** An Employee that was employed by the Company on or before 1 July 2019 in full-time employment or part-time employment and, immediately prior to the commencement of this Agreement, was covered by the *Costa (Berry Category) Enterprise Agreement 2015 - 2019* ("2015 Agreement"), will continue to be paid in accordance with **clause 19 – Extra Payment** of the 2015 Agreement and receive a 2.5% pay increase in the first full pay period on or after 1 July each year in lieu of the:
- a) Penalty rates, shift rates, overtime rates and annual leave loading under this Agreement; and
 - b) wage increases under **clause 27 – Scheduled Increases** of this Agreement.
- 11.2.** An Employee under **clause 11.1** can elect to be paid in accordance with this Agreement by giving the Company two weeks' notice.
- 11.3.** An election under **clause 11.2** may be made at any time but cannot be reversed.
- 11.4.** An employee that is employed under the conditions in this clause will receive on an overall basis at least the same terms and conditions under this Agreement as if this clause did not apply.

12. TYPES OF EMPLOYMENT

Engagement

- 12.1. Employment can be full-time, part-time, maximum-term or casual. At the time of engagement the Company will inform each employee of the terms of their engagement and in particular whether they are to be full-time, part-time, maximum-term or casual.

Probation

- 12.2. Employment of a full-time employee or part-time employee shall be subject to a six-month probationary period. During the period of an Employee's probation, the Company or the Employee may terminate the employment by giving one weeks' notice in writing. The Company may make a payment in lieu of part or all of the notice period. The notice period does not apply in respect to an Employee whose employment is terminated based on his or her serious misconduct.

Full-time employment

- 12.3. A full-time employee is an employee who is engaged to work an average of 38 ordinary hours per week.

Part-time employment

- 12.4. A part-time employee is engaged to work an average of fewer than 38 ordinary hours per week.
- 12.5. Part-time employees are entitled to pro rata equivalent pay and conditions to those of full-time employment.
- 12.6. The Company must inform a part-time employee of their ordinary hours of work and, to the extent reasonably practicable, starting and finishing times. The Company and part-time employee may agree to vary the ordinary hours of work.
- 12.7. All time worked in excess of the hours mutually arranged will be overtime and paid for at the appropriate overtime rate.

Casual employment

- 12.8. Casual employees shall be engaged on a daily basis. In recognition of the financial circumstances faced by casual employees, the company will endeavor to provide as much notice as is reasonably practicable in the event of an unplanned seasonal stand down or the termination of the employee's employment.

Maximum-term employment

- 12.9. A maximum-term employee is a full-time employee or part-time employee engaged to work, on a full or part-time basis, for a specific period of time or task. The employment of a maximum-term employee can be terminated by either party prior to the specified end date or completion of the task on giving a period of notice in accordance with **clause 13 – Termination of Employment and Redundancy**.
- 12.10. Maximum-term employees are entitled to pro rata equivalent pay and conditions to those of full-time employment, for the duration of the employment contract.

13. TERMINATION OF EMPLOYMENT AND REDUNDANCY

- 13.1. The notice period within this clause applies to all full-time, part-time and maximum-term employees covered by this Agreement.
- 13.2. An employee must give the Company notice of termination in accordance with **Table 1—Period of Notice**.

Table 1 – Period of Notice

Employee's period of continuous service with Company	Period of notice
Not more than one year	At least one week
More than one year but not more than three years	At least two weeks
More than three years but not more than five years	At least three weeks
More than five years	At least four weeks

13.3. Where notice is given by the Company, the notice outlined above is increased by one week where the employee:

- a) is over 45 years old; and
- b) has completed at least two years of continuous service with the Company.

13.4. Redundancy is provided for in the NES and applies to full-time and part-time employees.

Employee leaving during redundancy notice period:

13.5. An employee given notice of termination in circumstances of redundancy may terminate their employment during the minimum period of notice prescribed by **clause 13.2** and **clause 13.3** of this Agreement.

13.6. The employee is entitled to receive the benefits and payments they would have received under **clause 13.4** of this Agreement had they remained in employment until the expiry of the notice.

13.7. However, the employee is not entitled to be paid for any part of the period of notice remaining after the employee ceased to be employed.

Job Search Entitlement:

13.8. Where the Company has given notice of termination to an employee (other than a casual employee or a maximum term employee) in circumstances of redundancy, the employee must be allowed time off without loss of pay of up to one day each week of the minimum period of notice prescribed by **clause 13.2** and **clause 13.3** of this Agreement for the purpose of seeking other employment.

13.9. If an employee is allowed time off without loss of pay of more than one day under **clause 13.8**, the employee must, at the request of the Company, produce proof of attendance at an interview.

- a) A statutory declaration is sufficient for the purpose of **clause 13.8**.
- b) An employee who fails to produce proof when required under **clause 13.9** is not entitled to be paid for the time off.

14. RIGHT TO REQUEST CASUAL CONVERSION

14.1. A person engaged by the Company as a regular casual employee may request that their employment be converted to full-time or part-time employment.

14.2. A regular casual employee is a casual employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee under the provisions of this Agreement.

- 14.3. A regular casual employee who has worked equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to full-time employment.
- 14.4. A regular casual employee who has worked less than equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.
- 14.5. Any request under this clause must be in writing and provided to the Company.
- 14.6. Where a regular casual employee seeks to convert to full-time or part-time employment, the Company may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the employee.
- 14.7. Reasonable grounds for refusal include that:
- a) it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time or part-time employee in accordance with the provisions of this award – that is, the casual employee is not truly a regular casual employee;
 - b) it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;
 - c) it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months; or
 - d) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work.
 - e) the employee's behavior, performance and/or attendance did not reach the required Company standards and as communicated through a formal method, including a formal warning, discussion record and/or performance improvement plan (PIP). If a request is declined for this reason, a subsequent request can be submitted a minimum of 6 months after the initial request was declined.
- 14.8. For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.
- 14.9. Where the Company refused a regular casual employee's request to convert, the Company must provide the casual employee with the Company's reasons for refusal in writing within 21 days of the request being made. If the employee does not accept the Company's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in **clause 42 – Dealing with Disputes**. Under that procedure, the employee or the Company may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.
- 14.10. Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in this clause, the Company and employee must discuss and record in writing:
- a) the form of employment to which the employee will convert – that is, full-time or part-time employment; and
 - b) if it is agreed that the employee will become a part-time employee, the agreed hours of work.
- 14.11. The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.

- 14.12.** Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of the Company.
- 14.13.** A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under this clause.
- 14.14.** Nothing in this clause obliges a regular casual employee to convert to full-time or part-time employment, nor permits the Company to require a regular casual employee to so convert.
- 14.15.** Nothing in this clause requires the Company to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.
- 14.16.** The Company must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of this subclause within the first 12 months of the employee's first engagement to perform work.
- 14.17.** A casual employee's right to request to convert is not affected if the Company fails to comply with the notice requirements in **clause 14.16**.

15. ORDINARY HOURS

- 15.1.** The ordinary hours of work for those employees who are not employed on a casual basis will not exceed 152 hours over a four-week period provided that:
- a) The ordinary hours will be worked between Monday and Saturday inclusive;
 - b) The ordinary hours will be worked between 5.00am and 5.00pm except if varied by arrangement between the Company and the majority of the employees in the section/s concerned;
 - c) The ordinary hours will not exceed 12 hours per engagement or 12 hours on single day; and
 - d) Subject to **clause 36 – Night Shift Loading**, all time worked by full-time and part-time employees in excess of the ordinary hours will be deemed overtime.
- 15.2.** The ordinary hours of work for casual employees will not exceed 304 hours over an eight-week period provided that:
- a) The ordinary hours will be worked between Monday and Sunday inclusive; and
 - b) The ordinary hours will be worked between 5.00am and 8.30pm except if varied by arrangement between the Company and the majority of the employees in the section/s concerned;
 - c) In a State or Territory that does not observe daylight saving time, by agreement between the Company and a majority of affected casual employees, the 5.00am to 8.30pm daily spread of hours can be moved forward one hour (4.00am to 7.30pm) for the period of daylight saving time in other States and Territories; and
 - d) The maximum number of ordinary hours which a casual employee may work per engagement, or on any day, is 12 ordinary hours.
- 15.3.** For casual employees, all time worked in excess of 12 hours per engagement, 12 hours on a single day or 304 hours over an eight-week period, will be deemed overtime.
- 15.4.** The four-week period referred to in **clause 15.1** of this Agreement and the eight-week period referred to in **clause 15.2** of this Agreement will commence from the first full pay period after the date that this Agreement commences.

16. REASONABLE ADDITIONAL HOURS

- 16.1. Employees are expected to work such reasonable additional hours during the week and on weekends, as are necessary for the completion of work.
- 16.2. Each employee shall have the right to reasonably refuse additional hours, and the Company reserves the right to direct employees to cease working excessive hours in order to maintain a safe place of work.

17. ANNUAL LEAVE

- 17.1. Annual Leave is provided for in the NES. An employee must be paid the wages they would have received in respect of the ordinary hours the employee would have worked had the employee not been on leave during the relevant period.
- 17.2. Excessive Leave Accruals;
 - a) An employee has an excessive leave accrual if the employee has accrued more than eight weeks of paid annual leave.
 - b) If an employee has an excessive leave accrual, the Company or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave.
 - c) If the Company has genuinely tried to reach agreement with an employee under **subclause 17.2(b)** but agreement is not reached, the Company may direct the employee in writing to take one or more periods of paid annual leave.
 - d) A direction by the Company under **subclause 17.2(b)** is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than six weeks when any other paid annual leave arrangements are taken into account.
- 17.3. During a period of annual leave, an employee will also be paid an annual leave loading equal to 17.5% of the wages prescribed in **Schedule B – Rates of Pay 2019-2023**.

18. PERSONAL LEAVE, CARER'S LEAVE AND COMPASSIONATE LEAVE

- 18.1. Personal Leave, Carer's Leave and Compassionate Leave are provided for in the NES.

19. PARENTAL LEAVE

- 19.1. Parental Leave is provided for in the NES.

20. COMMUNITY SERVICE LEAVE

- 20.1. Community Service Leave is provided for in the NES.

21. LEAVE TO DEAL WITH FAMILY AND DOMESTIC VIOLENCE

- 21.1. This clause applies to all employees, including casuals.

Definitions

In this clause

family and domestic violence means violent, threatening or other abusive behaviour by a family member of an employee that seeks to coerce or control the employee and that causes them harm or to be fearful.

family member means:

- i. a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
- ii. a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or
- iii. a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.
- iv. A reference to a spouse or de facto partner in the definition of family member of this Agreement, includes a former spouse or de facto partner.

21.2. Entitlement to unpaid leave

- a) An employee is entitled to five days of unpaid leave to deal with family and domestic violence, as follows:
 - i. the leave is available in full at the start of each 12-month period of the employee's employment;
 - ii. the leave does not accumulate from year to year; and
 - iii. is available in full to full-time, part-time and casual employees.
- b) A period of leave to deal with family and domestic violence may be less than a day by agreement between the employee and the Company.
- c) The Company and employee may agree that the employee may take more than five days of unpaid leave to deal with family and domestic violence.

21.3. Taking unpaid leave

- a) An employee may take unpaid leave to deal with family and domestic violence if the employee:
 - i. is experiencing family and domestic violence; and
 - ii. needs to do something to deal with the impact of the family and domestic violence and it is impractical for the employee to do that thing outside their ordinary hours of work.
- b) The reasons for which an employee may take leave include making arrangements for their safety or the safety of a family member (including relocation), attending urgent court hearings, or accessing police services.

21.4. Service and continuity

- a) The time an employee is on unpaid leave to deal with family and domestic violence does not count as service but does not break the employee's continuity of service.

21.5. Notice and evidence requirements

- a) Notice – An employee must give the Company notice of the taking of leave by the employee under **clause 21**. The notice:
 - i. must be given to the Company as soon as practicable (which may be a time after the leave has started); and
 - ii. must advise the Company of the period, or expected period, of the leave.

- b) Evidence – An employee who has given their Company notice of the taking of leave under **clause 21** must, if required by the Company, give the Company evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in **clause 21.3**.
 - i. Depending on the circumstances such evidence may include a document issued by the police service, a court or a family violence support service, or a statutory declaration.

21.6. Confidentiality

- a) The Company must take steps to ensure information concerning any notice an employee has given, or evidence an employee has provided under **clause 21.5**, is treated confidentially, as far as it is reasonably practicable to do so.
- b) Nothing in **clause 21** prevents the Company from disclosing information provided by an employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.
- c) Information concerning an employee's experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. The Company should consult with such employees regarding the handling of this information.

21.7. Compliance

- a) An employee is not entitled to take leave under **clause 21** unless the employee complies with **clause 21**.

22. LONG SERVICE LEAVE

- 22.1.** Long Service Leave shall be in accordance with the relevant state and territory long service leave acts.
- 22.2.** Long Service Leave applies to all employees, including casuals.
- 22.3.** The following circumstances do not break continuity of service:
 - a) Annual leave or long service leave;
 - b) Paid personal leave;
 - c) Workers Compensation;
 - d) Stand down of employee due to slackness of trade;
 - e) Approved unpaid leave;
 - f) Paid and unpaid parental leave;
- 22.4.** Whilst a period of unpaid leave does not break continuity of service in line with **clause 22.3**, it is not included in calculating length of service for purposes of Long Service Leave.

23. PAYMENT OF WAGES

- 23.1.** The payment cycle for employees engaged under the terms of this Agreement will be weekly, with the pay week being Monday to Sunday.
- 23.2.** Wages will be released by Electronic Funds Transfer by the Thursday of each week.
- 23.3.** All hours will be paid at the appropriate base rate or penalty rate where applicable, in the pay week of which the hours are worked.
- 23.4.** The payment of the overtime component will occur for work in excess of:

- a) 152 hours over a four-week period for full-time, part-time and maximum term employees – in the payment cycle after the conclusion of that four-week period; or
- b) 304 hours over an eight-week period for casual employees – in the payment cycle after the conclusion of that eight-week period.

24. CLASSIFICATION STRUCTURE AND DEFINITIONS

- 24.1. Employees will be classified based on their substantive role in line with the classification table shown in **Schedule A – Classification Structure**.
- 24.2. Opportunities will be afforded where practicable to enable employees to develop skills and competencies necessary for progression through the classification structure at the enterprise. Employees will be encouraged to progress to the highest level personally attainable, consistent with the needs of the workplace.
- 24.3. An employee may request their classification level be reviewed by submitting a request in writing to the Company.
- 24.4. The Company may engage an Employee (other than a full-time employee) under two or more separate employment contracts. Each employment contract cannot be for substantially similar duties of another position the Employee is engaged for.
- 24.5. If an employee is engaged in a part-time position, the total ordinary hours worked under the employment contracts must not exceed 38 hours per week.
- 24.6. If an employee is engaged in only casual employment positions, the total ordinary hours worked under the employment contracts must not exceed 304 hours in each eight-week period.
- 24.7. Each arrangement must be in writing.

25. RATES OF PAY

- 25.1. The rates of pay applying to this Agreement are set out in **Schedule B – Rates of Pay 2019-2023** of this Agreement.
- 25.2. In addition to the base rate of pay, casuals will receive a loading of 25%. The loading is paid instead of annual leave, personal/carer's leave, notice of termination, redundancy benefits and other full-time or part-time employment entitlements.

26. JUNIORS

- 26.1. Juniors are defined as being those employees who are under 18 years of age.
- 26.2. Juniors will be paid a percentage of the applicable base rate of pay, based on their age, as shown in **Table 2 – Junior Rates** of this Agreement.
- 26.3. A junior's hourly rate will be increased in line with **Table 2 – Junior Rates**, effective from the employee's birthday each year, until 18 years of age.
- 26.4. Junior rates will not apply in the event of Piecework.

Table 2 – Junior Rates

Age:	Percentage of Applicable Single Time Rate of Pay
Under 16 years	70%
At 16 years of age	80%
At 17 years of age	90%
At 18 years of age and above	100%

26.5. Apprentice and Trainee rates are provided for in **Schedule C – Apprentice and Trainee Pay Rates** of this Agreement.

27. SCHEDULED INCREASES

27.1. Increases to Rates of Pay will be effective in the first full pay week on or after 1 July each year the Agreement is in operation, as shown below:

- a) 3 July 2019
- b) 6 July 2020
- c) 5 July 2021
- d) 4 July 2022

27.2. Increases will be made to the base Agreement pay rate.

28. PIECEWORKERS

- 28.1.** The Company and a full-time, part-time or casual employee may enter into an agreement for the employee to be paid a piecework rate. An employee on a piecework rate is a pieceworker.
- 28.2.** The calculation of piecework rates in **clause 28** of this Agreement for casual employees will include the casual loading prescribed in **clause 25.2** of this Agreement.
- 28.3.** A piecework rate is paid instead of the hourly rate prescribed in **Schedule B – Rates of Pay 2019-2023** and will enable the average competent employee to earn at least 15% more per hour than the minimum hourly rate prescribed in this Agreement, for the type of employment and the classification level of the employee. The piecework rate agreed is to be paid for all work performed in accordance with the piecework agreement.
- 28.4.** Employees will be advised of the minimum piecework rate applicable for that activity, block and crew prior to starting.
- 28.5.** Employees will be asked to sign on to acknowledge the minimum starting rate.
- 28.6.** The Company and the individual employee must have genuinely made the piecework agreement without coercion or duress.
- 28.7.** The piecework agreement between the Company and the individual employee must be in writing and signed by the Company and the employee.
- 28.8.** The Company must give the individual a copy of the piecework agreement.
- 28.9.** Nothing in this Agreement guarantees an employee on a piecework rate will earn at least the minimum ordinary time weekly or hourly wage in this Agreement for the type of employment classified, as the employee's earnings are contingent on their productivity.

28.10. The following clauses of this Agreement do not apply to an employee on a piecework rate:

- a) **Clause 15 – Ordinary Hours**
- b) **Clause 30 – Overtime**
- c) **Clause 32 – RDOs for Casual Employees**
- d) **Clause 34 – Minimum Engagement**
- e) **Clause 35 – Allowances**
- f) **Clause 36 – Night Shift Loading**

29. MEAL AND REST BREAKS

29.1. The following breaks will be allowed as a minimum only. Breaks will be determined by agreement, based on operational requirements, environmental factors and employee wellbeing.

- a) Employees will be allowed a paid rest break of 15 minutes each day.
- b) Generally, for a shift exceeding five hours, an unpaid meal break of not less than 30 minutes and no more than 60 minutes will be allowed each day, at no later than five hours after commencing work for that day or as agreed based on operational requirements.
- c) Where an employee is directed by the Company to work through a meal break and the employee performs work during the meal break, they will be paid at 200% of their applicable base rate. Such rate will continue until an employee is released for a 30 minute break.
- d) If a shift exceeds nine hours, an additional unpaid rest break of 15 minutes will be permitted at a time agreed between the employee and the Company.
- e) An employee is entitled to a break of 10 hours between finishing work on one day and commencing work on the next day.
- f) When directed by the Company, overtime rates will be paid for work required to be performed where an employee has not had the 10 hour break, until such time as the employee is released and able to take the 10 hour break.

30. OVERTIME

- 30.1.** For employees other than casuals the rate of pay for overtime will be 150% of the base rate, except for overtime worked on a Sunday.
- 30.2.** For employees other than casuals, overtime worked on a Sunday (except during harvest periods for those employees in harvest activities as defined in **clause 34.3 – Minimum Engagement**) will be 200% of the base rate.
- 30.3.** Should employees be required to work on a Saturday and the majority of such employees elects to not work on the Saturday but rather on the Sunday then such work performed on that Sunday will be paid for at the rate prescribed for Saturday work.
- 30.4.** During harvest period, for those employees in harvest activities the first eight hours overtime in a week may include five hours work on a Sunday at the rate of 150%, but all hours worked in excess of the eighth overtime hour worked in the week, or in excess of five hours on a Sunday will be paid at a rate of 200%.
- 30.5.** For casual employees, other than pieceworkers, the rate of pay for overtime will be 175% of the base rate (inclusive of the casual loading).
- 30.6.** Overtime does not apply to pieceworkers.
- 30.7.** Within this clause, harvest period means the period of time during which the employees of the Company are engaged principally in the harvesting, grading, packing, or transportation of horticultural product.

31. TIME OFF INSTEAD OF PAYMENT FOR OVERTIME

- 31.1. This clause applies to all employees other than casual employees.
- 31.2. An employee and the Company may agree in writing to the employee taking time off at a later time in lieu of being paid for hours worked in excess of 38 each week.
- 31.3. The following must apply to any Time Off In Lieu agreement:
 - a) Time off in Lieu must be taken within 12 months of accrual;
 - b) Time off in Lieu not taken within 12 months of accrual or on termination of employment must be paid at the overtime rate applicable to the overtime when worked.
- 31.4. If an employee cannot be usefully employed due to circumstances outside of the Company's control, the Company may direct them to take Time Off In Lieu.
- 31.5. Time Off In Lieu may be taken at any time by agreement between the Company and employee.
- 31.6. If an employee and the Company have not entered into an agreement in writing as outlined in **clause 31.2** of this Agreement, an employee will be paid for any overtime hours worked as per **clause 30 – Overtime** of this Agreement.

32. ROSTERED DAYS OFF FOR CASUAL EMPLOYEES

- 32.1. An employee and the Company may agree in writing to a casual employee taking a rostered day off (RDO) at a later time in lieu of being paid for hours worked in excess of their ordinary hours.
- 32.2. A casual employee can only access the RDO scheme as outlined in **clause 32.1** by opting in.
- 32.3. A casual employee can opt in or out of the RDO scheme only once per year.
- 32.4. The period of time off that an employee is entitled to take is the same as the number of overtime hours worked. That is, by making an agreement under **clause 32.1** an employee who works two hours of overtime is entitled to two hours of time off at the ordinary rate of pay.
- 32.5. RDO hours will be accrued on a weekly basis.
- 32.6. The maximum number of hours that can be added to the RDO balance per week is two hours. Any additional hours worked in excess of this will be paid at the overtime rate.
- 32.7. RDO hours can only be taken in full day increments (that is 7.6 hours at a time) subject to line manager approval.
- 32.8. RDO hours banked will not exceed 38 hours at any point in time. Should an employee's bank reach 38 hours, thereafter all hours worked in excess of ordinary hours will be paid out at the overtime rate applicable for the hours worked, until such time as the employees balance reduces below 38 hours.
- 32.9. RDO hours remaining in the employee's bank will be paid out in the final pay week of each tax year at the rate of which the overtime hours were worked.
- 32.10. Upon employment ending, any RDO hours remaining in the employees bank will be paid at the rate of which the overtime hours were worked.
- 32.11. If a casual employee and the Company have not entered into an agreement in writing as outlined in **clause 32.1** of this Agreement, a casual employee will be paid for any overtime hours worked as per **clause 30 – Overtime** of this Agreement.

33. PUBLIC HOLIDAYS

- 33.1.** The days which are observed as public holidays under the Agreement are any days proclaimed or gazetted as public holidays by the relevant State Government.
- 33.2.** In addition, one half day per year will be observed as a public holiday under this Agreement for the day proclaimed or gazetted as a public holiday by the relevant Local Government Authority, or as otherwise agreed by the Company.
- 33.3.** The unique requirements of the horticulture industry require work on public holidays. An employee may be requested to work on a public holiday. The Company will endeavour to provide forward notice of this request as soon as operationally practical. The Employee may reasonably refuse to work on the public holiday.
- 33.4.** Employees are expected to work an equal share of public holidays amongst themselves.
- 33.5.** With respect to **clause 33.1** of this Agreement, no public holiday shall be paid to an employee on a day which falls on a day that would not be their normal working day.
- 33.6.** For employees other than casuals and pieceworkers, public holidays worked will be paid at 200% of their base rate.
- 33.7.** For casual employees, other than piece workers, public holidays worked will be paid at 225% of their base rate (inclusive of the casual loading).
- 33.8.** For pieceworkers, the piecework rate for public holidays worked will be calculated using the penalty rate for public holidays, in place of the ordinary base rate.

34. MINIMUM ENGAGEMENT

- 34.1.** A casual employee will be engaged for at least two consecutive hours of work on each occasion they are required to attend work.
- 34.2.** If a shift is cancelled without prior notice to an employee attending the workplace, casual employees will be paid for two hours at their base rate.
- 34.3.** This clause does not apply to workers engaged in harvest activities. Harvest activities relates to all fruit pickers, harvest assistant supervisors, harvest crew support, harvest transport, harvest supervisors and harvest coordinators.

35. ALLOWANCES

35.1. FIRST AID ALLOWANCE

- a) This allowance applies to all employees covered by this Agreement.
- b) An employee who has undertaken a first aid course, is a holder of a current recognised first aid qualification and has been appointed as a First Aid Officer by the Company, will be paid a First Aid Allowance of \$2.60 per day that they attend the workplace.
- c) An employee who holds a current relevant qualification and has been appointed as an Occupational First Aid Officer by the Company, will be paid an Occupational First Aid Allowance of \$5.00 per day that they attend the workplace.
- d) This allowance rate will be increased annually where required to either meet or exceed the allowance rate as prescribed in the Horticulture Award 2010.

35.2. MEAL ALLOWANCE

- a) This allowance applies to all employees covered by this Agreement.
- b) An employee required to work overtime for more than two hours after the employee's ordinary ceasing time without having been notified prior to

- commencing the shift that overtime will be required, will be entitled to a payment of \$12.43, unless provided with an adequate meal by the Company.
- c) This allowance rate will be increased yearly where required to either meet or exceed the allowance rate as prescribed in the Horticulture Award 2010.

35.3. TRAVELLING FOR WORK ALLOWANCE

- a) This allowance applies to all employees covered by this Agreement.
- b) An employee who has been asked by the Company to travel for work temporarily, away from their usual place of employment and is required to sleep away from the employee's usual place of residence will:
 - i. Be provided accommodation at the Company's expense;
 - ii. Be provided reimbursement of costs incurred on travel, such as air fares, taxi, fuel in personal vehicle, where the Company was not able to book and pay directly; and
 - iii. Be paid \$60 per day for which they were required to be away from home, including travelling days, to cover the costs of meals purchased. This payment will be made in the usual payment run of which the employee's travel time falls.
- c) No additional claims for meals can be made where the \$60 has been paid, including charging meals back to company at an accommodation facility.
- d) This clause does not apply where the employee:
 - i. Has requested a transfer to another site; or
 - ii. Where a permanent relocation is agreed

35.4. COLD WORK ALLOWANCE

- a) This allowance applies to employees engaged in work locations where the room temperature has been modified by artificial means below one degree Celsius (**Cold Work**).
- b) These areas may include:
 - i. Post-pack cool room
 - ii. Modified Atmosphere room
 - iii. Storage cool room
- c) The allowance will be paid at a rate of \$0.55 for each hour an employee is required to work in Cold Work.

35.5. WET WORK

- a) An employee who is required to work in a wet place will be provided with adequate protection. A **wet place** will mean a place where the clothing of the employee becomes saturated or a place where the employee has to stand in water or slush so that the employee's feet become wet.

35.6. PROVISION OF TOOLS

- a) Tools and equipment will be provided by the Company.

36. NIGHT SHIFT LOADING

- 36.1. This loading applies to those employees engaged to work a component of their ordinary hours, outside the span of Ordinary Hours defined in **clause 15 – Ordinary Hours**.

- 36.2. Each ordinary hour worked by a casual employee on any day of the week (excluding public holidays) between 8.31pm and 4.59am, will attract a loading of 15% of the employee's base rate for their classification.
- 36.3. Casual employees will receive the casual loading as prescribed in **clause 25.2**, in addition to the 15% loading prescribed in **clause 36.2**
- 36.4. Where a full-time, part-time or maximum-term employee is rostered for a shift where the shift end time is after 5.00pm (excluding public holidays), those employees will be paid a loading of 15% of the employee's base rate for that shift.
- 36.5. Where an employee's time worked is in excess of their ordinary hours as prescribed in **clause 15 – Ordinary Hours**, of this Agreement, those hours will be deemed overtime and will attract overtime rates as prescribed in **clause 30 – Overtime**, of this Agreement, and the Night Shift Loading will not apply.

37. LABOUR FLEXIBILITY

- 37.1. Changes within the workplace, including redundancy, may give rise to an offer of redeployment. In this eventuality an employee will be given the opportunity to consider the offer.
- 37.2. When redeployed, employees shall carry out any required duties for which they are trained and competent, irrespective of their substantive classification. For example, maintenance workers or supervisors may be directed by management to engage in picking operations.
- 37.3. An employee may use the procedure under **clause 42 – Dealing with Disputes** in this Agreement to dispute whether the offer of redeployment constitutes other acceptable employment. If Fair Work Commission finds in favour of the employee, the employee will have the right to a redundancy, in which case the respective redundancy provision of this Agreement will apply.
- 37.4. If as a result of change, a permanent employee is re-deployed to a lower classified position and the employee's salary or benefits are to be otherwise reduced, the employee will retain the pre-existing salary and benefits for a period of three months.
- 37.5. The Company will endeavor to redeploy employees where possible in order to encourage continuity of employment with the Company.
- 37.6. If as a result of change, an employee is re-deployed to a higher classified position, the employee will be paid the rate of pay applicable to that classification for the hours which they are undertaking those duties.

38. HIGHER DUTIES

- 38.1. An employee engaged for more than two hours during one day or shift on duties carrying a higher minimum wage than their ordinary classification will be paid the higher minimum wage for such hours worked in that role.

39. REQUESTS FOR FLEXIBLE WORKING ARRANGEMENTS

- 39.1. This clause applies where an employee has made a request for a change in working arrangements under s.65 of the Fair Work Act.
- 39.2. Before responding to a request made under this clause, the Company will discuss the request with the employee and genuinely try to reach agreement on a change in working arrangements that will reasonably accommodate the employee's circumstances, having regards to:
 - a) The needs of the employee arising from their circumstances:

- b) the consequences for the employee if changes in working arrangements are not made; and
 - c) any reasonable business grounds for refusing the request
- 39.3.** The company will respond to any requests within 21 days, in writing, stating whether the Company grants or refuses the request.
- 39.4.** If the request is refused, the written response will include details of the reason for the decision, including the business grounds or grounds for the refusal and how the ground or grounds apply.
- 39.5.** If the Company and the employee could not agree on a change in working arrangement under this clause, the written response must;
 - a) State whether or not there are any changes in working arrangements that the Company can offer the employee so as to better accommodate the employees circumstances; and
 - b) If the Company can offer the employee such changes in working arrangements, set out those changes in working arrangements.
- 39.6.** If the Company and the employee reached an agreement under this clause on a change in working arrangements that differs from that initially requested by the employee, the Company will provide the employee with a written response to their request setting out the agreed changes in working arrangements.
- 39.7.** Disputes about whether the Company has discussed the request with the employee and responded to the request in the way required in this clause can be dealt with under **clause 42 – Dealing with Disputes.**

40. SUPERANNUATION

40.1. Company contributions

- a) The Company shall make contributions on an employee's behalf into a Superannuation Fund of the employee's choice, an amount necessary to discharge its minimum obligations under the applicable legislation as amended from time to time in accordance with the Superannuation Guarantee Act (1994)(Cth).
- b) Where no such choice is made, payments will be made into the Company's default fund, Australian Super.

40.2. Discretionary superannuation contributions

- a) An employee may choose to pay additional amounts of their salary into their nominated Superannuation Fund.
- b) Employees can choose to make before-tax contributions (Salary Sacrifice) or post-tax contributions.
- c) Full-time and part-time employees may enter into a Salary Sacrifice agreement with the Company, in accordance with relevant Superannuation legislation and Concessional Contributions Caps.
- d) The Company encourages all employees to seek independent financial advice prior to entering into any discretionary superannuation contribution agreements.
- e) The Company will not provide advice on discretionary superannuation contributions and will not be liable for any breaches of the Concessional Contributions Cap.
- f) All discretionary superannuation contribution agreements will be made in writing.

41. STAND DOWN

- 41.1. The Company shall have the right to stand down any employee, without pay, during a period in which the employee cannot usefully be employed where the shift has been brought to an end due to breakdown of machinery or any stoppage of work by any cause, including environmental impacts or weather events, for which the Company cannot reasonably be held responsible.
- 41.2. Standing down of employees will not break the continuity of service for purposes such as Long Service Leave or Redundancy.
- 41.3. Employees who have been stood down under **clause 41.1** of this Agreement, will accrue all leave entitlements as they would normally.
- 41.4. Under **Clause 31 – Time Off Instead of Payment For Overtime** of this Agreement and Company policy as amended from time to time, permanent and maximum-term employees may use banked hours from their accrued TOIL balances to compensate for non-worked hours due to operational shut-down in line with **clause 41.1** of this Agreement.

42. DEALING WITH DISPUTES

- 42.1. If a dispute relates to:

- a) A matter arising under this Agreement; or
- b) The National Employment Standards;

This term sets out procedures to settle the dispute.

- 42.2. An employee who is a party to the dispute may appoint a representative for the purposes of the procedures in this term.
- 42.3. In the first instance, the parties to the dispute must try to resolve the dispute at the workplace level, by discussions between the employee or employees and relevant supervisors and/or management.
- 42.4. If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Commission.
- 42.5. Fair Work Australia may deal with the dispute in two stages:
 - a) Fair Work Commission will first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and
 - b) if Fair Work Commission is unable to resolve the dispute at the first stage, Fair Work Commission may then:
 - c) arbitrate the dispute; and
 - d) make a determination that is binding on the parties.
 - e) Note: If Fair Work Commission arbitrates the dispute, it may also use powers that are available to it under the Act.
- 42.6. While the parties are trying to resolve the dispute using the procedures in this term:
 - a) an employee must continue to perform his or her work as he or she would normally unless he or she has a reasonable concern about an imminent risk to his or her health or safety; and
 - b) an employee must comply with a direction given by the Company to perform other available work at the same workplace, or at another workplace, unless:
 - c) the work is not safe; or
 - d) applicable occupational health and safety legislation would not permit the work to be performed; or

- e) the work is not appropriate for the employee to perform; or
- f) there are other reasonable grounds for the employee to refuse to comply with the direction.

42.7. The parties to the dispute agree to be bound by a decision made by Fair Work Commission in accordance with this term.

43. DECLARATION


43.1. The parties declare that this Agreement;

- a) is not contrary to public interest;
- b) is not unfair, harsh or unconscionable;
- c) was at no stage entered into under duress; and
- d) reflects the interests and desires of the parties.


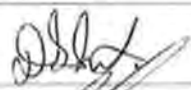
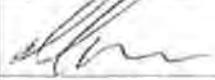

44. SIGNATORIES TO THE AGREEMENT

44.1. The undersign parties approve the terms contained in this Agreement and agree that it gives effect to the Agreement reached between them.



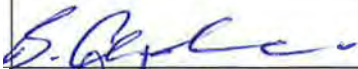
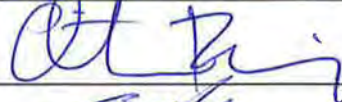

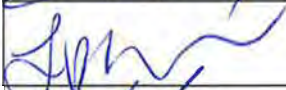
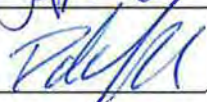

Signed for and on behalf of CostaExchange Pty Ltd;

Name	Position	Address	Signature
Stuart Costa	General Manager Berry Category	Range Road, Corindi, NSW 2456	
Billie Jo Cassar	National HR Manager	Range Road, Corindi, NSW 2456	

Signed for and on behalf of the employees:

Name	Position	Address	Signature
Daniel McElligott	EA Rep	Atherton	
DUNCAN SMITH	EA REP	ATHERTON	
RICHARD AMES	EA - REP	RANGEVIEW	
THOM DRAHER	EA - REP	WALKAMIN	

Name	Position	Address	Signature
Matthew Masters	<i>Bargaining Rep</i> Operations Supervisor	683 Chitna Road Neergabby WA 6503	<i>m masters</i>
ANNE SAHETAPY	BARGAINING REP	Range Road Corindi NSW 2456	<i>Ann</i>
DANIEL ROBINSON	BARGAINING REP	Range Road Corindi NSW 2456	<i>D. Robinson</i>
DANIEL WOOLFE	BARGAINING REP	Range Road Corindi NSW 2456	<i>[Signature]</i>
DAVE SHEPHERD	BARGAINING REP		
N. MILLER-TUCKER	BARGAINING REP	Range Road Corindi NSW 2456	<i>N.T.</i>
TOBY HUNT	BARGAINING REP	Range Road Corindi NSW 2456	<i>[Signature]</i>
SAM RICKETTS	BARGAINING REP	Range Road Corindi NSW 2456	<i>S</i>
BALWINDER KAUR	BARGAINING REP	Range Road Corindi NSW 2456	<i>BK</i>
SANDHEEP KAUR	BARGAINING REP	Range Road Corindi NSW 2456	<i>S.K.</i>
SATBIR KAUR	BARGAINING REP		No Longer Employed
FRANK GATTI	BARGAINING REP.	Range Road Corindi NSW 2456	<i>[Signature]</i>

Name	Position	Address	Signature
Roland Young	bargaining rep	535 Dunorlan Road Dunorlan TAS 7304	
Tim Piper	Bargaining Rep	535 Dunorlan Road Dunorlan TAS 7304	
BRADLEY ANDERSON	BARGAINING REP	Wrights Lane Wesley Vale TAS 7307	
QUINTON BRAY	Bargaining Rep	Wrights Lane Wesley Vale TAS 7307	
ERIK MILBURN	Bargaining Rep East Devonport	211 Brooke Street East Devonport TAS 7310	
LISA MAGUIRE	Bargaining Rep	315 Zig Zag Road Sulphur Creek TAS 7316	
Dale Irvine	Bargaining Rep	211 Brooke Street East Devonport TAS 7310	
ARMANDO MACUAGA	BARGAINING REP	211 Brooke Street East Devonport TAS 7310	

SCHEDULE A – CLASSIFICATION STRUCTURE

Employees will be classified based on their substantive role, in line with the classification table shown below.

Under **clause 24.3** of this Agreement, an employee may request for their classification level to be reviewed by submitting a request in writing to the Company.

A.1 Definitions

Horticulture Employees, meaning those employees engaged in work including but not limited to:

- i) Relating to the sowing, planting, raising, cultivation, irrigating, canopy management, pest and disease management, harvesting, picking, washing, packing, storing, grading, forwarding or treating of horticultural crops; or
- ii) The clearing, fencing, trenching, draining, weeding, mowing or otherwise preparing or treating of land, property or infrastructure for the maintenance, development or redevelopment of a horticultural crop.

A.2 Level Classifications – Horticulture Employees

Level 1

1. An employee at this level:

- has undertaken induction training and completed and adheres to all relevant SOPs/SWPs in line with task requirements;
- has a general understanding of crop issues (e.g. pests, diseases, quality) and appropriate reporting requirements;
- performs routine duties essentially of a manual nature and to the level of their training;
- works under general supervision either individually or in a team environment;
- has a good understanding of safety responsibilities, including reporting hazards and incidents;
- is responsible for the quality of their own work; and
- demonstrates behaviours in line with the Company values

Indicative duties an employee may perform at this level are:

- General labouring duties that may include the potting, planting, raising, canopy management, pest and disease scouting and control, harvesting, packing, storing, grading, forwarding or treating of horticultural crops; or
- General labouring duties that may include a range of maintenance tasks to premises or grounds, including weeding, mowing;
- And any other task of this level as defined by the structure and definitions above

Level 2

2. An employee at this level:

- has undertaken induction training and completed and adheres to all relevant SOPs/SWPs in line with task requirements;
- has a general understanding of crop issues (e.g. pests, diseases, quality) and appropriate reporting requirements;
- works under general supervision either individually or in a team environment;
- works with established routines, methods and procedures;
- exercises limited discretion;
- has a good understanding of safety responsibilities, including reporting hazards and incidents;
- is responsible for the quality of their own work;
- assists in on-the-job training in conjunction with supervisors; and
- demonstrates behaviours in line with the Company values

Indicative duties an employee may perform at this level are:

- duties of horticultural crop and farm maintenance, beyond the scope of Level 1, including irrigation, spraying, tractor operation of machines <70kW, some high level pruning activities.
- harvest related activities beyond the scope of Level 1, including operating machinery such as pallet jacks, tractors <70kW, harvest trucks, mechanical harvesters, box machines and the like

Level 3

3. An employee at this level:

- performs work above and beyond the skills of an employee at Level 2;
- works under general direction with no direct supervision;
- is responsible for the quality of their own work;
- assists in on-the-job training in conjunction with supervisors; and
- demonstrates behaviours in line with the Company values

If an employee's indicative duties are classified as Level 2, to progress to Level 3 they must have:

- knowledge of the Company's operation; and
- demonstrated achieving set KPI's consistently; and
demonstrated behaviours consistent with the Company values; and
- not been subject to any formal management procedures in the previous 12 months

Level 4

4. An employee at this level:

- performs work above and beyond the skills of an employee at Level 3;
- coordinates and schedules approved work in a team environment;
- is responsible for the quality of their own work and their team;
- performs work under general direction;
- provides on-the-job training; and
- demonstrates behaviours in line with the Company values;

The Level 4 classification is broken into 3 sublevels, based on the number of employees within the supervisor's team, as per below:

- **Level 4.1** – Employees at this level perform duties as outlined in the Level 4 classification description and **leads a team of 9 people or less**
- **Level 4.2** – Employees at this level perform duties as outlined in the Level 4 classification description and **leads a team of 10 to 20 people**
- **Level 4.3** – Employees at this level perform duties as outlined in the Level 4 classification description and **leads a team of 21 people or more**

Level 5

5. An employee at this level:

- performs work above and beyond the skills of an employee at Level 4;

If an employee's indicative duties are classified as Level 4, to progress to Level 5 they must have:

- completed 12 months continuous employment with the Company at the Level 4 classification; and
- knowledge of the Company's operation; and
- demonstrated achieving set KPI's consistently; and
- demonstrated behaviours consistent with the Company values; and
- not been subject to any formal management procedures in the previous 12 months.

The Level 5 classification is broken into 3 sublevels, based on the number of direct and indirect reports within the supervisor's team, as per below:

- **Level 5.1** – Employees at this level perform duties as outlined in the Level 4 classification description and **leads a team of 9 people or less**
- **Level 5.2** – Employees at this level perform duties as outlined in the Level 4 classification description and **leads a team of 10 to 20 people**
- **Level 5.3** – Employees at this level perform duties as outlined in the Level 4 classification description and **leads a team of 21 people or more**

Area	Position	Classification	Progression	Pay Rate Code
FIELD HARVEST	Picker Packer Crew Support (e.g. Runner)	Level 1	Not applicable	HL1A
	Assistant Supervisor	Level 2	2A for the first 12 months in this position	HL2A
			Progress to level 2B after 12 months in this position	HL2B
	Crew Supervisor (less than 12 months experience) <i>9 people or less</i>	Level 4.1	Level 4 for the first 12 months in this position	HL4A
	Crew Supervisor (less than 12 months experience) <i>10 to 20 people</i>	Level 4.2		HL4B
	Crew Supervisor (less than 12 months experience) <i>21 people or more</i>	Level 4.3		HL4C
	Crew Supervisor (more than 12 months experience) <i>9 people or less</i>	Level 5.1	Progression to Level 5 after 12 months in this position	HL5A

	Crew Supervisor (more than 12 months experience) <i>10 to 20 people</i>	Level 5.2		HL5B
	Crew Supervisor (more than 12 months experience) <i>21 people or more</i>	Level 5.3		HL5C
	Truck Driver	Level 2	2A for the first 12 months in this position when operating a truck not requiring a Light Rigid/Medium Rigid licence.	HL2A
			An employee classified as Level 2A, may progress to level 2B after 12 months in this position.	HL2B
		Level 3	3A when operating a truck which requires the employee to hold a Light Rigid/Medium Rigid licence.	HL3A
PACKING AND DISTRIBUTION	Packers	Level 1	Not applicable	HL1A
	Crew Supervisor (less than 12 months experience) <i>9 people or less</i>	Level 4.1	Level 4 for the first 12 months in this position	HL4A
	Crew Supervisor (less than 12 months experience) <i>10 to 20 people</i>	Level 4.2		HL4B
	Crew Supervisor (less than 12 months experience) <i>21 people or more</i>	Level 4.3		HL4C
	Crew Supervisor (more than 12 months experience) <i>9 people or less</i>	Level 5.1	Progression to Level 5 after 12 months in this position	HL5A
	Crew Supervisor (more than 12 months experience) <i>10 to 20 people</i>	Level 5.2		HL5B
	Crew Supervisor (more than 12 months experience) <i>21 people or more</i>	Level 5.3		HL5C

	Receival/Dispatch Staff (not operating forklifts)	Level 1	Not applicable	HL1A
	Receival/Dispatch Forklift Operators	Level 3	3A for the first 12 months of time in this position when operating forklifts	HL3A
			Progress to 3B after 12 months in this position when operating forklifts	HL3B
	QA Assistants	Level 2	2A for first 12 months in this position	HL2A
			Progress to 2B after 12 months in this position	HL2B
	QA Champions	Level 3	Not applicable	HL3A
IRRIGATION	Irrigator (Substrate or in ground)	Level 2	2A for 12 months in this position	HL2A
			Progress to 2B after 12 months in this position	HL2B
	Lead Irrigator	Level 3	3A for first 12 months in this position	HL3A
			Progress to 3B after 12 months in this position	HL3B
	Crew Supervisor (less than 12 months experience) <i>9 people or less</i>	Level 4.1	Level 4 for the first 12 months in this position	HL4A
	Crew Supervisor (less than 12 months experience) <i>10 to 20 people</i>	Level 4.2		HL4B
	Crew Supervisor (less than 12 months experience) <i>21 people or more</i>	Level 4.3		HL4C
	Crew Supervisor (more than 12 months experience) <i>9 people or less</i>	Level 5.1	Progression to Level 5 after 12 months in this position	HL5A

	Crew Supervisor (more than 12 months experience) <i>10 to 20 people</i>	Level 5.2		HL5B
	Crew Supervisor (more than 12 months experience) <i>21 people or more</i>	Level 5.3		HL5C
HORTICULTURAL OPERATIONS	Planting	Level 1	Not applicable	HL1A
	Weed Spraying Hand Weeding Mowing	Level 1	Not applicable	HL1A
	Pest and Disease Scouts	Level 1	1A for the first 12 months in this position	HL1A
			Progress to 1B after 12 months within this position	HL1B
	Pruners	Level 1	1A for the first 12 months in the position of General Pruner	HL1A
			Progress to 1B after 12 months within position of General Pruner	HL1B
		Level 2	2A when deemed competent in the following specified pruning activities; blueberry pruning, Rubus thinning, Rubus cut backs	HL2A
	Block Removal	Level 1	Not applicable	HL1A
	Tunnel Maintenance	Level 1	1A for the first 12 months in this position	HL1A
			Progress to 1B after 12 months in this position	HL1B
	Tunnel Establishment	Level 2	Not applicable	HL2A
	Assistant Supervisor	Level 3	3A for the first 12 months in this position	HL3A

			Progress to 3B after 12 months in this position	HL3B
	Crew Supervisor (less than 12 months experience) <i>9 people or less</i>	Level 4.1	Level 4 for the first 12 months in this position	HL4A
	Crew Supervisor (less than 12 months experience) <i>10 to 20 people</i>	Level 4.2		HL4B
	Crew Supervisor (less than 12 months experience) <i>21 people or more</i>	Level 4.3		HL4C
	Crew Supervisor (more than 12 months experience) <i>9 people or less</i>	Level 5.1	Progression to Level 5 after 12 months in this position	HL5A
	Crew Supervisor (more than 12 months experience) <i>10 to 20 people</i>	Level 5.2		HL5B
	Crew Supervisor (more than 12 months experience) <i>21 people or more</i>	Level 5.3		HL5C
	Tractor Operator (less than 70kW)	Level 2	2A for the first 12 months in this position	HL2A
			Progress to 2B after 12 months experience in this position	HL2B
	Tractor Operator (more than 70kW)	Level 3	3A for the first 12 months in this position	HL3A
			Progress to 3B after 12 months in this position	HL3B

SCHEDULE B – RATES OF PAY 2019-2023

B.1 Pay Rate changes are effective from the first full pay period on or after 1 July for each year that this Agreement is in operation.

B.2 Pay rate changes are applicable to the base Agreement rate only.

B.3 A Schedule of Pay Rates for each year the Agreement is in operation will be issued to employees, after the announcement from Fair Work regarding increases to the Minimum Wage Rate.

B.4 Yearly increases will be 2.5% to the base award rate or the Minimum Wage Increase as decided by Fair Work Australia, whichever is highest.

COMPOSITION OF PERMANENT & MAXIMUM-TERM RATES						
Agreement Base Rate (ordinary hours)	Agreement Overtime Rate (Monday-Saturday)	Agreement Overtime Rate (Sunday, outside of harvest period)	Agreement Overtime Rate (Sunday, - first 5 hours within first 8 hours of overtime per week)	Agreement Overtime Rate (Sunday, after 8 hours overtime in a week or after 5 hours work on the Sunday)	Agreement Night Shift Rate	Agreement Public Holiday Rate
Award Rate	Agreement Base Rate x 1.5	Agreement Base Rate x 2.0	Agreement Base Rate x 1.5	Agreement Base Rate x 2.0	Agreement Base Rate x 1.15	Agreement Base Rate x 2.0

COMPOSITION OF CASUAL RATES			
Agreement Base Rate (ordinary hours) inclusive of Casual Loading	Agreement Overtime inclusive of Casual Loading	Agreement Night Shift Rate inclusive of Casual Loading	Agreement Public Holiday Rate inclusive of Casual Loading
(Award Rate) + (Award Rate x 0.25)	Agreement Base Rate (excluding casual loading) x 1.75	Agreement Base Rate (excluding casual loading) x 1.40	Agreement Base Rate (excluding casual loading) x 2.25

MINIMUM RATES OF PAY AS OF 3 JULY 2019

Pay Rate Code	Current Award Base Rate (as at 14 May 2019)	Minimum Agreement Base Rate (inclusive of minimum 2.5% increase to award rate) 2019-2020	Leading Hand Allowance (inclusive of 2.5% increase to award rate) 2019-2020	Casual Loading 2019-2020
HL1A	\$18.93	\$19.40		\$4.85
HL1B	\$18.93	\$19.68		\$4.92
HL2A	\$19.47	\$19.96		\$4.99
HL2B	\$19.47	\$20.24		\$5.06
HL3A	\$20.03	\$20.53		\$5.13
HL3B	\$20.03	\$20.92		\$5.23
HL4A	\$20.03 + \$0.69 (Leading Hand Allowance)	\$20.53	\$0.71	\$5.13
HL4B	\$20.03 + \$0.98 (Leading Hand Allowance)	\$20.53	\$1.00	\$5.13

HL4C	\$20.03 + \$1.23 (Leading Hand Allowance)	\$20.53	\$1.26	\$5.13
HL5A	\$20.79 + \$0.69(Leading Hand Allowance)	\$21.31	\$0.71	\$5.33
HL5B	\$20.79 + \$0.98 (Leading Hand Allowance)	\$21.31	\$1.00	\$5.33
HL5C	\$20.79 + \$1.23 (Leading Hand Allowance)	\$21.31	\$1.26	\$5.33

SCHEDULE C – APPRENTICE AND TRAINEE PAY RATES

C.1 DEFINITIONS

C.1.1 In this schedule:

adult trainee means a trainee who would qualify for the highest minimum wage in wage level A,B or C if covered by that wage level.

approved training, in relation to a trainee, means the training specified in the training contract of the trainee.

Australian Qualifications Framework (AQF) means the national framework for qualifications in post-compulsory education and training.

relevant Ministers means the Commonwealth, State and Territory Ministers responsible for vocational education and training.

relevant State or Territory training authority means a body in the relevant State or Territory that has power to approve traineeships, and to register training contracts, under the relevant State or Territory vocational education and training legislation.

relevant State or Territory vocational education and training legislation means the following or any successor legislation:

Apprenticeship and Traineeship Act 2001 (NSW);

Education and Training Reform Act 2006 (Vic);

Training and Skills Development Act 2008 (SA);

Training and Skills Development Act 2016 (NT);

Training and Tertiary Education Act 2003 (ACT);

Training and Workforce Development Act 2013 (Tas);

Vocational Education and Training Act 1996 (WA);

Further Education and Training Act 2014 (Qld).

trainee means an employee undertaking a traineeship under a training contract.

traineeship means a system of training that:

(a) has been approved by the relevant State or Territory training authority;
and

(b) meets the requirements of a training package developed by the relevant Skills Service Organisation and endorsed by the Australian Industry and Skills Committee; and

(c) leads to an AQF certificate level qualification.

training contract means an agreement for a traineeship made between an Company and an employee that is registered by the relevant State or Territory training authority.

training package means the competency standards and associated assessment guidelines for an AQF certificate level qualification that have been endorsed for an industry or enterprise by the Australian Industry and Skills Committee and placed on the National Training Information Service with the approval of the relevant Ministers, and includes any relevant replacement training package.

Year 10 includes any year before Year 10.

C.1.2 A reference in this schedule to **out of school** refers only to periods out of school beyond Year 10 as at 1 January in each year and is taken to:

(a) include any period of schooling beyond Year 10 that was not part of, or did not contribute to, a completed year of schooling; and

(b) include any period during which a trainee repeats, in whole or part, a year of schooling beyond Year 10; and

(c) not include any period during a calendar year after the completion during that year of a year of schooling.

C.2 Coverage

C.2.1 Subject to **clauses C.2.2 to C.2.4**, this schedule applies to an employee covered by this award who is undertaking a traineeship and whose training package and AQF certificate level.

C.2.2 This schedule does not apply to:

(a) the apprenticeship system; or

(b) qualifications not identified in training packages; or

(c) qualifications in training packages that are not identified as appropriate for a traineeship.

C.2.3 If this schedule is inconsistent with other provisions of this award relating to traineeships, the other provisions prevail.

C.2.4 This schedule ceases to apply to an employee at the end of the traineeship.

C.3 Types of traineeship

The following types of traineeship are available:

C.3.1 A full-time traineeship based on 38 ordinary hours per week, with 20% of those hours being approved training;

C.3.2 A part-time traineeship based on fewer than 38 ordinary hours per week, with 20% of those hours being approved training provided:

- (a) wholly on the job; or
- (b) partly on the job and partly off the job; or
- (c) wholly off the job.

C.4 Minimum rates

C.4.1 Minimum weekly rates for full-time traineeships

The minimum rate for a full-time trainee undertaking an AQF Certificate Level I–III traineeship is the weekly rate specified in Column 2 of Table 4— **minimum weekly rate for full-time trainees (AQF Certificate Level I–III traineeship)** according to the highest year of schooling completed by the trainee specified in that column and the experience level of the trainee specified in Column 1.

Table 4—minimum weekly rate for full-time trainees (AQF Certificate Level I–III traineeship)

Column 1 Experience level of trainee	Column 2 Highest year of schooling completed		
	Year 10 per week	Year 11 per week	Year 12 per week
School leaver	\$323.10	\$355.80	\$423.90
Plus 1 year out of school	\$355.80	\$423.90	\$493.30
Plus 2 years out of school	\$423.90	\$493.30	\$574.10
Plus 3 years out of school	\$493.30	\$574.10	\$657.30
Plus 4 years out of school	\$574.10	\$657.30	
Plus 5 or more years out of school	\$657.30		

NOTE: See **clause C.4.3** for other minimum wage provisions that affect this clause.

C.4.2 Minimum hourly rates for part-time traineeships

The minimum hourly rate for a part-time trainee undertaking an AQF Certificate Level I–III traineeship is the hourly rate specified in Column 2 of **Table 5—minimum hourly rate for part-time trainees (AQF Certificate Level I–III traineeship)** according to the highest year of schooling completed by the trainee specified in that column and the experience level of the trainee specified in Column 1.

Table 5—minimum hourly rate for part-time trainees (AQF Certificate Level I–III traineeship)

Column 1 Experience level of trainee	Column 2 Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per hour	per hour	per hour
School leaver	\$10.63	\$11.72	\$13.95
Plus 1 year out of school	\$11.72	\$13.95	\$16.24
Plus 2 years out of school	\$13.95	\$16.24	\$18.88
Plus 3 years out of school	\$16.24	\$18.88	\$21.61
Plus 4 years out of school	\$18.88	\$21.61	
Plus 5 or more years out of school	\$21.61		

NOTE: See **clause C.4.3** for other minimum wage provisions that affect this clause.

C.4.3 Other minimum wage provisions

(a) An employee who was employed by a Company immediately before becoming a trainee with that Company must not suffer a reduction in their minimum rate of pay because of becoming a trainee.

(b) For the purpose of determining whether a trainee has suffered a reduction as mentioned in **subclause C.4.3 (a)**, casual loadings are to be disregarded.

C.5 Employment conditions

C.5.1 A trainee is entitled to be released from work without loss of pay and without loss of continuity of employment to attend any training and assessment specified in, or associated with, the training contract.

C.5.2 Time spent by a trainee, other than a trainee undertaking a school-based traineeship, in attending any training and assessment specified in, or associated with, the training contract is to be regarded as time worked for the Company for the purposes of calculating the trainee's wages and determining the trainee's employment conditions.

SCHEDULE D - ANNUALISED SALARY

D.1 Annual salary instead of Agreement provisions

- (a) By mutual agreement, the Company may pay an Employee an annual salary in satisfaction of any or all of the following provisions of the Agreement.
 - (i) Rates of Pay;
 - (ii) Allowances;
 - (iii) Overtime;
 - (iv) Public Holidays; and
 - (v) Night Shift Loading
- (b) Where an annual salary is paid the Company must advise the Employee in writing of the annual salary that is payable and which of the provisions of this Agreement will be satisfied by payment of the annual salary.

D.2 Annual Salary not to disadvantage employees

- (c) The annual salary must be no less than the amount the Employee would have received under this Agreement for the work performed over the year for which the salary is paid (or if the employment ceases earlier over such lesser period as has been worked).
- (d) The annual salary of the Employee must be reviewed by the Company at least annually to ensure that the compensation is appropriate having regard to the Agreement provisions which are satisfied by the payment of the annual salary.

IN THE FAIR WORK COMMISSION

FWC Matter No.:

AG2019/2033

Applicant:

CostaExchange Pty Ltd

Undertaking- section 190

I, Billie Cassar, National HR Manager give the following undertaking with respect to the *Costa (Berry Category) Enterprise Agreement 2019 - 2023* ("the Agreement"):

1. I have the authority given to me by CostaExchange Pty Limited to provide this undertaking in relation to this application before the Fair Work Commission.

Casual Employees

2. Clause 25.2 will be deleted and replaced with:

In addition to the base rate of pay, casuals will receive a loading of 25%. The loading is paid instead of annual leave, personal/carer's leave, notice of termination, redundancy benefits and other full-time or part-time employment entitlements provided for in this Agreement. Nothing in this clause affects a casual employee's entitlement to unpaid leave in accordance with the NES

Annual Salary

3. Further to Schedule D, clause D.2(d) will be deleted and replaced with:
 - (i) The annual salary will be reviewed each 4 weeks to determine if the Employee in that period was paid more than if the Horticulture Award 2010 applied to them.
 - (ii) the audit will be conducted within 14 days of the end of the 4 week period in which the hours were worked
 - (iii) if the Employee was paid equal to or less than what the employee would have been paid under the Horticulture Award 2010 then Costa will reimburse the Employee for the difference plus 3%.

Minimum engagement – Casual Employees

4. A Casual Employee (including a Casual Pieceworker) will be engaged and paid for at least 2 consecutive hours of work on each occasion they are required to attend work.

Job Search Entitlement (Non-Redundancy)

5. A new clause 13.10 will be added:

- a) Where the Company has given notice of termination to an employee (other than a Casual Employee), the employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment.
- b) The time off under clause (a) is to be taken at times that are convenient to the employee after consultation with the Company.
- c) This clause 13.10 does not apply where clause 13.8 applies.

Higher Duties

6. Clause 38.1 is replaced with the following:

'An employee engaged for more than two hours during one day or shift on duties carrying a higher minimum wage than their ordinary classification will be paid the higher minimum wage for the whole day or shift'.

A new clause 38.2 will be added:

'If an employee is engaged for two hours or less during one day or shift on duties carrying a higher minimum wage than their ordinary classification, they must be paid the higher minimum wage for the time so worked'.

Accident Pay

7. Clause 20 of the Horticulture Award 2010 will apply to the Agreement:

20. Accident pay

20.1 Definitions

For the purposes of this clause, the following definitions will apply:

(a) Accident pay means a weekly payment made to an employee by the employer that is the difference between the weekly amount of compensation paid to an employee pursuant to the applicable workers' compensation legislation and the weekly amount that would have been received had the employee been on paid personal leave at the date of the injury (not including over award payments) provided the latter amount is greater than the former amount.

(b) Injury will be given the same meaning and application as applying under the applicable workers' compensation legislation covering the employer.

20.2 Entitlement to accident pay

The employer must pay accident pay where an employee suffers an injury and weekly payments of compensation are paid to the employee under the applicable workers' compensation legislation for a maximum period of 26 weeks.

20.3 Calculation of the period

(a) The 26 week period commences from the date of injury. In the event of more than one absence arising from one injury, such absences are to be cumulative in the assessment of the 26 week period.

(b) The termination by the employer of the employee's employment within the 26 week period will not affect the employee's entitlement to accident pay.

(c) For a period of less than one week, accident pay (as defined) will be calculated on a pro rata basis.

20.4 When not entitled to payment

An employee will not be entitled to any payment under this clause in respect of any period of paid annual leave or long service leave, or for any paid public holiday.

20.5 Return to work

If an employee entitled to accident pay under this clause returns to work on reduced hours or modified duties, the amount of accident pay due will be reduced by any amounts paid for the performance of such work.

20.6 Redemptions

In the event that an employee receives a lump sum payment in lieu of weekly payments under the applicable workers' compensation legislation, the liability of the employer to pay accident pay will cease from the date the employee receives that payment.

20.7 Damages independent of the Acts

Where the employee recovers damages from the employer or from a third party in respect of the said injury independently of the applicable workers' compensation legislation, such employee will be liable to repay to the employer the amount of accident pay which the employer has paid under this clause and the employee will not be entitled to any further accident pay thereafter.

20.8 Casual employees

For a casual employee, the weekly payment referred to in clause 20.1(a) will be calculated using the employee's average weekly ordinary hours with the employer over the previous 12 months or, if the employee has been employed for less than 12 months by the employer, the employee's average weekly ordinary hours over the period of employment with the employer. The weekly payment will include casual loading but will not include over award payments.

Overtime - Sunday

8. A new clause 30.8 will be added:

'All employees (other than a Casual employee) required to work overtime on a Sunday will be paid for a minimum of three hours'.

Jury Service

9. Clause 20.2 will be added:

20.2 Reimbursement for jury service

- a) A full-time employee required to attend for jury service during their ordinary hours of work must be reimbursed by the Company an amount equal to the difference between the amount paid to the employee in respect of the

employee's attendance for such jury service and the wages the employee would have received in respect of the ordinary hours the employee would have worked had the employee not been on jury service.

- b) Where a part-time employee is required to attend for jury service and such attendance coincides with a day on which the employee would normally be required to work, payment must be made to the employee in accordance with clause 20.2(a).

Leading Hand Allowance

- 10. No employee who is classified below a Level 4 in the classification structure will be allocated Leading Hand Duties unless they are paid for any relevant higher duties for (i.e. higher duties would be Level 4 or above).

Automatic Progression

- 11. Automatic progression after reaching the specified amount of service occurs *within* a Level (i.e. 1A to 1B) and not between Levels (i.e. not Level 1 to Level 2) – i.e. automatic progression from Level 1A to 1B occurs after 12 months service automatically. There is no automatic progression from Level 1B to 2A.

Allowances

- 12. **Wet work allowance**

Clause 35.5(b) will be added:

In the event the Company does not provide adequate wet weather protection, the employee must be paid an amount of 10% of the standard rate for each hour that they are required to work in the wet place.

Tool and equipment allowance

Clause 35.6(b) will be added:

Where the employer requires an employee to supply their own tools and equipment (i.e. where the employer does not provide the employee with tools and equipment), the employer must reimburse the employee for the cost of supplying such tools and equipment. The provisions of this clause do not apply where the tools and equipment are paid for by the employer.

Casual Overtime

- 13. Clause 15.4 of the Enterprise Agreement is 'struck out' and no longer forms part of the Enterprise Agreement.

Night Shift Allowance

- 14. Clause 36.4 of the Enterprise Agreement is 'struck out' and replaced by the following:

'Where a full-time, part-time or maximum term employee is rostered for a shift where the shift end time is after 5:00pm and before 8:00am (excluding public holidays),

those employees will be paid a loading of 15% of the employee's base rate for that shift.

Schedule A Classification Structure

15. An employee's classification is to be determined by reference to the definitions set out A.1 of Schedule A. The classification table is indicative of where a particular role is classified at the time of the Enterprise Agreement but may be reviewed in line with the definitions set out in A.1 of Schedule A.

Schedule A.1 is amended/clarified as follows:

- (a) A Level 1 employee is required to:
- (i) have a *basic understanding of crop issues* (not a 'general understanding')
 - (ii) work under *direct supervision* (not 'general supervision').
- (b) A 'Lead Irrigator' (referred to in the classification table as a 'Level 3' in the 'Irrigation' section) is not required to take on any supervisory duties but is required to operate with less supervision, exercises a higher degree of discretion in their role and has skills and expertise over and above the skills and expertise expected of a Level 2 Irrigator.
16. No employee will be disadvantaged by the application of the classification structure in Schedule A to the Agreement in place of the classifications structure in Schedule B to the *Horticulture Award 2010*.

Employer name: CostaExchange Pty Limited

Authority to sign: National HR Manager

Signature:



Date: 17 October 2019

