

**Annexure A**

**IN THE FAIR WORK COMMISSION**

**FWC Matter No.:**  
AG2023/4025

**Applicant:**

**CostaExchange Pty Ltd**

Section 185 – Application for approval of a single enterprise agreement

**Undertaking- Section 190**

I, Sarah Miles, for National HR Manager - Berry Category, give the following undertakings with respect to the Costa (Berry Category) Enterprise Agreement 2023 – 2027 ("the Agreement"):

1. I have the authority given to me by CostaExchange Pty Ltd (**the Employer**) to provide this undertaking in relation to the application before the Fair Work Commission.

**Trainees and Apprentices**

2. Notwithstanding Schedule C of the Agreement, the Employer will pay a minimum rate of pay to Trainees or Apprentices employed under the Agreement which at least exceeds the minimum rates of pay in Schedule E of the Miscellaneous Award 2020.

**Shiftworkers (part-time or full-time employees only)**

3. Further to clauses 15.1 and 36 of the Agreement, the Employer undertakes that the ordinary hours of work for a part-time or full-time employee who is a shiftworker will not exceed 152 hours over a 4 week period, provided that:
  - (a) the ordinary hours will be worked between Monday and Friday inclusive; and
  - (b) if an employee is directed to work on shifts, the shift must not exceed 8 hours without the payment of overtime.
  - (c) time worked by a full-time or part-time shiftworker in excess of the ordinary hours for shiftworkers will be deemed overtime paid in accordance with clause 30 of the Agreement (Overtime).

4. These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.

**Signature**



**Date:** 19/12/2023

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 2023 - 2027**



**1. TITLE**

- 1.1. This Agreement shall be known as the Costa (Berry Category) Enterprise Agreement 2023 - 2027 (the “Agreement”).

**2. AGREEMENT CLAUSES**

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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, 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 7 days following approval by the Fair Work Commission.
- 4.2. The nominal expiry date of the Agreement is 30 June 2027. 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) (**the Act**).

### 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. This Agreement will be read and interpreted in conjunction with the National Employment Standards (**NES**). Where there is an inconsistency between this agreement

and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.

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 (including any impact in relation to their family or caring responsibilities).
- 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 Act; and
  - b) are not unlawful terms under section 194 of the Act; 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, 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.

### **Job Search Entitlement (Non-Redundancy)**

- 13.10.** 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. The time off under this clause is to be taken at times that are mutually convenient to the employee after consultation with the Company. This clause does not apply where clause 13.8 applies.

### **14. RIGHT TO REQUEST CASUAL CONVERSION**

- 14.1.** Offers and requests for conversion from casual employment to full-time or part-time employment are provided for in the NES (see **Schedule E** for an extract of the NES provisions).

### **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.

### **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(c)** 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 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.
- 20.2. In relation to jury service:
- a) a full-time Employee required to attend 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 wage the Employee would have received in respect of the ordinary hours the Employee would have worked had they 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)**.

## 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 close relative of an employee, a member of the employee's household, or a current or former intimate partner of an employee that:

- i. seeks to coerce or control the employee;
- ii. and that causes them harm or to be fearful.

a close relative of the employee is another person who:

- i. is a member of the employee's immediate family as defined by the NES; or
- ii. a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

#### **21.2. Entitlement to paid leave**

- a) An employee is entitled to 10 days of paid leave in accordance with the NES 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 10 days of paid leave to deal with family and domestic violence.

#### **21.3. 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.

#### **21.4. 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 21.3**, 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.

#### **21.5. 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 each payment cycle after the 152 hours is reached; or
- b) 304 hours over an eight-week period for casual employees – in each payment cycle after the 304 hours is reached

### **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 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 provided for in this Agreement. Nothing in this clause affects a casual employee's entitlement to unpaid leave in accordance with the NES.

**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 2023 - Minimum Wage Increase to modern awards as decided by the Fair Work Commission, or 2.5% increase to the base Agreement rate, whichever is highest;
- b) 1 July 2024 - Minimum Wage Increase to modern awards as decided by the Fair Work Commission, or 2.5% increase to the base Agreement rate, whichever is highest;
- c) 7 July 2025 - Minimum Wage Increase to modern awards as decided by the Fair Work Commission, or 2.5% increase to the base Agreement rate, whichever is highest;
- d) 6 July 2026 – Minimum Wage Increase to modern awards as decided by the Fair Work Commission, or 2.5% increase to the base Agreement rate, whichever is highest.

**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 being paid a piece rate is a pieceworker.
- 28.2.** In this clause:
- a) the **average productivity of a pieceworker competent at the piecework task** over a period is calculated by dividing the total output of the pieceworkers competent at the piecework task over that period by the total of the hours worked on the piecework task by the pieceworkers competent at the piecework task over that period (where output is measured in the same unit used to specify the piece rate, for example, a punnet, bucket or kilogram);
  - b) **hourly rate for the pieceworker** means the minimum hourly rate for the pieceworker's classification level, plus for a casual pieceworker the 25% casual loading under **clause 25.2** of this Agreement;
  - c) **pieceworker competent at the piecework task** means a pieceworker who has at least 76 hours' experience performing the task (for example, picking apples, picking strawberries or pruning grape vines).
- 28.3.** A piecework rate is paid instead of the hourly rate prescribed in **Schedule B – Rates of Pay**. The Company must fix the piece rate at a level such that a pieceworker working at the average productivity of a pieceworker competent at the piecework task will earn at least 15% more per hour than the hourly rate for the pieceworker. 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 piecework rate applicable for that activity, block and crew prior to starting.
- 28.5.** The Company must give the individual a copy of the piecework agreement.
- 28.6.** The Company must keep the following as employee records:
- a) a copy of each piecework record given to the pieceworker; and
  - b) a record of all hours worked by the pieceworker and the applicable piece rate at the time those hours were worked.



- 28.7.** Despite any other provision of **clause 28**, a pieceworker must be paid for each day on which they work no less than the hourly rate for the pieceworker multiplied by the number of hours worked on that day.
- 28.8.** If a pieceworker does any work in addition to the task for which they are being paid a piece rate, the pieceworker must be paid for that additional work at the hourly rate for the pieceworker.
- 28.9.** For the purposes of the NES the base rate of pay and full rate of pay of a pieceworker are the same and are worked out as follows:
- a) by dividing the total amount payable to the pieceworker under this agreement during the relevant period by the total hours worked by the pieceworker during the relevant period;
  - b) If the pieceworker was continuously employed by the employer for a period of 12 months or more immediately before the rate of pay is to be worked out—the relevant period is the 12 months before the rate is to be worked out. If the pieceworker was continuously employed by the employer for a period of less than 12 months immediately before the rate of pay is to be worked out—the relevant period is that period
- 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 35 – Allowances
  - e) 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 30.7**) 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 (other than casual 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.
- 30.8.** All Employees (other than a casual Employee) required to work overtime on a Sunday will be paid a minimum of three hours.

### **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 76 hours at any point in time. Should an employee's bank reach 76 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 76 hours.
- 32.9. Upon employment ending, any RDO hours remaining in the employees bank will be paid at the rate of which the overtime hours were worked.
- 32.10. 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 subject to an employee's right to reasonably refuse to work on a public holiday.
- 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. A pieceworker is paid 200% of the piece rate for work on a public holiday.

### 34. MINIMUM ENGAGEMENT

- 34.1. A casual employee (including a casual pieceworker) will be engaged and paid 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.

## **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 2020.

### **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 \$14.66, 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 2020.

### **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) Cold Work Allowance applies to:
  - i. employees engaged in work locations where the room temperature has been modified by artificial means below one degree Celsius (**Cold Work**); and
  - ii. employees engaged in handling frozen product.
- b) Cold Work areas may include:
  - i. Post-pack cool room;
  - ii. Modified Atmosphere room; or
  - iii. Storage cool room.
- c) The Cold Work allowance will be paid at a rate of \$0.80 for each hour an employee is required to work in Cold Work or handle frozen product.
- d) This allowance will increase by the same percentage as the scheduled increases in **clause 27.1** of the Agreement.

### **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.
- b) 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 as defined in the Horticulture Award for each hour they are required to work in the wet place.

### **35.6. PROVISION OF TOOLS**

- a) Tools and equipment will be provided by the Company.
- b) Where the Company 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 Company must reimburse the Employee for the cost of providing such tools and equipment. The provisions of this clause do not apply where the tools and equipment are paid for by the Company.

### **35.7. NIGHT SPRAY ALLOWANCE**

- a) The Night Spray Allowance applies to employees rostered to undertake night spray operations.
- b) Where an employee is rostered to perform night spray duties, then they will be paid an allowance of 10% of their base hourly rate of pay for the whole rostered night spray shift.
- c) The Night Spray Allowance applies in addition to, not in place of the Night Shift Loading provided for in **clause 36** of the Agreement.
- d) The Night Spray Allowance and Night Shift Loading are added separately to the employee's base hourly rate of pay. For example, a full-time Level 3

Employee performing Night Spray duties on Night Shift would receive the following:

- i. base rate of \$24.04 + \$3.61 per hour Night Shift Loading + \$2.40 per hour Night Spray Allowance).

**35.8. FUMIGATION ALLOWANCE**

- a) The Fumigation Allowance applies where an employee is engaged by the Company to perform the duties of fumigation of fresh fruit during the post-harvest process on a given shift;
- b) Where an Employee performs fumigation duties on shift, then they will be paid an allowance of 10% of their base hourly rate of pay for the whole shift (regardless of the hours spent performing fumigation duties);
- c) For example, where an employee performs a total of 7 hours of work on a shift, but only performs one hour of fumigation duties, they will be paid the Fumigation Allowance for 7 hours.

**35.9. CREW SUPERVISOR ALLOWANCE – 50 OR MORE PEOPLE**

- a) Rates of pay for Crew Supervisors are outlined in **Schedule A** of this Agreement.
- b) In addition, where a Crew Supervisor is nominated as the only Crew Supervisor and is required to supervise a crew of 50 or more people, an allowance of 10% of the base hourly rate of pay for their classification will apply.
- c) For example, for an employee classified at Level 5C, where they supervise a crew of 50 people or more, then they will be paid an additional hourly allowance of \$2.49.
- d) This allowance is added separately to the employee's base hourly rate of pay for the whole shift and only applies where:
  - i. a supervisor is rostered to supervise a crew of 50 or more people; or
  - ii. if not rostered, where a crew supervisor is required to supervise 50 or more people during a shift for a duration of 2 hours or longer.
- e) Where a supervisor is required to supervise a crew of 50 or more people for less than 2 hours, then they will receive the allowance outlined above for the period of time spent supervising 50 or more people

**35.10. TOILET CLEANING ALLOWANCE**

- a) Where a Cleaner is engaged for any part of a day or shift to clean toilets, the Company will pay the employee a toilet cleaning allowance of \$3.28 per shift up to a maximum \$16.15 per week.
- b) This allowance will increase by the same percentage as the scheduled increases in **clause 27.1** of the Agreement.

**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 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.
- 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 endeavour 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 the whole day or shift.
- 38.2. 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.

### 39. REQUESTS FOR FLEXIBLE WORKING ARRANGEMENTS

- 39.1. Requests for flexible working arrangements will be in accordance with the NES.

## 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 (and there is no applicable stapled superannuation fund as identified by the ATO), 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. The Fair Work Commission 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. ACCIDENT PAY**

- 43.1. The Accident Pay clause in the Horticulture Award 2020 (currently **clause 19**) will apply to this Agreement.



#### **44. DECLARATION**

- 44.1. 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.

#### 45. SIGNATORIES TO THE AGREEMENT

45.1. 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
1. Christian Parsons	General Manager – Berry Category	Range Road, Corindi, NSW, 2456	
2. Sarah Miles	National HR Manager	Range Road, Corindi, NSW, 2456	

Signed for and on behalf of the employees:

Name	Position	Address	Signature
Terry Johnson	Warehouse Supervisor (Bargaining Representative)	Range Road, Corindi, NSW, 2456	

## **SCHEDULE A – CLASSIFICATION STRUCTURE**

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

No employee will be disadvantaged by the application of the classification structure in this Schedule in place of the classifications structure in Schedule B to the Horticulture Award.

### **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.

*Cleaning employees*, meaning those employees substantially engaged in work including but not limited to:

- iii. Cleaning of office and kitchen locations relating to the horticulture operation, toilets and facilities for members of staff

### **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/SWIs in line with task requirements;
- has a basic 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 direct 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/SWIs 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 powered 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

Indicative duties an employee may perform at this level are:

- duties of horticultural crop and farm maintenance, beyond the scope of Level 2, including irrigation lead, tractor operation of machines >70kW, truck driving with relevant licence, cleaning
- harvest related activities beyond the scope of Level 2, including quality champion, operating machinery such as tractors >70kW, harvest trucks with relevant licence and the like
- Cleaning activities including cleaning office locations, kitchens, lunchrooms and toilets as well as rubbish removal

**Note:** 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.

#### **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**

## CLASSIFICATION REVIEW

The Company will conduct an annual review of employee classifications, the purpose of which is to ensure that employees are correctly classified in accordance with the classifications outlined above.

Area	Position	Classification	Progression	Pay Rate Code
FIELD HARVEST	Picker Packer	Level 1	Not applicable	HL1A
	Crew Support (e.g. runner) 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 <b>not requiring</b> 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
<b>PACKING AND DISTRIBUTION</b>	<b>Packers</b>	Level 1	1A for the first 12 months in this position	HL1A
			Progress to 1B after 12 months within this position	HL1B
	<b>Crew Supervisor</b> (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
	<b>Crew Supervisor</b> (less than 12 months experience) <i>10 to 20 people</i>	Level 4.2		HL4B
	<b>Crew Supervisor</b> (less than 12 months experience) <i>21 people or more</i>	Level 4.3		HL4C
	<b>Crew Supervisor</b> (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
	<b>Crew Supervisor</b> (more than 12 months experience) <i>10 to 20 people</i>	Level 5.2		HL5B
	<b>Crew Supervisor</b> (more than 12 months experience) <i>21 people or more</i>	Level 5.3		HL5C
	<b>Receival/Dispatch Staff</b> (not operating forklifts)	Level 1	Not applicable	HL1A
	<b>Receival/Dispatch Forklift Operators</b>	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	



	<b>Fumigator</b>	Level 3	3A for the first 12 months in this position	HL3A
			Progress to 3B after 12 months in this position	HL3B
	<b>QA Assistants</b>	Level 2	2A for first 12 months in this position	HL2A
			Progress to 2B after 12 months in this position	HL2B
	<b>Quality Champions</b>	Level 3	Not applicable	HL3A
	<b>IRRIGATION</b>	<b>Irrigator (Substrate or in ground)</b>	Level 2	2A for 12 months in this position
Progress to 2B after 12 months in this position				HL2B
<b>Lead Irrigator</b>		Level 3	3A for first 12 months in this position	HL3A
			Progress to 3B after 12 months in this position	HL3B
<b>Crew Supervisor (less than 12 months experience) 9 people or less</b>		Level 4.1	Level 4 for the first 12 months in this position	HL4A
<b>Crew Supervisor (less than 12 months experience) 10 to 20 people</b>		Level 4.2		HL4B
<b>Crew Supervisor (less than 12 months experience) 21 people or more</b>		Level 4.3		HL4C
<b>Crew Supervisor (more than 12 months experience) 9 people or less</b>		Level 5.1	Progression to Level 5 after 12 months in this position	HL5A
<b>Crew Supervisor (more than 12 months experience) 10 to 20 people</b>		Level 5.2		HL5B

	<b>Crew Supervisor</b> (more than 12 months experience) <i>21 people or more</i>	Level 5.3		HL5C
<b>HORTICULTURAL OPERATIONS</b>	<b>Planting</b>	Level 1	Not applicable	HL1A
	<b>Weed Spraying Hand Weeding Mowing</b>	Level 1	Not applicable	HL1A
	<b>Pest and Disease Scouts</b>	Level 1	1A for the first 12 months in this position	HL1A
			Progress to 1B after 12 months within this position	HL1B
	<b>Pruners</b>	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 performing the following specified pruning activities; blueberry pruning, Rubus cane selection, Rubus cut backs	HL2A
	<b>Block Removal</b>	Level 1	Not applicable	HL1A
	<b>Tunnel Maintenance</b>	Level 1	1A for the first 12 months in this position	HL1A
			Progress to 1B after 12 months in this position	HL1B
<b>Tunnel Establishment</b>	Level 2	Not applicable	HL2A	
<b>Assistant Supervisor</b>	Level 3	3A for the first 12 months in this position	HL3A	
		Progress to 3B after 12 months in this position	HL3B	

	<b>Cleaner</b>	Level 3	3A for the first 12 months in this position	HL3A
			Progress to 3B after 12 months in this position	HL3B
	<b>Crew Supervisor</b> (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
	<b>Crew Supervisor</b> (less than 12 months experience) <i>10 to 20 people</i>	Level 4.2		HL4B
	<b>Crew Supervisor</b> (less than 12 months experience) <i>21 people or more</i>	Level 4.3		HL4C
	<b>Crew Supervisor</b> (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
	<b>Crew Supervisor</b> (more than 12 months experience) <i>10 to 20 people</i>	Level 5.2		HL5B
	<b>Crew Supervisor</b> (more than 12 months experience) <i>21 people or more</i>	Level 5.3		HL5C
	<b>Tractor Operator</b> (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
<b>Tractor Operator</b> (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 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.

<b>COMPOSITION OF PERMANENT &amp; MAXIMUM-TERM RATES</b>						
<b>Agreement Base Rate (ordinary hours)</b>	<b>Agreement Overtime Rate (Monday-Saturday)</b>	<b>Agreement Overtime Rate (Sunday, outside of harvest period)</b>	<b>Agreement Overtime Rate (Sunday, during harvest period - first 5 hours within first 8 hours of overtime per week)</b>	<b>Agreement Overtime Rate (Sunday, during harvest period, after 8 hours overtime in a week or after 5 hours work on the Sunday)</b>	<b>Agreement Night Shift Rate</b>	<b>Agreement Public Holiday Rate</b>
Agreement 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

<b>COMPOSITION OF CASUAL RATES</b>			
<b>Agreement Base Rate (ordinary hours) inclusive of Casual Loading</b>	<b>Agreement Overtime inclusive of Casual Loading</b>	<b>Agreement Night Shift Rate inclusive of Casual Loading</b>	<b>Agreement Public Holiday Rate inclusive of Casual Loading</b>
(Agreement Rate) + (Agreement 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 2023

<b>Pay Rate Code</b>	<b>Current Award Base Rate (as at 3 July 2023)</b>	<b>Minimum Agreement Base Rate (inclusive of minimum 5.75% increase to award rate) 2023-2024</b>	<b>Leading Hand Allowance (inclusive of 5.75% increase to award rate) 2023-2024</b>	<b>Casual Loading (inclusive of 5.75% increase to award rate) 2023-2024</b>
HL1A	\$22.61	<b>\$22.77</b>		\$5.69
HL1B	\$22.93	<b>\$23.09</b>		\$5.77
HL2A	\$23.23	<b>\$23.39</b>		\$5.85
HL2B	\$23.56	<b>\$23.72</b>		\$5.93
HL3A	\$23.87	<b>\$24.04</b>		\$6.01
HL3B	\$24.30	<b>\$24.47</b>		\$6.12
HL4A	\$23.87 + \$0.83 (Leading Hand Allowance)	<b>\$24.04</b>		\$0.84
HL4B	\$23.87 + \$1.17 (Leading Hand Allowance)	<b>\$24.04</b>	\$1.17	\$6.30

HL4C	\$23.87 + \$1.47 (Leading Hand Allowance)	<b>\$24.04</b>	\$1.48	\$6.38
HL5A	\$24.73 + \$0.83(Leading Hand Allowance)	<b>\$24.90</b>	\$0.84	\$6.44
HL5B	\$24.73 + \$1.17 (Leading Hand Allowance)	<b>\$24.90</b>	\$1.17	\$6.52
HL5C	\$24.73 + \$1.47 (Leading Hand Allowance)	<b>\$24.90</b>	\$1.48	\$6.60

## 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
<b>School leaver</b>	\$384.30	\$ 423.10	\$ 503.30
<b>Plus 1 year out of school</b>	\$ 423.10	\$ 503.30	\$ 585.70
<b>Plus 2 years out of school</b>	\$ 503.30	\$ 585.70	\$ 681.60
<b>Plus 3 years out of school</b>	\$ 585.70	\$ 681.60	\$ 780.40
<b>Plus 4 years out of school</b>	\$681.60	\$ 780.40	
<b>Plus 5 or more years out of school</b>	\$ 780.40		

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 per hour	Year 11 per hour	Year 12 per hour
<b>School leaver</b>	\$12.64	\$13.92	\$16.55
<b>Plus 1 year out of school</b>	\$13.92	\$16.55	\$19.27
<b>Plus 2 years out of school</b>	\$16.55	\$19.27	\$22.42
<b>Plus 3 years out of school</b>	\$19.27	\$22.42	\$25.68
<b>Plus 4 years out of school</b>	\$22.42	\$25.68	
<b>Plus 5 or more years out of school</b>	\$25.68		

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
- (vi) Leave 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**

a) The annual salary will be reviewed each 6 months to determine if the Employee in that period was paid more than if the Horticulture Award 2020 applied to them.

b) The audit will be conducted within 14 days of the end of the 6 month period in which the hours were worked.

c) If the Employee was paid equal to or less than what the Employee would have been paid under the Horticulture Award 2020, then Costa will reimburse the Employee for the difference plus 3%.

## **SCHEDULE E – CASUAL CONVERSION**

The following is an extract of the NES casual conversion entitlements contained in the Act:

### **Division 4A—Offers and requests for casual conversion**

#### **Subdivision A—Application of Division**

##### **66A Division applies to casual employees etc.**

- (1) This Division applies in relation to an employee who is a casual employee.
- (2) A reference in this Division to full-time employment or part-time employment is taken not to include employment for a specified period of time, for a specified task or for the duration of a specified season.

#### **Subdivision B—Employer offers for casual conversion**

##### **66AA Subdivision does not apply to small business employers**

This Subdivision does not apply in relation to an employer that is a small business employer.

##### **66B Employer offers**

- (1) Subject to section 66C, an employer must make an offer to a casual employee under this section if:
  - (a) the employee has been employed by the employer for a period of 12 months beginning the day the employment started; and
  - (b) during at least the last 6 months of that period, the employee has worked a regular pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to work as a full-time employee or a part-time employee (as the case may be).

**Note:** An employee who meets the requirements of paragraphs (a) and (b) would also be a regular casual employee because the employee has been employed by the employer on a regular and systematic basis.

- (2) The offer must:
  - (a) be in writing; and
  - (b) be an offer for the employee to convert:
    - (i) for an employee that has worked the equivalent of full-time hours during the period referred to in paragraph (1)(b)—to full-time employment; or
    - (ii) for an employee that has worked less than the equivalent of full-time hours during the period referred to in paragraph (1)(b)—to part-time employment that is consistent with the regular pattern of hours worked during that period; and
  - (c) be given to the employee within the period of 21 days after the end of the 12 month period referred to in paragraph (1)(a).

**Note:** If an offer is accepted, the conversion to full-time employment or part-time employment has effect for all purposes (see section 66K).

- (3) For the purposes of paragraph (2)(b), in determining whether an award/agreement free employee has worked the equivalent of full-time hours, regard may be had to the hours of work of any other full-time employees of the employer employed in the same position as (or in a position that is comparable to) the position of the employee.

### **66C When employer offers not required**

- (1) Despite section 66B, an employer is not required to make an offer under that section to a casual employee if:
  - (a) there are reasonable grounds not to make the offer; and
  - (b) the reasonable grounds are based on facts that are known, or reasonably foreseeable, at the time of deciding not to make the offer.
- (2) Without limiting paragraph (1)(a), reasonable grounds for deciding not to make an offer include the following:
  - (a) the employee's position will cease to exist in the period of 12 months after the time of deciding not to make the offer;
  - (b) the hours of work which the employee is required to perform will be significantly reduced in that period;
  - (c) there will be a significant change in either or both of the following in that period:
    - (i) the days on which the employee's hours of work are required to be performed;
    - (ii) the times at which the employee's hours of work are required to be performed;which cannot be accommodated within the days or times the employee is available to work during that period;
  - (d) making the offer would not comply with a recruitment or selection process required by or under a law of the Commonwealth or a State or a Territory.
- (3) An employer must give written notice to a casual employee in accordance with subsection (4) if:
  - (a) the employer decides under subsection (1) not to make an offer to the employee; or
  - (b) the employee has been employed by the employer for the 12 month period referred to in paragraph 66B(1)(a) but does not meet the requirement referred to in paragraph 66B(1)(b).

**Note:** If an employer fails to give notice to a casual employee, the employee has a residual right to request conversion to full-time or part-time employment in certain circumstances: see Subdivision C.

- (4) The notice must:
  - (a) advise the employee that the employer is not making an offer under section 66B; and
  - (b) include details of the reasons for not making the offer (including any grounds on which the employer has decided to not make the offer); and
  - (c) be given to the employee within 21 days after the end of the 12 month period referred to in paragraph 66B(1)(a).

### **66D Employee must give a response**

- (1) The employee must give the employer a written response to the offer within 21 days after the offer is given to the employee, stating whether the employee accepts or declines the offer.
- (2) If the employee fails to give the employer a written response in accordance with subsection (1), the employee is taken to have declined the offer.

#### **66E Acceptances of offers**

- (1) If the employee accepts the offer, the employer must, within 21 days after the day the acceptance is given to the employer, give written notice to the employee of the following:
  - (a) whether the employee is converting to full-time employment or part-time employment;
  - (b) the employee's hours of work after the conversion takes effect;
  - (c) the day the employee's conversion to full-time employment or part-time employment takes effect.
- (2) However, the employer must discuss with the employee the matters the employer intends to specify for the purposes of paragraphs (1)(a), (b) and (c) before giving the notice.
- (3) The day specified for the purposes of paragraph (1)(c) must be the first day of the employee's first full pay period that starts after the day the notice is given, unless the employee and employer agree to another day.

#### **Subdivision C—Residual right to request casual conversion**

##### **66F Employee requests**

- (1) A casual employee may make a request of an employer under this section if:
  - (a) the employee has been employed by the employer for a period of at least 12 months beginning the day the employment started; and
  - (b) the employee has, in the period of 6 months ending the day the request is given, worked a regular pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to work as a full-time employee or a part-time employee (as the case may be); and
  - (c) all of the following apply:
    - (i) the employee has not, at any time during the period referred to in paragraph (b), refused an offer made to the employee under section 66B;
    - (ii) the employer has not, at any time during that period, given the employee a notice in accordance with paragraph 66C(3)(a) (which deals with notice of employer decisions not to make offers on reasonable grounds);
    - (iii) the employer has not, at any time during that period, given a response to the employee under section 66G refusing a previous request made under this section;
    - (iv) if the employer is not a small business employer—the request is not made during the period of 21 days after the period referred to in paragraph 66B(1)(a).

**Note:** Nothing in this Subdivision prevents an employee from requesting to convert to full-time or part-time employment outside the provisions of this Division, or prevents an employer from granting such a request.

- (2) The request must:
  - (a) be in writing; and
  - (b) be a request for the employee to convert:
    - (i) for an employee that has worked the equivalent of full-time hours during the period referred to in paragraph (1)(b)—to full-time employment; or
    - (ii) for an employee that has worked less than the equivalent of full-time hours during the period referred to in paragraph (1)(b)—to part-time employment that is consistent with the regular pattern of hours worked during that period; and
  - (c) be given to the employer.

Note: If a request is accepted, the conversion to full-time employment or part-time employment has effect for all purposes (see section 66K).

- (3) For the purposes of paragraph (1)(b), in determining whether an award/agreement free employee has worked the equivalent of full-time hours, regard may be had to the hours of work of any other full-time employees of the employer employed in the same position as (or in a position that is comparable to) the position of the employee.

#### **66G Employer must give a response**

The employer must give the employee a written response to the request within 21 days after the request is given to the employer, stating whether the employer grants or refuses the request.

#### **66H Refusals of requests**

- (1) The employer must not refuse the request unless:
  - (a) the employer has consulted the employee; and
  - (b) there are reasonable grounds to refuse the request; and
  - (c) the reasonable grounds are based on facts that are known, or reasonably foreseeable, at the time of refusing the request.
- (2) Without limiting paragraph (1)(b), reasonable grounds for refusing the request include the following:
  - (a) it would require a significant adjustment to the employee's hours of work in order for the employee to be employed as a full-time employee or part-time employee;
  - (b) the employee's position will cease to exist in the period of 12 months after giving the request;
  - (c) the hours of work which the employee is required to perform will be significantly reduced in the period of 12 months after giving the request;
  - (d) there will be a significant change in either or both of the following in the period of 12 months after giving the request:
    - (i) the days on which the employee's hours of work are required to be performed;
    - (ii) the times at which the employee's hours of work are required to be performed;which cannot be accommodated within the days or times the employee is available to work during that period;

- (e) granting the request would not comply with a recruitment or selection process required by or under a law of the Commonwealth or a State or a Territory.
- (3) If the employer refuses the request, the written response under section 66G must include details of the reasons for the refusal.

### **66J Grants of requests**

- (1) If the employer grants the request, the employer must, within 21 days after the day the request is given to the employer, give written notice to the employee of the following:
  - (a) whether the employee is converting to full-time employment or part-time employment;
  - (b) the employee's hours of work after the conversion takes effect;
  - (c) the day the employee's conversion to full-time employment or part-time employment takes effect.
- (2) However, the employer must discuss with the employee the matters the employer intends to specify for the purposes of paragraphs (1)(a), (b) and (c) before giving the notice.
- (3) The day specified for the purposes of paragraph (1)(c) must be the first day of the employee's first full pay period that starts after the day the notice is given, unless the employee and employer agree to another day.
- (4) To avoid doubt, the notice may be included in the written response under section 66G.

### **Subdivision D—Other provisions**

#### **66K Effect of conversion**

To avoid doubt, an employee is taken, on and after the day specified in a notice for the purposes of paragraph 66E(1)(c) or 66J(1)(c), to be a full-time employee or part-time employee of the employer for the purposes of the following:

- (a) this Act and any other law of the Commonwealth;
- (b) a law of a State or Territory;
- (c) any fair work instrument that applies to the employee;
- (d) the employee's contract of employment.

#### **66L Other rights and obligations**

- (1) An employer must not reduce or vary an employee's hours of work, or terminate an employee's employment, in order to avoid any right or obligation under this Division.

Note: The general protections provisions in Part 3-1 also prohibit the taking of adverse action by an employer against an employee (which includes a casual employee) because of a workplace right of the employee under this Division.

- (2) Nothing in this Division:
  - (a) requires an employee to convert to full-time employment or part-time employment; or



- (b) permits an employer to require an employee to convert to full-time employment or part-time employment; or
- (c) requires an employer to increase the hours of work of an employee who requests conversion to full-time employment or part-time employment under this Division.

## **66M Disputes about the operation of this Division**

### *Application of this section*

- (1) This section applies to a dispute between an employer and employee about the operation of this Division.
- (2) However, this section does not apply in relation to the dispute if any of the following includes a term that provides a procedure for dealing with the dispute:
  - (a) a fair work instrument that applies to the employee;
  - (b) the employee's contract of employment;
  - (c) another written agreement between the employer and employee.

**Note:** Modern awards and enterprise agreements must include a term that provides a procedure for settling disputes in relation to the National Employment Standards (see paragraph 146(b) and subsection 186(6)).

### *Resolving disputes*

- (3) In the first instance, the parties to the dispute must attempt to resolve the dispute at the workplace level, by discussions between the parties.

### *FWC may deal with disputes*

- (4) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the dispute to the FWC.
- (5) If a dispute is referred under subsection (4):
  - (a) the FWC must deal with the dispute; and
  - (b) if the parties notify the FWC that they agree to the FWC arbitrating the dispute—the FWC may deal with the dispute by arbitration.

**Note:** For the purposes of paragraph (a), the FWC may deal with the dispute as it considers appropriate, including by mediation, conciliation, making a recommendation or expressing an opinion (see subsection 595(2)).

### *Representatives*

- (6) The employer or employee to the dispute may appoint a person or industrial association to provide the employer or employee (as the case may be) with support or representation for the purposes of resolving, or the FWC dealing with, the dispute.

**Note:** A person may be represented by a lawyer or paid agent in a matter before the FWC only with the permission of the FWC (see section 596).

## IN THE FAIR WORK COMMISSION

**FWC Matter No.:**

AG2023/4025

**Applicant:**

**CostaExchange Pty Ltd**

Section 185 – Application for approval of a single enterprise agreement

### Undertaking- Section 190

I, Sarah Miles, for National HR Manager - Berry Category, give the following undertakings with respect to the Costa (Berry Category) Enterprise Agreement 2023 – 2027 ("the Agreement"):

1. I have the authority given to me by CostaExchange Pty Ltd (**the Employer**) to provide this undertaking in relation to the application before the Fair Work Commission.

#### **Trainees and Apprentices**

2. Notwithstanding Schedule C of the Agreement, the Employer will pay a minimum rate of pay to Trainees or Apprentices employed under the Agreement which at least exceeds the minimum rates of pay in Schedule E of the Miscellaneous Award 2020.

#### **Shiftworkers (part-time or full-time employees only)**

3. Further to clauses 15.1 and 36 of the Agreement, the Employer undertakes that the ordinary hours of work for a part-time or full-time employee who is a shiftworker will not exceed 152 hours over a 4 week period, provided that:
  - (a) the ordinary hours will be worked between Monday and Friday inclusive; and
  - (b) if an employee is directed to work on shifts, the shift must not exceed 8 hours without the payment of overtime.
  - (c) time worked by a full-time or part-time shiftworker in excess of the ordinary hours for shiftworkers will be deemed overtime paid in accordance with clause 30 of the Agreement (Overtime).
4. These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.

**Signature**



**Date:** 19/12/2023